

**MINNETONKA PLANNING COMMISSION
MINUTES**

FEBRUARY 6, 2003

1. CALL TO ORDER

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

A. Election of chair and vice chair.

Knight moved, second by Gallop, to elect Wagner to serve as Chair and Egge to serve as Vice-Chair for the Planning Commission in 2003.

Gallop, Hart, Knight, Maes, Wagner, Britain, and Egge voted yes. Motion carried.

2. ROLL CALL

Commissioners Gallop, Hart, Knight, Maes, Britain, Egge, and Wagner were present.

Staff members present: Planning Director Geoff Olson, Principal Planner Cary Teague, Planner Susan Thomas, Environmental Coordinator Jo Colleran, Environmental Intern Chris Robbins, Planning Intern Ed Davis, and Planning Consultant Curt Gutoske.

- 3. APPROVAL OF AGENDA:** The agenda was approved as submitted. Olson briefed the Commission on a Change Memo dated February 6, 2003 that added conditions to Item 8B, resolution approving variances for a second-story addition to the home at 2819 McKenzie Point Road for Jack and Betsy Randall (02062.02a). Additional copies were provided for the public.

- 4. APPROVAL OF MINUTES:** January 16, 2003

Egge moved, second by Hart, to approve the January 16, 2003, meeting minutes as submitted.

Gallop, Hart, Knight, Maes, Britain, Egge, and Wagner 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 January 27, 2003.

- Adopted a resolution approving a conditional use permit for an accessory apartment at 19106 Townline Road for Michael and Lucinda Blanchfield.

- Introduced the ordinance rezoning 26 Kingsview Lane from R-1 low density residential, to R-2 low density residential to allow 15,000-square-foot lots and referred it to the Planning Commission.
- Adopted an ordinance amending a PID (Planned I-394 District) master development plan and approving final site and building plans for a 240-stall parking deck at 401 Carlson Parkway for Carlson Real Estate Company. Council directed staff to work with Medica and Carlson Real Estate Company on the traffic demand management plan to require Carlson Real Estate Company to step in if Medica fails to complete its Travel Demand Management Plan (TDM). Staff met with Carlson Real Estate Company representatives and learned that Carlson Real Estate Company plans to have its TDM surpass its requirements and include 301 Carlson Parkway, as well as 401 Carlson Parkway.

The City Council also appointed Doug Britain and Cathy Maes, and reappointed Craig Gallop, to the Planning Commission. Olson welcomed them to the Commission.

Staff met with the Glen Lake area residents on February 4, 2003, to discuss future redevelopment plans. Several plans and feedback forms were distributed to the residents. Staff will be compiling the results of the feedback forms.

Olson announced that the Mayor's *State of the City* address will begin Tuesday, February 11, 2003, at 7:30 a.m. in the Community Center. He asked the Commissioners to RSVP to Terry DesLaurier if they plan to attend.

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.

Egge moved, second by Gallop, to approve the item listed on the Consent Agenda as recommended in the staff report as follows:

A. Items concerning a rezoning and two-lot subdivision, with variances, at 26 Kingsview Lane for Gonyea Properties, Inc. (02073.02a):

- 1. Ordinance approving a rezoning from R-1 low density residential, to R-2 low density residential, to create two lots, each with a minimum lot size of 15,000 square feet; and a**

2. Resolution approving a two-lot subdivision, with a buildable area variance from 2,400 square feet to 2,340 square feet

- A. Recommend that the City Council adopt the ordinance on pages A5–A7 of the staff report, which approves the proposed rezoning. This ordinance is based on the following findings:
1. The rezoning would be consistent with the City’s comprehensive plan.
 2. The rezoning would be consistent with the public health, safety and welfare.
- B. Recommend that the City Council adopt the resolution on pages A1–A4 of the staff report. This resolution approves a lot division at 26 Kingsview Lane, with a buildable lot area variance from 2,400 square feet to 2,340 square feet. Approval is based on the following findings:
1. Except for the variance, 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 location of the wetland in the southwest corner of proposed Parcel A.
 - b. The variance would meet the intent of the ordinance because the applicant could reconfigure the lot lines to meet the buildable area requirement, however, in doing so the effective buildable area would not change. If the plans were revised to meet the buildable area, the result would be an irregular shaped lot line, which could cause future problems to the landowners of these two properties.

