

**MINNETONKA PLANNING COMMISSION
MINUTES**

SEPTEMBER 19, 2002

1. CALL TO ORDER

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

2. ROLL CALL

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

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

- 3. APPROVAL OF AGENDA:** The agenda was approved as submitted. Chair Sodergren acknowledged receipt of the September 19, 2002 Change Memo. Olson stated that Commissioners were provided correspondence the City received from the Builder's Association in reference to the proposed Wetland Buffer Ordinance.

- 4. APPROVAL OF MINUTES:** September 5, 2002

Yearwood moved, second by Wagner, to approve the September 5, 2002, meeting minutes as amended by the Change Memo dated September 19, 2002 and as follows:

Page 6, third through fourth paragraphs:

- Change Jeff ~~Wheata~~ to Jeff Witta
- Olson stated that the berming would require a grading permit.

Page 9 through page 11:

- Change Myrna ~~Oristien~~ to Myrna Orensten

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

5. REPORT FROM STAFF

Olson briefed the Commission on land use applications considered by the City Council at its meeting of September 9, 2002:

- Adopted Ordinance No. 2002-23, approving revised park dedication fees. Council members in support of the increase in park dedication fees felt the increase was long-

over due, since it remained constant for six years; there is no intent to keep the fee low; new residents should pay their fare share; the fees will still be lower than other cities'; and the park dedication fees will add value to the City and the park system.

Olson announced that the October 17, 2002, Planning Commission meeting will be a joint meeting with the Economic Development authority to discuss strategies to increase affordable housing in Minnetonka.

Olson thanked Yearwood, on behalf of staff, for her contribution to the Planning Commission and stated that staff enjoyed working with her. Yearwood thanked the Mayor and City Council for appointing her and thanked staff and other Commissioners for their professionalism and camaraderie. She regretted the need for her resignation, but it will allow her more time to spend with a parent who has health issues. Chair Sodergren expressed the Commission's gratitude for Yearwood's insights. Yearwood voiced her appreciation for all she learned from the experience.

6. REPORT FROM PLANNING COMMISSION MEMBERS: None

7. PUBLIC HEARINGS: CONSENT AGENDA

Item 7C, a resolution approving a side yard setback variance from seven feet to two feet, and a front yard setback variance from 20 feet to 14 feet at 16928 Cottage Grove Avenue for David Canada (02051.02a), was removed from the Consent Agenda for discussion and separate action.

Clinton moved, second by Gallop, to approve Items 7A, 7B, 7D, and 7E, listed on the Consent Agenda, as recommended in the respective staff reports as follows:

A. Resolution approving a side yard setback variance from ten feet to seven feet to construct an additional stall to the existing two-stall garage at 16831 Creek Ridge Trail for Jay Schroeder (95054.02a)

Adopt the resolution on pages A1 – A3 of the staff report, approving the side yard setback variance from ten feet to seven feet at 16831 Creek Ridge Trail, 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 hardship is caused by the triangular shape of the lot and the existing location of the garage.
2. The variance would be consistent with the spirit and intent of this ordinance for the following reasons:
 - a. Most of the homes on Creek Ridge Trail have three-stall garages.
 - b. The adjacent home to the west would not be affected since it is angled away from the applicant's house, has no windows facing the proposed garage, and has a larger than usual side yard setback.

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. The building materials and color of the addition must match the existing home.
3. 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.

Wagner, Yearwood, Clinton, Gallop, Knight, and Sodergren voted yes. Egge was absent. Motion carried and Items 7A, 7B, 7D, and 7E, on the Consent Agenda, were approved as submitted.

Clinton moved, second by Gallop, to approve Items 7A, 7B, 7D, and 7E, listed on the Consent Agenda, as recommended in the respective staff reports as follows:

B. Resolution approving a front yard setback variance from 30 feet to 25 feet at 12368 James Road for Sela Roofing and Remodeling (02048.02a)

Adopt the resolution on pages A1–A3 of the staff report. This resolution approves a front yard setback variance from 30 feet to 25 feet at 12368 James 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. The alignment of James Road directly adjacent to the subject property creates a setback more constraining at the center of the home, its natural entry, than at any other point along the home's façade.
 - b. The applicant is proposing to use the subject property in a reasonable manner.
2. The variance would be consistent with the spirit and intent of this ordinance for the following reasons:
 - a. The proposed entry would not encroach into established, neighborhood building lines.
 - b. The proposed 26-foot separation, together with the 10-foot adjacent right-of-way, provides adequate separation from James Road.

