Planning Commission Agenda

Nov. 15, 2018 – 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: Nov. 1, 2018

5. Report from Staff

6. Report from Planning Commission Members

7. Public Hearings: Consent Agenda

8. Public Hearings: Non-Consent Agenda Items

   A. Resolution amending Site Plan No. 248 to accommodate construction of the Southwest Light Rail Transit Line at 5450 Feltl Road.

   Recommendation: Adopt the resolution approving the proposal (4 votes)

   • Final Decision Subject to Appeal
   • Project Planner: Susan Thomas

   B. Resolution approving setback variances for construction of a new home at 5729 Whited Ave.

   Recommendation: Adopt the resolution approving the proposal (4 votes)

   • Final Decision Subject to Appeal
   • Project Planner: Drew Ingvalson

9. Adjournment
Notices

1. Please call the planning division at (952) 939-8290 to confirm meeting dates as they are tentative and subject to change.

2. Applications and items scheduled for the Dec. 6, 2018 planning commission meeting:

<table>
<thead>
<tr>
<th>Project Description</th>
<th>Description</th>
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</thead>
<tbody>
<tr>
<td>Project Address</td>
<td>Perzhu Residence, front yard setback variances</td>
</tr>
<tr>
<td>Project No.</td>
<td>18039.18a</td>
</tr>
<tr>
<td>Assigned Staff</td>
<td>Ashley Cauley</td>
</tr>
<tr>
<td>Ward Councilmember</td>
<td>Bob Ellingson</td>
</tr>
</tbody>
</table>

| Project Description                  | WILLISTON HEIGHTS, a four-lot subdivision        |
| Project Address                      | 4716 and 4724 Williston Road                    |
| Project No.                          | 18034.18a                                        |
| Assigned Staff                       | Drew Ingvalson                                   |
| Ward Councilmember                   | Tim Bergstedt                                    |

| Project Description                  | DORN ESTATES, a two-lot subdivision              |
| Project Address                      | 5524 Nantucket Place                             |
| Project No.                          | 18038.18a                                        |
| Assigned Staff                       | Drew Ingvalson                                   |
| Ward Councilmember                   | Tim Bergstedt                                    |

| Project Description                  | INVERNESS ESTATES, a two-lot subdivision         |
| Project Address                      | 13321 Inverness Road                             |
| Project No.                          | 18040.18a                                        |
| Assigned Staff                       | Susan Thomas                                     |
| Ward Councilmember                   | Bob Ellingson                                    |

| Project Description                  | Doran Apartments                                 |
| Project Address                      | 11706 Wayzata Blvd                               |
| Project No.                          | 18029.18a                                        |
| Assigned Staff                       | Ashley Cauley                                    |
| Ward Councilmember                   | Rebecca Schack                                   |

| Project Description                  | Glen Lake Apartments                             |
| Project Address                      | 14317 Excelsior Blvd                             |
| Project No.                          | Not yet assigned                                 |
| Assigned Staff                       | Susan Thomas                                     |
| Ward Councilmember                   | Bob Ellingson                                    |

| Project Description                  | Police and Fire Facility                         |
| Project Address                      | 14600 Minnetonka Blvd                            |
| Project No.                          | 18036.18a                                        |
| Assigned Staff                       | Loren Gordon                                     |
| Ward Councilmember                   | Mike Happe                                       |
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 Sewall, Hanson, Henry, Knight, Luke, and Kirk were present. Powers was absent.

Staff members present: Community Development Director Julie Wischnack, City Planner Loren Gordon, and Assistant City Planner Susan Thomas.

3. **Approval of Agenda:** The agenda was approved as submitted.

4. **Approval of Minutes:** Oct. 18, 2018

   *Hanson moved, second by Henry, to approve the Oct. 18, 2018 meeting minutes as submitted.*

   *Sewall, Hanson, Henry, Knight, Luke, and Kirk voted yes. Powers was absent. Motion carried.*

5. **Report from Staff**

Gordon briefed the commission on land use applications considered by the city council at its meeting of Oct. 22, 2018:

   - Adopted a resolution approving a change to the drainage and utility easement for one lot of the Wilson Sixth Addition, a three-lot subdivision with three new houses.

The next planning commission meeting is scheduled for Nov. 15, 2018. The planning commission meeting regularly scheduled for Dec. 13, 2018 has been moved to Dec. 6, 2018.

There will be a comprehensive guide plan steering committee meeting next week and a public hearing on the comprehensive guide plan on Nov. 29, 2018. There have been six out-reach events that gathered feedback from residents.

6. **Report from Planning Commission Members:** None

   A five-minute recess was taken to deal with technical issues.

7. **Public Hearings: Consent Agenda**
No item was removed from the consent agenda for discussion.

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

A. Resolution approving a front yard setback variance for construction of a garage addition at 4425 Tonkawood Road.

Adopt the attached resolution approving a front yard setback expansion permit to construct an attached garage addition at 4425 Tonkawood Road.

Sewall, Hanson, Henry, Knight, Luke, and Kirk voted yes. Powers was absent. The motion on the consent agenda item 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.

8. Public Hearings

A. Resolution approving rezoning, master development plan, final site and building plans, and preliminary and final plats for The Mariner.

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.

In response to Sewall’s question, Thomas explained that staff referred to the proposed structure as two “buildings,” but they are parts of the same building. The property line separates the west wing which would have 194 market-rate units and the east wing made up of 55 units that would meet affordable housing standards. Wischnack explained that the different financing makes it necessary to separate the types of units.