Approval is subject to the following conditions:

1. The following items must be submitted to the City before the City releases this resolution:
 - a. 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) Drainage easements over wetlands and storm water ponds

- (3) Conservation easements over the area starting 20 feet outward from the north edge of the wetland to the south lot line. A drawing of the easements must be submitted for the approval of the City Attorney. The easements and drawing must be recorded with the resolution.

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

- b. A park dedication fee of \$2,375.00.
 - c. Title evidence that is acceptable to the City Attorney. Title evidence must be current within thirty days before release of the lot split resolution.
2. The following must be completed before the City issues a building permit:
 - a. A grading and tree preservation plan must be submitted to the City for each lot, subject to staff approval. The plans must be substantially in compliance to the agreed building areas as required with final approval. The sewer and water services must be shown to minimize impact to the significant trees. This plan will be subject to the planning director's approval.
 - b. Drainage calculations from a registered engineer must be submitted to demonstrate the flood elevation for 2 back-to-back 100-year storm events or maximum elevation based on overflow to Parkers Lake Road. The basement elevation must be minimum of 2 feet above the flood elevation of the 2 back-to-back storm events or maximum elevation with overflow, whichever applies.
 - c. The installation and maintenance of a temporary rock driveway, erosion control, tree protection and wetland protection fencing must be installed subject to review and approval of the City's Environmental Resources Coordinator.
 - d. 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.
 - e. A hook-up 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.
 3. During construction, the streets must be kept free of debris and sediment, and the tree protection fencing, and erosion control fencing must be maintained.

4. Trees must be planted to compensate for significant trees removed from the 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.
5. 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.

Gallop, Hart, Knight, Maes, Britain, Egge, and Wagner voted yes. Motion carried and the items on the Consent Agenda were approved as submitted.

8. PUBLIC HEARINGS

A. Resolution approving a two-lot subdivision with a front yard setback variance from 25 feet to 3 feet at 13326 North Street for Gary and Shirley Smith (94013.02a)

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

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

Gallop asked if there had been any problems or concerns with waivers of appeal used previously and asked if there had been any interest expressed to subdivide the property located on the west of the site. Gutoske stated that a waiver of appeal had been successfully used and people have recognized the validity of the agreement. It has proven acceptable when a specific figure has been included in the agreement so that the property owners know what the potential future assessment would be. Gutoske stated that he was not aware of any interest expressed to subdivide the property located to the west of the proposed site.

Knight asked why a variance for the road frontage was not required. Gutoske explained that the lot division would include dedication of right-of-way that would give Parcel B frontage. Gutoske illustrated where the frontage would be located. Gutoske explained that if the right-of-way was not included in the lot division, then a frontage variance would be required.

Gutoske confirmed that the lot would look like a flag lot, a lot located behind another lot. However, the right-of-way dedication, even without construction of a cul-de-sac, would give Parcel B sufficient frontage and it would meet ordinance requirements.

Britain asked if an easement would be needed on the west side of the site. Gutoske explained that a thirty-foot easement was already dedicated on the west side.

Hart asked where the entrance to the garage on Parcel A was located. Gutoske stated that it is located off North Street, on the west side of the structure. Gutoske stated that the easement would be located in close proximity to the driveway.

Gary Smith, 13326 North Street, applicant, asked Jeff Martineau, a real estate agent with Coldwell Banker, to speak on his behalf. Mr. Martineau stated:

- A lot split was approved by the City with the understanding that access would be gained through negotiating use of the easement on the adjacent property.
- The current proposal minimizes the construction and long-term maintenance impact of the proposed site and the property to the west.
- The proposal would allow the City to maintain easements.
- Wetland delineations and the assessment cost to construct a cul-de-sac are completed.

Gallop asked how snow removal would be done for the three driveways. Mr. Smith stated that space would remain on both sides of each driveway.

The public hearing was opened.

Dave Schmits, owner of the property east of the proposed site, asked where the retaining wall would be located, what it would look like, and what would be done with the increased drainage. He asked if the lot line extended into the sharp grade.

Gutoske stated that the retaining wall would be located on the west side of the future driveway. It would run north and south. Plans had not been completed yet for the size of the retaining wall. Drainage would be reviewed during the building permit process. Gutoske reviewed the elevations of the lots.

Chair Wagner asked if drainage would also be addressed in the construction management plan. Gutoske answered in the affirmative.

Mr. Schmits requested to be kept up to speed with the status of the project.

Robert Erickson, 13509 North Street, asked how many feedback forms were sent out and the results. He opposed half-acre lots and felt three driveways close together would not be aesthetically pleasing.

