

**MINUTES  
MINNETONKA CITY COUNCIL  
REGULAR MEETING, MONDAY, OCTOBER 13, 2003**

**1. CALL TO ORDER.**

Mayor Anderson called the meeting to order at 6:30 p.m.

**2. PLEDGE OF ALLEGIANCE.**

All joined in the Pledge of Allegiance.

**3. ROLL CALL.**

City Clerk Kathleen Magrew called the roll. Council members Terry Schneider, Al Thomas, Jan Callison, Dick Allendorf, Ken Tauer, Brad Wiersum and Karen Anderson were present.

**4. APPROVAL OF AGENDA.**

City Manager John Gunyou reviewed the addendum, which included two new conditions and corrected August 7 planning commission minutes for item #14A, the Randall appeal. City Planner Geoff Olson clarified that the planning commission had approved their corrected minutes.

Allendorf moved, Tauer seconded a motion to accept the agenda with the addendum. All voted "yes." Motion carried.

**5. APPROVAL OF MINUTES.**

Schneider moved, Wiersum seconded a motion to approve the minutes of the September 15, 2003 and September 29, 2003 Minnetonka City Council meetings. Tauer noted that he had made small corrections to the September 29 minutes. All voted "yes." Motion carried.

**6. SPECIAL MATTERS: None.**

**7. REPORTS FROM CITY MANAGER & COUNCIL MEMBERS.**

Gunyou reported that the senior advisory board and the fire relief association will be at the October 20 study session. The next regular council meeting will be held on October 27.

Anderson thanked the staff and volunteers for their contributions to the very successful City-wide and Fire Department Open House.

Anderson also reported that City Attorney Desyl Peterson had received the International Municipal Lawyers Association's Distinguished Public Service Award. The award recognized Peterson's expertise and willingness to share her knowledge with others. Anderson noted that the award reflected the respect of her colleagues from throughout the world.

**8. CITIZENS WISHING TO DISCUSS MATTERS NOT ON THE AGENDA.**

Hennepin County Commissioner Linda Koblick provided a briefing on the services Hennepin County provides for its residents, and the budget challenges they face. She encouraged county residents to visit the Hennepin County Web site to provide feedback on the county's approach to balancing the budget.

In response to Schneider's question, Koblick provided information about how the county is approaching security issues after the recent shooting at the Government Center. A committee is reviewing the issue and will provide recommendations. Koblick hoped that the committee's recommendations would be made available for public feedback.

**9. BIDS AND PURCHASES:**

**A. Consideration of bids for the Carlson Parkway/Cheshire Parkway and Cedar Lake Road/Hopkins North Junior High Traffic Signal.**

Gunyou provided a brief introduction to this item and recommended approval.

Callison moved, Tauer seconded a motion to award the bid for the Carlson Parkway/Cheshire Parkway and Cedar Lake Road/Hopkins North Junior High Traffic Signal to Ridgedale Electric, Inc. in the amount of \$261,991.50. All voted "yes." Motion carried.

**10. CONSENT AGENDA (Items Requiring a Majority Vote):**

**A. Claims for council authorization.**

Tauer moved, Callison seconded a motion to approve the October 13, 2003 claims list, including checks numbered 177496 through 177893 totaling \$1,872,092.04. All voted "yes." Motion carried.

**B. Resolution authorizing the installation of traffic control devices at various locations within the City of Minnetonka.**

Gunyou reminded the council of Friday's addendum to the agenda packet, which indicated that the no parking sign in the Saddlewood area would be postponed at the request of the residents.

Tauer moved, Callison seconded a motion to adopt Resolution No. 2003-100 approving a stop sign on Waterstone Place at Gizmo Lane. All voted "yes." Motion carried.

**C. Request from Swift Movers to move a house located at 4530 Highland Road to a site in Big Lake, Minnesota.**

Tauer moved, Callison seconded a motion approve a permit for Swift Movers to move a house located at 4530 Highland Road to a site in Big Lake, Minnesota, subject to the following stipulations:

- 1) The locust tree on the south side of the driveway is the only tree that may be removed. All other trees on the site must be protected.
- 2) That any additional tree-trimming that may occur in connection with the house moving must be approved in advance by city staff.

