Planning Commission Agenda

March 23, 2017—6:30 P.M.

City Council Chambers—Minnetonka Community Center

1. Call to Order

2. Roll Call

3. Approval of Agenda

4. Approval of Minutes: March 2, 2017

5. Report from Staff

6. Report from Planning Commission Members

7. Public Hearings: Consent Agenda

   No Items

8. Public Hearings: Non-Consent Agenda Items

   A. Preliminary and final plats, with front yard setback variances, and waiving the McManus Policy, for THE ENCLAVE AT REGAL OAK at 3639 Shady Oak Road and 3627 Regal Oak Lane.

   Recommendation: Recommend the city council approve the request (4 votes)

   • Recommendation to City Council (Tentative Date: April 10, 2017)
   • Project Planner: Susan Thomas

9. Adjournment
Notices

1. Please call the planning division at (952) 939-8274 to confirm meeting dates as they are tentative and subject to change.

2. Applications and items scheduled for the April 6, 2017 Planning Commission meeting:

   Project Description: The applicant is currently proposing to construct dormers onto the north side of the existing home. While the additions would not increase the footprint of the home, a wetland setback variance is required.
   Project No.: 17006.17a        Staff: Ashley Cauley
   Ward/Council Member: 3—Brad Wiersum       Section: 22

   Project Description: The applicant is proposing alterations to Hopkins High School athletic facilities at 2400 Lindbergh Drive. The applicant has proposed to convert three fields into synthetic turf, add light poles, construct new dugouts, and construct other structures. The applicant’s proposal requires approval of a conditional use permit amendment.
   Project No.: 96079.17a        Staff: Drew Ingvalson
   Ward/Council Member: 2—Tony Wagner       Section: 12

   Project Description: The city of Minnetonka is proposing recreational improvements on the Civic Center Campus, including construction of several trails and boardwalks and installation of lighting on an existing soccer field. The improvements require conditional use permits for: (1) recreational facilities in required wetland buffer; (2) utility poles greater than 60 feet in height.
   Project No.: 02068.17a        Staff: Susan Thomas
   Ward/Council Member: 3—Brad Wiersum       Section: 16

   Project Description: The Cheesecake Factory Restaurants, Inc. is proposing to operate a Cheesecake Factory restaurant within Ridgedale Mall. The new tenant space, generally located in the southeast corner of the mall, between Sears and Nordstrom, requires approval of the following: (1) conditional use permit; (2) final site and building plans; and (3) sign plan amendment.
   Project No.: 03046.17a        Staff: Susan Thomas
   Ward/Council Member: 2—Tony Wagner       Section: 02
Project Description: The applicant is proposing an addition to the existing home at 2425 Bantas Point Rd. The request requires an expansion permit.
Project No.: 05050.17a Staff: Drew Ingvalson
Ward/Council Member: 3—Brad Wiersum Section: 08

Project Description: The applicant is proposing to construct a monument sign at Shady Oak Beach. The sign contains a dynamic sign. The sign requires a variance to exceed 32 square feet in size with a dynamic sign exceeding 35% of the sign.
Project No.:89017.17a Staff: Ashley Cauley
Ward/Council Member: 1—Bob Ellingson Section: 26
WELCOME TO THE MINNETONKA PLANNING COMMISSION MEETING

This outline has been prepared to help you understand the public meeting process. The review of an item usually takes the following form:

1. The chairperson of the meeting will announce the item to be reviewed and ask for the staff report on the subject.

2. Staff presents their report on the item.

3. The Commission will then ask City staff questions about the proposal.

4. The chairperson will then ask if the applicant wishes to comment.

5. The chairperson will open the public hearing to give an opportunity to anyone present to comment on the proposal.

6. This is the time for the public to make comments or ask questions about the proposal. Please step up to the podium, speak clearly, first giving your name (spelling your last name) and address and then your comments.

7. At larger public hearings, the chair will encourage speakers, including the applicant, to limit their time at the podium to about 8 minutes so everyone has time to speak at least once. Neighborhood representatives will be given more time. Once everyone has spoken, the chair may allow speakers to return for additional comments.

8. After everyone in the audience wishing to speak has given his or her comments, the chairperson will close the public hearing portion of the meeting.

9. The Commission will then discuss the proposal. No further public comments are allowed.

10. The Commission will then make its recommendation or decision.

11. Final decisions by the Planning Commission may be appealed to the City Council. Appeals must be written and filed with the Planning Department within 10 days of the Planning Commission meeting.

It is possible that a quorum of members of the City Council may be present. However, no meeting of the City Council will be convened and no action will be taken by the City Council.
1. **Call to Order**

Chair Kirk called the meeting to order at 6:30 p.m.

2. **Roll Call**

Commissioners Powers, Schack, Sewell, Calvert, Knight, and Kirk were present. O’Connell was absent.

Staff members present: City Planner Loren Gordon, Assistant City Planner Susan Thomas, Senior Planner Ashley Cauley, Water Resources Engineer Tom Dietrich, and Natural Resource Specialist Aaron Schwartz.

3. **Approval of Agenda**

*Calvert moved, second by Powers, to approve the agenda as submitted with modifications provided in the change memo dated March 2, 2017.*

Powers, Schack, Sewell, Calvert, Knight, and Kirk voted yes. O’Connell was absent. Motion carried.

4. **Approval of Minutes:** February 16, 2017

*Powers moved, second by Calvert, to approve the February 16, 2017 meeting minutes as submitted.*

Powers, Schack, Sewell, Calvert, Knight, and Kirk voted yes. O’Connell was absent. Motion carried.

5. **Report from Staff**

Gordon briefed the commission on a land use application considered by the city council at its meeting of February 27, 2017:

- Reviewed a concept plan for the Shady Oak redevelopment project. Financial information for the project will be reviewed at the next city council meeting.

The next planning commission meeting will be March 23, 2017.
6. Report from Planning Commission Members

Kirk stated that the SWLRT is ready to begin planning for construction.

7. Public Hearings: Consent Agenda

The item was not removed from the consent agenda for discussion or separate action.

Knight moved, second by Calvert, to approve the item listed on the consent agenda as recommended in the staff report as follows:

A. Front and side yard setback variances for additions to the existing house at 3250 Fairchild Avenue.

Adopt the resolution approving front yard and side yard setback variances for additions to the home at 3250 Fairchild Avenue.

Powers, Schack, Sewell, Calvert, Knight, and Kirk voted yes. O’Connell was absent. Motion carried and the item on the consent agenda was approved as submitted.

8. Public Hearings

A. Expansion permit to construct a new single-family home at 3808 Tonkawood Road.

Chair Kirk introduced the proposal and called for the staff report.

Gordon reported. He recommended approval of the application based on the findings and subject to the conditions listed in the staff report.

Knight asked how close Tonkawood Road would get if it would be widened. Gordon noted that 25 feet is a wide boulevard edge for this type of street. He did not anticipate that the street would be widened. If a six-foot or eight-foot trail would be added, there would still be quite a bit of room.

Chair Kirk noted that the setback is measured from the right of way, not the paved portion of the street.

Pat Schiller, 760 Fairfield Circle, applicant, was available for questions.
Powers asked if he knew the opinions of the neighbor on the south. Mr. Schiller spoke to the adjoining neighbor on the south. The neighbor’s shed extends over the property line onto the site. He described the proposal to the neighbor and he did not share any concerns.

Calvert asked how many trees would be removed. Mr. Schiller explained that one of the trees near the house is dead. The dead tree would be removed. Utilizing the existing footprint would save more trees than if the house would be located further back.

The public hearing was opened.

Don Ahmann, 3811 Tonkawood Road, stated that he was glad to see the improvement. He stated that widening the road was considered in the past. The street is not conducive to parking. A short driveway would not have as much parking. He asked for the distance between the house and the wetland. He would prefer the house be set further back.

No additional testimony was submitted and the hearing was closed.

Chair Kirk confirmed with Gordon that a sidewalk or trail would have to be located within the street right of way, so there would be 30 feet between the right of way and house. The proposal includes a 3-car garage, so there would be room for 3 vehicles in the driveway.