Chair Wagner stated that 34 properties received feedback forms and five were returned to the City. The five responses were included in the agenda materials. One was in favor, three were opposed, and one provided a general comment.

Gutoske acknowledged that three driveways located close together could potentially cause problems. He stated that the applicant would submit a proposed driveway plan that would be reviewed by staff to develop the best configuration.

Mr. Erickson asked if there was a similar situation in the City where three drives were located that close to each other. Gutoske was unable to recall a similar situation.

No additional testimony was submitted and the hearing was closed.

Chair Wagner reviewed the primary issues.

Britain asked if the property on the west side needed to be subdivided to justify the need for a public street. Gutoske stated that staff believes that the street is not needed until the property located on the west side develops. The City Engineer felt that the proposed lot, as well as the existing access to 13400 North Street, could co-exist with private driveways at this time.

Hart asked who would pay for the street if it was built now. Gutoske hypothesized that one-third would be assessed to Lot B and two-thirds would be assessed to the property to the west, based on that property's future development potential. Parcel A would not be assessed, because it would not receive a benefit.

Hart asked if the owners of 13400 would need to agree to the improvement. Gutoske explained that the City's position has always been that property owners petition to the City for construction of the street, rather than forcing an improvement on residents.

In response to Wagner's astute observation, Gutoske confirmed that the park dedication fee should be changed from \$550 to \$2,375.

Knight asked what the road frontage requirement is for a single lot. Gutoske stated that the road frontage requirement is 80 feet for a lot that is abutting a straight segment of street and 65 feet for a lot that is at the end of a cul-de-sac, that has a curved frontage.

Gutoske stated that if the cul-de-sac was never built, the lot would still meet the ordinance requirements, because the 65 feet is measured along the dedicated right-of-way easement, not the street. The easement would exist on the record. So, the construction of the cul-de-sac is immaterial.

Knight was concerned that the cul-de-sac may not be built, leaving a flag lot. He opposed flag lots. It was "unlikely" he supported the proposal.

Gallop's biggest concern was the three driveways being located so close. He was in favor of staff's recommendation.

Hart felt that the three driveways would have less of an impact than a cul-de-sac, since the access to the cul-de-sac would be approximately 50 feet wide. Gutoske confirmed that the cul-de-sac access would be 50 feet, but only 26 feet of the street easement would be paved. Hart figured that two driveways, at twelve feet each, would be similar enough to a cul-de-sac access. She found it acceptable to consider the right-of-way easement as frontage. Hart supported staff's recommendation.

Chair Wagner concurred with Hart that the driveways would be in similar size to a cul-de-sac. He preferred the cul-de-sac, but would not impose it on the property owners. He supported the proposal.

Gallop moved, second by Hart, to recommend that the City Council approve the following resolution on pages A1–A5 of the staff report, which approves the proposed two-lot subdivision and the front yard setback variance from 25 feet to 3 feet. This resolution is based on the following findings:

1. Except for the variance, 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 locations of the existing house and the previously dedicated public right-of-way.
 - b. The variance would meet the intent of the ordinance because the new public right-of-way easement increases the width of the previous right-of-way easement to City standards.

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) A 20-foot-wide public right-of-way easement along the east property line, including the area required to accommodate the cul-de-sac turn-around, subject to the City Engineer's approval.

- (2) A 10-foot-wide public right-of-way easement on the north side of North Street.
- (3) 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
- (4) A private driveway easement between the street right-of-way and Parcel B 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.

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 \$2,375.00.
 - 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 or a driveway permit:
- a. A right-of-way permit must be approved by the City Attorney. The permit must include the applicants' agreement to waive their right to appeal an assessment for the future construction of a cul-de-sac to serve Parcel B based on a current cost estimate of \$47,500. The agreement shall provide for annual cost adjustments of the cul-de-sac costs based upon accepted consumer price indices.
 - b. The private driveway plans must be approved by the City Engineer. No construction impacts will be permitted to the abutting property to the west.
 - c. A grading and tree preservation plan must be submitted to the City for Parcel B, subject to staff approval. The plans must be substantially in compliance to the agreed building areas as required with final approval. The sewer and water services must be shown to minimize impact to the significant trees. This plan will be subject to the Planning Director's approval.