All voted "yes." Motion carried.

**D. Resolution authorizing the certification of delinquent water and sanitary sewer charges to the Hennepin County Auditor.**

Allendorf pulled this item from the consent agenda to ask how the delinquencies would affect the city's budget. Gunyou said that these payments are part of the Utility Fund, and have no direct effect on the General Fund. He noted that staff provides for delinquencies in the budget for the Utility Fund, and the accounts to be certified are consistent with staff's assumptions.

Allendorf moved, Wiersum seconded a motion to adopt Resolution No. 2003-101 authorizing the certification of delinquent water and sanitary sewer charges to the Hennepin County Auditor. All voted "yes." Motion carried.

**E. Resolution approving a conditional use permit for an accessory apartment at 2929 Merlen Drive for Kari Fasth.**

Tauer moved, Callison seconded a motion to adopt Resolution No. 2003-102 approving a conditional use permit for an accessory apartment at 2929 Merlen Drive for Kari Fasth. Approval is based

on the finding that the proposal meets the required conditional use permit standards and is subject to the following conditions:

- 1) Record this resolution with the county.
- 2) The city council may reasonably add or revise conditions to address any future unforeseen problems.
- 3) Any change to the approved use that results in a significant increase in traffic or a significant change in character would require a revised conditional use permit.
- 4) The applicant must agree to the above conditions in writing.

All voted "yes." Motion carried.

**F. Approval of Agreement for Prosecution Services with the cities of Minnetrista and St. Bonifacius.**

Tauer moved, Callison seconded a motion to approve an agreement for prosecution services with the cities of Minnetrista and St. Bonifacius. All voted "yes." Motion carried.

**11. CONSENT AGENDA (Items requiring Five Votes). None.**

**12. INTRODUCTION OF ORDINANCES.**

**A. Introduction of an ordinance amending the civic center master development plan to replace the existing water treatment plant at 14600 Minnetonka Boulevard.**

Gunyou introduced this item, noting that city projects require the same review process as private projects. Due to unfavorable soil conditions, expansion of the existing water treatment plant was shifted to a nearby location. He noted that the new plant would be roughly twice the size of the existing plant. The new location for the plant would allow for a turnaround circle, which would provide better access to the trail and the canoe launch area.

Anderson noted that the city council had not adopted the civic center plan. Gunyou said that the approval process was delayed to accommodate an extended leave by the plan's chief designer. The plan is scheduled to be submitted for council approval after the first of the year. Staff thought it appropriate to bring this project to the council at this time to avoid delays in construction.

Anderson noted that the plan shows buildings that the council has not yet approved. She was concerned about siting another building without an adopted plan, but thought the placement of the water treatment plant seemed logical.

Tauer was concerned about shifting the plant to what he called the heart of the campus. He felt this could restrict possible future options. He asked that staff closely look at other options, including shifting the plant closer to the tree line.

Anderson agreed, and asked that the plant be shifted as far to the east and south as possible.

Tauer moved, Allendorf seconded a motion to introduce an ordinance amending the civic center master development plan to replace the existing water treatment plant at 14600 Minnetonka Boulevard and to refer the ordinance to the planning commission.

Schneider said that he was sympathetic with the concerns expressed by Anderson and Tauer. However, he felt that the new turnaround to provide access to the activity areas was an improvement.

Wiersum asked for a status report on the replacement of the playground equipment. Assistant City Manager Geralyn Barone said that play equipment removed from Meadow Park would be installed in the area north of the parking lot of Ice Arena B within the next few weeks. This temporary equipment would remain until permanent equipment is installed in about three years. Barone said that a letter had been sent advising the neighbors of this information. Wiersum said that a number of people enjoy that equipment, so he appreciated the interim measures.

All voted "yes." Motion carried.

### **13. PUBLIC HEARINGS.**

#### **A. Continued public hearing for on-sale intoxicating liquor licenses for Origami West restaurant, 12401 Wayzata Boulevard (Ridgedale Shopping Center).**

Community Development Director Ron Rankin introduced the item, noting that there were no changes since the item was introduced on September 15.

