

**MINNETONKA PLANNING COMMISSION  
MINUTES**

**APRIL 18, 2002**

**1. CALL TO ORDER**

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

**2. ROLL CALL**

Commissioners Egge, Gallop, Knight, Wagner, Yearwood, Clinton, and Sodergren were present.

Staff Members Present: Planning Director Geoff Olson, Principal Planner Cary Teague, Environmental Coordinator Jo Colleran, and Planner Susan Thomas.

**3. APPROVAL OF AGENDA:** The agenda was approved as submitted. A change memo dated April 18, 2002, was added to the agenda.

**4. APPROVAL OF MINUTES:** April 4, 2002

*Gallop moved, second by Clinton, to approve the April 4, 2002, meeting minutes as submitted.*

*Egge, Gallop, Knight, Wagner, Yearwood, Clinton, and Sodergren voted yes. Motion carried.*

**5. REPORT FROM STAFF**

Olson briefed the Commission on land use applications considered by the City Council at its meeting of April 8, 2002:

- Approved a preliminary plat for the Striker Addition at 2112 Meeting Street for Myron H. Striker.
- Adopted a resolution approving a lot division to divide one lot into two lots at 5017 Highland Road for Lori Hamilton Brown and Mark G. Brown.
- Adopted a resolution approving a three-year conditional use permit to allow transient sales at 17523 Minnetonka Boulevard for Lakewinds Natural Foods.
- Upheld the Planning Commission's denial of the request for an 18-square-foot sign size variance at 4926 Linnea Lane for Accell Academy.

Olson announced a neighborhood meeting will be held April 19, 2002, in the Minnetonka Mills Community Room at 7:00 p.m., to discuss the Ridge Pointe Senior project located immediately north of 12600 and 12800 Marion Road West.

**6. REPORT FROM PLANNING COMMISSION MEMBERS:** None

**7. PUBLIC HEARINGS: CONSENT AGENDA**

No items were removed from the Consent Agenda for discussion or separate action.

*Wagner moved, second by Yearwood, to approve the items listed on the Consent Agenda as recommended in the respective staff reports as follows:*

**A. Resolution approving the following side yard setback variances for additions to the home at 3309 Larchmore Avenue for Stephen Lowe (02014.02a):**

- 1) side yard setback variance from 10 feet to 7 feet on the north side of the home. Existing side yard setback is 7 feet;**
- 2) side yard setback variance from 20 feet to 9 feet on the south side of the home. Existing side yard setback is 17 feet; and an**
- 3) aggregate side yard setback variance from 30 feet to 16 feet. Existing aggregate setback 24 feet.**

Adopt the resolution on pages A1–A3 of the staff report, which approves side yards and aggregate side yard setback variances at 3309 Larchwood Avenue.

1. Strict enforcement would cause undue hardship because of the following circumstances that are unique to this property:
  - a. Hardship is caused by the property's substandard size.
  - b. Hardship is further caused by existing, non-conforming setbacks.
2. The variance would be consistent with the spirit and intent of this ordinance for the following reasons:

- a. Side yard setbacks vary throughout the Larchwood Avenue neighborhood.
- b. The proposed additions would not encroach further into the required side yard setback than has already occurred within the area.

Approval is subject to the following conditions:

1. Submit proof of having recorded this resolution with the county before the City issues a building permit.
2. This variance will end on December 31, 2003, unless the City has issued a building permit for the project covered by this variance or approved a time extension.

*Egge, Gallop, Knight, Wagner, Yearwood, Clinton, and Sodergren voted yes. Motion carried and the items on the Consent Agenda were approved as submitted.*

*Wagner moved, second by Yearwood, to approve the items listed on the Consent Agenda as recommended in the respective staff reports as follows:*

**B. Resolution approving a front yard setback variance from 50 feet to 2 feet, at 3864 Hopkins Crossroad for DPRA Incorporated (86088.02a)**

Adopt the resolution on pages A1–A4 of the staff report. This resolution approves a front yard setback variance from 50 feet to 3 feet at 3864 Hopkins Crossroad, 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 unimproved Minnetonka Mills Road right-of-way runs through the site and requires a 50-foot setback.
2. The variance would be consistent with the spirit and intent of this ordinance for the following reasons:
  - a. The structure would be setback 65 feet from the realigned Minnetonka Mills Road.
  - b. There is a large green area separating the office building to the north.

- c. The perceived location of this building would be in a side yard due to the vacated right-of-way.

Approval is subject to the following conditions:

1. Submit proof of having recorded this resolution with the county before the City issues a building permit.
3. The building shall be removed once the remediation of the site is complete.
4. This variance will end on December 31, 2003, unless the City has issued a building permit for the project covered by this variance or approved a time extension.

*Egge, Gallop, Knight, Wagner, Yearwood, Clinton, and Sodergren voted yes. Motion carried and the items on the Consent Agenda were approved as submitted.*

*Wagner moved, second by Yearwood, to approve the items listed on the Consent Agenda as recommended in the respective staff reports as follows:*

**C. Resolution approving a side yard setback variance for an addition to the home at 4914 Shady Oak Road for Ronald M. Hays and Nina M. Norum (99024.02a)**

Adopt the resolution on pages A1–A4 of the staff report, which approves the proposed side yard setback variance at 4914 Shady Oak Road. This resolution is based on the following findings:

1. Strict enforcement would cause undue hardship because of the following circumstances that are unique to this property:
  - a. Hardship is caused by the property's irregular shape and easement encumbrance.
  - b. Hardship is further caused by existing, non-conforming setbacks.
2. The variance would be consistent with the spirit and intent of this ordinance for the following reasons:
  - a. Hardship is caused by the property's irregular shape and easement encumbrance.