Sewall asked how far into the easement the proposed amenities would extend. Thomas pointed out the boundary. A large watermain is located underground in the easement. The city may need to access the watermain in the future.

Henry asked why some easements are vacated and not others. Thomas explained that an easement may become obsolete when a property is redeveloped and utilities previously located in an easement are removed.

In response to Chair Kirk’s question, Thomas explained that the staff recommendation includes a condition of approval that would prohibit a dog run and parking area from being located in the easement. The proposal would still meet parking ordinance requirements with the removal of the proposed parking area located in the easement.
Becky Landon, president of Newport Midwest, applicant, stated that:

- She enjoyed working with staff.
- The building would look and function as one development. There would be affordable and market-rate components.
- The amenities would be equally attractive to all units. There would be a playground, splash pad, common room, game room, and gathering areas geared more toward adults.
- The northwest corner of the building would be about 550 feet from the SWLRT station platform and 70 - 80 feet from the tracks.
- There would be four units of high-priority supportive homeless housing. Hennepin County would refer a family when a unit is open. There would still be a background check and lease. A supportive provider would provide case management services. This would be permanent, supportive housing. These would be families with children.
- The applicant maximized every square inch of the site in order to create the kind of density the area dictates. The applicant is concerned with parking because there is no off-street parking in the area. The 21 stalls would help alleviate that problem. The dog run would not be much different than typical landscaping, but it would be maintained and designated as an area for residents to take their dogs. There are already people walking their dogs on the trail system now, but a lot more dogs would be added with the completion of the proposal.

Jack Immerman, civil engineer with Wenck Associates, stated that:

- There is a 10-inch watermain running through the 50-foot wide drainage and utility easement. The watermain is located directly underneath the existing bituminous trail. A 20-foot wide trench would be needed to repair the watermain. Repairs to the watermain would not encroach on the proposed parking. The dog run and parking area would extend 20 feet into the easement and leave 30 feet of easement for future utilities.
- Cable, electric, and telephone utilities use small cables buried three feet below the surface that fit within a five-foot easement.
- The dog park would consist of landscaping with a fence around it and the parking area would be bituminous with a concrete curb. It would be fairly simple to remove the parking or fence if needed.

Ms. Landon said that connecting residents of the proposed building and surrounding area to the SWLRT is critical. Making sure as many users can get to the SWLRT as safely as possible is a priority. Sidewalks would be located on the south side of the building from a private driveway to the driveway located on Bren Road East. She explained the pedestrian traffic pattern and the concessions made for safety and privacy.

Mr. Immerman stated that:
• Bren Road East has been moved closer to the proposed building. There is a 16-foot grade difference between the top of the road and the pedestrian underpass. A 3:1 grade could be constructed from the top of the road to the building. An additional 10-foot tall retaining wall would be required to build a sidewalk between the road and the building.
• The third concept is a rendering that shows that pedestrians would travel between a building wall and a 10-foot retaining wall. The applicant did not think pedestrians living off site would utilize this corridor and it would not provide a safe environment. There would be better connectivity from the north and east sides of the site.

In response to Chair Kirk’s request, Thomas explained the grading plan and existing trail system.

Ms. Landon pointed out that there is no sidewalk along Bren Road East. Most of the pedestrian traffic would come from the existing trails located on the north side of the site.

Wischnack explained that staff supports taking a broader view of the area and adding segments of trails that would link up with future trails.

In response to Henry’s question, Thomas stated that the site may be accessed from Bren Road East and the private drive. She pointed out the accesses to the underground parking areas.

Ms. Landon explained other guest parking options that were considered. There would be lifts in the underground parking.

The public hearing was opened.

Ryan Kronzer, assistant director of the SWLRT, stated that:
• He was available for questions.
• He has met with the applicant to coordinate the development proposal and discuss grading and the shifting of Bren Road East. The location of stormwater utility pipes was adjusted to allow the building to be constructed in the proposed location.
• Retaining wall work may be delayed depending on how the road will shift and the type of shoring required.

No additional testimony was submitted and the hearing was closed.

Hanson appreciated staff’s long-term view. There is quite a bit of action happening in the area. He agreed with staff’s recommendation.

Sewall felt that staff’s recommendation is reasonable. There are too many unknowns with the area on the north. The area could still be designated for dogs. As the SWLRT is
developed, the demand on parking may decrease. Having a 10-year vision for sidewalks will be beneficial. He supports the design and affordable housing component. He likes the look and supports staff’s recommendation.

Henry noted that this type of housing is needed in the city, especially located near the SWLRT. It would provide a huge benefit to the city. He appreciated the thought the applicant put into the demographics of who would reside in the proposal. It is a strong proposal. He encouraged the applicant to consider providing underground guest parking to provide better access for people with disabilities. He supports approving the proposal with the conditions provided in staff’s recommendation.

Luke agreed with commissioners. The building is well thought out. It takes into account a lot of living situations needed in Minnetonka. She agrees with staff’s recommendation regarding sidewalks and keeping the easements. She appreciates planning for the future. It is a very good project and it would be good for the city.

Knight liked the appearance of the building. He was a little concerned with not having enough guest parking.

Chair Kirk felt that there would be enough parking on site because renters would not live there unless there would be enough parking for their vehicles. There may need to be a modification to create additional parking. He liked the design of the building and the use. He did not want funding the south trail to eliminate the applicant’s ability to provide the same number of affordable and support units. The realignment of Bren Road East encumbered the positioning of the building. He liked the design and articulation of the building. The view of the architecture would be nice. The Opus trails are designed for a campus feel. The addition of the SWLRT would create a demand for pedestrians and bikers to get from one point to another. He supports the condition requiring the south sidewalk. He appreciates the product and the mix of housing.