- d. The installation and maintenance of a temporary rock driveway, erosion control, tree protection and wetland protection fencing must be installed subject to review and approval of the City's Environmental Resources Coordinator.
 - 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. A hook-up fee for sanitary sewer and water.
 - g. A letter from the surveyor stating that boundary and lot stakes have been installed as required by ordinance.
3. The drive for Parcel B must be paved from at least the street to the house on Parcel A before the City makes a final inspection of the house on Parcel B. The driveway must have at least a seven-foot setback from the side lot lines. The City may approve a time extension if weather prevents paving of the drive.
 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. 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.

Gallop, Hart, Maes, Britain, Egge, and Wagner voted yes. Knight voted no. Motion carried.

Chair Wagner stated that the item would be reviewed by the City Council.

B. Resolution approving the following variances for a second-story addition to the home at 2819 McKenzie Point Road for Jack and Betsy Randall (02062.02a):

- **shoreland setback variance from 35 feet to 33 feet;**
- **floodplain setback variance from 35 feet to 9 feet;**
- **side yard setback variance from 7 feet to 1.7 feet for the side wall;**
- **side yard setback variance from 7 feet to 2 inches for the over-hand on the**

- north side of the home;**
- **side yard setback variance from 7 feet to .7 feet for the chimney.**

Chair Wagner 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.

Teague addressed issues listed by an attorney representing the neighbors located on the north side of the proposed site. He explained:

- The deck, to be constructed on top of the front porch, would meet setback requirements.
- The front steps are an existing condition and there are no changes proposed in the application, therefore, a variance is not required.
- The chimney would not be expanded past the footprint of the existing chimney.
- While the City Attorney has not offered an opinion in regard to whether this application is reasonable or not, she offered the opinion that a case could be made for hardship due to the narrow width of the lot and the fact that the existing structure encroaches into required setbacks.
- The discrepancy between the Sorenson and Randall residences occurred due to the measurements being taken at the front of the residences, where they are 13 ½ feet apart, but they are 12 feet apart at the rear of the residences.
- Again, a variance would not be needed for the deck stairway since it currently exists.
- Again, no further encroachment into the setback would occur. The chimney would not be expanded. It would follow the same plan as the existing structure.

Knight asked for clarification of the distance between the porch and the shoreline. Teague answered 25.4 feet. Teague explained that 33 feet referred to the second story addition where the shoreline angles on the south side.

Knight asked if the residence currently encroached on the neighbor's property. Teague explained that the overhang currently encroaches into the neighbor's property. He pointed-out where the foundation was the closest to the property line, one foot, seven inches to the property line. The chimney is seven inches from the property line.

Gallop questioned if the eaves would have to be moved back on the existing house if the variance was denied. Teague stated that the eaves currently exist, so the City would not require them to be moved. Olson interjected that a property owner may have rights that would be addressed in a civil court in regard to property encroachment issues.

Britain asked if the gutter would be located on the applicant's lot. Teague answered in the affirmative.

Egge asked how other neighbors move their boatlifts. She asked if there is a dedicated area for boatlifts. Teague stated that the boatlifts are allowed by ordinance to be stored on the lakeshore yard. He was not aware of a neighborhood common area for boatlifts. He saw several being stored in lakeshore yards in the area.

Chair Wagner requested clarification of the 50 percent rule. He asked what would happen if the roof is taken off and it is appraised to have changed its value by 50 percent. Teague explained that the whole project would then be looked at as a vacant lot.

Chair Wagner asked if the addition could be built without trespassing on the Sorenson property. Teague stated that the City's building official has seen a similar job completed from the inside before.

Egge asked who would perform the appraisal. Teague stated that the applicant would hire an independent appraiser and submit the appraisal to the City.

Jack and Betsy Randall, 2819 McKenzie Point Road, applicants, stated:

- The residence is small; it has only two bedrooms.
- It is used as a seasonal dwelling in the summer.
- They need more bedrooms for when their grandson and granddaughter stay with them.
- They eventually hope to retire and live at the house.
- They are not trying to be difficult.
- Mr. Randall has spoken to the tax assessor and the 50 percent rule should not be an issue. Removing the roof and putting it back on is not worth an increase of 50 percent.

Gallop asked if they considered adding onto the west side of the residence. Mr. Randall stated that they are not allowed to expand the hard cover.

In response to Gallop's question, Teague explained that a hard surface variance would be required to increase the footprint of the house.

Knight asked if expanding over the garage would be an option. Mr. Randall explained that the proposal would be more aesthetically pleasing. Expanding over the garage would not meet the applicants' goals.

