

**MINNETONKA PLANNING COMMISSION
MINUTES**

MAY 2, 2002

1. CALL TO ORDER

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

2. ROLL CALL

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

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

3. APPROVAL OF AGENDA: The agenda was approved as submitted.

4. APPROVAL OF MINUTES: April 18, 2002

Knight moved, second by Gallop, to approve the April 18, 2002, meeting minutes with a minor amendment clarifying Knight's comments as follows:

~~Knight opposed lot size variances. He did not support the variance because it allowed Hennepin County to take additional right-of-way without cost~~

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.

Gallop, Knight, Wagner, Yearwood, Clinton, Egge, 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 22, 2002:

- Adopted the ordinance amending the conditional use permit standards for utility poles, transmission lines and substations.
- Approved a motion to introduce an ordinance requiring buffer areas around wetlands on lots with new construction and increasing building setbacks around "preserve" wetlands from 35 feet to 60 feet and refer the ordinance to the planning commission.

- Adopted a resolution approving a conditional use permit for a 75-foot-high pole with wireless telecommunication antennas at 3311 County Road 101 for Sprint PCS.

6. REPORT FROM PLANNING COMMISSION MEMBERS: None

7. PUBLIC HEARINGS: CONSENT AGENDA

No item was removed from the Consent Agenda for discussion or separate action.

In response to Gallop's question, Thomas explained that a swimming pool was exempt from floodplain setback requirements since it was not a habitable use.

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

A. Resolution approving a floodplain setback variance for an in-ground pool in the rear yard at 5705 Vine Hill Road for Douglas and Susan Lidstone (96032.02a)

Adopt the resolution on pages A1–A3 of the staff report. This resolution approves a floodplain variance from 35 to 13 feet at 5705 Vine Hill Road, 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 a discrepancy between the current and proposed floodplain ordinances.
2. The variance would be consistent with the spirit and intent of this ordinance for the following reasons:
 - a. A horizontal floodplain setback does not inherently ensure proper water flow.
 - b. The proposed pool would not alter the character of the neighborhood, as it would be fully screened.
 - c. An appropriate discharge plan would protect the adjacent floodplain and wetland.

Approval is subject to the following conditions:

1. Submit a pool water discharge plan to be reviewed and approved by the City's Environmental Resources Coordinator.
2. Wetland protection fencing must be installed, subject to review by planning staff.
3. Submit proof of having recorded this resolution with the county before the City issues a building permit.
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.

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

8. PUBLIC HEARINGS

A. Front yard setback variance from 25 feet to 20 feet for a house at 4525 Dunibar Ridge Road for Dan and Laurie Schoenecker (02019.02a)

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.

Dan Schoenecker, Edina, applicant, explained the positioning of the proposed residence and garage. He and his wife wished to focus the view from the house on the preserve and turn the garage. The neighbors across the street were present to support the proposed position of the garage to prevent traffic congestion, allow more green space, and improve the view. If the garage was a front-load garage, the proposed residence would lose its front windows and the location of the front door. The proposed position of the garage would allow for more privacy and safety, and would improve the aesthetic quality of the residence. Mr. Schoenecker stated that the turned garage would allow space for the snowplow to leave snow and allow more sunlight on the driveway to promote melting of ice and snow.

The public hearing was opened.

Greg Wit, 4526 Dunibar Ridge Road, represented himself, the Dunibar Ridge Neighborhood Association, and the seven residents who reside there. He voiced their support of the plan as it was proposed.

No additional testimony was submitted and the hearing was closed.

Chair Sodergren asked if the wetland buffer had been discussed with the applicant. Thomas explained that a conservation easement and buffer requirement were included in the plat approval. Thomas indicated on the map where the existing conservation easement was located. Olson explained that the quality of the wetland would be used to determine the wetland setback the proposed ordinance would require.

Clinton believed that the applicant had made a decent case in support of the proposal, considering the characteristics of the neighborhood, the point intrusion, the creation of the smaller lot being done to allow more land to be included in the conservation easement, and the possibility of development to the east. He believed the proposal met the spirit and intent of the ordinance. It would not impact the neighborhood. He supported the variance.