Henry moved, second by Hanson, to recommend that the city council adopt the following pertaining to The Mariner at 10400, 10500, and 10550 Bren Road East:

1. An ordinance rezoning the property from B-2, limited business, to PUD, planned unit residential and adopting a master development plan.

2. A resolution approving final site and building plans.

3. A resolution approving preliminary and final plats.

Sewall, Hanson, Henry, Knight, Luke, and Kirk voted yes. Powers was absent. Motion carried.

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

By: ____________________________
Lois T. Mason
Planning Secretary
Minnetonka Planning Commission Meeting
Nov. 15, 2018

Agenda Item 7

Public Hearing: Consent Agenda

NONE
Minnetonka Planning Commission Meeting
Nov. 15, 2018

Agenda Item 8

Public Hearing: Non-Consent Agenda
In 1984, the planning commission approved Site Plan Review No. 248 for Westfield Center, an office/warehouse complex in the southwest corner of the Smetana Road/Feltl Road intersection. As a condition of the approval, a “permanent landscaping easement” was required to ensure tree preservation on the northernmost portion of the site. A portion of this easement area will be impacted during the construction of the Southwest Light Rail Transit line (SWLRT). To accommodate this impact the site plan approval must be amended to: (1) remove the tree preservation requirement from a portion of the easement area; and (2) allow for construction of the transit line in the easement.

While acknowledging that the SWLRT line will impact natural resources within Minnetonka, the city has regularly noted that these impacts must be weighed against the public good provided. Regional and local policy makers have determined that the SWLRT line will ultimately provide the regional population with a transportation alternative and, as such, contribute toward the greater public good. Further, the project and its alignment have been approved at national, regional, and local levels.
Staff Recommendation

Adopt the resolution amending Site Plan Review No. 248: (1) removing the requirement for tree preservation within the existing easement area; and (2) allowing the construction of the SWLRT line within the easement area.

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

**Surrounding Land Uses**
- Northerly: City of Hopkins
- Easterly: Office/Warehouse, zoned PUD
- Southerly: Industrial/Warehouse, zoned I-1
- Westerly: Townhomes, zoned R-2

**Planning**
- Guide Plan designation: mixed use
- Zoning: PUD, planned unit development

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

1) Concur with the staff recommendation. In this case a motion should be made to adopt the resolution approving the amendment.

2) Disagree with staff’s recommendation. In this case, a motion should be made directing staff to prepare a resolution for denying the amendment request. This motion should include findings for denial.

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

**Appeals**
Any person aggrieved by the planning commission’s decision regarding the requested variances may appeal such decision to the city council. A written appeal must be submitted to the planning staff within ten days of the date of the decision.

**Neighborhood Comments**
The city sent notices to 283 area property owners and received no comments to date.

**Deadline for Decision**
Feb. 16, 2019
P.C. Minutes 7/19/84

Stanley Feltl commented that Opus Corporation is doing a good job and he is perfectly satisfied with the project. He was proud of it and expected the quality to continue.

Vice Chairman Schneider asked for clarification regarding the landscape plan for the western edge. Mr. Krauss said he too had questioned the plan, and said a stipulation should be added to see if the installed landscaping correlates to where the building is currently located. Ms. Perry noted that the previous plan was negotiated between Fazenin Townhomes and Opus Corporation and a separate plan was provided. All of that landscaping has been installed. She said the question is if additional landscaping is required because of the new building. Mr. Krauss felt that stipulation 3. c) covered this concern.

Commissioner Sawyer moved, Broe seconded, for approval to Site Plan No. 248 for the Opus Westfield Center, with a technical variance for 36 compact parking stalls, subject to the following stipulations:

1. Work with the City Engineer to relocate the stormwater ponding easement to cover the revised pond location.
2. Provide plans for screening outdoor trash storage and HVAC equipment for review and approval by staff.
3. Modify the landscaping plan for review and approval by staff by:
   a) Providing a tree preservation plan;
   b) Providing a plan to restore the area impacted by the haul road through the trees;
   c) Establish a permanent landscaping easement over a forested area;
   d) Review the berm plantings with staff. Additional plant material may be required to screen the Westfield site plan;
   e) Provide a plan for the required underground irrigation system.
4. Provide lighting and signage plans for review and approval by staff.
5. Project approval by the Nine Mile Creek Watershed District.
6. Relocate the sanitary sewer line that runs between 11th Street and Building C to avoid the need to remove existing trees.

Commissioners Broe, Bergstedt, Sawyer, Schneider and Witta voted "aye". Motion carried.

D. Review of the proposed revisions to the Driveway Ordinance of the City of Minnetonka.

Ron Baty reminded the Commission that this item was heard on June 21st. A number of questions arose and the item was continued in order for Lloyd Pauly, Director of Operations and Maintenance to be present to answer questions. Mr. Baty advised that the ordinance now contained another revision. Existing language read "that no portion of a driveway approach, except the curb return, shall be constructed within 35' of a corner". The City Council recently judged that 35' may be inadequate and the City Engineer has recommended it be changed to 45'.

Vice Chairman Schneider asked Mr. Pauly to provide background and justification of the lot width requirement for circular driveways. He noted that at the last hearing the requirement was related to the storage capacity of snow.