Britain asked if the house could be replaced further back. Mr. Randall explained that it would double the cost of the project. It would require a new foundation and demolition.

Mrs. Randall felt it would be very expensive to tear down the house to move it back only ten feet.

The Commission took a short break.

The public hearing was opened.

Howard Roston, attorney for Scott Sorenson, requested the opportunity for Mr. Sorenson to review the appraisal. Teague agreed that Mr. Sorenson could review the appraisal submitted by the Randalls and submit another appraisal if he chooses to do so.

Mr. Roston requested staff confirm that the materials he submitted, affidavits from David Phillips and John Hunterbird, Exhibits A through Q, the letter he submitted today, and four pictures were made part of the record. Teague pointed-out the spiral bound notebook that included the materials that he submitted and that were distributed to those present. The letters and pictures were also distributed.

Mr. Roston stated that:

- Mr. Sorenson objected to the variances because there is no hardship demonstrated.
- The city cannot legally approve the variances.
- The construction cannot be done without trespassing on the Sorenson property.
- There is nothing unique about the property to require a variance.
- The applicant can build over the garage or move the house back.
- The nonconformities of the residence would not be rectified by the proposal.
- Floodplain and shoreline setbacks cannot legally be varied.
- The applicant stated that it would not be convenient to build options that would meet code. This is not a legal reason to approve a variance.
- A new home could be built on the lot without the need for a variance.

Knight asked Mr. Roston what he thought of the City Attorney's opinion. Mr. Roston stated that the City Attorney did not give an opinion on the reasonable use of the property. Mr. Roston stated that the residence was currently used as a single-family residence and the addition could be constructed in different ways.

Knight commented that the lot was not unique in the neighborhood, but asked Mr. Roston if he agreed that its small size is unique in the City. Mr. Roston stated that the variance test does not apply to the entire City. If that was the definition, everything would be unique or not unique. Mr. Roston stated that the uniqueness test does hinge on the neighborhood. He stated

that the site does qualify as a small lot. He believed the surrounding lots are also qualifying small lots.

Knight asked Mr. Roston if the contractor could walk on the neighboring property. Mr. Roston stated that without an agreement, it would be considered trespassing.

Knight asked Mr. Roston if he meant that a variance cannot be granted for floodplain or shoreland setbacks. Mr. Roston referred to page eight of David Phillip's affidavit. He read from Section 300.071d of the City's ordinances. Knight did not see the basis for the "absolute" standard.

Dan Schlecht, attorney for Jack and Betsy Randall, suggested that five names of appraisers be submitted and all parties agree one appraiser. He stated that the Randalls are fine with paying for the appraisal. He complimented staff on the thorough report. It addressed the issues and focused on statements provided by the City Attorney. The Randalls are working with the City and the neighbors. He invited a closer look at the variance ordinance and explained the language that referred to granting no variance referred to not granting a variance that would cause a reduction in flood protection. The Planning Commission must make that determination. He trusted that the Planning Commission had experience with similar applications and trusted staff's findings. He was available for questions.

Knight asked Mr. Schlecht if the proposal could be done without having to go on a neighbor's property. Mr. Schlecht stated that he was not qualified to answer that question. It would be the applicant's risk. If a trespass would occur, then there would be a cause of action for a trespass.

Knight asked Mr. Schlecht to expand on his comments regarding not granting a variance that would cause a reduction in flood protection. Mr. Schlecht explained that ordinances are written to give cities flexibility to create communities that have different focuses. The Planning Commission may have a finding that the proposal would not cause a reduction in flood protection. It is not an absolute prohibition on variances and the City has granted similar ones in the past. Implicitly, by granting those variances, the Planning Commission has said that it believes it would not reduce flood production. He supposed that if the City Attorney felt it was an issue, she would have addressed it in the previous variances and the current one.

Scott Sorenson, 2815 McKenzie Point Road, stated that:

- He has been concerned about existing setbacks for five years, since he bought the property.
- He spoke to the Department of Natural Resources and the agency would prefer to see the house moved back.