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, 2002, unless the City has issued a building permit for the project covered by this variance or approved a time extension.

Wagner, Yearwood, Clinton, Gallop, Knight, and Sodergren voted yes. Egge was absent. Motion carried and Items 7A, 7B, 7D, and 7E, on the Consent Agenda, were approved as submitted.

Clinton moved, second by Gallop, to approve Items 7A, 7B, 7D, and 7E, listed on the Consent Agenda, as recommended in the respective staff reports as follows:

D. Resolution approving a preliminary plat for a two-lot subdivision of 30 Plymouth Road, for Daren and Dan Lone (02053.02a)

Recommend that the City Council give preliminary plat approval of 30 Plymouth Road for Karen and Dan Lone. Approval is based on the finding that the plat meets the required 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 public street right-of-way and at least seven-foot-wide drainage and utility easements along all other lot lines.
 - (2) A 10-foot wide utility easement centered over proposed sewer and water lines serving Lot 2 must be established on Lot 1. This would allow maintenance of these utilities.
 - b. Pay the City a park dedication fee of \$550.
2. The following items must be submitted to the City before the City releases the final plat:
 - a. An electronic CAD file of the final plat in microstation or DXF.
 - b. 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) If applicable, 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 submitted to the City before the City issues a building permit:
 - a. A grading and tree preservation plan for the new lot, subject to staff approval. The plans must be in substantial compliance with the agreed building areas as required with the final plat. The sewer and water services must be shown to minimize impact to significant trees.
 - b. The installation and maintenance of a temporary rock driveway, erosion control and tree protection fencing must be installed, subject to review and approval of the City's Environmental Resources Coordinator.
 - c. A copy of the recorded plat and any easements or covenants required to be recorded.
 - d. A hookup 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. If the grading for proposed streets has not been completed, the planning director may approve a time extension to this requirement.
 - f. A driveway permit from Hennepin County.
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. A driveway turnaround must be constructed within the driveway to ensure that cars do not back out onto Xenium Lane South.
6. Trees must be planted to compensate for significant trees removed from each site that would be outside of the building pad, utility lines 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.

7. 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.

Wagner, Yearwood, Clinton, Gallop, Knight, and Sodergren voted yes. Egge was absent. Motion carried and Items 7A, 7B, 7D, and 7E, on the Consent Agenda, were approved as submitted.

Clinton moved, second by Gallop, to approve Items 7A, 7B, 7D, and 7E, listed on the Consent Agenda, as recommended in the respective staff reports as follows:

E. Ordinance amending the standards for lot width at the public right-of-way variances (99047)

Recommend that the city council adopt the ordinance on pages A1–A3 of the staff report.

Wagner, Yearwood, Clinton, Gallop, Knight, and Sodergren voted yes. Egge was absent. Motion carried and Items 7A, 7B, 7D, and 7E, on the Consent Agenda, were approved as submitted.

Chair Sodergren announced that items continuing to the City Council for approval were tentatively scheduled for the October 14, 2002, City Council meeting.

C. Resolution approving a side yard setback variance from seven feet to two feet, and a front yard setback variance from 20 feet to 14 feet at 16928 Cottage Grove Avenue for David Canada (02051.02a)

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

Gallop was concerned with the distance between the proposed second story addition and the neighbor. He supported the attached two-stall garage addition, but not the second-story room addition.

David Canada, 16928 Cottage Grove Avenue, applicant, estimated that eight feet separated his residence from his neighbor's. He explained that the existing house is approximately 600 square feet, with no family room. The proposed plan would preserve large oak trees on the property.

Waataja confirmed the distance of approximately 60 feet from the front to the adjacent neighbor and approximately six feet between the residences.

Chair Sodergren confirmed with Mr. Canada that there is a significant grade difference between his lot and his neighbor's. His house is located on a hill and it has a walkout basement.

Gallop appreciated the desire for the addition, but he was concerned with the small size of the lot and the neighbor's residence located so close.