Anderson invited comments during the continued public hearing. There were none and the hearing was closed at 7:06 p.m.

Allendorf moved, Thomas seconded a motion to grant on-sale intoxicating liquor licenses for Origami West restaurant, 12401

Wayzata Boulevard (Ridgedale Shopping Center). All voted "yes."  
Motion carried.

**14. OTHER BUSINESS:**

**A. Appeal of the planning commission's denial of variances for a second-story addition to the home at 2819 McKenzie Point Road for Jack and Betsy Randall.**

Anderson reviewed the process for discussion of this item. Olson provided the staff report, and reviewed the information in the addendum.

Anderson asked about the options for windows. Olson provided two possibilities: fire shutters or glass block windows that would allow light while providing fire protection. He said that this issue was related to fire safety, and the requirements are more restrictive for windows within three feet of a lot line.

Anderson asked if the air conditioner unit could be placed in an attic space. Olson said that the unit is currently illegally placed. He said that conditions related to the unit must be tied to the variance requested.

Anderson asked if changes to the entrance area would affect the variance. Olson said that the variance would not be reduced, but one variance would be eliminated with removal of the chimney.

Anderson asked how stairs are factored because she thought the new stairway configuration might create a new variance for the first floor structure. Olson suggested that the applicant clarify if the stairs would angle, or if they only appeared that way in the drawing.

Schneider did not think that stairs figured into the setback requirements, and thought that the foundation was the usual point of measurement. Anderson noted that the stairs for her deck had to meet utility easement requirements.

Tauer noted the inset for the second floor wall and asked Rankin if that was feasible under the building code. Rankin said that it would not be difficult to set the wall back, and that the requirements of the building code would be enforced.

Wiersum asked if the two foot setback for the second story wall was the primary change from the first application. Olson said that the

two-foot setback and removal of the chimney were the only significant changes.

Jack and Betsy Randall, 1571 Lake Lucy Road, Excelsior, spoke as the owners of the property at 2819 McKenzie Point Road. They have owned the property for three or four years, and plan to use the property as their retirement home, wintering in Florida. They want a home that is in keeping with the character of the neighborhood. Mr. Randall noted that there are only two single-story homes remaining in the neighborhood. He said they tried to minimize the variances, and had agreed to add shrubs, reduce the hardcover, remove the chimney, provide a sprinkler system, and blacktop part of the driveway. Mr. Randall said that they also participated in mediation with Sorenson to try to mitigate the issues. He asked the city to be fair in granting variances similar to those granted to others in the neighborhood.

Tauer asked if the Randalls would consider removing the existing house and rebuilding if they were guaranteed their grandfathered rights. Mr. Randall said that they did not want to move their house or re-do the foundations because of the costs. He said their option would be to move the top roof in seven feet, which would have an adverse affect on the aesthetics of the home.

Wiersum noted the tightness at the north lot line, and asked if the Randalls had considered purchasing two feet of property from Sorenson. Mrs. Randall said they did not believe Sorenson would sell. Mr. Randall said that they had not pursued that option.

Schneider noted that a partial screen would help mitigate the privacy issues near the porch. Mr. Randall said that the privacy screen was definitely something they were willing to do, as they had offered during mediation. He said that the proposed screen would improve privacy and should not block Sorenson's view of the bay to the north.

Howard Rosten, spoke as the attorney for Scott Sorenson, owner of the property to the north. He asked the council to deny the applicant's appeal and affirm the planning commission's decisions made in February and in July. Rosten said that the planning commission denied the Randall's request because there were other options, no hardship was demonstrated, too many variances were requested, the home would be too close to the lot line, and it would perpetuate an existing non-conforming use. He said that these were ample justifications for denial of the variances.

Rosten said that the planning commission was the primary group to consider requests for variances, and suggested that deference should be given to their decisions.

With regard to the hardship test, Rosten said that the city's zoning ordinance sets specific requirements for setbacks. He argued that this was not a unique lot, and that it had similarities to small lots in other neighborhoods. He noted that the code provides for a seven foot setback for small lots. He said that the standards are provided for consistency in development, safety, aesthetics, and orderly development. He argued that the multiple variances requested were extraordinary, and reflected no effort on the part of the Randalls to further the goals of the ordinance.