Gordon provided that the proposed house would be approximately 175 feet from the wetland. A wetland setback is 35 feet. The back yard slopes down and would provide a walk-out basement.

Powers asked how far the flat part of the backyard extends from the house. Chair Kirk said that it gradually slopes down until the retaining wall where it gets steep. Gordon explained that if the house would be moved back 20 feet, oak trees 24-feet and 30-inches in diameter would have to be removed. Another 12-foot oak tree would possibly be impacted.

Chair Kirk noted that the application is not for a variance, but is for an expansion permit. The house conformed to setback requirements when it was built.

Calvert said that the house would be attractive and an improvement. A longer driveway would create more impervious surface and moving the house back would cause additional tree loss. She acknowledged the neighbor’s concerns, but stated that there is an important difference between an expansion permit and a variance.
Powers moved, second by Sewell, to adopt the resolution approving the expansion permit.

Powers, Schack, Sewell, Calvert, Knight, and Kirk voted yes. O’Connell was absent. Motion carried.

Chair Kirk stated that an appeal of the planning commission’s decision must be made in writing to the planning division within 10 days.

B. Site and building plan review with an expansion permit for Pump and Meter at 11303 Excelsior Boulevard.

Chair Kirk introduced the proposal and called for the staff report.

Cauley reported. She recommended approval of the application based on the findings and subject to the conditions listed in the staff report.

Kurt Radermacher, 11303 Excelsior Boulevard, applicant, stated that Pump and Meter supplies, installs, and services automotive and lubrication equipment. The Minnetonka Public Works garage is a customer. The business was started by his grandfather in 1954. The plan has been in place since 1992 to make this site the corporate headquarters. There would be 23 employees who work out of the office. The majority of the work is done out in the field. This would be the main warehouse for the equipment and vehicles. The building is at maximum capacity right now. Workers keep a company vehicle at home. The amount of proposed parking would not be needed for 23 employees. Typically there would be 1 or 2 customers visiting the business at a time.

Chair Kirk asked why the windows would be so small. Mr. Radermacher said that there are currently no windows, so that would be an improvement. He estimated that the actual windows would be larger. Chair Kirk encouraged the applicant to consider the improvements that will be made to the area in the future.

Calvert thought that the drive through in the back for trucks would be a tight fit. Mr. Radermacher explained that the current drive is 12 feet wide. The new drive would be 23 feet in width. He met with the fire marshal who approved it. The storm water pond in the back limits the usable space. Calvert encouraged the applicant to consider the future improvements to the area when designing the exterior.

The public hearing was opened. No testimony was submitted and the hearing was closed.
Calvert liked the proposal.

*Knight moved, second by Schack, to adopt the resolution approving final site and building plans with an expansion permit for a building expansion at 11303 Excelsior Boulevard.*

*Powers, Schack, Sewell, Calvert, Knight, and Kirk voted yes. O’Connell was absent. Motion carried.*

Chair Kirk stated that an appeal of the planning commission’s decision must be made in writing to the planning division within 10 days.

**C. Preliminary and final plats of Linner Road Estates at 1911 and 1935 Linner Road.**

Chair Kirk introduced the proposal and called for the staff report.

Thomas reported. She recommended approval of the application based on the findings and subject to the conditions listed in the staff report.

Eric Zehnder, applicant, stated that he was available for questions.

Chair Kirk noted that Lot 2 has a crazy shape. Mr. Zehnder stated that the parcel would be 42-feet wide. It looks smaller on the plan due to the surrounding large lots. It could be used for a pool, fire pit, shed, or swing set.

The public hearing was opened. No testimony was submitted and the hearing was closed.

Knight noted that the neighbors are getting what they asked for, houses that would meet R-1 ordinance requirements with driveways located on Linner Road. The builder is smart. It looks very straightforward.

Chair Kirk thought that the previous cul-de-sac proposal would be better organized, but the current proposal meets all ordinance requirements and there is enough buildable area to accommodate houses. Calvert agreed.

Schwartz explained tree mitigation for the site.

*Powers moved, second by Calvert, to recommend that the city council adopt the resolution approving the preliminary and final plats of Linner*
Road Estates with modifications provided in the change memo dated March 2, 2017.

Powers, Schack, Sewell, Calvert, Knight, and Kirk voted yes. O'Connell was absent. Motion carried.

9. Elections

Powers moved, second by Calvert, to elect Kirk to be chair of the Minnetonka Planning Commission for one year.

Powers, Schack, Sewell, Calvert, Knight, and Kirk voted yes. O'Connell was absent. Motion carried.

Knight moved, second by Powers, to elect Calvert to be vice chair of the Minnetonka Planning Commission for one year.

Powers, Schack, Sewell, Calvert, Knight, and Kirk voted yes. O'Connell was absent. Motion carried.

10. Planning Commission Bylaws and Policies

Gordon reported. He recommended approval of the bylaws and policies.

Shack moved, second by Sewell, to adopt the bylaws and policies for 2017.

Powers, Schack, Sewell, Calvert, Knight, and Kirk voted yes. O'Connell was absent. Motion carried.

11. Adjournment

Calvert moved, second by Knight, to adjourn the meeting at 7:55 p.m. Motion carried unanimously.

By: ____________________________

Lois T. Mason
Planning Secretary
Minnetonka Planning Commission Meeting
March 23, 2017

Agenda Item 7

Public Hearing: Consent Agenda
(No Items)
Minnetonka Planning Commission Meeting

March 23, 2017

Agenda Item 8

Public Hearing: Non-Consent Agenda
MINNETONKA PLANNING COMMISSION
March 23, 2017

Brief Description
Preliminary and final plats, with front yard setback variances, and waiving the McMansion Policy, for THE ENCLAVE AT REGAL OAK at 3639 Shady Oak Road and 3627 Regal Oak Lane.

Recommendation
Recommend the city council adopt the resolution approving the plats.

Background

July 2016. The city conducted a concept plan review for subdivision of the existing residential properties at 3639 Shady Oak Road and 3627 Regal Oak Lane. The plan contemplated division of the properties into six, single-family lots ranging in size from 8,600 square feet to 29,000 square feet. The council generally expressed that the proposed number of lots was too high.

August 2016. Airborne Construction One, LLC submitted formal plans for subdivision of the two properties. The plan proposed division into five, single-family lots ranging in size from 15,020 square feet to 46,110 square feet. The home at 3639 Shady Oak Road would be removed, the home at 3627 Regal Oak would remain, and four new homes would be constructed. The proposal required approval of: (1) rezoning from R-1, low-density residential, to PUD, planned unit development; (2) a master development plan; and (3) preliminary and final plats.

October 2016. The planning commission considered the proposed five-lot subdivision. The commission concurred with staff recommendation and recommended the council deny the subdivision for three reasons:

1. The proposed subdivision would not result in a significant public benefit warranting use of PUD zoning. Rather, it would simply result in creation of five lots on an area where four lots could otherwise be achieved.

2. The city is legally obligated to allow reasonable use of a property; it is not obligated to allow maximum use. As currently configured, there are two residential lots on the east side of Regal Oak each containing a single-family home. This constitutes reasonable use of the site. In the event that a subdivision were proposed that met existing R-1 zoning standards, as well as the provisions of the tree protection ordinance, that too would constitute reasonable use of the properties.

3. The proposal would result in removal of, or significant impact to, 55 percent of the high-priority trees located outside of the sites’ woodland preservation area. This would exceed the 35 percent allowed under the tree protection ordinance.
This proposal was not considered by the council. Rather, the applicant chose to reevaluate the specifics of the plan.

**November 2016.** The applicant submitted revised information and plans, including: (1) imposition of design and size restrictions on new homes within the subdivision; and (2) revised grading. Staff evaluated the plans and still found that they would result in a significant impact to natural topography and trees. Staff then commissioned an engineering firm – different than that being used by the applicant – to take a “fresh” look at the proposed subdivision and offer general plan improvements. The general plan provided by the city’s consultant increased preservation of significant trees and an existing wooded area east of the proposed home sites, but would not necessarily increase preservation of high-priority trees. Staff presented the general plan to the applicant, who was amenable to making the changes suggested by the plan.