- c. Hardship is further caused by existing, non-conforming setbacks.

*Egge, Gallop, Knight, Wagner, Yearwood, Clinton, and Sodergren voted yes. Motion carried and the items on the Consent Agenda were approved as submitted.*

*Wagner moved, second by Yearwood, to approve the items listed on the Consent Agenda as recommended in the respective staff reports as follows:*

**D. Site and building plan review to build a twin-home at 10413 34th Circle W. for Joe Kidder (02018.02a)**

Approve the site and building plans for Joe Kidder at 10413 34<sup>th</sup> Circle West, subject to the following conditions:

1. The site must be developed and maintained in substantial conformance with the following plans, unless modified by the conditions below:
  - Site plan dated March 6, 2002.
  - Grading plan dated March 6, 2002.
  - Landscaping plan dated March 6, 2002.
  - Building elevations dated January 28, 2002.
2. The following must be submitted to the City before the City issues a building permit:
  - a. The installation and maintenance of a temporary rock driveway, erosion control, tree protection and wetland protection fencing for each lot must be installed, subject to review by the City's Environment Resources Coordinator
  - b. Submit final site, grading, drainage, utility and erosion control plans for staff approval. These plans should reflect a shift in the building location five feet to the west in order to save the 20 inch oak tree located on the east side of the proposed driveway.
  - c. A final landscape plan for staff approval
  - d. A letter of credit or cash escrow for 150% of the estimated cost of all required landscaping
  - e. All required hook-up fees

3. The property owner is responsible for replacing any required landscaping that dies.
4. During construction, the streets must be kept free of debris and sediment, and the tree protection fencing, and erosion control fencing must be maintained.
5. Trees must be planted to compensate for significant trees removed from each site that would be outside of the building pad and driveway area. The trees must be primarily species native to the area. They must be at least 2-1/2 inches in diameter for deciduous trees and 6 feet tall for coniferous trees. The property owner or original developer must replace the required trees if they die within one year after installation.
6. Construction must begin by December 31, 2003, unless the Planning Commission grants a time extension.

*Egge, Gallop, Knight, Wagner, Yearwood, Clinton, and Sodergren voted yes. Motion carried and the items on the Consent Agenda were approved as submitted.*

## **8. PUBLIC HEARINGS**

### **A. Setback variances to construct a new house at 18 Westwood Circle for Jeff Litzau of Lutz Construction (01058.01a):**

- 1) buildable area variance from 3,500 square feet to 150 square feet;**
- 2) floodplain setback variance from 35 feet to 25 feet;**
- 3) wetland setback variance from 35 feet to 10 feet;**
- 4) front yard setback variance from 35 feet to 17 feet; and an**
- 5) aggregate side yard setback variance from 30 feet to 25 feet.**

Chair Sodergren 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.

Humberto Alarcon, 18 Westwood Circle, applicant, noted he has been a resident for over 25 years

and has owned subject property for 14 years. He stated:

- The new proposal is a better project for the neighborhood.
- The neighbors have been unfair and prejudiced.
- The developer was present to answer questions.
- He would not do anything against staff's proposal.

Egge asked if the garage received a variance before it was constructed. She questioned if the setback variances could be reduced if the existing garage was removed. Mr. Alarcon stated that he went through his records; the City Inspector was aware of the wetland; and it was approved by the City to be built. The distance between the existing garage and the proposed project would be approximately 8 feet to 10 feet.

Gallop asked if the existing garage is a non-conforming use. Thomas stated that the garage received a building permit in 1991 for construction. No site plan was included with the building permit. No variance was applied for or approved for the existing garage. The garage is a non-conforming use because it does not meet current setback requirements.

Gallop asked if the City could require the applicant to remove the garage. Olson stated that because the garage has existed since 1991, requiring its removal at this time would be difficult, even though it is a non-conforming use.

The public hearing was opened.

Jim Branch, 14 Westwood Circle, opposed the proposal. He stated:

- The proposal is not in character with the neighborhood.
- Nothing had improved on the site since the last Planning Commission meeting.
- Staff's recommendation sets a precedent regarding what the neighborhood use to look like instead of what it is becoming. In the past ten years, the neighborhood has revitalized its standards and conditions.
- The neighborhood has proven it cannot support housing in the wetland or floodplain area. There are seven unbuildable lots, four of which the City now owns.
- The existing garage should not have been built larger than a 2-car garage. The existing garage does not meet the City's setback requirements, is not painted the same color as the proposed house, the siding is "going bad" and the doors do not match.
- The roof, siding, and materials should match the proposed residence.
- The proposed residence should be setback farther, even if it has to be slanted on the

- property because of the front steps and the garage being rented as commercial storage.
- The debris on the property was supposed to be removed before the variance application could be reviewed. The debris has not been removed.
  - He asked the builder what items, that were currently behind the garage, would be utilized to construct the proposed residence.
  - He was concerned with the amount of fill required for the proposal and what precautions would be taken to prevent water runoff onto his property.
  - The property owner was responsible for the previous residence being condemned. It was never properly repaired or maintained.
  - The City should enforce its own policies regarding setbacks for wetlands and floodplains.
  - The property should be purchased by the City with its open space funds.
  - He wanted to know the 4 criteria used to determine if a property would be purchased by the City with open space funds.