Rosten said that the Randalls had not demonstrated any hardship, and that their requests were based on economics and their own desires. Rosten said that they have no issue with the request for a two-story house, but said that there are alternatives to mitigate the existing non-conforming uses for which no variances would be needed.

Rosten noted that a representative from the Minnesota Department of Natural Resources said that the Randalls have reasonable use of the property without the variances, and said that it would be hard to prove a hardship existed. Rosten said that the other variances granted in the neighborhood were not relevant, because the council had to consider this request on its own merits. He also noted that significant concessions had been made when those variances were granted. Two non-conforming buildings were removed at 2805 McKenzie Point Road, and the house at 2809 McKenzie Point Road was moved away from the lake, the sideyard setback was reduced, and the hard surface coverage was reduced.

Anderson noted that the city attorney's interpretation of the city's ordinance differed from Rosten's, and said that she had always found her opinions to be very accurate. Rosten said that Peterson was competent and well-qualified, but he disagreed with her interpretation.

Rosten referred to the city's brochure regarding variances, and noted that the city does not grant variances lightly. He asked the city council to affirm the planning commission's decision.

David Phillips, 1250 East Moore Lake Drive, Fridley, spoke. He is an architect/general contractor, with experience in building homes and apartments. On behalf of Sorenson, he provided options that

would reduce the need for variances. He said that the existing home could be demolished and rebuilt to meet the setback requirements. The house could be shifted to the south. He said that the issue was the Randall's lack of attempt to mitigate the non-conforming items. Phillips noted that the DNR official urged mitigation, even if it meant removing the whole house, or at a minimum, removing the porch.

Phillips argued that some of the concessions made by the Randalls were requirements of the code. He said that the planning commission voted to deny the variances because no attempt had been made to mitigate the non-conforming issues. He urged the council to deny the variances based on the recommendations of the DNR representative, the planning commission's vote, and the city's code.

Callison asked Phillips to clarify his statement that no attempt had been made to mitigate, and asked if he was referring to removal of the porch. Phillips said that Randall told the planning commission that he would not remove the porch. Phillips said that the house could have been shifted to the south and a new home built. Phillips said that maintenance will be difficult due to the closeness of the home to the north lot line, and said that construction and maintenance will be difficult without trespass onto Sorenson's property. He said that at least part of the home should be removed, and the hard surface reduced.

Scott Sorenson, 2815 McKenzie Point Road, said that all of the neighbors, except Hans Hagen, support his position that the Randall's home would be too close to the property line. He said that the Randall's lot is the largest in the neighborhood, so there is more space on the south side. Sorenson said that his was the first home in the area that was demolished in 1977 and replaced with a new home. In that case, the house was moved away from the lake and toward the center of the property. He encouraged the council to follow the law.

Sorenson said that Hagen moved his house back by at least 50 feet. There have been five homes that have added second floors, and all those homes were moved back to reduce the non-conforming uses, or the size of the garage was reduced.

Sorenson said that the DNR representative had 28 years of experience. He noted that the DNR does not usually issue letters of this type.

Sorenson said that the Randall's construction may require partial removal of one of Sorenson's trees that overhangs the Randall's house.

Sorenson said that the planning commission spent a great deal of time on this request, and asked good questions. He said that they found that there were too many variances. Sorenson said that he had been asking Randall for concessions for two years, but had not been successful. He urged the council to follow the law.

In response to Allendorf's question, Olson said that if the Randall's home lost more than 50 percent of its value, it would lose its grandfathered protections.

Tauer said that it was Randall's right to refuse some of the possible options. He noted that the city has little control over the existing house, and can only use the variance for leverage. Tauer cited the history of that neighborhood, and the dramatic changes in its character since 1991 when he was on the Board of Zoning Adjustments. He said that the first request generated significant discussions, but that lessened with each request. He noted that neighborhoods along Lake Minnetonka have a different character. A vital part of the value of those houses comes from boat docks and the lake view. Due to the value of the land, privacy from each other is traded for the lake amenity. Tauer said that setting the second floor wall back would not look too bad. He felt that the tree limb was a private issue. In response to Rosten's comment on the number of variances, Tauer said that the city council had approved many variances on that street. He suggested that the Randalls consider bringing the front stairs out directly to the front.