**January 2017.** The city council considered the November 2016 plans and consultant-drafted general grading plan. Staff continued to be of the opinion that the proposal did not warrant the use of PUD zoning. The council concurred with staff’s opinion. However, rather than denying the requests, the proposal was tabled to allow for further plan revisions.

**Current Proposal**

Airborne Construction One, LLC has now submitted applications for a subdivision consistent with the properties’ current R-1 zoning. As proposed, the properties at 3639 Shady Oak Road and 3627 Regal Oak would be divided into four lots. The home at 3639 Shady Oak Road would be removed, the home at 3627 Regal Oak would remain, and three new homes would be constructed.

**Current Proposal Summary**

The following is intended to summarize the applicant’s proposal. Additional information associated with the proposal can be found in the “Supporting Information” section of this report.

- **Existing Site Conditions.** The subject properties are located near the northeast corner of the Shady Oak Road/Regal Oak intersection. The 3639 Shady Oak Road property is roughly 2.2 acres in size. The existing home, constructed in 1960, is located near the highest point of the lot. Grade falls in all directions from this point; there is a 50-foot change in elevation from the highest to lowest point on the property. The 3627 Regal Oak property, on which a home was constructed in 1986, is 0.4 acres in size. It too contains a 50-foot change in elevation, with grade falling from south to north. In addition to mature oak, elm, and boxelder trees, both properties contain a mesic oak forest woodland preservation area (WPA).
• **Proposed Lots.** The applicant proposes to divide the two existing properties into four residential lots, ranging in size from 22,000 square feet to over 46,000 square feet.

• **Site impacts.** Significant grading would occur to accommodate construction on the proposed lots and installation of required utilities and stormwater management facilities.

**Primary Questions and Analysis**

A land use proposal is comprised of many details. In evaluating a proposal, staff first reviews these details and then aggregates them into a few primary questions or issues. The following outlines both the primary questions associated with the proposed subdivision and staff’s findings.

• **Are the proposed lots reasonable?**

  Yes. The proposed lots would meet all minimum size and dimension standards as required by city code.

<table>
<thead>
<tr>
<th></th>
<th>Area</th>
<th>Width</th>
<th>Average Depth</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Total</td>
<td>Buildable</td>
<td>Setback</td>
</tr>
<tr>
<td><strong>Required</strong></td>
<td>22,000 sq.ft.</td>
<td>3,500 sq.ft.</td>
<td>110 ft</td>
</tr>
<tr>
<td>Lot 1</td>
<td>23,410 sq.ft.</td>
<td>8,295 sq.ft.</td>
<td>155 ft</td>
</tr>
<tr>
<td>Lot 2</td>
<td>22,000 sq.ft.</td>
<td>8,615 sq.ft.</td>
<td>140 ft</td>
</tr>
<tr>
<td>Lot 3</td>
<td>23,100 sq.ft.</td>
<td>9,870 sq.ft.</td>
<td>110 ft</td>
</tr>
<tr>
<td>Lot 4</td>
<td>46,110 sq.ft.</td>
<td>10,065 sq.ft.*</td>
<td>120 ft</td>
</tr>
</tbody>
</table>

All numbers rounded down to nearest 5 ft. or 5 sq. ft.
* outside of proposed conservation easement

• **Are the proposed site impacts reasonable?**

  Yes. The proposed subdivision has been evaluated for conformance with the city’s natural resource ordinances, including the tree protection and steep slope ordinances. These ordinances attempt to balance the community benefit of preserving natural resources with private development rights.

  **Trees.** Under the tree ordinance, no more than 35% of a site’s high-priority trees may be removed or impacted during development. The subject property contains 31 high-priority trees and 92 significant trees. The proposed subdivision and resulting construction would result in removal of, or substantial damage to, 10 high-priority trees. This level of removal/damage would meet the standards of the tree protection ordinance.
### Steep Slope

By code definition, a “steep slope” is one that: (1) rises at least 25 feet; (2) has an average grade change of at least 20%; and (3) has a width of at least 100 feet. There are several areas within the proposed subdivision that are visually steep and that meet one or two of the “steep slope” criteria. However, there is no area that meets all three criteria. Therefore, there is no code-defined “steep slope” on the site.

<table>
<thead>
<tr>
<th>Trees</th>
<th>Existing</th>
<th>Impacted or Removed</th>
</tr>
</thead>
<tbody>
<tr>
<td>High-Priority</td>
<td>31</td>
<td>10 trees or 32%</td>
</tr>
<tr>
<td>Significant</td>
<td>92</td>
<td>54 trees or 57%</td>
</tr>
<tr>
<td>TOTAL</td>
<td>123</td>
<td>64 trees or 52%</td>
</tr>
</tbody>
</table>

### Is the requested front yard setback variance reasonable?

Yes. The general plans submitted by the applicant illustrate homes generally located 25 feet from the front property lines adjacent to Regal Oak. While the homes could certainly be constructed meeting the required 35-foot front yard setback, such location would likely result in more grading and associated tree loss along the eastern portion of the site. Though there are few high-priority trees along the property line outside of the WPA, the trees that do exist in the area create a wooded “feel.”

In order to minimize grading and maximize tree protection during the initial construction phase, staff supports the requested 10-foot reduction in front yard setback with a commensurate 10-foot increase in rear yard setback. With a lesser front yard setback offset by greater rear yard setback, the allowable buildable area on each lot would not increase. Rather, it would simply shift to the west. Further, the proposed 25-foot front yard setback is consistent with the setback of other existing homes along the Regal Oak cul-de-sac. In 1979 when the properties were originally platted, front yard setback variances from 35 feet to 25 feet were granted for four of the five lots.

### Should the McMansion Policy be waived?

Yes. From staff’s perspective, the intent of the McMansion Policy is twofold: (1) to ensure that homes requiring variances – either due to non-conformance with lot standards or setback standards – have a visual mass similar to that of existing homes within a neighborhood; and (2) to ensure there is some connection between the buildable area of a property and the mass of the home constructed on it.

The requested front yard setback variances, with commensurate rear yard setback increases, would not impact the buildable area of any of the proposed lots. Rather, the variances would simply shift the buildable area with the intent of minimizing
grading and associated trees loss. Given that the variance would not allow for larger homes to be constructed on the lots than would otherwise be allowed, staff supports waiving the McMansion Policy.

Staff Recommendation

Recommend the city council adopt the resolution approving preliminary and final plats, with front yard setback variances, and waiving the McMansion Policy, for THE ENCLAVE AT REGAL OAK at 3639 Shady Oak Road and 3627 Regal Oak Lane.

Originator: Susan Thomas, AICP, Assistant City Planner
Through: Loren Gordon, AICP, City Planner
## Supporting Information

### Surrounding Uses
The subject properties are surrounded by single-family residential lots.

### Surrounding Lots
The properties within 400 feet of the subject properties and 1000 feet along Shady Oak Road have a mean average size of 27,635 square feet and a median average size of 23,079 square feet.

### Planning
- **Guide Plan designation:** low-density residential
- **Existing Zoning:** R-1, low-density residential

### Grading
Significant grading would occur to accommodate the proposed home sites and installation of utilities and stormwater management practices. Generally, excavation would occur on the southerly portion of the development and fill in the northerly portion. For example, on proposed Lot 1 two to nine feet of excavation would be required, while on Lot 3 six to eight feet of fill may occur.

### Stormwater
Under the city’s stormwater rule, stormwater management must be provided for each individual home. Stormwater facilities, such as rain gardens, must control for runoff rate, volume and quality. Under the general plans submitted, runoff from new impervious surface would be directed to one of two raingardens that would be constructed adjacent to Regal Oak. As a condition of approval, specific stormwater plans must be submitted for staff review and approval in conjunction with building permit applications for each lot.

### Utilities
Public water, sanitary, and storm sewer facilities are available to the site from both Shady Oak Road and Regal Oak.