Mr. Pauly agreed that the storage of snow as it relates to the number of driveways is one point of concern, but a generally larger category is the preservation of the right-of-way for the purpose it is platted. He went on to say that the public purpose of right-of-way is for the ultimate installation and repair of underground utilities, and for mailboxes and fire hydrants. He commented that those are necessary and when there is an over-abundance of encroachments onto the right-of-way, it limits the utilization of the boulevard area and also affects the cost of delivering public services. If a 75' frontage is encumbered with two 20' driveways, and with a 3' radius on each, it uses up 60% Once circular driveways are allowed, a number of them can be installed in an area. It is then difficult to find places for curb boxes, water shut-off, NISP and Northwestern Bell pedestals, and fire hydrants. Digging in driveways also adds to the cost of repair and restoration and causes a greater disturbance to property owners. He argued that with a large number of driveways, the delineation of the street is lost and crews have a more difficult time plowing. Plow repairs in 1983 were approximately $10,000. The inability to define the extremes and limits of streets and the frequency of driveways contributes greatly
Line of drainage and utility easement

Line of temporary easement

5450 Feltl Road
SWLRT Context Map
9 Oct 2018  rev 0
CONDEMNATION MAP
CONDEMNATION #C100610
HENNEPIN COUNTY
SP 9909-01
CS 2700 (SWR)
PARCELS 315, 317, 320,
321, 400, 407,
408 AND 613

SPECIFIC: TREE PRESERVATION - DOC. #A-4943462
CS 2700(SWR) SP 9909-01
PAR 407 (FEE)
DCII-5400-5510 FELTL ROAD, LLC
LOTS 1, 2 AND 3, BLOCK 3, OPUS 2 NINTH ADDITION

ENTIRE TRACT 676922 SF (F&T)
NRW R/W 13514 SF
BALANCE 663408 SF
DRAINAGE AND UTILITY EASE 14342 SF
T.E. (EXPIRES 06/01/2021) 20793 SF

OCT 23 2018
Submitted by Applicant
AMENDMENT TO DECLARATION OF TREE PRESERVATION EASEMENT

THIS AMENDMENT TO DECLARATION OF TREE PRESERVATION EASEMENT ("Amendment") is dated effective as of March ____, 2018 ("Effective Date") and is made by COLLINS DRIVE CORPORATION, a Minnesota corporation ("Collins") and is joined in by CITY OF MINNETONKA, a Minnesota municipal corporation ("City").

Recitals

A. By Declaration of Tree Preservation Easement dated October 24, 1984 and recorded November 14, 1984 as Document No. 4943462 in the Office of the Hennepin County Recorder ("Declaration"), Collins (formerly known as Opus Corporation) established a perpetual easement for tree preservation purposes ("Tree Preservation Easement") over the following described property ("Easement Area"):

That part of Lot 1, Block 3, OPUS 2 NINTH ADDITION, according to the recorded plat thereof, lying northwesterly and northerly of the following described line:

Commencing at the Northwest corner of said Lot 1; thence on an assumed bearing of South 2 degrees 07 minutes 22 seconds West along the West line of said Lot 1, a distance of 440.0 feet to the point of beginning of the line to be described; thence North 45 degrees 45 minutes 00 seconds East a distance of 266.00 feet; thence South 89 degrees 02 minutes 18 seconds East, to the intersection with the East line of said Lot 1, and said line there terminating.

B. At the time the Declaration was made, Collins was the owner and developer of Lot 1, Block 3, OPUS 2 NINTH ADDITION ("Subject Property"). The City required the Tree Preservation Easement as a condition of site plan approval (Site Plan No. 248) ("Site Plan") for the Subject Property. Collins complied with the conditions for Site Plan approval imposed by the City.

C. The Subject Property is located within a larger geographic area of Minnetonka commonly referred to as "Opus II Business Park," generally consisting of the lands abutting an integrated system of one-way streets designated Yellow Circle Drive, Red Circle Drive, Green Circle Drive, Blue Circle Drive, and Green Oak Drive, as well as Feltl Road, Opportunity Court, Bren Road East and Bren Road West.

D. The Easement Area abuts Feltl Road at one of the main entrance points to the Opus II Business Park.
E. The Metropolitan Council and Minnesota Department of Transportation have undertaken a project ("Project") to extend light rail transit to and through the Opus II Business Park. A portion of the Project will impact the Easement Area.

G. On ____________, 2018, the City approved an amendment to the Site Plan to (1) remove the requirement for tree preservation within the Easement Area; and (2) allow the construction of the Project within the Easement Area ("Site Plan Amendment").

H. The parties to this Amendment desire to amend the Declaration as of the Effective Date to: (a) remove the requirement of tree preservation within the Easement Area; (b) permit the construction of the Project within and through the Easement Area; and (c) otherwise amend the Declaration in accordance with the Site Plan Amendment.

**Terms and Conditions of Amendment**

NOW, THEREFORE, in consideration of the foregoing recitals, which are true and correct and incorporated herein by reference and the mutual promises made herein, the Declaration is amended as follows:

1. Recital A of the Declaration is deleted in its entirety and replaced with the following:
   
   A. Declarant is the former fee owner and developer certain real property situated in the City of Minnetonka, Hennepin County, Minnesota, legally described as follows:

   Lot 1, Block 3, OPUS 2 NINTH ADDITION, according to the recorded plat thereof

   (hereinafter, the "Subject Property").

2. Recital B of the Declaration is deleted in its entirety and replaced with the following:

   B. In 1984, Declarant developed the Subject Property to include an office/warehouse complex pursuant to and in accordance with the Site Plan as approved by the City.