Allendorf noted Sorenson's concern about the Randall's new roof preventing future additions to his home. Olson said that it would depend on Sorenson's plans. Olson said that the main concern would be fire safety. He noted that the Randalls will provide a sprinkler system for their home. Allendorf said that would affect the internal fire safety, but Sorenson would likely be concerned about fire jumping across the roofs.

Olson said that the Randalls raised issues related to practical difficulties. Their home is already in place. In the case of Sorenson's property, the original home was removed and there was new construction. The sites are different, so it is difficult to compare them. He could not say that a Randall variance would preclude a future Sorenson variance, and said that would be an issue for the council to decide at that time.

Callison referred to the chart in the packet about the conditions on McKenzie Point Road. Three homes have received variances and constructed two-story structures. There are a variety of side yard setbacks. All but three homes are two-story. She asked why the city should not allow the Randalls to do what others have done. Callison looked at the three tests, and said that the request is reasonable. Two-story houses are in keeping with the character of the neighborhood. The hardship related to the size of the house and the lot. She said that the city has not expected people to rebuild their homes. The city has required removal of non-conforming outbuildings, but there are none in this case. It would not be appropriate to penalize the Randalls because they do not have outbuildings. Callison would not support removal of the porch and found it an appropriate amenity in this case. She did not see a reason to treat this property differently, and said she would support overturning the planning commission's decision.

Schneider agreed. He said that every request is examined based on its unique circumstances. The city council has tried to be consistent in how they apply the standards to different areas. All of the homes in this neighborhood have similar challenges with modernization and meeting current needs. He believed that the Randalls had made reasonable efforts to reduce the impacts of their expansion. The changes would improve the aesthetics at the front elevation. Schneider said that the project would provide a home that is very aesthetically pleasing, and a significant improvement from the lake view. He supported realignment of the porch to improve the appearance and resolve variance issues. Although the angled steps might be attractive, he suggested straightening them. He said that removal of the chimney was a prudent decision that will improve access on that side of the house. Schneider said that there have been compromises on the part of the Randalls, and they have been reasonably cooperative. Schneider did not think the city should stipulate the privacy wall, viewing that as a private issue between neighbors.

Allendorf said that while five variances might be excessive in a normally placed development, this neighborhood was different. He referred to the DNR opinion to move the house to the center of the lot, and noted that could not happen without a loss of the grandfathered rights. He felt that the Randalls had made concessions, and said he would support overturning the planning commission's decision.

Allendorf noted the appearance of a neighborhood feud, and said it appeared to be escalating. He suggested that it was time to de-escalate. If the fence were removed, it would lessen the appearance of the tight lot line on the north, and could reduce the mechanical and maintenance problems. He said that this issue was not within the council's purview, but suggested the action for ongoing neighbor relations.

Wiersum was concerned about the close proximity of the Randall's home to the north property line. He felt that two-stories are within the character of the neighborhood. He was concerned that the narrow side-yard would set a precedent. He agreed that the Randalls had made meaningful changes in a good faith effort to mitigate the issues. Wiersum's biggest issue was the setback at the north property line and to the lake. He did not see any real concessions on those two paramount issues, so he did not see a reason to overturn the planning commission decision.

Schneider said that the applicant had reduced the variance by moving the wall back, and the front setback is existing. Anderson asked staff to clarify the apparent confusion on this issue. Olson said that no variance was required for the 1.7 foot setback. A variance for that setback would only be required if more than 50 percent of the structure's value was lost. The variance only applied to the addition. The porch meets the setback requirement because it qualifies as an open deck.

Thomas said that he is normally reluctant to overturn a planning commission decision. He has read the reports and minutes, and viewed the property. As he drove the street, he looked at the other variances granted in the past. He felt that an expectation had been set for property owners to build up and increase the size of their homes. He noted this had occurred on both sides of the street. He would support overturning the planning commission's decision.

