

SUNFISH LAKE PLANNING COMMISSION MEETING
MAY 23, 2024
7:00 P.M.

Attendants

Chair: Tom Hendrickson
Commissioners: Present: Dominick Driano, Jeannine Naves and Kevin Wu
City Planner: Lori Johnson
City Clerk: Christy Wilcox
Members of the General Public.

1. CALL TO ORDER: Chair Hendrickson called the meeting to order at 7:10 p.m.
2. ADOPT AGENDA: Chair Hendrickson asked if there were any additions to the agenda and there was no response.

Commissioner Driano moved to adopt the agenda as presented, seconded by Commissioner Naves. Motion carried (4-0)

3. APPROVE MINUTES, APRIL 18, 2024, PLANNING COMMISSION MEETING: Chair Hendrickson asked if there were any additions or corrections to the April 18, 2024, Planning Commission meeting minutes.

Commissioner Naves moved to approve the April 18, 2024, Planning Commission minutes seconded by Chair Hendrickson. Motion carried. (4-0)

4. PUBLIC HEARING: A. MAJOR SITE PLAN REVIEW AND VARIANCE REQUEST AT 415 SALEM CHURCH ROAD. Applicant is Ken Ronsberg, Performance Pool & Spa. Chair Hendrickson opened the meeting for the purpose of a public hearing on the application for a Major Site Plan Review at 415 Salem Church Road. He reviewed the procedures for conducting a public hearing and asked the Planner to present her report.

Planner Johnson referred to her report dated May 17, 2024, as well as the presentation packet that was distributed this evening. The property is zoned R-1 Single Family Residential and within the Shoreland Overlay District. The acreage of the site is 4.69 acres. The request is for a Major Site Plan Review for the construction of a pool.

PROPOSED:

- Pool – 2,029 square feet. The pool will be 18 ft. x 36 feet (648 square feet) and the pool deck and stairs will be 1,381 square feet
- Retaining wall and path surrounding south-east of pool/home
- All setbacks have been met
- Impervious surface is 5% which meets the requirements
- Building coverage is 2% which meets the requirements
- No change to existing driveway access to property

LANDSCAPING AND TREE REMOVAL/PRESERVATION:

- No trees/shrubs planned for removal
- Planting bed installations
- Additional plantings northeast of pool

OTHER INFORMATION:

- Proposed improvements meet R-1 and Shoreland Overlay District requirements and standards
- DNR Approval: Area Hydrologist was properly notified, and no comments received

The Planner stated that staff is recommending approval of the Major Site Plan Review subject to the seven (7) conditions as listed in the Findings of Fact.

Chair Hendrickson asked if there were any further comments from the applicant or public at this time.

Public Comments:

- There were no public comments

Chair Hendrickson asked if the Commissioners had any questions or comments. Chair Hendrickson closed the public hearing.

Commissioner Naves moved to recommend approval of the Major Site Plan Review for a pool subject to the conditions as listed in the Planner's report dated May 17, 2024, seconded by Commissioner Wu. Motion carried (4-0).

5. PUBLIC HEARING: A. MAJOR SITE PLAN REVIEW, CONDITIONAL USE PERMIT AND VARIANCES AT 2570 DELAWARE AVENUE. Applicants are Jeremy and Rachel Segal. Chair Hendrickson opened the meeting for the purpose of a public hearing on the application for a Major Site Plan Review, Conditional Use Permit and Variances at 2570 Delaware Avenue.

Planner Johnson referred to her report dated May 17, 2024, as well as the presentation packet that was distributed this evening. The property is zoned R-1 Single Family Residential within the Shoreland Overlay District. The acreage of the site is 3.9 acres with an existing home on site and accessed via private shared drive off Delaware Avenue.