### Variance Standard
A variance may be granted from the requirements of the zoning ordinance when: (1) it is in harmony with the general purposes and intent of the ordinance; (2) it is consistent with the comprehensive plan; and (3) when an applicant establishes that there are practical difficulties in complying with the ordinance. Practical difficulties mean that the applicant proposes to use a property in a reasonable manner not permitted by the ordinance, the plight of the landowner is due to circumstances unique to the property not created by the landowner, and, the variance if granted, would not alter the essential character of the locality. (City Code §300.07)
**Purpose and Intent.** The intent of the front yard setback requirement is twofold: (1) to ensure adequate separation between structures and the traveled portion of streets; and (2) to establish consistent building lines with a neighborhood. The proposed setback would meet this intent:

1. A standard parking stall is 18 feet in length, as such the 25-foot setback would allow vehicles to be parked on driveways without encroaching on public right-of-way.

2. The setback would be consistent with other variances approved for the Regal Oak neighborhood.

**Comprehensive Plan.** The guiding principles in the comprehensive plan provide for maintaining, preserving, and enhancing existing single-family neighborhoods. The requested setback variances are not contrary to these principles. Rather, they could allow for construction at a building line consistent with that approved for the larger area.

**Practical Difficulties.**

1. **Reasonableness.** With a commensurate increase in rear yard setback, the requested decrease in front yard setback would not increase the buildable area of any lot. Rather, it would simply shift the buildable area to the west.

2. **Unique Circumstance and Neighborhood Character.** The proposed 25-foot setback would be consistent with the 25-foot setback also established by variance for other homes along Regal Oak.

**McMansion Policy**

The McMansion Policy is a tool the city can utilize to ensure new homes or additions requiring variances are consistent with the character of the existing homes within the neighborhood. By policy, the floor area ratio (FAR) of the subject property cannot be greater than the largest FAR of properties within 1,000 feet on the same street, and a distance of 400 feet from the subject property. The highest FAR on Regal Oak is 0.16.

**Tree Removal**

The tree protection ordinance establishes specific thresholds for tree removal and impact during subdivision and during the construction of new homes, additions, or accessory buildings. Two years after issuance of a certificate of occupancy for a home, and outside of construction activity, the protection standards no longer apply.
In other words, but for trees located within a conservation easement, a private property owner may choose to remove a tree on his or her property two years following issuance of a certificate of occupancy. In this way, the tree protection ordinance attempts to balance the potential impact of development and construction with the private property rights.

**Natural Resources**
Best management practices must be followed during the course of site preparation and construction activities. This would include installation and maintenance erosion control fencing.

**Outside Agencies**
The applicant’s proposal has been submitted to various outside agencies for review, including Hennepin County and Minnehaha Creek Watershed District.

**Pyramid of Discretion**

This proposal:

**Motion Options**
The planning commission has several options:

1. Approve as presented by staff. In this case, a motion should be made recommending the city council adopt the resolution approving the plats, with setback variances, and waiving the McMansion Policy.

2. Approve the plats, without setback variances. In this case, a motion should be made to recommend the city council approve the plats, but deny the front yard setback variances. This motion should include a statement as to why the denial is recommended.

3. Approve the plats with setback variances, but enforce the McMansion Policy. In this case, a motion should be made recommending the city council adopt the resolution approving the plats, with setback variances, and enforce the floor area ratio regulations as established by the McMansion Policy.
4. Deny the plats. In this case, a motion should be made to recommend the city council deny the plats. This motion should include a statement as to why the denial is recommended.

5. Table the request. In this case, a motion should be made to table the item. The motion should include a statement as to why the request is being tabled with direction to staff, the applicant, or both.

**Voting Requirement**

The planning commission will make a recommendation to the city council. A recommendation for approval requires an affirmative vote of five members, due to the setback variances. The city council’s final approval requires an affirmative vote of five members, again due to the setback variances.

**Neighborhood Comments**

The city sent notice to 116 area property owners and has no written comments to date.

**Deadline for Action**

120-day statutory deadline has been waived.
Location Map

Project: Enclave at Regal Oak
Applicant: Airborne Construction One LLC
Address: 3639 Shady Oak Rd
Project No. 16007.16b

This map is for illustrative purposes only.
CONCEPT PLAN
Enclave At Regal Oak - Concept Plan

Setbacks:
Front: 20'
Side: 10'
Rear: 35'

Lot 1: 0.36 AC
Lot 2: 0.24 AC
Lot 3: 0.20 AC
Lot 4: 0.24 AC
Lot 5: 0.54 AC
Conservation Easement: 0.67 AC
1. A resolution approving a conditional use permit for a restaurant and outdoor eating area, with variances, at 13008 Minnetonka Boulevard (see pages A35-A40).

2. A resolution approving final site and building plans, with variances, for site and building changes at 13008 Minnetonka Boulevard (see pages A41-A49).

O’Connell, Odland, Powers, Calvert, and Hanson voted yes. Knight and Kirk were absent. Motion carried.

9. Other Business

A. Concept plan review for The Enclave at Regal Oak, 3639 Shady Oak Road.

Acting Chair Odland introduced the proposal and called for the staff report.

Thomas reported. Staff recommends the planning commission provide comments and feedback to assist the applicant with future direction that may lead to the preparation of more detailed development plans.

Roger Anderson, applicant, thanked staff and commissioners for their input and feedback on the proposal. He has enjoyed working with staff and thinks it will be great going forward. He is the developer and civil engineer on the project. He stated that:

- The plat makes sense to him. It has a nice flow. The drainage and utilities layout nicely.
- Jo Colleran did a good job of delineating the old-growth woods. A survey was done. There is a conservation easement on the north side of the property. He entered into discussions with the neighbor to join the conservation easement. A stormwater pond may be added.
- He wants to include a rain garden on each lot to treat and minimize stormwater impact.

Mike Haley stated that he is working with Mr. Anderson on the home designs. He stated that:

- The concept is simple. He wants to build 5 homes that are geared to empty nesters. He provided an illustration of a model with one level and 1,500 square feet on the main floor.
• The average homeowner is 65 years of age in Minnetonka. Most want to downsize, but stay in the community. The houses would be priced in the $600,000, but are considered affordable new construction in Minnetonka.
• Three of the 5 houses would have geothermal systems including the model.
• The houses would not be mcmansions. Three of the 5 would have master bedrooms on the main floor.
• The build out would be finished in 12 to 15 months since it is a high-demand product. It is scheduled to begin construction this fall.
• There would be a simple homeowner’s association to take care of the grass and snow.
• The houses would be built custom to each homeowner’s choice.

O’Connell thinks the concept is great and that it would work. He noted that there are similar developments being done. Mr. Haley emphasized that the location is what makes the proposed homes in great demand. Mr. Anderson said that the homes would be one-floor living with basements, so there would be rooms when the kids and grandchildren visit. There would be high-end finishes.

Acting Chair Odland asked how many bedrooms would be on the first floor. Mr. Haley said the houses would have a great-room concept where the kitchen, dining, and great room flow together. There would be two full baths on the main floor and a large walk-in closet. Sod and large trees would be planted and sprinklers would be installed immediately. A big impact can be made with landscaping on a small lot.

Calvert asked where the rain gardens would be located in relation to the gully. Mr. Anderson pointed out the area for a pond and the rain gardens. It would look like a rock garden area. The roof gutters would direct the runoff to the rain garden. Each house would take care of its own runoff. It would work well. This is the first year in 40 years where house sizes became smaller instead of bigger.

Calvert asked how much parking would be available. Mr. Anderson explained that Regal Oak would meet city street requirements and be 24-feet wide. Each of the houses would have a 2-vehicle garage. There would be room for 2 more vehicles in the driveway. That is generally enough parking.

Calvert asked if the entire area would be graded flat. Mr. Anderson said that it would not be flat. Colleran identified the significant trees and they are marked on the survey. It turned out that the majority of significant trees are in the
conservation easement. He would attempt to save the few in other areas, but many of them would be removed and replaced by other trees.

Powers liked the product and presentation.

