

All,

We provided some supplemental information by email yesterday for our CUP Application for 2205 Wildwood Dr, however we were not completely sure who to include on the email. It appears from an earlier instruction letter, that our contact/Project Manager is Mark Noble, and that we should send all of our additional supplemental information AND the required documents from yesterday's Neighborhood meeting to Mark as well? Anyone else that we should include on these mailings? Please confirm, as we would like to send those documents as soon as possible.

Finally, just by way of preparation, could we please receive a call to briefly discuss how the meeting with the BOAA will be handled next week? We did view last month's recorded meeting, but just want to clarify a few questions before the weekend, given that it is the 4th of July prior to our meeting.

Please call me (Jim) at 978-886-4341 at your earliest convenience.

Best Regards,

Jim & Nancy Schreiner

On Wed, Jun 28, 2023 at 3:39 PM Jim & Nancy Mae <jimandnancymae@gmail.com> wrote:
We would like to provide additional information regarding the property at 2205 Wildwood and the Assisted Living care provided at that address, specific to the 5 categories noted under City Code 151.011, as referenced in the CUP Letter addressed to us on May 19, 2023.

1. The use will not be injurious to the use and enjoyment of other property in the immediate vicinity for the purposes already permitted, nor substantially diminish and impair property values within the immediate vicinity.

a. OUR RESPONSE: Based on neighborhood behavior and feedback to date, we believe there will be specific comments or concerns expressed to this item. We believe that this topic will be the ONLY one of the 5 categories to which feedback will be relevant in the consideration of conditional use. We will look to understand and confirm these points during our Neighborhood meeting which will be held at 6:30 PM on Wednesday, July 28th, 2023. We believe specific concerns from selected neighbors include the following:

i. **We are creating a parking problem for neighbors or that the number of cars in our driveway in some way impacts "use and enjoyment".** We have worked deliberately to minimize the number of cars in the driveway AND we insist that all care staff and visitors park in the driveway to avoid creating any parking hardship on the city street/circle. We run 12-hour shifts for our care staff, meaning that this changeover occurs only twice per day (7:00am and 7:00pm). On occasional days during the week or weekend, we may also have a visiting doctor or therapist visit a resident to administer prescribed care. Of course, there is also the occasional visit by family or friends of the residents, just as there would be at any residential home. We have a rather large driveway, so this has all been manageable. However, we have seen countless occasions when neighbors have walked by, driven by or stood in their driveway or the circle, and taken videos and photos of our property, notably on those days

where cars are at a peak (all in the driveway, mind you). Comparably however, there are several homes on our street with large families with several licensed drivers, including one in our circle, where it is common to see at least 4 or more cars/vehicles parked in the driveway on any given day, with coming and going at similar frequency. There are also regular occasions where visitors to neighbors are parked all the way around our circle, including at times encroaching into our narrow driveway entrance. In our estimation, we do not believe that the daily vehicle loading at our home in any way causes harm based on comparisons to the normal residential vehicle loads we see at the other large homes in our neighborhood.

ii. **We are creating additional traffic that in some way impacts “use and enjoyment”.** We have only 5 residents and are not licensed by the State of MN for more. Our care staff changes shift only twice per day (12 hour shifts), just like the incoming/outgoing travels of all the working people in every house in the neighborhood. Deliveries are essentially the same as for most homes – daily Amazon stops (in which the truck regularly stops at several of our neighbors on the same delivery), occasional Door Dash/Instacart food deliveries. In addition to that we have occasional physician/therapist, occasional Pharmacy delivery of medications for residents who are not able to travel to pick up prescription medications, and then the noted occasional visitors. We believe that the traffic patterns for our property are essentially no different than that of any busy, large family in the neighborhood.

2. *The establishment and conditional use will not impede the normal and orderly development and improvement of surrounding vacant property for uses allowed in the area.*

a. OUR RESPONSE – Our Conditional Use Permit will in no way impede in this regard as there is no surrounding vacant property. Additionally, the back acreage of our property is in Conservation Easement, so cannot be further developed in any way.

3. *Adequate utilities, access roads, drainage, and other necessary facilities have been or will be provided.*

a. OUR RESPONSE - Because this is truly a residential property, holding what comparably is a large family of residents, there are no impacts to any of the public utilities or facilities noted above.

4. *The use is consistent with the purposes of the zone in which the applicant intends to locate the proposed use*

a. OUR RESPONSE – Under the State of Minnesota, it is presumed that many Residential Assisted Living facilities are operated under residentially zoned communities. In fact, records show that there are 22 such Residential Assisted Living homes operating today in Scott County with 7 or less residents, 13 of which are in the City of Shakopee. This would seem to support that the City of Shakopee already acknowledges that these are consistent use of residential zoning, albeit admittedly with the proper Conditional Use Permit.