1. Overview.

Amber Hill, PEBL Design, has made a request on behalf of the property owners (Jeremy and Rachel Segal) at 2570 Delaware Avenue to allow for the following improvements on site:

- **Major site plan** approval to allow for the construction of a swimming pool (and fence around pool equipment), golf area, pergola, a 30-foot long 6-foot tall privacy fence all in excess of 1,000 square feet. NOTE: Outdoor fitness area and tree house were removed from the plan by the applicant after the May 23 Planning Commission meeting.
- A **Conditional Use Permit** for more than one accessory structure on a lot, and for the allowance of accessory structures in the front yard. The pool and the golf area are considered accessory

structures/uses and are proposed in the front yard of the lot, which is on the east side of the lot. The entrance monument/gate also requires a conditional use permit and is included in the proposed resolution of approval.

- **Variance** for the location of a future entrance gate which is proposed to be located 22 feet and 4 inches away from the side yard property line on the north side of the site where a 50-foot setback is required for such gate.
- **Variance** for the existing 350-foot-long wrought iron fence that was constructed without a permit adjacent to the lake, where a 200-foot setback from the Ordinary High Water Mark is required. Fences are also required to be no longer than 200 lineal feet.
- The variance for the location of a tree house (accessory structure) has been pulled from the plans by the applicant.

Existing Fence/Shoreline Improvements

- Applicants built an addition/major site plan approval/minor site plan approval
- At that time, no fence was proposed or existing on site
- Since that time, major improvements to the site (walls/walkway immediately adjacent to the lake, installation of wrought iron fence
- No permits were applied for or issued for any of this work

Lakeside Improvements/Fence Existing

- Considerable grading activity/slope alterations
- Property owners have indicated that they did not know permits were needed for the work
- The fence is not allowed within the 200-foot setback from the OHWL
- Unsure if erosion controls were installed/storm water ordinance met
- Shoreland Ordinance prohibits removal of natural vegetation within the slope to the lake

The applicants have stated that a fence was on the property when they bought the property in 2014. The applicant has provided pictures of a fence along the lake which appears to be some sort of wire fence, which also would not have been permitted under ordinance requirements. There is a picture of a chain link fence that was submitted by the applicant, but the location is unknown. Staff have not found permits for any of the fences shown in the pictures (WSB records go back to 2010). Additionally, the staff reports for the 2018 approvals indicated that no fencing existed at that time or was proposed. A copy of the existing site plan that was submitted for the 2018 approvals is attached and there is no fence shown on that site plan. The staff report indicated that no work was proposed along the lakeside with the 2018 project. It is unknown when the site plan was drawn that was submitted by the applicant regarding the existing fence, which was simply an illegal wire fence

Other Items of Interest

Impervious Surface and Building Coverage: The total existing impervious surface coverage for the lot is 11.7%. The total proposed new impervious surface coverage on the lot is 14.29%. The total maximum impervious surface coverage allowed on the lot is 30%.

The total building coverage allowed on the lot cannot be greater than 10% per ordinance requirements. The building coverage on the site is 4.14%, and the building coverage is not changing with this proposal.

Tree Preservation/Landscaping: The applicant submitted a tree survey that originally indicated 12 trees will be removed in and around the construction site. The city's replacement requirement indicates that the

applicant must replace the number of trees that are removed. The applicant has submitted a landscape plan which includes more than the required number of replacement trees. Tree protection of the existing trees on site during the construction will be required and must be inspected by the City Forester prior to work being performed. *After talking with the landscaping company, they might be able to save a couple trees.*

The ordinance requires that accessory structures such as pools be screened from neighboring properties. In this case there is a proposed row of spruces and pine trees along the south side of the pool, a proposed 6-foot privacy fence adjacent to the water feature to block the view of the pool to the east, and birch trees on the north side of the pool. The home blocks the view of the pool from the lake on the west side of the site.

Lighting: The applicant has submitted a lighting plan that meets the requirements of the zoning ordinance. The foot candle readings must be less than one at waters edge, property lines and public streets. The lighting plan indicates that the foot candle readings will be 0 well before the waters edge, property lines, and public streets. Fixture cut sheets have also been provided.