3. Recital C of the Declaration is deleted in its entirety and replaced with the following:

   C. The City’s Site Plan approval was conditioned upon the establishment of a permanent landscaping easement over that part of the Subject Property legally described on the attached Exhibit A ("Easement Area") and depicted on the attached Exhibit B.

4. The Declaration is amended by adding the attached Exhibit A (the legal description of the Easement Area) as Exhibit A to the Declaration.

5. The Declaration is amended by adding the attached Exhibit B (the depiction of the Easement Area) as Exhibit B to the Declaration.
6. Recital D of the Declaration is deleted in its entirety and replaced with the following:

   D. Declarant has complied with the conditions of Site Plan approval imposed by the City by designating the Easement Area and making this Declaration for the preservation of the natural state of the Easement Area, subject to the terms and conditions set forth in the Declaration.

7. The Declaration is amended by inserting a new Recital E as follows:

   E. The City has approved the extension of a light rail transit line by the Metropolitan Council and Minnesota Department of Transportation within and through that portion of the Easement Area designed at the Light Rail Area on Exhibit A.

8. Paragraph 1 of the Declaration is deleted in its entirety and replaced with the following:

   The purpose of this easement is to preserve the natural state of the Easement Area. Therefore, the natural state of the easement area shall not be disturbed by Declarant or any future owner or occupant of the Subject Property; provided, however, that the owner of the Subject Property may, from time to time, clear any debris including dead vegetation from the Easement Area, may remove invasive non-native vegetation such as European buckthorn and plants designated as noxious weeds under state law, and may engage in other environmental management practices approved by the City. The owner may also take such actions as said owner may deem appropriate for the safety of persons and property located on the property adjoining the Easement Area, with the prior written consent of the Declarant and the City of Minnetonka.

9. Paragraph 2 of the Declaration is deleted in its entirety and replaced with the following:

   No buildings, structures or improvements of any kind shall be erected within the Easement Area, except as follows: (a) improvements that have been or may be constructed by City of Minnetonka and public utilities within the drainage and utility easements as dedicated in the plat of OPUS 2 NINTH ADDITION; (b) that certain underground sanitary sewer pipeline previously constructed within the Easement Area by Declarant, which services improvements erected on the balance of Lot 1, Block 3, OPUS 2 NINTH ADDITION; (c) improvements that are constructed within the Easement Area by the Metropolitan Council as part of the Southwest Light Rail Transit Line project; and (d) all repairs and replacements of the improvements listed in (a), (b), and (c) as may be necessary for ongoing maintenance and operation.

10. The capitalized terms used in this Amendment will have the same definitions as set forth in the Declaration to the extent that such capitalized terms are defined therein and not redefined in this Amendment. Except as expressly amended herein, the terms, conditions and covenants of the Declaration are in all other respects, affirmed. In the case of any inconsistency between the provisions of the Declaration and this
Amendment, the provisions of this Amendment will govern and control. From and after the Effective Date, all references to the Declaration shall mean and include the Declaration, as amended by this Amendment.
Signature Page – Collins

COLLINS DRIVE CORPORATION,
a Minnesota corporation

By: _______________________
Its: President

STATE OF MINNESOTA )
 )SS
COUNTY OF HENNEPIN )

The foregoing instrument was acknowledged before me on _____________, 2018, by
_____________________, the President of COLLINS DRIVE CORPORATION, a
Minnesota corporation, on behalf of the corporation.

_______________________________
Notary Public
Signature Page – City

City of Minnetonka

By: ________________________________
    Brad Wiersum, Mayor

By: ________________________________
    Geralyn Barone, City Manager

STATE OF MINNESOTA  )
    )SS
COUNTY OF HENNEPIN   )

The foregoing instrument was acknowledged before me on _____________, 2018, by Brad Wiersum, the mayor of the City of Minnetonka, a Minnesota municipal corporation, on behalf of the corporation.

_______________________________
Notary Public

STATE OF MINNESOTA  )
    )SS
COUNTY OF HENNEPIN   )

The foregoing instrument was acknowledged before me on _____________, 2018, by Geralyn Barone, the city manager of the City of Minnetonka, a Minnesota municipal corporation, on behalf of the corporation.

_______________________________
Notary Public

DRAFTED BY:
City of Minnetonka
Legal Dept. (CAH)
14600 Minnetonka Blvd.
Minnetonka, MN 55345
EXHIBIT A

Legal Description of Easement Area

That part of Lot 1, Block 3, OPUS 2 NINTH ADDITION, according to the recorded plat thereof, lying northwesterly and northerly of the following described line:

Commencing at the northwest corner of said Lot 1; thence on an assumed bearing of South 2 degrees 07 minutes 22 seconds West along the west line of said Lot 1, a distance of 440.0 feet to the point of beginning of the line to be described; thence North 45 degrees 45 minutes 00 seconds East a distance of 266.00 feet; thence South 89 degrees 02 minutes 18 seconds East, to the intersection with the East line of said Lot 1, and said line there terminating.