Knight asked Mr. Branch if he could suggest specific modifications to the proposal. Knight stated that the proposal would require the existing garage match the proposed residence. Mr. Branch provided photographs illustrating that the siding on the garage was warped and the garage doors did not match or close properly. He felt the doors might be unsafe. The siding and shingling of the proposed house and garage should match. The proposed residence should be setback farther from the road in case it was widened.

Chair Sodergren asked Mr. Branch if he knew when the satellite dish was installed on the garage. He answered in the negative.

Mr. Alarcon disagreed with Mr. Branch. He stated:

- The garage siding color would be the same color and the same materials would be used as the proposed house. The materials located in the back of the garage would be used.
- He discussed the grading of the soils and wetland on the property.
- He has the refrigerator, dishwasher, dryer, and shower, that would be used in the proposed house, stored in the garage.
- A person from his church stored items in the garage.
- The doors on the garage are the colors that would be used on the proposed house. He kept materials in the garage.
- The City staff have been good to work with and answered all of his questions.
- The inspector was strict.
- The garage is legal.

Mr. Branch stated that he was not opposed to the house being constructed, but in all the years he has lived there, the site had never been cleaned-up. Vehicles have been towed-away and a pile of junk remains under a blue tarp behind the garage. He can provide information regarding who rented the garage. If the trailer does not belong to Mr. Alarcon, it should be moved. Mr. Branch favored Mr. Alarcon taking care of the violations before allowing the proposal to be approved.

Chair Sodergren pointed out the April 18, 2002, Change Memo provided stronger language requiring the nuisance violations be eliminated. Mr. Branch had with him a two-page report detailing the calls the police previously responded to at 18 Westwood Circle, including a shooting. Mr. Branch said he never called the police; he "lived with it." Two-thirds of the calls received by the police were made by people at 18 Westwood Circle. Since the demolition of 18 Westwood Circle, the neighborhood had been peaceful. He requested the nuisance violations be taken care of before the proposal was approved.

Teague stated that a City health inspector visited the site and, as of that day, there were no nuisance violations visible. Construction materials covered by a tarp is allowed in the City.

Mr. Branch provided photographs showing materials still in the wetland.

Chair Sodergren asked Teague to describe the nuisance complaint process. Teague stated that the City's Community Development Department receives nuisance complaints. An inspector inspects the site, takes photographs, and then notifies the property owner of the violation(s). A certain time period is given for the property owner to abate the nuisance conditions.

No additional testimony was submitted and the hearing was closed.

Knight asked if the garage was being rented. Thomas stated that the applicant said that it was not being used for commercial activity.

Knight asked what would happen if the property owner did not abate the nuisance conditions once the time period expired. Teague stated that the property owner could be issued a citation that would require the property owner's appearance at a hearing. A fine might be imposed at the hearing. Knight asked if the property owner could maintain the nuisance if the fine was paid. Olson said that the fine amount could increase each day the nuisance continued.

Chair Sodergren requested Commissioners' comments regarding staff's recommendation.

Wagner asked if the soils would be able to support the proposal. Thomas stated that soil tests

would be conducted to determine what techniques would need to be used to accommodate the soil. Teague stated that pilings could be used if necessary.

Yearwood confirmed with staff that a soil compaction test would be done. Thomas explained the timing of the grading and building permits.

Clinton felt the current proposal was an improvement from the previous one. He was concerned with the amount of fill that would be needed. He favored the proposed house being set as low as possible. Teague stated that the City engineer and building inspector would calculate that information when the tests were completed and grading plan submitted.

Gallop supported staff's recommendation. He appreciated Mr. Branch's statements. He stated that the garage and proposed residence color and siding should be the same and appear appropriate. He would support the project if the nuisance issues were resolved.

Knight concurred with Gallop. He was unsure if the change memo would provide stricter enforcement of the nuisance ordinance, but he favored all nuisances being resolved immediately. He favored adding, "in color and materials" to Condition Number 4. He favored the conditions of approval being clear and specific. He felt the new proposal was an improvement from the first one.

Edge was concerned with matching the roofing materials, as well as the siding, and with removing materials from the yard. She visited the site that day and saw a large, uncovered pile of materials next to the garage. She stated that the piles needed to be removed. She would only support the proposal if the nuisances were removed.

Yearwood concurred with the commissioners. She favored nothing happening until the nuisances were abated. She questioned what was considered permissible "construction materials" and if there is an allowable limit. Teague stated that the Planning Department does not enforce that part of the code, but suggested that the planning staff accompany community development inspectors to the site and compile a list of what needed to be cleaned-up.

Yearwood agreed that the existing garage match the proposed residence's siding, color, roofing materials, and doors. She favored the smaller porch and the new proposal.