Calvert asked why all of the houses would not have geothermal systems. Mr. Haley stated due to the cost. It would be included in the model and the buyer would be encouraged to include one, but it would be the homebuyer’s option. Mr. Haley stated that a back-up system would still have to be included. The increase in cost is $25,000. The loop system virtually lasts forever.

The audience was invited to provide input.

Ron Hanson, 12215 Mari Lane, stated that the area is wooded and the oak trees are large.

Cheryl Smith, 3624 Arbor Lane, stated that:

- She was concerned that the houses in the examples are larger than 15,000 square feet.
- She was concerned with tree mitigation. She loves the wildlife. The proposal would change it.
- The lots would be smaller and density increased compared to what is on the street now.

Hyde Thompson, 3616 Arbor Lane, requested that street lighting point downward. He liked the idea of the rain gardens and healing the gully.

Calvin Lee, 3636 Regal Oak, stated that:

- His view is currently of trees. He met with Mr. Haley and thinks that things seem copasetic. He wants to make sure that the trees and landscaping prevent a stark change.
- He was concerned with the safety of his kids riding bikes on the street during construction, where the construction vehicles would park, and the noise created by construction workers during the 12 to 18 months.
- There are two rental houses on the court.
- It would be nice if the houses would stay in tune with the existing houses. The proposed houses look too modern for the neighborhood.
• He and his wife have not decided if they like the project yet or not. He asked if there would be another step where the public would comment.
• He asked if all of the houses would be one story.

Annette Lee, 3636 Regal Oak, stated that:
• Parking for construction vehicles could be located where the existing home is on Shady Oak Road.
• She is concerned with the damage to her property during the construction.
• Her driveway is already used as a u-turn.
• She is concerned too many houses are being added to the area.

Vanessa Green, 3632 Arbor Lane, stated that:
• She is completely opposed to the proposal. This would destroy the large lot sizes and mature trees. This would be completely out of character with the neighborhood.
• The forest would be leveled. There are nesting hawks, owls, and woodpeckers. She is appalled.
• The density makes her uncomfortable.

O'Connell stated that this type of project has been reviewed by the commission before and they have been found generally favorable with some design tuques approved by staff along the way. He did not see this project to be any different.

Powers appreciates the neighbors’ input. He had a similar situation happen in his neighborhood. He agreed that issues can be worked out over time. Seniors in Minnetonka are looking to stay in the area in smaller houses. Small lots are a preferred reality going forward.

Calvert asked if approval of the proposal would set a precedent. Thomas explained the difference between legal and fairness precedents. Applications must be considered individually. After the concept plan review, the applicant may submit an application with plans that would be reviewed by the planning commission and city council with a public hearing being held at the planning commission. The planning commission would provide a recommendation to the city council.

Hanson agreed with O’Connell that the commission has seen this type of project a lot. He will support the proposal once slight changes have been made. The
existing road makes the proposal less forced. He liked the inclusion of the conservation easement. Four lots might be more comfortable for the neighborhood. The conservation easement does provide a long-term benefit for the house on Regal Oak. The proposal would preserve the neighborhood character. Trees would be preserved and some would be replaced. There would be nice landscaping and quality construction. He could not see denying this proposal when compared to others that have been approved.

Acting Chair Odland would be curious how four lots would fit.

Calvert applauded the developer for protecting the environment. There are advantages to the geothermal. She encouraged planting large trees to decrease the visual impact and impact to wildlife. Dead trees do provide habitat. She would like natural resources staff to address the steep gully, runoff, and wildlife. The city does not have adequate housing stock in this type of housing.

B. Concept plan for a 75-unit apartment building at 2828 and 2800 Jordan Avenue.

Acting Chair Odland introduced the proposal and called for the staff report.

Cauley reported. Staff recommends the planning commission provide comments and feedback to assist the applicant with future direction that may lead to the preparation of more detailed development plans.

John Ferrier of CSM Corporation, applicant, stated that:

- He appreciated the planning commission reviewing the concept plan.
- He agreed that a traffic study is warranted. His company owns additional properties in the area. He wants to make sure the amount of traffic would be appropriate.
- Staff found a previous plan not viable due to a steep slope on the site. The multi-family housing market is on fire right now. The building would be located in an appropriate area to deal with the topography.
- There is a berm on the west side. That is not a naturally occurring slope. It was created when an adjacent site was graded. He explained the grading of the site. There would be tuck-under parking utilizing the topography. The slope preservation ordinance criteria would be followed.
- A lot of the trees are not quality. As many of the trees as possible would be preserved.
Larry Barenbaum, a partner at Big Top Liquors in Ridge Square, clarified that the business pays rent on over 8,500 square feet, not 5,000 as the previous speaker mentioned. Total Wine has changed the scope of the business for the better. The consumer benefits by the incredible operation that he has witnessed. There have been improvements over the years to address safety concerns caused by traffic. America provides a competitive retail world. Haskell's is a good retailer in this city and knows how to compete to make it better for their customers. He has a high level of regard for everyone he has dealt with at Total Wine.

The public hearing was closed.

Wiersum moved, Bergstedt seconded a motion to continue the public hearing to September 12, 2016. All voted “yes.” Motion carried.

14. Other Business:

A. Concept plan review for The Enclave at Regal Oak, 3639 Shady Oak Road

City Planner Loren Gordon provided the staff report.

In response to Wagner’s question, Gordon answered that the surrounding lot sizes are generally the same as the standard for an R-1 single-family lot.

Roger Anderson, owner of Anderson Engineering representing the applicant, stated that he likes the site because it has a flow to it. The utilities are there, it is a nice street, and the drainage would work. The product is one that buyers want. Residents love to stay here. Housing to allow downsizing is needed for empty nesters and those who travel south for the winter. The basements would generally be lookouts with a bedroom for the grandchildren. There would be a snow and mow association. The grading and storm water on individual sites would be done to allow capture of roof drainage and minimize the size of the pond. There is an existing gully that could route runoff to a pond to control erosion.

Michael Halley, builder for the applicant, stated that the proposed houses would be from 1,400 square feet to 1,700 square feet on the main floor. The average buyer would be in their 70s and have lived in the city 30 years. Three of the five houses would be geothermal. Large trees would be planted to provide privacy. He has met with neighbors who live on Regal Oak. If the property would be divided into three lots, then the amount of square footage created would be equal to what would be created by the proposal of five smaller houses. There are not a lot of
options in the city to provide this product that would be affordably priced around $650,000.

Schneider disclosed that he previously worked with Anderson Engineering on projects.

Allendorf’s first reaction was that the proposal would not fit. Then he considered the need for diversity of housing types. The proposal would provide needed housing.

Bergstedt had a reaction similar to Allendorf’s reaction. Councilmembers and planning commissioners felt the original proposal’s 10 lots would be too dense. There is a need for this type of housing and diversification. He still has a problem with five lots. He would be more comfortable with four lots so that the subdivision would fit in better with the surrounding area and provide diversified housing.

Wagner acknowledged that the one-level housing type is needed. An 11,000-square-foot lot would make him pause. The concept is good. The conservation easement and storm water management would be great.

Ellingson thought that a floor-area ratio (FAR) requirement might be appropriate. Providing housing for young families is a priority. A house priced at $650,000 seemed high to be considered affordable. He did not see a real justification for a planned unit development. Five lots would not fit in the neighborhood.

Schneider sees a need for single-floor living for seniors. The conservation easement reduces the overall size of the lots. An 8,600-square-foot lot is probably pushing too hard to make the proposal work. He could see four lots. The lot to the northwest would be significantly larger than the rest. The fivelot proposal would be a hard sell.

Allendorf heard from seniors who want single-story living in Minnetonka. It is a needed housing type.

Cheryl Smith, 3624 Arbor Lane, stated that the size of the lots would be out of character with the neighborhood. She moved here because she loves the wildlife. There are currently a lot of water issues. There is a hill between Lots three and four. Her lot is downhill of the proposal and has a drainage pipe. The houses on her side of the street sell for $350,000. She requested councilmembers consider the proposal carefully.
Hanson identified that commissioners must decide the best location for the driveway.