5. *The use is not in conflict with the comprehensive plan.*

a. OUR RESPONSE – The use of a Residential property for Assisted Living in no way conflicts with the comprehensive plan of the City of Shakopee.

Some final comments on concerns expressed by a few neighbors regarding Covenants.

Prior to making an offer on the property, and subject to final closing on the property we were told repeatedly by the Seller and their Agent that there was no active Homeowners Association in the community, nor any governing Covenants in relation to that subject. We had a signed affidavit from the Seller stating that to their knowledge there was no active HOA, and thus any Covenants/enforcement on the property to be sold. We asked this question several times before and during closing. And in fact neighbors confirmed that there has been no active Homeowners Association in the neighborhood for some time. In light of recent complaints and a handful of confrontational approaches from a few of the neighbors, we dutifully sought alternative legal counsel on this topic.

(One important side note to better characterize the mood of some in our neighborhood. One specific neighbor marched aggressively into our garage and verbally ambushed Nancy with a stream of threats to sue us for violation of covenants and such and to “get ready because we will see this to the end”. This tirade was followed shortly thereafter by a visit from the Police Department, called by the same neighbor. When Nancy explained what happened and showed the officer the video recording of the incident, the officer became very concerned for her, telling her that if any such an event were to happen again, she should call 911 and press charges! Understandably, this was VERY upsetting to Nancy, and has caused some serious reservations about openly discussing the home with these neighbors!)

Continuing . . . upon new searches with new counsel, we were surprised to learn of the existence of the Whispering Oaks Estates Homeowners Association Declaration (Recorded 12.08.2003) outlining covenants for the property, and that which according to our newly retained counsel, could yet be binding on us, even though the Seller attested otherwise (a clear disclosure violation). This document was NOT provided to us as part of our closing documents. We are currently reviewing this Declaration with counsel. The prominent complaint from a few select neighbors focused on selection of Fencing material, which we chose based on the needs of residence privacy and elopement prevention, and those selections are not in line with the Declarations on fencing. Notably, this fence is in the back yard, down the slope of the property and essentially invisible from the street. There may be other restrictions of concern that may have been presented by neighbors to the city, but not brought to our attention yet, so we will continue to review the Declaration with counsel as needed. Had we been made aware of such Covenants we may have reconsidered our purchase altogether. However, even had we been aware of this document, and wished to request exceptions/variances to the declarations, there was no governing body to contact, given that all powers of the Declaration were given to the specified HOA non-profit corporation, which is no longer in existence.

More broadly, some comments to operating this particular business within a residential property, even in the presence of Covenant restrictions against operating a business. Early in our studies about how to operate a Residential Assisted Living facility, we sought legal counsel on doing so in a neighborhood even if covenants applied to the property. We were presented with ample case law and precedent where providing assistance with daily living for elderly residents could not be restricted by such covenants to exclude “group homes” from the neighborhood under Federal Fair Housing Act (FHA). The Fair Housing Act prohibits discrimination against people with disabilities (“handicap” in the actual law), and that residents who require assistance with daily living qualify as disabled under this act. This position was furthered by legislative amendments to the FHA, with language that prohibited restrictive covenants that would . . . “have the effect of excluding, for example, congregate living arrangements for persons with handicaps” . . . or “limiting the ability of such individuals to live in the residence of their

choice in the community". Additionally, such assisted living facilities' residents are NOT considered transient tenants, but rather share "the characteristics of a family". These residents typically live in the home for indefinite periods of time, usually departing only when they pass away or need higher levels of care. We would assume that the City of Shakopee understands this federal protection, even when there are covenants in place, since the City already supports/licenses other Residential Assisted Living homes in the City and County. We are reasonably sure that the average homeowner does not know about these protections under Federal statute.

With this further support, and in support of our application, we are requesting a Conditional Use Permit for the property/business at 2205 Wildwood Drive. In the very difficult event that the Board should conclude it is NOT in the interests of the City of Shakopee to grant this CUP, we would need then to implore the BOAA to grant an adequate, time-limited CUP to allow us to unwind and close the business. RAL Closing Procedures are tightly governed by the State of MN and Minnesota Department of Health. These procedures are built to insure minimum disruption of care, and prevent any untimely, forced relocation of protected residents. This process can take several months.

As required, we will send a summary of the neighborhood feedback immediately following the Neighborhood Meeting to be held this evening. We thank you for your consideration.

Warmest regards,

Jim and Nancy Mae Schreiner