Chair Sodergren asked staff to explain the benefits of a conservation easement. Colleran explained that it would prevent cutting, filling, or dumping in the conservation easement area. Any junk in the wetland would be required to be removed, since it would be considered fill. Colleran had not inspected the site yet, but was anxious to do so.

Colleran stated that a condition could be added that would make any item being stored in the wetland area a violation of the wetland regulations.

Knight favored the nuisances being resolved immediately, but suggested a ten-day deadline from April 18, 2002, be imposed.

Chair Sodergren mentioned where to locate additional conditions.

Clinton asked if the Planning Commission could require removal of nuisance materials before the certificate of occupancy would be issued. He was looking for a way to ensure that, even if the existing materials were removed now, additional materials were not left on the property during the construction. Teague stated that he would research what violations would meet the nuisance ordinance standard and if the certificate of occupancy could be held until the violations were abated.

Chair Sodergren stated that it was not unusual for properties in Minnetonka to have stored materials outside. She favored acting to abate the nuisance violations while the Commission had the opportunity.

Olson relayed the City Attorney's opinion that compliance with a nuisance ordinance is not grounds to delay a project, but compliance with the nuisance ordinance could be made a condition of approval of the variances.

Egge favored fines being imposed for nuisance violations. She would favor approval of the application if a deadline of approximately 10 days is set for the property to be brought into compliance with the nuisance ordinance. She did not see the point in going forward with the project if the nuisance violations were not abated.

Chair Sodergren reiterated the City Attorney's opinion that the project could not be delayed because of nuisance violations. Teague stated that staff would complete a list of the nuisance violations and set a time limit for the property owner to comply.

Egge confirmed with Teague that the site work could not begin until the nuisance violations were abated.

***Knight moved, second by Egge, to adopt the resolution on pages A1–A5 of the staff report with modifications made by the April 18, 2002, Change Memo; added wording to condition three: “the exterior of the existing garage, including walls, roof, and doors,***

*must be finished to match the exterior of the proposed house in color and materials”; add 1.b. to remove any fill or materials in the wetland to maintain its compliance with the wetland regulations; and a condition requiring the driveway to be paved. This resolution approves five variances: floodplain variance from 35 feet to 25 feet, wetland setback variance from 35 feet to 10 feet, front yard setback variance from 35 feet to 17 feet, buildable area variance from 3,500 square feet to 150 square feet, and aggregate side yard setback variance from 30 feet to 25 feet at 18 Westwood Circle, 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 property is a lot of record with 150 square feet of buildable area. Reasonable use of the property would be denied without the requested variances.
2. The variance would be consistent with the spirit and intent of this ordinance for the following reasons:
  - a. Front yard and wetland setbacks in the Westwood Circle area vary.
  - b. The proposed house would not impose any negative impacts on the surrounding area, as it would not encroach further into required setbacks than has already occurred throughout the neighborhood.

Approval is subject to the following conditions:

1. Complete the following before release of this resolution:
  - a. Submit for the City Attorney's approval a conservation easement below the 892.0 elevation.
  - b. Fill or materials must be removed from the wetland to maintain its compliance with wetland regulations.

This document must be recorded with the variances, and a drawing of any easements must be attached to the easement deed.

2. The following must be submitted to the City prior to the issuance of a grading permit:

- a. Final grading, drainage, and erosion control plans must be submitted for staff approval.
  - b. A soils test must be conducted and submitted for staff approval.
  - c. A soils compaction test must be conducted and submitted for staff approval.
  - d. Minimum floor elevation must be 893.5, as required by engineering.
  - e. A copy of the recorded resolution and a copy of any easements or restrictive covenants required to be recorded must be submitted to the City.
  - f. Payment of delinquent utility bills.
  - g. Submittal of a hold harmless agreement. This agreement shall hold the City harmless for any future structural problems with the buildings on the site caused by proximity to the wetland, floodplain, and stormwater retention area. The hold harmless agreement must be filed with the deed to the property.
  - h. Nuisance violations must be resolved. All non-essential construction materials must be stored inside the existing, detached garage.
3. The exterior of the existing garage, including walls, roof, and doors, must be finished to match the exterior of the proposed home in color and materials.
  4. The driveway must be paved.
  5. This variance will end on December 31, 2003, unless the City has issued a building permit for the project covered by this variance or approved a time extension.

***Egge, Gallop, Knight, Wagner, Yearwood, Clinton, and Sodergren voted yes. Motion carried.***

Chair Sodergren announced that the Planning Commission's decision was final. To appeal the Planning Commission's decision to the City Council, written notice must be submitted to the Planning Director within 10 days.

**B. Preliminary approval of the Archwood Addition plat for eight single family residential lots at 10707 Crestridge Drive and the vacant lot at the northeast corner of Crestridge Drive and Archwood Road for Archwood Associates (02017.02a)**

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

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

Edge asked how a conservation easement is enforced. Colleran stated that a conservation easement would be recorded with the property and follows the title of the property. It would be discovered during a title search performed by a lender. Signing conservation easement areas was discussed by the City Council to allow for more effective enforcement, but the signs could themselves become a problem. The individual property owners would be responsible for maintaining the conservation easement.

Chair Sodergren asked if residents would be provided information regarding the special care required to protect the conservation easement areas. Colleran stated that the *Minnetonka Memo* recently supplied lawn-care practice information. Regulation and educational tools are included in a new homeowner packet that is provided to new residents.