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

Clinton felt the tuck-under garage and the grade changes would prevent "massing" on the site. He understood Gallop's concerns, but he supported the project.

Gallop commented that, as he viewed the site, he felt that the addition would stand out and not be characteristic of the neighborhood.

Chair Sodergren noted the City's policy of allowing each single-family residence to have a two-car garage. The issue was whether the proposal would be an over-intensification of the lot.

Yearwood moved, second by Clinton, to adopt the resolution on pages A1 – A3 of the staff report, approving the side yard setback variance from seven feet to two feet and a front

yard setback variance from 20 feet to 14 feet at 16928 Cottage Grove Avenue, 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's shape, size, and existing trees limit the location of the garage.
2. The variance would be consistent with the spirit and intent of this ordinance for the following reasons:
 - a. Setbacks in the area vary significantly.
 - b. The sense of separation would remain between the two homes due to how the homes are angled, the grade change from the garage to the neighboring home, and the natural screening that currently exists.
 - c. Adequate separation remains between the home and street.

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. The building materials and color must match the existing home.
3. This variance will end on December 31, 2002, unless the City has issued a building permit for the project covered by this variance or approved a time extension.

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

8. PUBLIC HEARINGS

A. Ordinance amending the standards for political campaign signs (02045)

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

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

Knight asked if county roads and state highways were regulated by the City's right-of-way requirements. Olson confirmed with the City Attorney that state law prohibits off-premises signs on county and state-aid road right-of-ways, but election signs are an exception to the state law.

Yearwood supported the proposal, specifically providing conformance for local and non-local election years. Chair Sodergren asked Yearwood if she supported using the size of a sign as a factor to be taken into consideration when determining the required setback. Yearwood favored consistency across the board. The greater the number of variations provides a greater opportunity for confusion for residents and enforcement.

Gallop supported the ordinance. He was concerned with allowing signs, without a maximum number for one site, to be located five feet from the street. He felt numerous signs would potentially create a safety hazard, i.e.: children running after a ball. He preferred a ten-foot setback.

Chair Sodergren asked if having permission from the property owner was included in the proposed ordinance. Olson confirmed that requirement was included in A-2 of the proposed ordinance.

Clinton shared Gallop's concern that numerous, large signs may cause a line-of-sight issue at intersections. He recognized that other signs are required to be smaller than political signs. He preferred a ten-foot rather than five-foot setback. On many standard roads, the ten-foot setback would be in accordance with the right-of-way.

Chair Sodergren pointed-out that the proposed ordinance required that signs "must not obstruct driver visibility at intersections." Clinton felt safety would be gained without losing the impact of the sign by requiring a ten-foot setback.

Chair Sodergren asked how consistent the proposed ordinance would be with other cities. Olson stated that the proposed changes were brought about to comply with state law. Chair Sodergren stated that residents do have the recourse of complaining to the City and the sign could be taken down if it created a hazard. Olson agreed and clarified that the property

owner's permission is required to locate a sign in a right-of-way and the property owner has the right to take down a sign located in a right-of-way at any time.

Knight recently experienced his political signs causing a safety issue. When that happened, the police department contacted his campaign headquarters and requested the sign be moved. He was concerned that requiring a ten-foot setback would prevent signs from being located in many yards.

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

Wagner moved, second by Yearwood, to recommend that the City Council adopt the ordinance on pages A1–A2 of the staff report.

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

Chair Sodergren stated that Item 8A was scheduled to be heard by the City Council tentatively on October 14, 2002.

B. Ordinance amending the wetland overlay district, including requirements for wetland buffer areas, which would increase building setbacks around “preserve” wetlands from 35 feet to 60 feet (98063.02a)

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

Clinton excused himself from the discussion of this item due to a possible conflict as a Builders Association member.

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

Chair Sodergren requested clarification of when the ordinance would apply to existing homes. Colleran stated that the proposed ordinance would not apply to properties if no changes were made.

Chair Sodergren asked how many wetlands in the City are considered preserve wetlands. Colleran confirmed that 29 of the total wetlands located in Minnetonka meet the preserve wetland standards. That number does not include storm water ponds, which are not considered wetlands.