Storm Water: The applicant has worked with the City Engineer to provide a grading, drainage and erosion control plan that meets city requirements.

DNR Approval. The Minnesota DNR Area Hydrologist was notified of the proposed request and had no other comments, other than the DNR requires a 100-foot setback for fences adjacent to the OHWL.

Public Comment. Staff received several written comments from the adjacent property owners with regard to this project and those written responses are included in your packet. Additionally, the adjacent property owners were in attendance at the public hearing at the Planning Commission meeting. The comments presented from the neighborhood include:

- Fear of setting precedence for this type of development in the city
- Tree removal concerns
- View concerns from adjacent properties/screening alternatives
- Lighting concerns
- Questions about process and variances/conditional use permits
- Questions about the entrance monument/gate location

Staff recommends approval of the Major Site Plan/Conditional Use permit with the conditions listed in the staff report. The Planning Commission has little discretion when making a recommendation or decision, but can add conditions that would be beneficial to the project or surrounding neighborhood. Screening is one such condition that could be added. The City Planner suggested adding 16 foot white pine trees to be added on the south side next to the golf area. Lighting is another thing that you could have them remove.

The City Planner then went over each request:

Variance for Monument Gate - 27.6 foot variance from the 50 foot side yard setback for the entrance and monument gate. The City Planner has recommended approval. The property is unique when you think about it in terms of putting in an entrance monument gate. It is a relatively short driveway and would be difficult for them to locate that anywhere else. It's reasonable to have an entrance gate within the city as there are many others located within the city. The applicants weren't responsible for the driveway location

and was improved in the past, but it doesn't fundamentally change the fact that they don't have room to meet that set back.

Variances for Fence - which is a 100 foot variance to the 200 foot length requirement for fences and the 200 foot variance to the 200 foot shoreline ordinance set back requirement for the existing fence. This property is not unique in terms of topography. SFL has many other lots within the city with steeper slopes than this that we have worked to maintain the integrity of the natural nature of the slopes adjacent to the lake. The City Planner will recommend denial of this Variance.

The purpose of the ordinance is to keep fences out of the set back and off the slopes of the lake and is not aware of any other fences located that close to the lake and on a slope.

Comments from applicant Jeremy Segal:

When we hired a very reputable builder to do our property, we were not paying attention to city ordinances or permits. We allowed them to do it and expected them to do it properly and found out they didn't do it. It is an error on our part, so we'll take responsibility for that, but we do not want to be judged based on that activity and how we need to handle our business or personal life or our projects. We sat in this process nine years ago with the Boyle family supporting them on their project. The city denied it and we said we don't have a problem with it and want them to build their dream house and the remodeling project. Our request today for you is to think about our project and understand that we are trying to do the same thing. We understand privacy and encroaching on different properties, and it's never been our attention as we had a very friendly relationship with the Boyles and never had issues with encroachment onto other properties.

The Chair asked for comments from the general public:

Resident at 2580 Delaware: Asked if the Boyles told the applicants in advance what their plans were? The applicant indicated that they supported their project in full.

Rachel Segal indicated she was surprised to see the emails today and the comments. They have hired the best team possible to help to implement a plan that is thoughtful to the land. When we moved SFL 10 years ago, we had big dreams for our property and have plans for this to be our forever home. We want to have a positive relationship with the neighbors, so if there are any questions or concerns moving forward with anything, please know we are open and want to work with the neighbors.

Resident at 2560 Delaware: Asked if the neighbors had any say on the proposed project such as cutting down trees, lighting and setbacks.

The City Planner asked the Chair if it would be helpful to go over the rules and regulations around Variances versus Conditional Use Permits. At this time, the City Planner reviewed the process.

Amber Hill discussed the lighting plan as presented and indicated the lighting is very minimal.

Commissioner Naves asked to handle this in 4 pieces as recommended. The Commission agreed. Commissioner Naves commented that seeing the driveway I understand that if I would travel on that road I would need to be able to drive in and turn around if that wasn't my destination so appreciates the fact that the gate is far enough up. Commissioner Naves understands that it is not as much as we would like but feel a good decision on that fits within the regulations.