Gallop asked if the five structures located on the south lot would be removed. Teague answered in the affirmative.

Yearwood discussed with Teague where the driveways would access the streets. She asked why the site had designated outlots. Teague stated that the outlots were designated for future single-family residential development.

Allan Chazin, Cedar Pass, with Archwood Associates, applicant, stated that the plan was developed after he received the neighbors' concerns regarding the previous plan. He worked with staff regarding drainage, grading and appearance issues. He stated that a homeowner's association would be created to maintain the ponds and provide restrictive covenants for the wetland. He stated he was available for questions.

In response to Gallop's question, Mr. Chazin illustrated the area included in the conservation easement.

Chair Sodergren asked about flags being located on the trees. Colleran stated that pink flags were placed in the trees to delineate the wetland edge.

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

Chair Sodergren summarized the improvements the development would provide for the

neighborhood, including better drainage and establishing a conservation easement. Chair Sodergren asked if it would be appropriate to make the homeowners association responsible for enforcing the conservation easement. Colleran answered in the affirmative.

Clinton suggested including a condition to require any damaged vegetation in the easement be replaced. Colleran agreed.

Teague reaffirmed where the thirty-five foot setback line and buffer were located.

Yearwood and Colleran identified the areas of the resolution that required as many trees as possible to be saved.

***Egge moved, second by Gallop, to recommend that the City Council allow development on two outlots, and give preliminary approval to the Archwood Addition, dated February 26, 2002, with the addition of conditions to require vegetation damaged in the conservation easement be replaced and make the homeowner's association responsible for maintaining the conservation easement. Approval is based on the finding that the plat meets the required standards and ordinances. Approval is subject to the following conditions:***

Approval is subject to the following conditions:

1. Complete the following before final plat approval:
  - a. Show the following on the final plat:
    - (1) At least ten-foot-wide drainage and utility easements next to any existing or proposed public street rights-of-way and at least seven-foot-wide drainage and utility easements along all other lot lines
    - (2) Utility easements over existing or proposed public utilities, as determined by the city engineer
    - (3) Drainage and utility easements over wetlands, floodplains and storm water ponds, as determined by the city engineer.
    - (4) A 20-foot easement is required along the north property line of Lot 5, Block 1, over the storm sewer pipe.

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- (5) The drainage and utility easement shown over the proposed pond on Lots 1 and 2 of Block 1 must be revised to run along the 916.6 contour, which is the edge of the wetland. The pond would be considered private, and must be maintained by a homeowners association or the homeowners of Lots 1 and 2, Block 1.
  - (6) The drainage and utility easement on Lot 3, Block 2, must be revised to cover the storm sewer pipe from Welland Avenue.
  - (7) Provide a drainage and utility easement over Lot 2, Block 2 to the 939.4, the 100-year elevation for the adjacent wetland.
  - (8) Vacation of the 10-foot wide strip on the west side of Crestridge Drive.
- b. If the developer is petitioning the City to construct the public improvements, the City Council must order the improvements.
  - c. If required, submit evidence of the watershed district approval. The City may require revisions to the preliminary plat to meet the district's requirements.
2. The following items must be submitted to the City before the City releases the final plat:
- a. An engineering/utility inspection fee.
  - b. A subgrade inspection fee, as required by ordinance.
  - c. Payment for traffic signs and installation, as required by the City Engineer.
  - d. An electronic CAD file of the final plat in microstation or DXF.
  - e. If the developer is constructing any public improvements, the developer must submit a signed agreement with the City. This agreement must guarantee that the developer will complete all public improvements and meet all City requirements. This agreement must include an escrow to ensure that the developer completes all public improvements and complies with all City regulations. This escrow must be a letter of credit or cash deposit. The amount must be 150% of the estimated cost of the improvements or 125% of the cost if based on actual bids.
  - f. The existing building within the Welland Avenue right-of-way must be removed.

- g. The following documents for the City Attorney's approval:
- (1) Title evidence that is acceptable to the City Attorney. Title evidence must be current within thirty days before release of the final plat.
  - (2) Conservation easements over the area 25 feet outward from the edge of the wetland on Block 1 and a drawing of the easements for the approval of the City Attorney. The easements and drawing must be recorded with the final plat.
  - (3) Conservation easements over the area 16.5 feet outward from the edge of the wetland on Lot 2, Block 2, and a drawing of the easements for the approval of the City Attorney. The easements and drawing must be recorded with the final plat.
  - (4) Documents establishing a homeowners' association. The association must be responsible for maintaining any common areas, common drives, the required drainage pond and any other required drainage improvements approved by the City. Maintenance will include, but not be limited to, the periodic removal of sedimentation at the base of the pond and any adjacent drainage ditches, keeping a vegetative cover within the ditches and pond, and removing any blockage of the swale or culvert that may impede the drainage of the site, as approved with the building permits.

These documents must be recorded with the final plat, and a drawing of any easements must be attached to the easement deed.

3. The following must be completed before the City issues a grading permit or any site work is started:
  - a. Final grading, drainage, and erosion control plans must be submitted for staff approval. If the developer is building the streets and utilities, the developer must submit final street and utility plans for staff approval.
  - b. A letter of credit or cash escrow for 150% of the estimated cost to comply with grading permit requirements and to restore the site must be submitted to the City. The City will not release the letter of credit or cash escrow until the developer submits as-built drawings and a letter certifying that the utilities, driveway, and grading have been completed according to the plans approved by the City.