Powers agreed. He stated that there would be no dramatic difference between the proposed drive and every other drive on Copperfield Place. The proposed lots meet all ordinance requirements. He agrees with staff’s recommendation.

Chair Kirk noted that the only variance has to do with the driveway. He feels like he must support the proposal. A motion needs to be made to provide a recommendation to the city council.

**Powers moved, second by Hanson, to recommend that the city council adopt the resolution approving the preliminary plat of Mayfair at Copperfield, a three-lot residential subdivision with lot access variance, at 14700 Copperfield Place (see pages A14-A26).**

**Powers, Hanson, and Knight voted yes. Odland, Calvert, and Kirk voted no. O’Connell was absent. Motion failed.**

This item is scheduled to be reviewed by the city council October 24, 2016.

C. **Items concerning The Enclave of Regal Oak at 3639 Shady Oak Road and 3627 Regal Oak Lane.**

Chair Kirk introduced the proposal and called for the staff report.

Thomas reported. She recommended denial of the application based on the findings listed in the staff report.

Chair Kirk clarified that the proposal would make two lots into five lots with one existing house that would remain.

Odland confirmed with Thomas that the item could be tabled. Chair Kirk added that the applicant could revise the proposal before it will be reviewed by the city council. Thomas stated that feedback from commissioners would be beneficial.

Thomas reviewed the suggestions provided by the applicant.
Roger Anderson, engineer representing the applicant, stated that:

- The six-lot concept laid out nicely.
- Councilmembers stated that they would prefer four lots.
• The proposal would meet R-1A requirements, but that would not work because the proposal does not include building a street as required by R-1A.

• Three R-1 lots could meet ordinance requirements, but the idea is to make the houses provide one-floor living.

• The floor area ratio (FAR) would comply with R-1A requirements and the applicant is happy with that size. It would restrict the size of the houses somewhat and keep the price point around $600,000.

• He compared the proposal to Cherrywood Pointe. The public benefit of the proposal would be providing a home for seniors. It is harder to see the public benefit for a 4-unit proposal than 99-unit proposal.

• The proposed type of housing is unavailable in Minnetonka right now. Large lots would support large houses. The proposed houses with floor area restrictions with 1,800-square-foot to 2,000-square-foot main floors and no second floors. That would provide a public benefit.

• Almost two thirds of an acre would be dedicated in a conservation easement.

• A pipe that directs water to the proposed property would be fixed, rain gardens would be installed, and geothermal would be used. The impact to the environment would be the same for four R-1A houses or three R-1 houses. The amount of grading would be approximately the same.

• The best plan is the proposed PUD for ramblers with walkouts and lookouts. The proposal would provide a public benefit by providing new, single-level living houses.

Hanson asked if the existing house on Lot 5 was included in a previous review of the proposal. Mr. Anderson explained that the property owner is a joint applicant who reached an agreement with the original applicant.

Powers asked for the size and price of houses that would be built with R-1 zoning. Mr. Anderson answered that he has received inquiries from buyers who want to build a 6,000-square-foot house.

The public hearing was opened.
Cheryl Smith, 3625 Arbor Lane, thanked Thomas for her responses to her emails. She stated that:

• She did not support the proposal.
• She saw a pileated woodpecker and owls on the site.
• She was concerned with stormwater drainage and the city having access to the retention pond to keep it clean.
• The land would be decimated and the woods would no longer soak up water.

Grace Sheely, 14325 Grenier Road, thought this would be a great opportunity to utilize R-1A zoning. She encouraged thinking long term. She was concerned that there would be a tax base loss due to the next generation not wanting to purchase the current houses. R-1A zoning may be able to save some of the woods, but she did not know. She suggested more stormwater drainage improvements to help the residents downhill.

Vanessa Green, 3632 Arbor Lane, stated that:

• She agreed with the other speakers.
• A river would form in her backyard when she was a kid when it rained. She was concerned that cutting down the trees would cause huge runoff.
• She was concerned with the extensive grading.
• Her neighborhood is all single-level living houses. One of those could be renovated.

Greg Bartholomew, 3653 Shady Oak Road, stated that:

• He had concerns with lot size and density.
• He was concerned with the target market.
• There are ramblers in the neighborhood.
• He asked if landscaping and tree replacement would be required.
• There is a steep grade.
• It would be helpful to see a rendering of what the site would look like. The change in the view would be dramatic.

No additional testimony was submitted and the hearing was closed.

Chair Kirk asked staff to compare PUD and R-1A zoning for the site. Thomas explained that rezoning to R-1A would not require the public benefit, which was necessary when rezoning from R-1 to a PUD. R-1A zoning standards have no control over house design, but there would be some control over house size. The tree ordinance applies to every type of zoning classification. In order to be zoned R-1A, 60 percent of the lots in the area must be less than 22,000 square feet in size or a new public street must be created. Neither of those applies to this proposal.
Dietrich explained the stormwater management requirements which are usually worked out at the time of the grading permit.

Colleran pointed out where grading and tree loss would occur.

In response to Chair Kirk’s question, Thomas estimated that tree loss would be similar whether the site would be zoned PUD, R-1A, or R-1. The grading permit would only be issued if all requirements would be met.

Powers noted the steepness and was concerned with the runoff. Mr. Anderson stated that a grading plan, stormwater management plan, and stormwater calculations have been submitted. The proposal meets all requirements. A pond would be built where a neighbor requested a pond to be built. Right now, there is no control of the stormwater. The proposal would pay to manage the stormwater and meet city requirements. A stormwater management system takes up room and causes more grading. The proposal would place a conservation easement over most of the significant trees. The grading plan would fix a three-foot gully to make it function properly. A maintenance agreement would be made with the city to service the pond and stormwater management system.

In response to Knight’s question, Mr. Anderson explained that a 3:1 slope is similar to the slope from the front of yard to the back yard of a house with a walk-out basement. Lawn mowers can be ridden on the slope just fine. The maintenance agreements would be recorded on each title.

Calvert agreed that diversified housing stock is needed. She opposed the proposal because it would result in too much tree loss.

Powers liked the developer’s ability to present the proposal. He favored three lots instead of four. He is less concerned about the overall size of the houses. He is not concerned with homeowners wanting to downsize to a single level. The overall feeling of the area is better suited for fewer houses.

Odland agreed. Fewer houses would have less impact on the wildlife.

Hanson recalled commissioners asking the applicant to reduce the number of houses from five to four at the concept plan review. He commended the applicant for doing that. Fine tuning needs to be done with the stormwater management. Four new houses could fit the site, but the details need to be more thought out.
Chair Kirk noted that new housing is lacking in Minnetonka. He agreed that the proposal is not ready for approval. The character of the neighborhood should also be taken into consideration.

Calvert appreciated Mr. Anderson’s presentation. She did not think the proposal was ready.

*Odland moved, second by Calvert, to recommend that the city council adopt the resolution denying the requested rezoning, master development plan, and preliminary and final plats (see pages A18-A21 of the staff report).*

*Odland, Powers, Calvert, Hanson, Knight, and Kirk voted yes. O’Connell was absent. Motion carried.*

This item is scheduled to be reviewed by the city council October 24, 2016.

**D. Conditional use permit, with variances, for a microbrewery and taproom with outdoor seating area at 14625 Excelsior Boulevard.**

Chair Kirk introduced the proposal and called for the staff report.

Gordon reported. He recommended approval of the application based on the findings and subject to the conditions listed in the staff report.

In response to Chair Kirk’s question, Gordon explained that the animal hospital is a separate building that uses the west end of the Glen Lake Center parking lot. The lot would need to be restriped to add three stalls.

J.D. Park, 3941 Brown Lane, stated that he and his wife, Megan, are founders of Unmapped Brewing Company. Mr. Park stated that they are excited and proud at the prospect of opening their business in the community that they live. They want Unmapped to be a positive force in the Glen Lake community and city. They want to work with their neighbors to achieve this goal. He looks forward to the discussion.