Chair Hendrickson asked about the elevation plan and asked if there are lights on the caps proposed. Chair Hendrickson asked if there is an opportunity to change the lights, so they are mounted down. City Planner said to make this a condition.

Chair Hendrickson moved to approve a Variance from the 50-foot side yard setback requirement for an entrance monument/gate located at 2570 Delaware Avenue, based on the Findings of Fact and subject to the conditions as listed in the Planner's report dated May 17, 2024, as amended to include that the lights be changed to an under cap mounted down light that meet the 0 foot property line, seconded by Commissioner Naves. Motion carried (4-0)

A question was asked clarifying about state statute. In the motion, the Commission does not need to mention statute as it is an ordinance. Statute is covered under state rules and regulations, and it is an ordinance requirement. The ordinance states the Conditional Use Permit should be granted for the monument gate but then if it does not meet set back requirements, then a Variance is required. The monument that is on the north side of the driveway is only 22 feet, 4 inches from the side property line and it needs to be 50 feet. The entrance monument gate will be considered into the Conditional Use Permit.

Resident Ciresi asked what the purpose of the ordinance is? Planner Johnson said there are two purposes for the ordinance. The set back rules are meant to keep structures out of the setback area and the Conditional Use Permit part allows residents to install items listed as conditional uses, and allows the Planning Commission and City Council to place conditions on the request.

Commissioner Wu stated that the confusion is that a 50-foot setback may seem like it is a hard and fast rule so residents do not build within the 50 foot setback. So what Planner Johnson is trying to do is look at other factors that would necessitate building the monument within that set back that doesn't counteract other rules. So in this case, because the driveway ends at that certain location and you can't put the gate pretty much any further in is why the recommendation is to proceed because of the way their driveway is set.

Planner Johnson explained that the easement doesn't cover the driveway that goes on to the applicant's property. The monuments are not proposed on any of the easements and the applicants have the ability to put them on their own property.

Chair Hendrickson said the possibility of locating it inside the set back doesn't seem practical and doesn't seem realistic to try and force something like that when a reasonable use of a Variance reducing that setback number is fair.

A resident asked why ordinances really don't matter but specifically states the fence does not negatively impact the use of abutting property or distract from the open natural setting of the community. This is in the direct view of our property.

Commissioner Naves said that part of the difficulty with gates is that there is a precedent in the city that multiple residents want them and have them and there are some that are super visible and no way to screen them. If you look down Salem Church Road for example, there's a couple that there's no way you could screen them enough because you'd have to screen out the fence in its entirety from the road and it is not possible. The best that we can kind of do is make sure that there is no extra lighting on there that calls attention to it, that pushes more light toward that area than is absolutely necessary. We have residents who really want gates and I think there's other things we could ask for about other places of trees that would help screen them a little bit more.

Mayor O'Leary noted that the Minnesota Supreme Court rules in previous cases that there is no sightline right of property owner.

Chair Hendrickson noted that this is one of the sections of the code that will be changed in the future because of this ruling.

Rachel Segal noted knowing how sensitive the Ciresi's are about their visual to this gate that she has spent a lot of time standing in the spot where this gate will go and looking up the hill to their home. What I've noticed is the tree covering and the height of the trees, I cannot see their house or the windows to their house from those pillars where the gates would be.

Resident Ciresi stated that this might be true now when all the leaves are on the trees, but not true October through May.

Discussion began regarding the 150-foot variance to the 200-foot length requirement for fences and the 200-foot variance to the 200-foot Shoreland Ordinance setback requirement for the existing fence.

Commissioner Driano asked if the fence could be removed and planted with adequate shrubbery to essentially reach the same ends?

The applicant indicated they will do whatever they need to do to move forward with this project.

Resident at 2544 Delaware asked if the removal would include the retraining wall. Planner Johnson noted that there are no setback requirements for the retaining wall. There is a requirement in the zoning ordinance that the natural state of the slope not be changed. There would be more damage to the lake to pull everything out and this is the consensus of the City Engineer as well.