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- c. All trees to be preserved must be fenced and erosion control measures must be installed for staff approval.
      - d. A construction management plan must be submitted for staff approval.
    4. The following must be submitted to the City before the City issues a building permit:
      - a. A grading, tree preservation and erosion control plan for each lot, subject to staff approval. The plans must be substantially in compliance to the agreed building areas as required with the final plat. The sewer and water services must be shown to minimize impact to the significant trees.
      - b. The installation and maintenance of a temporary rock driveway, erosion control, tree protection and wetland protection fencing for each lot must be installed, subject to review by the City's Environment Resources Coordinator
      - c. A copy of the recorded plat and any easements or covenants required to be recorded.
      - d. A park dedication fee of \$4,400.
      - e. A hookup fee for sanitary sewer and water.
      - f. A letter from the surveyor stating that boundary and lot stakes have been installed as required by ordinance. If the grading for proposed streets has not been completed, the Planning Director may approve a time extension to this requirement.
      - g. All homes must be elevated 2 feet above the 100-year flood plain; therefore, minimum basement elevation for homes in Block 1 is 918.6 and 942.1 for homes in Block 2.
  5. The building pad for Lot 1, Block 1, must be shifted to the east to preserve the large oak trees on this lot. The developer or owner of this lot must work with City staff to establish a buildable area on this site to protect these trees.
  6. During construction, the streets must be kept free of debris and sediment, and the tree protection fencing, and erosion control fencing must be maintained.
  7. Trees must be planted to compensate for significant trees removed from each site that would be outside of the building pad and driveway area. The trees must be primarily species native to the

area. They must be at least 2 1/2 inches in diameter for deciduous trees and 6 feet tall for coniferous trees. The property owner or original developer must replace the required trees if they die within one year after installation.

8. The City must approve the final plat within one year of preliminary approval or receive a written application for a time extension, or the preliminary approval will be void.
9. Any damaged vegetation located in the conservation easement must be replaced.
10. The homeowner's association will be responsible for maintaining the conservation easement.

*Egge, Gallop, Knight, Wagner, Yearwood, Clinton, and Sodergren voted yes. Motion carried.*

Chair Sodergren stated that the City Council is tentatively scheduled to review the item at its May 6, 2002, meeting.

**C. Items concerning development of two twin homes at 14800 Margaret Place for Lynmore, LLC (02012.02a):**

- 1) rezoning from R-1, Low Density Residential, to R-2, Low Density Residential;**
- 2) lot division with a lot width at the setback variance, and lot area variance; and**
- 3) building and site plan review with a front yard setback variance.**

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

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

Egge asked if the property on the north would also be designated as an R-2 district. Teague stated that the rezoning would not include the property to the north. The rezoning was necessary to accommodate the duplexes.

Gallop was concerned with maintenance of Outlot A. Teague stated that the parcel would be attached to the lot on the north. The property owner of the northern lot would be responsible to maintain it.

Yearwood asked if specific approval for development of an outlot was required by the City Council. Teague clarified that since no structure would be built on an outlot, approval was not needed from the City Council.

Dave More, Vice President of Lynmore, LLC, applicant, commended the staff's guidance and suggestions to improve the grading plans, elevations, and safety features. The townhomes would be handicap accessible, one-level units. He stated that the covenants and restrictions would be very strict. He needed to review what type of maintenance would be favorable for the outlots. The units would be strictly owner-occupied. The sewer service would be provided without the need to tear-up the street. He described the landscape and buffer plan.

The public hearing was opened.

Pat Sextant, resident south of the proposed site, complimented the proposed units that would be located across Williston. He stated:

- The increased traffic on Margaret Place was a minor concern.
- The cul-de-sac bulb would be substandard in width and difficult to snowplow.
- He would prefer the driveways to have access off Williston Road.
- He asked if the overhang would be included in the measuring of the setback.

Teague stated that the setback would be measured from the exterior edge of the foundation. The overhang could extend five feet into the setback.

Mr. More stated that piping for a sprinkler system would be installed and would be an option for the homeowners.

Egge questioned if the existing bushes would remain. Mr. More stated that they would be thinned, but not all of them would be removed. His primary concern was to allow visibility for motorists.

Egge asked where the snow would be plowed. She wanted to insure that the snowplowing problem on Margaret Place would not be increased. Mr. More stated that the snow would be stored on the west side of the driveway. He felt the site, including a boulder wall and wild flower, would be very impressive.

Wagner asked where the drainage pond would be located. Teague clarified that the condition did not apply since the site was not large enough to need a pond.

In response to Wagner's question regarding the association, Mr. More stated a contract would be entered into with a service to maintain the properties.

Gallop favored a plan being submitted that outlined what would be planted and maintained in Outlot A. He was not comfortable leaving it vacant. Mr. More said he would work with staff to determine what type of vegetation would be best. Colleran concurred with Mr. More that the future of Outlot A should be taken into consideration. She stated that there are types of shrubbery and trees that would be low-maintenance.

Mr. More asked what street improvements would result in assessment costs to upgrade Margaret Place. Teague stated that the City's policy is to not assess property owners for street improvements.