Chair Kirk asked for the number of seats. Mr. Park explained that there would be tables, informal seating, and standing room. Seating would flow into the patio area.

Chair Kirk asked for the applicant’s idea for a “family taproom.” Mr. Park answered that alcohol would not be the only beverage available. He would encourage patrons to bring in food. It would not be structured like a restaurant. Patrons would be able to explore and see interesting things. There would be
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Wischnack gave the staff report.

Wiersum moved, Wagner seconded a motion to approve the Cooperative Agreement with Hennepin County for future projects related to the goals of the Corridor Investment Framework and authorize the mayor and city manager to execute the agreement, including subsequent non-material changes as approved by the city manager and community development director in a form acceptable to the city attorney. All voted “yes.” Motion carried.

C. Items concerning THE ENCLAVE AT REGAL OAK, at 3639 Shady Oak Road and 3627 Regal Oak Lane:

1) Ordinance rezoning the properties from R-1 to PUD;
2) Master development plan; and
3) Preliminary and final plats

Gordon gave the staff report.

Roger Anderson, civil engineer and agent for the owner, 13605 1st Avenue North, Plymouth, said he and the owner looked at the property to determine what type of housing to bring forth. The smaller homes, single level living, rambler style with some walkouts was the market they wanted to focus in on. When they first started laying out the plan it looked like there could be five or six new lots. After discussing the concept plan with the council, it was determined to move forward with four lots. The plan being shown to the council was refined to reduce the impact areas. The layouts soften the impacts. The tree preservation ordinance could be met. Stormwater management could be managed. He said it really comes down to the public benefit requirement of the planned unit development (PUD). The use of a PUD was landed upon almost accidentally because the thinking would be to use R1-A zoning. However the requirements of R1-A necessitated using PUD instead. The feeling is there really is a strong market in the city for this type of housing. There are a lot of ramblers in the city but generally they are older housing stock. Renovating those likely would require tearing them down and rebuilding.

Vanessa Greene, 3632 Arbor Lane, said the planning commission and city council both had denied the request for rezoning and now the developer was returning with essentially the same proposal to rezone. The changes were not that significant. Only seven trees have been added. There would be significant grading that could kill more trees. The density was still too high and was out of character of the neighborhood. City staff had indicated there was no significant public benefit. She was still concerned with
Cheryl Smith, 3624 Arbor Lane, said her main concern was the requirement for public benefit. The neighbors all talk about the wildlife that live in the woods. Every house that is added reduces the number of trees and animals that live in the woods. She didn't see how retaining walls could be built without destroying the trees. She asked the council to consider the public benefit for the entire neighborhood and not just these four proposed houses.

Ron Hanson, 12215 Mari Lane, said he was 68 years old and his family moved into the area when he was 10 years old. As far as he knew the woods had been there for a long time. The area had been untouched for at least 58 years. A lot of the aesthetic would be lost with this development.

Schneider asked Anderson if he would prefer the item be tabled to allow him to reevaluate the plan if the council indicated a preference for three lots. Anderson said that would be his preference, and it was likely three conforming lots could be created.

Wagner noted it was a long process and the council felt the concept plan was too intense. It was also thought at one point R-1A zoning was a possibility until the cul-de-sac was looked at. The idea behind the R1-A ordinance was the city wanted and understood the need to have a variety of housing stock but it needed to fit in with the neighborhood. He was more in favor of traditional R1 zoning in this area. He didn't see a public benefit to the $600,000 price point.

Wiersum agreed with Wagner. He didn't think this rose to the level of public benefit that would make a PUD make sense. The council in the past had talked a lot about the concern of small lot creep. He believed the city would be looking at greater density. He believed the developer when he said the market he is looking at exists. These would be great houses in the right spot. Requiring a PUD in this location makes it not the right spot. He supported R1 for this location.

Acomb said she really appreciated a lot of what the developer wanted to include in the development. She believed single level living was a need in the community. She appreciated the geothermal and some of the other
nontraditional aspects as well. However, she didn't think they rose to the public benefit level. She would love to see them used in a three lot development.

Ellingson said he agreed with the other council members’ comments and thought the applicant should be allowed to come back with a revised plan rather than have the council reject the plan altogether. Schneider agreed.

Wagner moved, Acomb seconded a motion to table the item to a date to be determined. All voted “yes.” Motion carried.

15. Appointments and Reappointments:

A. Appointment of representatives to various advisory boards, commissions and committees

Schneider moved, Acomb seconded a motion to approve the appointments to the various advisory boards, commissions and committees. All voted “yes.” Motion carried.

16. Adjournment

Wiersum moved, Wagner seconded a motion to adjourn the meeting at 7:50 p.m. All voted “yes.” Motion carried.

Respectfully submitted,

David E. Maeda
City Clerk
Resolution No. 2017-

Resolution approving the preliminary and final plats, with front yard setback variances, and waiving the McMansion Policy, for THE ENCLAVE AT REGAL OAK at 3639 Shady Oak Road and 3627 Regal Oak

Be it resolved by the City Council of the City of Minnetonka, Minnesota, as follows:

Section 1. Background.

1.01 Airborne Construction One, LLC has proposed subdivision of the properties at 3639 Shady Oak Road and 3627 Regal Oak. The home at 3639 Shady Oak Road would be removed, the home at 3627 Regal Oak would remain, and three new homes would be constructed. The properties are legally described on EXHIBIT A of this resolution.

1.02 The applicant has further requested front yard setback variances from 35 feet to 25 feet for proposed Lots 1, 2, and 3.

1.03 Minnesota Statute §462.357 Subd. 6, and City Code §300.07 authorizes the planning commission to grant variances.

1.04 On March 23, 2017, the planning commission held a hearing on the proposed plat. The applicant was provided the opportunity to present information to the commission. The commission considered all of the comments received and the staff report, which are incorporated by reference into this resolution. The commission recommended that the city council approve the preliminary and final plats with front yard setback variances.

Section 2. General Standards.
City Code §400.030 outlines general design requirements for residential subdivisions. These standards are incorporated by reference into this resolution. One of the standards requires that all lots within a plat must have frontage on the public right-of-way from which the lot will have access.

By City Code §300.07 Subd. 1, a variance may be granted from the requirements of the zoning ordinance when: (1) the variance is in harmony with the general purposes and intent of this ordinance; (2) when the variance is consistent with the comprehensive plan; and (3) when the applicant establishes that there are practical difficulties in complying with the ordinance. Practical difficulties means: (1) The proposed use is reasonable; (2) the need for a variance is caused by circumstances unique to the property, not created by the property owner, and not solely based on economic considerations; and (3) the proposed use would not alter the essential character of the surrounding area.

The McMansion Policy is a tool the city can be utilized to ensure new homes or additions requiring variances are consistent with the character of the existing homes within the neighborhood. By policy, the floor area ratio (FAR) of the subject property cannot be greater than the largest FAR of properties within 1,000 feet on the same street, and a distance of 400 feet from the subject property.

Section 3. Findings.

The proposed preliminary and final plats would meet the design requirements as outlined in City Code §400.030.

The request front yard setback variances would meet the variance standard outlined in City Code §300.07 Subd. 1(a):

1. Purpose and Intent. The intent of the front yard setback requirement is twofold: (1) to ensure adequate separation between structures and the traveled portion of streets; and (2) to establish consistent building lines with a neighborhood. The proposed setback would meet this intent:

   a) A standard parking stall is 18 feet in length, as such the 25-foot setback would allow vehicles to be parked on driveways without encroaching on public right-of-way.

   b) The setback would be consistent with other variances approved for the Regal Oak neighborhood.
2. Comprehensive Plan. The guiding principles in the comprehensive plan provide for maintaining, preserving, and enhancing existing single-family neighborhoods. The requested setback variances are not contrary to these principles. Rather, they could allow for construction at a building line consistent with that approved for the larger area.

3. Practical Difficulties.

a) Reasonableness.