Commissioner Wu stated that we are here now with the requests and we have talked at length about the issues that happened in the past and unfortunately we can't go back on removing it without any effect. The retaining walls, the removal process for all that stone would be potentially more detrimental, and I think we are at a point where we're talking about just the fence. The homeowners have said they will take care of it and removal is part of it.

Chair Hendrickson said his perspective is that if we have the power or the authority or we thought it would be less detrimental to the lake, we would try and make some recommendation that not only the fence variance be denied but that you are forced to remove those retaining walls and replace that slope. We don't have that power and I agree with the City Planner that removing the retaining walls at this stage would be more detrimental, but I also think doing additional plantings might also not be allowed or if they are, it would have to be planned appropriately.

Planner Johnson noted that the space for landscaping is already there and it would not involve digging up any other part of the slope. There is a little strip between the fence and the walkway where you could put a little hedge for safety purposes.

Planner Johnson also went over how the escrow process works to ensure the neighbors that the plans will be followed, and all conditions are met for any approvals given by the City.

Commissioner Hendrickson noted that alleviates the safety concern. It does not alleviate people across the lake looking at it, and so that's my issue, that they did not have that to look at before until those were put in.

The other concern I have is one of the walls that is higher than four feet, which would have required engineering.

Chair Hendrickson closed the public hearing regarding the fence variances.

Commissioner Wu recommends that the request for a 150-foot variance to the 200 -foot length requirement for fences and the 200-foot variance to the 200-foot Shoreland Ordinance setback requirement for the existing fence be denied and request that the fence be removed 90 days after City Council consideration, seconded by Commissioner Naves. Motion carried (4-0).

Chair Hendrickson opened discussion on the Major Site Plan and Conditional Use Permit. Planner Johnson recommends approval of the Major Site Plan and Conditional Use Permit with the conditions listed in the staff report. Additional conditions can be added as suggested by the Planning Commission.

Resident of 2580 Delaware asked about the lighting on the pool area and there is concern over how much lighting is being proposed and wanted to understand how many lights are actually going to be installed, how many are in the pool area, and how many are pointed down.

Commissioner Henderickson pointed out that the lighting plan is part of the Planner's report.

Resident Ciresi said that collectively there are concerns over the lighting. The natural setting of the community is what is desired by the residents. Planner Johnson went over the lighting plan.

The applicant's contractor went over the lighting plan and indicated that the lighting plan that was a part of the Planner's report was not the most recent one. After discussion and recommendations by the Planning Commission, the contractor was directed to submit a final lighting plan to the City Planner for review prior to the City Council meeting which would include all landscaping lights including the downlights in the trees.

After discussion on trees, it was recommended that a condition be included that the applicant provide, prior to City Council approval, updated plans with the removal of the tree house, lighting, trees and any other elements that are discussed this evening.

Chair Hendrickson closed the public hearing and went over the recommendations of the City Planner as outlined in the Planning Report.

Moved by Chair Hendrickson, to approve the Major Site Plan and Conditional Use Permit for the property located at 2570 Delaware Avenue, based on the Findings of Fact dated May 17, 2024, subject to the conditions as provided in the Planner's report to include those items as noted below. Seconded by Commission Naves. Motion carried (4-0).

- **That that all lighting other than the pool interior lighting and two step riser lights, be removed from the plan, but the underwater pools lights will remain.**
- **The tree height of the white pine trees be increased to 16 feet along the south property line adjacent to the golf area.**
- **That the applicant provide, prior to City Council approval, updated plans with the removal of the tree house, lighting, increased tree sizes.**

OTHER/NEW BUSINESS:

5. ADJOURN

Chair Hendrickson moved to adjourn the meeting at 8:50 p.m., seconded by Commissioner Naves. Motion carried. (4-0)

Respectfully submitted,

Christy Wilcox, City Clerk