EXCEPT; That part of the above-described area which lies northerly and northeasterly of Line 1 described below (“Light Rail Area”):

Line 1. Commencing at the northeast corner of said Lot 1, Block 3, OPUS 2 NINTH ADDITION, thence southerly on an azimuth of 179 degrees 20 minutes 02 seconds along the east line of said Lot 1 for 159.46 feet to the point of beginning of Line 1 to be described; thence on an azimuth of 269 degrees 20 minutes 02 seconds for 15.00 feet to a point hereinafter referred to as Point “A”; thence continue on the last described course for 7.39 feet; thence on an azimuth of 333 degrees 53 minutes 44 seconds for 71.64 feet; thence on an azimuth of 312 degrees 04 minutes 32 seconds for 70.73 feet; thence on an azimuth of 290 degrees 11 minutes 02 seconds for 27.49 feet; thence on an azimuth of 20 degrees 11 minutes 02 seconds for 14.00 feet; thence on an azimuth of 290 degrees 11 minutes 02 seconds for 87.50 feet to the north line of said Lot 1 and there terminating.
EXHIBIT B
Sketch of Easement Area
Resolution No. 2018-
Resolution amending Site Plan No. 248, related to a tree preservation easement at 5450 Feltl Road

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

Section 1. Background.

1.01 The subject property is located at 5450 Feltl Road. It is legally described as:

Lots 1, 2, and 3, Block 3, Opus 2, Ninth Addition

1.02 On July 19, 1984, the planning commission approved Site Plan Review No. 248 for Westfield Center, an office/warehouse complex on the subject property. As a condition of approval, a “permanent landscaping easement” was required to ensure tree preservation on the northermmost portion of the site.

1.03 On Nov. 14, 1984, a Declaration of Tree Preservation Easement was recorded over the northermmost portion of the property.

1.04 A portion of this existing easement will be impacted during the construction of the Southwest Light Rail Transit line (SWLRT). To accommodate this impact, the site plan approval must be amended to: (1) remove the tree preservation requirement from a portion of the easement area; and (2) allow for construction of the transit line within the easement.

1.05 On Nov. 18, 2018, the planning commission held a hearing on the the site plan approval amendment. 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.

Section 2. Findings.

2.01 While acknowledging that the SWLRT line will impact natural resources within Minnetonka, the city has regularly noted that these impacts must be weighed against the public good provided.

2.02 Regional and local policy makers have determined that the SWLRT line will ultimately provide the regional population with a transportation alternative and, as
such, contribute toward the greater public good.

2.03 The SWLRT project and its alignment have been approved at national, regional, and local levels.

Section 3. Planning Commission Action.

3.01 An amendment to Site Plan No. 248 is hereby approved. The amendment removes the tree preservation requirement over a portion of the existing easement and allows construction of a transit line at 5450 Feltl Road. Approval is based on the findings outlined in section 2 of this resolution.

3.02 Approval is subject to the following condition:

1. An amendment to the Declaration of Tree Preservation Easement, as drafted and approved by the city attorney, must be recorded against the subject property.

Adopted by the Planning Commission of the City of Minnetonka, Minnesota, on Nov. 15, 2018.

Brian Kirk, Chairperson

ATTEST:

Karen Telega, Deputy 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 Planning Commission of the City of Minnetonka, Minnesota, at a duly authorized meeting held on Nov. 15, 2018.

Karen Telega, Deputy City Clerk
Brief Description
Variance for the construction of a new home at 5729 Whited Ave.

Recommendation
Adopt the resolution approving the requested variance

Proposal
Ryan Schleper of Shree Investments is proposing to demolish the existing home on the subject property to construct a new home. The home currently encroaches into the front yard, horizontal 100-year storm, and wetland setbacks. The new home would continue to encroach into the front yard and wetland setbacks, but would conform to the horizontal 100-year storm setback. (See attached).

Proposal Requirements
The proposal requires:

- Variance: Principal structure encroaching into the required wetland and front yard setbacks.

<table>
<thead>
<tr>
<th></th>
<th>Required</th>
<th>Existing</th>
<th>Proposed</th>
</tr>
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<td>35 ft.</td>
<td>10.1 ft.</td>
<td>10.1 ft.*</td>
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<tr>
<td>Wetland Setback</td>
<td>35 ft.</td>
<td>13 ft.</td>
<td>33 ft.*</td>
</tr>
<tr>
<td>Horizontal 100-Year Storm Setback</td>
<td>20 ft.</td>
<td>13 ft.</td>
<td>29 ft.</td>
</tr>
</tbody>
</table>

* requires setback variance

Site Features
The site is located on Whited Ave., south of Excelsior Blvd., and just west of Lake Rose. The lot is approximately 2.6 acres in size, which is significantly larger than the R-1 minimum lot size requirement of approximately 0.5 acres. The existing home is located on the highest elevation of the property and the topography of the site generally slopes down as you travel northwest. Runoff on the subject site drains into a wetland that takes up over 80-percent of the subject site.

Existing House
The existing house on the property is a one story rambler that was constructed in 1949, prior to the adoption of the city’s zoning ordinance. The house has non-conforming front yard, wetland, and horizontal 100-year storm setbacks.

Wetland
The city’s ordinance requires that homes be located 35 feet from the wetland edge. The existing house has a non-conforming 13-foot setback from the wetland edge.

Floodplain
There is a large amount of city-designated 100-year floodplain on the site, which is regulated by the city’s water resources management plan and zoning ordinance. The ordinance requires new structures to be located a minimum of 20 feet from the 100-year floodplain elevation of 943.5 feet. The existing home has a non-conforming, 13-foot setback from the floodplain.

The ordinance requires that the lowest floor of all new structures be built a minimum of 2 feet above the 100-year floodplain elevation, thus, at 945.5 feet for the subject property. Based on the survey submitted by the applicant, the existing home has a low floor flood elevation of 947.33 feet, which met the ordinance requirements.

**Front Yard**

City ordinance requires R-1 homes to be set back at least 35 feet from any local street public right-of-ways. The existing house has a non-conforming 10.1 foot front yard setback.