Mr. More questioned why park fees for two lots would be charged. Teague explained that park fees are calculated for each newly developed lot.

Mr. Sextant questioned if the City had considered accessing the driveways through the industrial park rather than Margaret Place. Teague stated that the City favored residential driveways accessing residential streets and explained possible complications with the alternatives.

Teague confirmed for Chair Sodergren that the City has no current plan to upgrade the cul-de-sac.

No additional testimony was submitted and the hearing was closed.

Yearwood suggested removing the unnecessary condition regarding a drainage pond, and requested a condition requiring the applicant to work with staff to create an agreeable landscape plan.

Chair Sodergren suggested adding language regarding maintenance of the outlots.

Gallop favored the applicant working with staff to develop a landscape plan for Outlot A as a condition of approval.

***Gallop moved, second by Wagner, to approve the items concerning development of two twin homes, with the added conditions that the applicant work with staff to determine a landscape plan for Outlot A, that the homeowners association be responsible for maintaining the outlot, and that the modification listed in the April 18, 2002 Change Memo be incorporated, at 14800 Margaret Place for Lynmore, LLC:***

A. *Recommend that the City Council adopt the ordinance on pages A1–A3, which approves the rezoning from R-1, low density residential, to R-2, low-density residential. This ordinance is based on the following findings:*

1. The proposal is consistent with the City's Comprehensive Guide Plan
2. The property is in a transitional area with an industrial park to the west and twin homes to the east.
3. The property abuts Williston Road, which is classified as a Major Collector.

B. *Recommend that the City Council adopt the resolution on pages A4–A10 of the staff report. This resolution approves a lot division at 14800 Margaret Place, with a 13-foot lot width variance from 110 feet to 97 feet for the northern lot, and a lot area variance from 25,000 square feet to 21,510 square feet for the southern lot. Approval is based on the following findings:*

1. Except for the variances, the proposal meets the required standards and ordinances for a lot division.
2. The proposal meets the required standards for a variance, because:
  - a. There is a unique hardship to the property caused by the shape of the lot, which narrows toward the back. This narrowing is caused by the angle of Margaret Place off Williston Road. The property contains 225 feet at Williston Road, and 116 feet at the required setback.
  - b. The City is requiring the dedication of an additional 12.5 feet of right-of-way for Margaret Place, as a result, the southern lot does not meet the required area.
  - c. The variance would meet the intent of the ordinance because the site contains adequate frontage at the right-of-way, and the southern lot meets the area requirement if the additional right-of-way were not taken.

Approval is subject to the following conditions:

1. The following items must be submitted to the City before the City releases this resolution:

- a. If applicable, evidence of watershed district approval
- b. The following documents for the City Attorney's approval:
  - (1) Ten-foot-wide drainage and utility easements next to any public street right-of-way and seven-foot-wide drainage and utility easements along all other lot lines.
  - (2) Dedication of a 12.5-foot wide road easement along Margaret Place.
  - (3) A private driveway easement for shared access, that is acceptable to the City Attorney. The easement must state the maintenance responsibilities of each owner. The minimum driveway width must be as required by the fire marshal.
  - (4) A private easement must be established over the proposed sewer line located on the southern lot that runs to the northern lot.
  - (5) Documents establishing a homeowners' association. The association must be responsible for maintaining the common areas.
  - (6) Legal descriptions of the new lots.

These documents must be recorded with the lot split resolution, and a drawing of any easements must be attached to the easement deed.

- c. A park dedication fee of \$2,000.
  - d. Title evidence that is acceptable to the City Attorney. Title evidence must be current within thirty days before release of the lot split resolution.
  - e. Restrictive covenants to be recorded against the individual lots with the lot split resolution. The covenants must include the conditions below that have not been met as of the release of the resolution. These covenants must first be submitted for the approval of the City Attorney.
2. The following must be completed before the City issues a building permit:
    - a. A grading and erosion control plan for each lot, subject to staff approval. The plans must be

- substantially in compliance to the agreed building areas.
- b. Temporary rock driveways and erosion control fencing must be installed. This fencing is subject to review by the City's Environmental Resources Coordinator
  - c. A copy of the recorded resolution and a copy of any easements or restrictive covenants required to be recorded must be submitted to the City.
  - d. A hook-up fee for sanitary sewer and water.
  - e. A letter from the surveyor stating that boundary and lot stakes have been installed as required by ordinance.
3. This resolution must be recorded by the county within one year, unless the City Council approves a time extension. If the council does not approve the extension, the lot division approval will be void.
  4. The applicant work with staff to create a vegetation plan for existing Outlot A and the homeowners association will be responsible for maintaining that area.
- C. Recommend that the City Council adopt the resolution on pages A11–A13 of the staff report. This resolution approves a front yard setback variance from 25 feet to 12 feet for the southern lot off Margaret Place, 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 shape of the lot, which narrows toward the back.
    - b. The City's taking of 12.5 feet of right-of-way for Margaret Place.
  2. The variance would be consistent with the spirit and intent of this ordinance for the following reasons:
    - a. If the City were not taking additional right-of-way for Margaret Place, no variance would be required.

Approval is subject to the following conditions:

1. Submit proof of having recorded this resolution with the county before the City issues a building permit.
2. This variance will end on December 31, 2003, unless the City has issued a building permit for the project covered by this variance or approved a time extension.