- The view of the lake is not an issue.
- The Randalls' residence is ten feet closer to the lake than his house, so the occupants can see into his house.
- The proposed deck would allow a view into his bedroom windows.
- He favors moving the house back ten feet and requiring all of the setbacks to be met.
- He has not made a decision to remove or rebuild his home.
- He would lose \$200,000 in value of his property if the proposal was built.
- Other area neighbors support him.
- It would be to the Randall's advantage to rebuild the entire house.
- Allowing this addition would make it less likely that this home would be rebuilt to meet code and eliminate the nonconforming setbacks.
- It may cost more to rebuild the house, but the added value justifies the cost. The roof is nine inches to eleven inches on his property.
- The Randalls only use the home ten days per year. Some of their friends use the house.
- He asked the City to require the air conditioner be removed because it ran constantly, no one used the house, and it was located under his bedroom.

Knight asked his thoughts on the appraiser. Mr. Sorenson supported an independent appraiser, not picked by the City.

EGGE stated that the air conditioner and lifestyle of the owners would not be affected by moving the house back. EGGE asked staff if similar letters were submitted by the Department of Natural Resources for the other variances approved on the lake. TEAGUE did not come across any similar letters during his research of variances in the area, but a specific search was not conducted. TEAGUE stated that it is standard practice to send the Department of Natural Resources notification and the plans to offer them the opportunity to comment on each project. The DNR will at times send letters expressing its concern, however, in research of the files for variances in this area, no letters were found. TEAGUE reviewed the DNR letter and the conditions for approval that the DNR was recommending. The City is requiring the buffer strip along the lake, which the DNR suggested. The impervious surface would be reduced by removing some of the sidewalks around the home. The overhang would be reduced in size. The gutter system would take drainage away from the site.

MR. SORENSON stated that drainage from the site would flood his house. The City pumped his house four times in the last year.

MAES questioned how many neighbors were opposed. She received feedback forms that indicated one supported the project, three were opposed, and one provided general comments regarding moving boat lifts. MR. SORENSON cited five neighbors that were opposed: John Jack, Larry Kabecha, John Kritch, Tom McMoore, and himself.

Mr. Sorenson stated that if the house was moved back, the boatlifts could be moved back. Maes confirmed with Mr. Sorenson that the lifts would still be stored between the residence and the shore.

Mr. Sorenson stated that the variances granted previously for second story additions were done based on negotiations prompted by the City to have the properties remove their garages.

John Hunerberg, 13705 26th Avenue North in Plymouth, Hunerberg Construction Company, was hired by Mr. Sorenson to look at the construction issues. He stated that Mr. Sorenson put up a piece of fence to show how close the lot line was to his house. He questioned how a ladder could be located on the applicant's property to maintain the outside of the house.

Egge questioned whether trespassing was a relevant issue, since it is a civil issue. She noted that the proposal would be no more of a problem than maintaining the current residence. Teague confirmed that trespassing is a civil matter and the building inspector affirmed that construction could be completed from inside the residence. Egge requested moving ahead to issues relevant to the Planning Commission's consideration.

Mr. Hunerberg felt that the cost would be over the 50 percent of the value of the residence after the roof would be removed and windows eliminated. Egge questioned whether Mr. Hunerberg was an appraiser and qualified to appraise the value of the house. Mr. Hunerberg stated that he is not an appraiser, but he figures the cost of jobs as a contractor.

Hart stated that the interior remodeling is irrelevant when calculating the 50 percent rule. She stated that if no remodeling was done, and the roof was removed, the applicants would be in compliance with the 50 percent rule. Mr. Hunerberg stated he did not agree. Olson concurred with Hart. The proposal could be done and the remodeling could be done a year later. Walls and structure are calculated in determining the value. Mr. Olson stated that if the project does not pass the 50 percent test, the building permit would not be issued.

Mr. Hunerberg said that he thought it would be hard to build it from the inside out.

David Phillips, 1250 East Moore Lake Drive, Fridley, licensed architect hired by Mr. Sorenson, stated that part of this job was to visit the site on two separate occasions. He visited staff and reviewed the file. Part of his profession includes interpreting zoning codes. He stated:

- A variance should be required for the proposed porch because it would be modified.
- Adding a roof to the porch would intensify the use.
- The nonconformancies should be brought into conformance.

- He discussed Ordinance 300.25, paragraph 8b. The 35 foot setback can exist if grandfathered in, but a variance cannot be granted to allow a new structure to be in nonconformance.

Chair Wagner asked if decks and balconies are distinguished in the ordinance. Teague stated that anything without a cover is considered the same, decks, patios, and balconies.

Hart questioned Mr. Phillips' interpretation. She stated that the proposal would not make the residence any less conforming.