Anderson supported the majority of opinions expressed by the council. She said that this was a tough decision about a very unique area of the city. The decisions made over the years have been unique, and every property was considered individually and separately. She appreciated the perspectives expressed by Callison, Tauer and Schneider because of their history with the BZA and planning commission. The city has granted variances to allow people to improve their properties, and this neighborhood has been vastly improved over the past 20 years. She said that the Randalls had the right to improve their property and add a second

story, as others in their neighborhood have done. She said that the variance had been reduced as much as possible.

Anderson said that the project may not necessarily be the smartest option, but it will cost less than a total rebuild. She believes that the home may have a mold problem. She objected to the stairs as designed because they might exacerbate the setback. She asked that the applicant consider bringing them straight out. She agreed with the hardship as laid out in the staff report.

Anderson was saddened by the neighborhood feud, especially because the houses are so close. She said that the feud could not be solved by the city. The requested project is the reasonable thing to do to enable some improvement to the structures.

Tauer said that all structures in the neighborhood have had variances, some at the houses and some at the garages.

Schneider suggested that consideration be given to the placement of the air conditioner unit. He asked if the city could stipulate its placement, and was not sure if the setback requirements would apply. He thought the greater issue was the noise from the unit. He thought placement on the roof might exacerbate the noise. Olson said that an air conditioner unit would have to be seven feet from the lot line for smaller lots. He suggested that the variance could include a condition to require screening around the unit. He thought the council had discretion to require the unit to be moved to another location as a condition of the variance.

Schneider moved, Tauer seconded a motion to:

- 1) Adopt Resolution No. 2003-103, approving the following variances at 2819 McKenzie Point Road: shoreland setback variance from 35 feet to 33 feet; floodplain setback variance from 35 feet to 9 feet; side yard setback variance from 7 feet to 4 feet for the side walls; side yard setback variance from 7 feet to 3 feet for the over-hang on the north side of the home and sideyard setback variance from seven feet to one foot for the existing air conditioner. This resolution is based on the following findings:
  - a. Strict enforcement would cause undue hardship because of the following circumstances that are unique to this property:
    - (1) The narrow width of the lot, which is 42 feet at the front of the home; 49 feet at the rear; and

57 feet at the required setback on McKenzie Point Road.

- (2) The location of the existing structure within the required setbacks pre-dates ordinance requirements.

The variance would be consistent with the spirit and intent of this ordinance for the following reasons:

- (1) The proposal does not increase the existing nonconforming setbacks.
- (2) The applicants are proposing reasonable use of the property.
- (3) The proposed second-story addition is consistent with other two-story homes on McKenzie Point Road.

Approval is subject to the following conditions:

- a. Submit proof of having recorded this resolution with the county before the city issues a building permit.
- b. Gutters must be installed along the north and south sides of the house to channel runoff to the lakeshore yard. Drainage must be controlled on the subject property.
- c. Before the city issues a building permit, submit an appraisal stating that the value of the structure after demolition would be at least 50 percent of the value of the existing structure, before demolition.
- d. The driveway entrance off McKenzie Point Road must be paved with bituminous concrete blacktop or equivalent paving to the required 35-foot setback.
- e. Installation and maintenance of a 10-foot buffer along the shoreline. The applicants must work with the city's environmental resources coordinator in creating a vegetation plan for the buffer area.
- f. The stone walkways along the side of the house must be replaced with non-impervious surface pavers. The pavers are subject to review and approval of the city's environmental resources coordinator.
- g. The two illegal vents on the north side of the house must be removed.
- h. This variance will end on December 31, 2004, unless the city has issued a building permit for the project covered by this variance or approved a time extension.
- i. Remove the existing chimney on the northerly side of the house.
- j. All building and mechanical code requirements must be met, including the windows on the first floor.

- k. The front stairs must be redesigned to be parallel to the side of the house.
- l. Sound mitigation must be installed around the air conditioner, subject to staff approval, or the air conditioner must be moved to comply with the Code.

The motion also included a requirement that a partial privacy wall be included on the north side of the deck, but that provision was withdrawn by the mover and seconder.

Wiersum said that he would be pleased if the neighbors worked out their differences. He noted the difficulty of building with the tight property lines, and said that neighbors typically allow leeway for construction. He said that it would be in everyone's best interest to accommodate that work.