*Egge, Gallop, Knight, Wagner, Yearwood, Clinton, and Sodergren voted yes. Motion carried.*

**D. Preliminary approval of the Fretham 2nd Addition plat, with lot size variance, at 2845 Plymouth Road for Curt Fretham (02011.02a)**

Chair Sodergren 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.

Gallop asked if Hennepin County reimburses a property owner for seizing ownership of the property to be used as a right-of-way. Teague explained that since the road improvements occurred during the platting process, the property owner would not be compensated.

Curt Fretham, 2845 Plymouth Road, was present to answer questions.

Gallop asked Mr. Fretham if he owned the property to the north of the proposed site. He answered in the negative.

The public hearing was opened.

Brad Wiley, neighbor of the proposed site, asked if anyone knew Hennepin County's plans for Plymouth Road and if the proposed driveway would follow the contour of the land or be built-up. Teague stated that Hennepin County has scheduled Plymouth Road as a provisional project to be done between 2002 and 2006. Thomas stated that staff's report favored laying-out the driveway to match the environmental features of the site. It would follow along the contours and large trees.

Chair Sodergren asked if there were any drainage concerns for the project. Thomas explained the drainage flow pattern that would not affect adjacent property owners.

Gallop asked staff to investigate dumping occurring on the property to the north. Gallop was

concerned with the amount of buildable area the new lots would have considering the steep grades. Thomas stated that the City engineer approved the plans.

No additional testimony was submitted and the public hearing was closed.

Yearwood asked if further conditions could be added to identify which significant trees would be preserved. Colleran agreed that prior to issuance of the grading permit, the trees to be saved must be agreed upon by staff.

Yearwood confirmed with Thomas that placement of the proposed residence was not being reviewed at that time.

Knight stated that he generally opposed lot size variances. However, considering that the variance was needed due to Hennepin County's taking of additional right-of-way, he supported the request.

Chair Sodergren reflected that it was a difficult lot split to make use of the property. The size of the lot would be fairly consistent with the area.

***Yearwood moved, second by Clinton, to recommend that the City Council give preliminary approval to the Fretham 2<sup>nd</sup> Addition plat, dated March 25, 2002, with lot area variance with the additional condition that the applicant work with staff to identify trees to be preserved. Approval is based on the following findings:***

1. The proposal meets the required standards for a variance, because:
  - a. The proposal creates two lots that are in character with other lots in the neighborhood.
  - b. The size of the subject property has dramatically decreased over time through County acquisition of right-of-way.
2. In all other aspects, the plat meets the required City standards and ordinances.

Approval is subject to the following conditions

1. Complete the following before final plat approval:
  - a. Show the following on the final plat:

- 
- (1) At least ten-foot-wide drainage and utility easements next to any existing or proposed public street rights-of-way and at least seven-foot-wide drainage and utility easements along all other lot lines
  - (2) Utility easements over existing or proposed public utilities, as determined by the city engineer
  - (3) Provide a 20-foot driveway easement along the east property line of Lot 2.
- b. Pay a park dedication fee of \$550.00
2. The following items must be submitted to the City before the City releases the final plat:
- a. An engineering/utility inspection fee.
  - b. A subgrade inspection fee, as required by ordinance.
  - c. An electronic CAD file of the final plat in microstation or DXF.
  - d. The following documents for the City Attorney's approval:
    - (1) Title evidence that is acceptable to the City Attorney. Title evidence must be current within thirty days before release of the final plat.
    - (2) A private driveway easement between Cedar Lake Road right-of-way and Lot 2. The easement must state the maintenance responsibilities of each owner. The easement must be 20 feet wide, minimum width required by the fire marshal.
    - (3) Provide restrictive covenants to be recorded against the individual lots with the plat. The covenants must include the conditions below that have not been met as of the release of the plat. These covenants must first be submitted for the city attorney's approval.

These documents must be recorded with the final plat, and a drawing of any easements must be attached to the easement deed.

3. The following must be completed before the City issues a grading permit or any site work is started:

- a. Final grading, drainage, and erosion control plans must be submitted for staff approval.
  - b. All trees to be preserved must be identified and agreed upon by staff and fenced and erosion control measures must be installed for staff approval.
  - c. A construction management plan must be submitted for staff approval.
4. The following must be submitted to the City before the City issues a building permit:
- a. A copy of the recorded plat and any easements or covenants required to be recorded.
  - b. A hookup fee for sanitary sewer and water.
  - c. A letter from the surveyor stating that boundary and lot stakes have been installed as required by ordinance. If the grading for proposed streets has not been completed, the planning director may approve a time extension to this requirement.
5. The City must approve the final plat within one year of preliminary approval or receive a written application for a time extension or the preliminary approval will be void.

*Egge, Knight, Wagner, Yearwood, Clinton, and Sodergren voted yes. Gallop voted no. Motion carried.*

Chair Sodergren stated that the item is tentatively scheduled to be heard by the City Council on May 6, 2002.

## 9. ADJOURNMENT

*Knight moved, second by Gallop, to adjourn the meeting at 9:30 p.m. Motion carried unanimously.*

By: \_\_\_\_\_  
Bernadette H. Leaf  
Planning Administrative Assistant