**Nonconforming Uses**

Under state law and the city’s zoning ordinance, nonconforming structures can be maintained, replaced, and reconstructed with an administrative building permit. The applicant would be allowed to reconstruct the previous house within one year of demolition. Reconstruction means construction that exactly matches pre-existing conditions, including the exact same footprint and exact same height and volume. Construction of a new home which does not meet setback requirements and does not exactly match pre-existing conditions of a previously nonconforming home requires a variance from the planning commission.

**Proposed House**

As proposed, the new home would be located southwest of the existing home. The proposed location maximizes the distance between the proposed home and the wetland on the northeast side of the property.

The proposed house would be 3,300 square feet in size and 1.5 stories in height with an attached three stall garage, and a rear deck. (See attached). Though the proposed home requires a variance, it would:

- Increase the setback from the wetland;
- Maintain the front yard setback distance; and
- Increase the horizontal 100-year floodplain setback.

**Staff Analysis**

Staff finds that the proposed variance is reasonable as:

- The proposed demolition of the existing home and construction of a new home is reasonable.
Meeting of November 15, 2018
Subject: Schleper Variance, 5729 Whited Ave.

- The existing house was built in 1949 and predates the city’s zoning ordinance. The existing house was built with non-conforming wetland, floodplain, and front yard setbacks.

- While the proposed home would be located in a different location, it would actually maintain or even reduce the non-confirming setbacks of the existing home.

- The proposed new house would maintain the residential character of the surrounding neighborhood.

**Staff Recommendation**

Adopt the attached resolution approving a front yard and wetland setback variance for the construction of a new house at 5729 Whited Ave.

Originator:  Drew Ingvalson, Planner
Through:    Loren Gordon, AICP, City Planner
Supporting Information

Project No. 18037.18a

Property 5729 Whited Ave.

Applicant Ryan Schleper

Surrounding Land Uses All properties to the north, south, east and west are zoned R-1, and guided for low density residential, with the exception of some park guided land near Lake Rose.

Planning Guide Plan designation: Low Density Residential
Zoning: R-1 Single Family Residential

Variance Standards 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)

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.

As proposed, the property would comply with the McMansion Policy. Currently, the property’s FAR is 0.01. The proposed attached garage addition would increase the property’s FAR to 0.03. This is still below the largest FAR within 400 feet, which is 0.31.

Natural Resources Best management practices must be followed during the course of site preparation and construction activities. This would include installation and maintenance of a temporary rock driveway, erosion control, and tree protection fencing. As a condition of approval the applicant must submit a construction management plan detailing these management practices.

Motion Options The planning commission has three options:

1. Concur with the staff recommendation. In this case a motion should be made to adopt the resolution approving the variance.
2. Disagree with staff's recommendation. In this case, a motion should be made directing staff to prepare a resolution for denying the proposal. This motion should include findings for denial.

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

**Voting Requirement**
The planning commission action on the applicant’s request is final subject to appeal. Approval requires the affirmative vote of five commissioners.

**Appeals**
Any person aggrieved by the planning commission’s decision about the requested variances may appeal such decision to the city council. A written appeal must be submitted to the planning staff within ten days of the date of the decision.

**Neighborhood Comments**
The city sent notices to 39 area property owners and has received no comments.

**Deadline for Decision**
December 14, 2018
Location Map

Project: Schleper residence
Address: 5729 Whited Ave
GENERAL NOTES:
1. ALL DOOR AND WINDOW HEADERS TO BE S.P.F. #2 OR BETTER, SEE PLANS FOR SIZES.
2. HOUSE TO BE BUILT PER CURRENT I.R.C. CODES.
3. VERIFY GRADES AND ADJUST FOUNDATION FOOTING STEPS AS NEEDED.
4. SEE PLANS FOR CEILING HEIGHTS
5. Poured Fdn. Walls Per Plan
6. FLOOR PLAN DIMENSIONS ARE TO FACE OF SHEATHING AND FOUNDATION.
7. ALL TRADES & SUPPLIERS TO REVIEW & VERIFY INFORMATION PERTINENT TO THEIR WORK AND NOTIFY CONTRACTOR OF ANY DISCREPANCIES PRIOR TO CONSTRUCTION.
8. NOTED CABINET SIZES ARE +/- AND TO BE FIELD VERIFIED.
9. TRADES TO VERIFY BASE AND TRIM SIZE PRIOR TO CONSTRUCTION.
10. ALL WALLS MORE THAN 10' H. TO BE S.P.F. #2 OR BETTER.
11. EXTERIOR ELEVATIONS ARE CONCEPTUAL ONLY: HOME SITE, FILL AND TOPOGRAPHY WILL DICTATE ACTUAL GRADES AND MAY VARY FROM THOSE SHOWN ON THE PLAN.
12. NOTE: SUBFLOOR JOINTS SHALL BE STAGGERED FROM FLOOR TRUSS OR JOIST JOINTS
13. NOTE: WINDOW FALL PROTECTION PER R312.1

SCALE: 1/8" = 1'-0"

FINAL PLAN

SPEC. HOME
5729 WHITED AVE.
MINNETONKA, MN
10-3-18 FINAL

5729 WHITED AVE.
SPEC. HOME
MINNETONKA, MN
10-3-18 FINAL

FINAL PLAN

NOTE:
SEE ROOF TRUSS LAYOUT PROVIDED BY MANUFACTURER FOR TRUSS DIRECTION AND GIRDER LOCATIONS

NOTE:
ICE AND WATER SHIELD 6'-0" IN FROM GABLES 1'-6" ON EACH SIDE OF VALLEY
NOTE:
WHERE WALLS MEET ROOF ICE & WATER SHIELDS SHOULD RUN UP WALL 1'-6" AND OUT FROM WALL 1'-6"
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EXTERIOR ELEVATIONS ARE CONCEPTUAL ONLY: HOME SITE, FILL AND TOPOGRAPHY WILL DICTATE ACTUAL GRADES AND MAY VARY FROM THOSE SHOWN ON THE PLAN.
Planning Commission Resolution No. 2018-

Resolution approving a front yard and wetland setback variance for the construction of a new home at 5729 Whited Ave.