Chair Sodergren questioned the potential number of lots that would trigger the ordinance’s implementation. Colleran stated that twenty residential lots are adjacent to preserve wetlands. Sixteen of the properties would require variances; the remaining four would not need variances. The remaining parcels were owned by the school district, a railroad, a synagogue, town homes and apartments, the City of Minnetonka, and Cargill, Incorporated.

Colleran confirmed for Chair Sodergren that each application would be considered on a case-by-case basis.

Wagner asked the number of preserve, manage one and manage two wetlands located in the City. Colleran gave that information.

Wagner asked how reclassification of wetlands would occur. Colleran explained that the proposed ordinance would set a standard for each type. If the characteristics for a wetland changed enough to cause a reclassification, the water resources plan would not be amended on a case-by-case basis; variances would be approved for individual cases. Colleran explained that evaluation and reclassification of wetlands would occur when the water resources management is updated. This plan is updated every fifteen to twenty years.

The public hearing was opened.

Tom McElveen, of the Builders Association of the Twin Cities, thanked Commissioners and staff for postponing the meeting to provide them with the opportunity to be heard on the issue. He stated that:

- The Builders Association of the Twin Cities goals are in line with the City of Minnetonka in regard to environment protection.
- Growth and providing affordable housing is also a goal of the Builders Association.
- Their planning consultant, John Uban, determined that the ordinance would affect approximately 444 acres.
- The Builders Association concurred that environmental resources add value to lots.
- The issue was allowing flexibility to work with the environmental asset.
- The Builders Association was concerned with restrictions to building and the potential number of units.
- The Builders Association feels that the phosphorous-free law and city erosion ordinances will effectively protect wetlands from phosphorus run-off.
- A letter he presented from Roger Anderson, a Builders Association engineer, stated that the Builders Association believes that buffer width is less important than two other factors to protect water quality.
- Ordinances of other cities are quite varied in buffer widths because there is no science to support buffer widths.
- The Building Association recommends flexibility in the wetland buffer ordinance to minimize and streamline the approval process.
- He welcomed meeting with staff to discuss methods to meet the performance standard goals without requiring wetland buffers.

John Uban, planning consultant for the Builders Association, with Dahlgren, Shardlow and Uban, stated that he has experience working with creating ordinances for cities and following ordinance standards when working with private property owners. He stated:

- Flexibility is the key to a successful ordinance.
- He felt the ordinance should allow developers to regrade buffer areas and replant.
- In most of the wooded areas in the twin cities, there are no wild flowers because every type of vegetation, i.e. buckthorn, is being protected.
- He has contoured and restored appropriate vegetation.
- He did the site work for Bet Shalom Synagogue. The proposed ordinance would not allow the restoration that occurred to happen.
- He worked on Clarion Hills where all parties met and discussed what would make the development the best.
- The proposed ordinance would affect 444 acres.
- He encouraged best management practices with flexibility.

- The wetlands need to be mapped again and officially delineated when development takes place.

Chair Sodergren asked for clarification if noxious species could be removed. Mr. Uban stated that the proposed ordinance would allow for the removal of noxious species, but not necessarily require the correct or native plantings.

Colleran stated that the proposed ordinance, under 5F, would allow grading into the buffer and would allow the City to work with developers to create the best ecologically valued buffer. The proposed ordinance would allow a buffer maintenance plan.

Mr. Uban stated that grading is used to provide restoration and create the proper setting or change in grade to accommodate development. The proposed ordinance would require a wetland alteration permit be received before grading could occur in the wetland buffer. A wetland alteration permit would require a public hearing. He stated that the public is usually opposed to change and that once a public hearing forum occurs, there would be “very little chance anything meaningful would happen to adapt the wetland to the development through grading”.

Colleran clarified that the proposed ordinance would require an alteration permit to alter a required buffer. The wetland alteration permit would be part of the original application proposal and handled at the same public hearing as the original application.

Mr. Uban felt that staff and the developer’s experts making the decisions achieve the best results. He preferred engineered and scientifically based-design rather than the “whims of a neighborhood meeting.”

Yearwood noted that the Planning Commission, with a public hearing and notifications, reviewed Clarion Hills as a total package, as recommended by staff, based on the extensive work that everyone did. The proposed ordinance would provide the same process to occur for each application.

Yearwood pointed-out that variance requests were included in the Clarion Hills application. It is an example of the City’s flexibility.