1) While a typical home could be constructed meeting the required 35-foot front yard setback, such location would likely result in more grading and associated tree loss along the eastern portion of the site. Though there are few high-priority trees along the property line outside of the WPA, the trees that do exist in the area create a wooded "feel." For construction of a typical home, a reduced front yard setback and commensurately increased rear yard setback would minimize grading and maximize tree protection during the initial construction phase.

2) With a commensurate 10-foot increase in rear yard setback, which is a condition of this resolution, the requested decrease in front yard setback would not increase the buildable area of any lot. Rather, it would simply shift the buildable area to the west.

b) Unique Circumstance and Neighborhood Character. The proposed 25-foot setback would be consistent with the 25-foot setbacks also established by variance for other homes along Regal Oak.

3.03 The intent of the McMansion Policy is twofold: (1) to ensure that homes requiring variances – either due to non-conformance with lot standards or setback standards – have a visual mass similar to that of existing homes within a neighborhood; and (2) to ensure there is some connection between the buildable area of a property and the mass of the home constructed on it. The requested front yard setback variances, with commensurate rear yard setback increases, would not impact the buildable area of any of the proposed lots or allow larger homes to be constructed than would otherwise be allowed. Rather, the variances would simply shift the buildable area with the intent of minimizing grading and associated trees loss.

4.01 The above-described preliminary and final plat, with front yard setback variance is hereby approved. Approval is based on the findings outlined in Section 3 of this resolution.

4.02 The McMansion Policy related to setback variances is hereby waived. This waiver is based on the findings outlined in Section 3 of this resolution.

4.03 Approval and waiver are subject the following conditions:

1. Prior to release of the final plat for recording, submit the following:
   
a) A revised final plat drawing that clearly illustrates the following:
      
      1) Dedication of seven feet of right-of-way adjacent to Shady Oak Road.

      2) Minimum 10-foot wide drainage and utility easements adjacent to the public right-of-way(s) and minimum 7-foot wide drainage and utility easements along all other lot lines.

   b) Documents for the city attorney’s review and approval. These documents must be prepared by an attorney knowledgeable in the area of real estate.
      
      1) Title evidence that is current within thirty days before release of the final plat.

      2) Conservation easement over the woodland preservation area as depicted on the plan set dated February 15, 2017.

      3) Minimum 10-foot wide easement trail and retaining wall purposes adjacent to the Shady Oak Road right-of-way.

   c) Two sets of mylars for city signatures.

   d) An electronic CAD file of the plat in microstation or DXF.
e) Park dedication fee of $10,000.

f) Any outstanding taxes and assessments.

2. Subject to staff approval, THE ENCLAVE AT REGAL OAK must be developed and maintained in substantial conformance with the following plans, except as modified by the conditions below:
   - Site plan, dated February 15, 2017
   - Grading plan, dated February 15, 2017
   - Roadway and Utility plan, dated February 15, 2017

3. Prior to issuance of a building permit for the first new house within the development, submit a letter from the surveyor stating that boundary and lot stakes have been installed as required by ordinance.

4. Prior to issuance of a building permit for any of the lots within the development:
   a) Submit the following items for staff review and approval:
      1) Stormwater narrative and calculations illustrating conformance with the following stormwater rule:
         a. Volume Control. One inch of retention over the site’s impervious surface must be retained on-site.
         b. Rate Control. Peak flow rates must be limited to that of existing conditions at all points where stormwater leaves the site.
         c. Water Quality. 60% total phosphorus and 90% total suspended solids must be removed.
      2) A stormwater easement agreement over any raingarden on the property.
      3) Provide the appropriate seed mix/plants for the rain gardens.
      4) A stormwater maintenance agreement.
5) Final grading and tree preservation plan for the lot. The plan must be in substantial conformance with Grading Plan dated February 15, 2017. No more than 10 high-priority trees may be removed from the combined site. High-priority trees shown to be preserved must be protected during all grading and construction activity. Erosion control installed and inspected prior to issuance, mitigation may be decreased. A mitigation plan with species and sizes shall be provided for staff review and approval prior to issuance of the first building permit. Mitigation shall include:

a. mitigate for 75-inches of high priority (1301, 1302, 1221 and 1254) tree loss (unless walnut trees 1221 (16") and 1254 (15") can be saved) and 11, 2-inch trees of significant tree loss or a total of 49, 2-inch trees.

6) Cash escrow in an amount to be determined by city staff. This escrow must be accompanied by a document prepared by the city attorney and signed by the builder and property owner. Through this document the builder and property owner will acknowledge:

- The property will be brought into compliance within 48 hours of notification of a violation of the construction management plan, other conditions of approval, or city code standards; and
- If compliance is not achieved, the city will use any or all of the escrow dollars to correct any erosion and/or grading problems.

b) Install a temporary rock driveway, erosion control, tree and wetland protection fencing and any other measures identified on the SWPPP for staff inspection. These items must be maintained throughout the course of construction.

c) Install heavy duty fencing, which may include chain-link fencing, at the conservation easement. This fencing must be maintained throughout the course of construction.

d) Submit all required hook-up fees.
e) Unless specifically authorized by city staff, no site work or tree removal may occur until issuance of the building permit for each lot.

5. All lots and structures within the development are subject to all R-1 zoning standards. In addition:

a) Principal structure setbacks are required as follows:

<table>
<thead>
<tr>
<th>Lot</th>
<th>Front Yard</th>
<th>Side Yard</th>
<th>Rear Yard</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>25 ft from Regal Oak</td>
<td>Aggregate</td>
<td>38 ft</td>
</tr>
<tr>
<td></td>
<td>40 ft from Shady Oak Rd</td>
<td>30 feet</td>
<td></td>
</tr>
<tr>
<td>2</td>
<td>25 feet</td>
<td>no one</td>
<td>38 ft</td>
</tr>
<tr>
<td></td>
<td></td>
<td>side less</td>
<td></td>
</tr>
<tr>
<td>3</td>
<td>25 feet</td>
<td>10 feet</td>
<td>50 ft</td>
</tr>
<tr>
<td>4</td>
<td>25 feet*</td>
<td>N/A</td>
<td></td>
</tr>
</tbody>
</table>

* approved by variance in 1979

b) If a new home cannot be encompassed by 150 feet of fire hose coverage, either: (1) the home must be protected by a 13D automatic fire sprinkler system or an approved alternative system; or (2) the driveway must be 20 feet wide of paved surface at less than 10% grade.

6. The city may require installation and maintenance of signs which delineate the edge of any required conservation easement. This signage is subject to the review and approval of city staff.

7. During construction, the streets must be kept free of debris and sediment.

8. Minimize street disturbances. If street cuts are in close proximity, make one contiguous repair, no gap between patches.

9. Proof of permit from Hennepin County for work in the right-of-way.

10. Permits may be required from other outside agencies including, Hennepin County, the Minnehaha Creek Watershed District, and the MPCA. It is the applicant’s and/or property owner’s responsibility to obtain any necessary permits.

11. This approval will be void on April 10, 2018 if: (1) the final plat has not been recorded with the county; and (2) the city has not received and approved a written application for a time extension.
Adopted by the City Council of the City of Minnetonka, Minnesota, on April 10, 2017.

______________________________
Terry Schneider, Mayor

Attest:

______________________________
David E. Maeda, City Clerk

Action on this resolution:

Motion for adoption:
Seconded by:
Voted in favor of:
Voted against:
Abstained:
Absent:
Resolution adopted.

I hereby certify that the foregoing is a true and correct copy of a resolution adopted by the City Council of the City of Minnetonka, Minnesota, at a duly authorized meeting held on April 10, 2017.

______________________________
David E. Maeda, City Clerk
EXHIBIT A

Lot 5, Block 1, REGAL OAK 2\textsuperscript{ND} ADDITION according to the recorded plat thereof, Hennepin County, Minnesota. (Abstract)

AND

That part of the Southeast Quarter of the Southwest Quarter of Section 14, Township 117 North, Range 22 west of the 5\textsuperscript{th} Principal Meridian, Hennepin County, lying west of the plat of REGAL OAK as monumented, east of the plat of REGAL OAK 2\textsuperscript{nd} ADDITION and north of the northerly right-of-way line of County Road 61.