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

Section 1. Background.

1.01 The subject property is located at 5729 Whited Ave. It is legally described as:

The south 456.50 feet of Lot 1, Lake Rose Park Addition, Hennepin County, Minnesota

1.02 Ryan Schleper of Shree Investments is proposing to demolish the existing home on the property to construct a new home. The existing home currently encroaches into the front yard and wetland setbacks. The new home would also encroach into these setbacks.

1.03 City Code §300.10 Subd.5(b) requires a minimum front yard setback of 35 feet.

1.04 City Code §300.23 Subd.8(b)(1) requires a minimum wetland setback of 35 feet.

1.05 City Code §300.24 Subd.8(e) requires a minimum 100-year storm setback of 20 feet (horizontal) and 2 feet (vertical) for principle structures.

1.06 The applicant is requesting the following setbacks for the proposed home.

<table>
<thead>
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* requires setback variance

1.07 Minnesota Statute §462.357 Subd. 6, and City Code §300.07 authorizes the Planning Commission to grant variances.

Section 2. Standards.

2.01 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.

Section 3. Findings.

3.01 The proposal would meet the variance standard as outlined in City Code §300.07 Subd.1:

1. INTENT OF THE ORDINANCE. The proposal is in harmony with the general purposes and intent of the zoning ordinance. The intent of the front yard setback requirement is to provide for consistent building lines within a neighborhood and to provide for adequate separation between homes and major collector or arterial roadways. The intent of the wetland setback requirement is to preserve and protect the environmental and, aesthetic and hydrologic functions of the City’s wetlands through ensuring separation between them and structures. The proposed home would be located the same distance from the front property line and the farther from the wetland than the existing home on the property.

2. CONSISTENT WITH COMPREHENSIVE PLAN. The proposed variance is consistent with the comprehensive plan. The guiding principles in the comprehensive guide plan provide for maintaining, preserving and enhancing existing single-family neighborhoods. The requested variance would preserve the residential character of the neighborhood and would provide an investment into a property to enhance its use.

3. PRACTICAL DIFFICULTIES. There are practical difficulties in complying with the ordinance:

a) REASONABLENESS: The proposed construction of a new home is reasonable. Specifically, the proposed home would:

1) Maintain the non-conforming front yard setback;

2) Increase the wetland setback; and

3) Increase the horizontal 100-year storm setback.

b) UNIQUE CIRCUMSTANCE: The presence of a large wetland and non-conforming home create unique circumstances on the subject property.

1) The existing house was built in 1949 and predates the city’s zoning ordinance.
2) The existing house has non-conforming wetland, floodplain, and front yard setbacks.

3) The wetland on the property takes up over 80 percent of the property. This wetland has created a practical difficulty when attempting to place a single-family home on the property and meeting all setback requirements.

c) CHARACTER OF THE LOCALITY: The proposed single-family home would maintain the residential character of the surrounding neighborhood.

1) The proposed home would maintain or increase the setbacks of the existing home.

2) The subject neighborhood is not characterized as having several homes that do not meet setback requirements. However, there are two homes, one across the street and one directly south of the subject property, that appear, based on aerial photography, to not meet the front yard setback requirement.

Section 4. Planning Commission Action.

4.01 The planning commission approves the above-described variance based on the findings outlined in section 3 of this resolution. Approval is subject to the following conditions:

1. Subject to staff approval, the site must be developed and maintained in substantial conformance with the following plans, except as modified by the conditions below:

   - Survey date stamped October 15, 2018.
   - Plans and elevations submitted with application and date stamped October 15, 2018.

2. Prior to issuance of a building permit:

   a) A copy of this resolution must be recorded with Hennepin County.

   b) The applicant must install erosion control and tree protection fencing as required by staff for inspection and approval. These items must be maintained throughout the course of construction.

   c) The applicant must:

      1) Confirm water service size and location. If inadequate or if determined to be in an unsuitable location, the old service must be removed to the main and the corporation stop
2) Confirm location of sanitary service. If determined to be in an unsuitable location, the old service pipe must be removed back to the main with the service wye being cut out and sleeved.

d) Applicant must obtain a driveway permit.

e) Applicant must provide a stormwater management plan. Volume control of 1-inch of runoff over all site impervious is required to be captured.

f) The applicant must add drainage and utility easement #2054828 to the survey.

g) All delinquent utility bills must be paid.

4. This variance will end on December 31, 2019, unless the city has issued a building permit for the project covered by this variance or has approved a time extension.

Adopted by the Planning Commission of the City of Minnetonka, Minnesota, on November 15, 2018.

Brian Kirk, Chairperson

Attest:

Karen Telega, Deputy 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 Planning Commission of the City of Minnetonka, Minnesota, at a duly authorized meeting held on November 15, 2018.

__________________________________________
Kathy Leervig, Deputy City Clerk