Schneider, Thomas, Callison, Allendorf, Tauer and Anderson voted "yes." Wiersum voted "no." Motion carried.

**B. Appeal of the planning commission's denial of a floodplain setback variance for a detached garage at 11417 Minnetonka Boulevard.**

Olson provided the staff report for this item, and clarified that the new garage would face toward Honeywood.

Anderson asked if the existing deck would remain. Olson deferred to the applicant on that issue.

Anderson asked about the separation between the house and the garage. Olson thought the separation was for the eaves.

Anderson noted that the major concern raised at the planning commission meeting had to do with a detached garage not being in keeping with the character of the neighborhood. She asked if the garage could be attached. Allendorf asked if shifting the garage would move it into the floodplain. Olson responded that it would increase the floodplain intrusion from 45 square feet to 185 square feet, and would also require a wetland setback variance. Allendorf said that if shifting the garage would not have affected the wetland, he would have preferred that option for aesthetic reasons.

In response to Anderson's question, Olson verified that the floodplain line passes through the house.

Callison asked about staff's position on the outbuildings. Olson said that staff would defer to the council's preference. Anderson noted that there was a second shed between the other shed and Minnetonka Boulevard. Olson said that the city has required removal when new lots are created and a non-conforming circumstance results. Where outbuildings exist within existing lot lines, removal has not always been required.

Michelle Periolat, 976 Fairfield Court, spoke as a real estate agent representing the buyer, Mr. Mack, and the seller, Mrs. Korbel, on the issue of city approval of the garage. Periolat clarified the appearance of the garage, noting that the original artwork was confusing. The new garage would set forward of the house, and be placed over an existing paved area so the impervious surface would not be increased as much. If the garage were shifted to the east, it would affect the wetlands and require additional hard surfaces. The existing single car garage is very substandard in size and does not accommodate today's larger vehicles. The hardship issues involve the unique and severe restrictions of the property. Although the property is two and one-third acres in size and is taxed as such, the actual buildable area is very small.

Periolat noted that the average time on the market for a Minnetonka home is 45 days, and the average price is \$349,528. This property was listed at \$349,900 and has been on the market for 263 days. There were hundreds of calls about the property due to the beauty of the lot and the views of the wetland, but only one offer was received. That offer was contingent upon approval of the additional garage. Periolat understood the perspective of the neighbors, but said that Korbel didn't comment when the nearby homes were built because she recognized their rights to use their properties. Periolat said that Korbel was only seeking to improve her home to the level of the neighborhood, and the lot would not allow the garage to be flush with the house.

Anderson asked about the intent for the outbuildings and a derelict fence. Periolat said that all of the sheds would be removed because the buyer wants to clean-up the property. The only exception related to the shed with a chimney. The buyer would like to keep the chimney, slab, and the wood holder to create an outdoor patio area. The roof and walls of the shed would be removed. Periolat indicated that there would be difficulties removing the chimney and slab because of their proximity to the wetland.

Tauer asked if the deck would be removed. Periolat said that it would. Tauer also asked about the oak tree that grows through the

deck. Periolat said that the tree had been struck by lightning and was not repaired by professionals. The buyer would like to save it if that is possible. She noted that the deck is in need of repair and does not add to the curb appeal of the property. The buyer also feels that it blocks the front of the house. Tauer said that would be the property owner's decision as long as the structure is up to code.

Periolat noted the concerns of the neighbors about the impact to their view. They suggested a different placement for the garage. Periolat said that moving the new garage to the opposite side would not look right, and no other locations would work. She said that the garage could not be attached due to problems related to footings, construction and soil issues.

Tom Lindee, 3296 Honeywood Lane, opposed the detached garage and suggested that the garage be placed on the east side. He thought the garage would better blend into the building at that site. Lindee noted the difference in age between the Korbel home and the other homes in the neighborhood. He suggested that adding only a single car garage would bring the Korbel property to the two-car standard. He said that a detached garage would not fit with the neighborhood.