Gallop concurred with Clinton. He felt the hardship standard had been met. A three-car garage is standard in the neighborhood and he felt it was a reasonable use for the property in that neighborhood. He felt it was helpful that the applicant spoke with the neighbors and the association. He supported the project.

Edge and Yearwood concurred with Clinton and Gallop. Yearwood felt the request was reasonable because of the point intrusion and the characteristics of the neighborhood.

Chair Sodergren presented the view that the proposal was new construction and that the garage and residence could be designed differently to eliminate the point intrusion. While she recognized the point intrusion was not a significant issue, she favored adherence to the ordinance and did not support the proposal.

Knight was worried about setting a precedent. He was unsure if the hardship standard had been met. He was undecided whether to support the application or not.

Yearwood took the size of the residences and garages in the neighborhood into consideration when making her decision to support the proposal.

Wagner supported the proposal based on the point of intrusion and that the size of the proposed residence and garage would be smaller than the majority of others in the neighborhood.

Egge moved, second by Clinton, to adopt the resolution on pages A1–A3 of the staff report, which approves a front yard setback variance for 4525 Dunibar Ridge 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. The applicants are proposing to use their property in a reasonable manner.
 - b. Half of this lot is encumbered by a wetland, which requires a 35-foot setback, and reduces the buildable area on this site.
 - c. Every home in the Dunibar Ridge development has a three-stall garage.
2. The variance would be consistent with the spirit and intent of this ordinance for the following reasons:
 - a. The intent of the ordinance is to maintain adequate separation of roadways and structures. Given the size of the setback intrusion and its location relative to the traveled portion of Dunibar Ridge Road, this separation is accommodated.

Approval is subject to the following conditions:

1. Erosion control measures must be installed for staff approval.
2. Construction must comply with the plans submitted.
3. Submit proof of having recorded this resolution with the county before the City issues a building permit.
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.

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

B. Ordinance concerning sexually-oriented businesses (96028.02a)

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

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

Edge asked what methods other communities had used to regulate sexually-oriented businesses. Peterson explained that most cities use a percentage definition, similar to the proposal, or the language, "a substantial portion of the business is devoted to sexually-oriented materials." Peterson explained that the percentage standard is easier to calculate from an enforcement standpoint.

Edge asked if challenges had been made in court when the percentage standard was used. Peterson stated that the majority of challenges had been upheld. The ones invalidated were for other reasons.

In response to Chair Sodergren's question, Peterson stated that by having all three standards, i.e., inventory, percentage of the floor area, and gross revenues, other cities reported positive results in defining the type of use and enforcing its regulations.

Wagner asked what percentage was most used by cities to determine that a use was a sexually-oriented businesses. Peterson stated that 25 percent is most commonly used.

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

Yearwood moved, second by Egge, to recommend that the city council adopt the ordinance.

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

C. Ordinance amendment that would eliminate the requirement that office uses not exceed 50 percent of the gross floor area of the principal structure in the I-1, Industrial zoning district (02008.02a)

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.

Yearwood asked if the proposal would allow an office use located in an industrial zoning district to return to being an industrial use. Teague answered in the affirmative.

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

Chair Sodergren felt the proposal was an improvement to the ordinance. It was brought-about by an application and will assist businesses in the City to create jobs.

Yearwood thanked staff for providing additional information. She supported the proposal.

Chair Sodergren and Yearwood thanked the Economic Development Authority for reviewing the proposal.

Gallop stated that his concerns had been addressed regarding losing manufacturing uses in the City, parking issues, and the Economic Development Authority review. Gallop was comfortable with the proposal.

Gallop moved, second by Yearwood, to recommend that the City Council adopt the ordinance on pages A1–A3 of the staff report.

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

Chair Sodergren stated that the item was tentatively scheduled for review by the City Council on May 20, 2002.

9. ADJOURNMENT

Clinton moved, second by Gallop, to adjourn the meeting at 7:25 p.m. Motion carried unanimously.

By: _____
Bernadette H. Leaf

Planning Administrative Assistant