Knight stated that the developer would still work with the public and staff prior to the public hearing. Mr. Uban concurred, but he favored using “best management practices” to develop a flexible approach to buffers to promote a more creative plan. He favored the ordinance including a statement promoting flexibility, without a public hearing or wetland alteration permit, to get better solutions in the long run.

Gallop asked Colleran if there is anything in the proposed ordinance she would like to

modify, after hearing Mr. Uban's comments. He was concerned with the proposed ordinance restricting staff's ability to deal with developers in the future.

Colleran noted that buffers serve a greater purpose than just filtering run-off. The variance process would allow staff flexibility and the ability to look at each case individually. Staff would want to work with developers to ensure that a wetland of higher quality would receive a larger buffer. She stated that the Planning Commission and the City Council have historically recognized and worked to preserve the ecological features of each site.

Tom McElveen supports the public process, but preferred consistent performance standards. He saw two different situations, one that would meet the best management practices and another that would demonstrate a hardship and require a variance. Chair Sodergren asked Mr. McElveen to suggest where to modify the proposed ordinance to better support the use of best management practices. He stated that he would provide Chair Sodergren with a proposal after reviewing the proposed ordinance.

Chair Sodergren asked if Mr McElveen felt that "required buffer width" was too rigid. Mr. McElveen answered in the affirmative. He favored allowing the option to install a buffer or to use best management practices to allow flexibility.

Chair Sodergren recognized that the proposed ordinance would set a standard, but that each project would be considered on a case-by-case basis. Mr. McElveen felt the same standard could be met by requiring a buffer using best management practices.

No additional testimony was submitted and the hearing was closed.

Yearwood asked Colleran to explain the proposed ordinance's review process for an application that proposed alteration of an established wetland buffer. Colleran confirmed that an application that included a reduction in the width of a buffer (new development, redevelopment, or preserve wetland) would go through the review process. Once a required buffer is installed, the applicant would need to go through the wetland alteration permit process to remove or alter the buffer.

Knight felt action should be taken on the proposed ordinance. He supported it.

Gallop supported the ordinance. He questioned if staff learned new information regarding flexibility that they wanted to consider. Colleran stated that a conditional use permit process was considered, but stated that numerous ecological features would need to be considered for each application including vegetation, water-quality, the surrounding land-use, and wildlife. A variance would allow flexibility and provide the necessary consideration each application would need.

Olson explained that a conditional use permit may not cover all exceptions and all regulations necessary for each site. After reviewing all options and receiving direction from the City Council, setting the standards and using the variance review process was determined to be the best option.

Yearwood supported the idea of doing more research, but did not support delaying the proposed ordinance. Colleran argued that wetland buffers are about more than phosphorous and suspended solids run-off. Colleran referred to a study that looked at aspects of wetland buffer function as it deals with water quality, hydrology, human encroachment, and fish and wildlife habitat. She listed several other studies' results and their recommendations for buffer widths.

Yearwood commended the City for its work on the proposed ordinance. She supported the proposed ordinance and thanked staff for their work on it.

In response to Wagner's question, Colleran stated that the City Attorney preferred the word "may" instead of "shall" when referring to requiring covenants and/or easements. She recommended that staff review each project on a case-by-case basis. Olson stated that the City Attorney would be requested to review that section.

Chair Sodergren congratulated staff for their work on the proposed ordinance. She noted that, due to the time committed to gaining public input, Minnetonka is behind other cities in adopting a wetland buffer ordinance. Chair Sodergren hoped the public and businesses would take action on their own to follow the requirements and protect the wetlands. She appreciated Mr. Uban's and Mr. McElveen's comments. She looked forward to gaining long-term results of the implementation of the proposed wetland buffer ordinance. Chair Sodergren stated that while much of the discussion has been on technical aspects, it is important to note the overall importance of this ordinance in protecting the City's wetlands.

Knight supported the Builders Association's proposed study. If the study brought new information forward, the ordinance could be amended. He noted that the City has a history of being open to new ideas.

Yearwood moved, second by Gallop, to recommend approval of the proposed ordinance amending the wetland overlay district.

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

9. ADJOURNMENT

Knight moved, second by Yearwood, to adjourn the meeting at 8:30 p.m. Motion carried unanimously.

By: _____
Bernadette H. Leaf
Planning Administrative Assistant