Allendorf asked if the garage were moved to the east as a single-car garage, as Lindee suggested, if the garage would still go into the wetland. Olson said that it wouldn't go into the wetland, and the intrusion into the floodplain would be reduced. Allendorf noted that the impervious surface would remain the same. Olson said that the neighbors were concerned about their view to the wetland.

Schneider did not recall any stipulations in the city's ordinance to require an attached garage. He noted that the Korbel property was the original neighborhood. Schneider said that there are detached garages in his neighborhood. If the garage is detached, he suggested a minimum distance of at least three feet between the house and garage for maintenance. Schneider said that the current garage is quite substandard, and would be better classified as a storage area. He said the city often sees requests for new two car garages when garages like the existing one are converted to living space. He found the request to be reasonable and in keeping with the standard for two-car garages. He viewed the floodplain intrusion as a minor issue and would be more concerned if the structure was closer to the wetlands. Given the age of the existing home, it might be safer to provide a detached garage due to roof and drainage issues.

Tauer saw this as a simple, straight-forward decision. He did not see the floodplain issue as relevant. He questioned having a floodplain setback in this case for a once-in-a-lifetime event. He was not concerned about the point intrusion, and said that the wetlands were more important. Tauer said that the newer homes changed the character of the neighborhood when they were built. The closest home is 150 feet from the subject property. Tauer said that he has not discriminated against detached garages versus attached garages. He was puzzled by the response of the neighbors who were not concerned about losing the tree. Tauer could see almost no negative impact and thought the new garage would be a strong improvement to the neighborhood.

Callison could not see any real issues and supported the request. She said that it would be an upgrade to the neighborhood and thought the neighbors should welcome it.

Wiersum agreed. He noted that the neighbors are concerned about the garage impeding their view of the wetland on the Korbel property. He said that it is the Korbel's right to improve their property.

Allendorf said that this request would have been granted but for a quirk of one of the planning commissioners being recused from discussion of the request. He noted that the wetland is very large. He said that the garage will be closer to the street than the house. Allendorf suggested adding a stipulation to require visual elements, such as a window on the north side of the garage, to improve the neighbors' view. Perolat said that she suggested windows, window boxes, or trellises, and the buyer agreed.

Anderson asked that the motion require removal of the shed, derelict fence and other structures. She appreciated the comments of Planning Commissioner Mays, who said that the house had serviced a loving family for many years and it was time to give it some loving care to serve another family. The buyer has that intention, and the changes will improve the views.

Schneider said that the garage will also require a service door, which will break up the wall.

Tauer moved, Callison seconded a motion to adopt Resolution No. 2003-104, approving a floodplain setback variance from 35 feet to 30 feet at 11517 Minnetonka Boulevard for Robert Mack, based on the following findings:

- 1) Strict enforcement would cause undue hardship because of the following circumstances that are unique to this property:
  - a. The applicant is proposing to use the property in a reasonable manner. The proposed encroachment is considered a point intrusion into the required setback.
  - b. Hardship is caused by the location of existing garage space in relation to floodplain on the site. The applicant's proposal maintains functional access to this existing space, while providing additional space with a visual connection to the home.
- 2) The variance would be consistent with the spirit and intent of this ordinance for the following reason:
  - a. The proposal is consistent with the neighborhood character.

Approval is subject to the following conditions:

- 1) Install an additional 15-foot wetland buffer for staff review and approval.
- 2) Construction must be in substantial compliance with the submitted plans.
- 3) Submit proof of having recorded this resolution with the county before the city issues a building permit.
- 4) Install tree protection and erosion control fencing. The fencing must be maintained and debris and sediment controlled throughout the course of construction.
- 5) This variance will end on December 31, 2004, unless the city has issued a building permit for the project covered by this variance or approved a time extension.
- 6) Remove all sheds and the derelict fence, except that the chimney, slab and wood storage container by one of the sheds may remain.
- 7) The northerly side of the garage must have architectural enhancements, subject to staff approval.

All voted "yes." Motion carried.

**15. APPOINTMENTS and REAPPOINTMENTS.** None.

**16. ADJOURNMENT.**

Thomas moved, Schneider seconded a motion to adjourn the meeting at 9:42 p.m. All voted "yes." Motion carried.

Respectfully submitted,

Kathleen Magrew  
City Clerk