Phillips stated that a variance cannot legally be approved. Phillips further reiterated a point made by Mr. Roston that variances are required where non-conforming uses and structures are going to be expanded or altered. According to the Zoning Ordinance "There shall be no expansion, enlargement, intensification, replacement, structural change or relocation of any use or any site element of any non-conforming land use except to make it a permitted use. Normal building maintenance and repair shall be excepted from this requirement." Zoning Ordinance, § 300.29. He felt there could be windows on the north side of the house and the applicant should not have to bear the expense of installing a fire sprinkler. He noted that one of the bedrooms is already located over the garage and that the whole addition could be built over the garage.

Teague stated that the use of the property is conforming, a single-family residential home.

Gallop asked what Mr. Phillips measured as the distance between the homes. Mr. Phillips stated twelve feet.

Knight asked Mr. Phillips if he was saying that a variance could not be granted if the residence was not brought into conformity. Mr. Phillips stated that a variance would make the nonconformity a conformity. Teague clarified that Mr. Phillips was referring to the nonconforming use section of the ordinance. The use is a single-family home and would remain a single-family home if the proposal was implemented. It is a nonconforming structure, not a nonconforming use.

Knight asked if the proposal was approved, and the Randalls wanted to make a change to the footprint in the future, if an application would need to be approved. Teague answered in the affirmative.

Mr. Randall noted that the proposal would relocate the air conditioner into the roof to eliminate that issue. The neighbors to the south received similar variances for a second-story addition.

Mr. Sorenson stated that his bedroom is on the second story of the residence facing the lake. He showed a picture taken from the bedroom. Gallop clarified that the bedroom is in the front of the house.

Egge noted that close proximity is a common problem for many of the houses in that area. Mr. Sorenson stated that currently it was fine. Mr. Sorenson stated that the Randall residence is the only residence where the occupants can look into the other houses' bedrooms. Mr. Sorenson was worried about the deck.

Maes asked if Mr. Sorenson planned on requesting future variances or making improvements to his property. Mr. Sorenson stated that he might. He was concerned that the proposal would make it harder for him to get a four-foot variance because the roofs would be two feet apart. Mr. Sorenson stated, "that is the bottom line."

Maes' opinion was that a newer, nicer neighboring home would increase the value of the adjacent property owner. Mr. Sorenson hoped the Randalls would build a new house in compliance with the City Code.

No additional testimony was submitted and the hearing was closed.

Maes asked staff to explain the purpose of a floodplain setback. Collieran explained that staff is currently revising the ordinance to eliminate the 35 foot horizontal setback requirement. What is more important is the vertical separation. She explained that the Federal Emergency Management Agency (FEMA) designates floodplain elevations. The City added a 35 foot setback for increased flood security, however, the more staff reviewed the ordinance with the DNR, staff learned that a two foot vertical separation from the lowest habitable floor is more effective than the 35 foot setback. Teague pointed-out where the floodplain elevation and setback was located.

Knight asked if the City is required to follow what the DNR wrote in its letter. Teague answered in the negative. The DNR provides comments and suggestions. Staff is recommending similar conditions to the DNR suggestions.

Knight asked if Mr. Sorenson could build a fence along the property line. Teague stated that a fence could be located up to the property line.

In response to Knight's question, Teague provided Knight with examples of staff recommending to the Planning Commission an alternative for an application requesting setback variances.

Hart reviewed the issues. The proposed construction would not expand the building footprint. There are two-story houses located on both sides of the property. The eaves would be

improved by being moved onto the applicant's property. The flat roof would improve the view of both parties. She suggested a privacy wall be located on the deck to allow for privacy. The gutters would improve the drainage issues with the current property. A ten-foot lakeshore buffer would be added. The air conditioner would be moved so it would no longer be an issue. Because of these unique circumstances, Hart supported the variance.

Gallop was concerned with the number of variances. He did not recall approving that number of variances for one application. He felt that the deck would create noise and there are other options for the applicant that would not require a variance. He did not support the proposal.

Egge concurred with Hart. Since she has been on the Commission, the City has approved many multiple variance applications where the footprint does not change. The improvements the proposal would create are clear to her. It is not reasonable to demolish the house and move it for a second-story addition. Noise on a deck would be a problem regardless of the setback and would fall under the jurisdiction of the noise ordinance. The applicants worked with staff in good faith to reduce the issues. She saw no good faith on Mr. Sorenson's part by automatically saying that if the workers trespass on his property, he has a legal action. That is not for the Planning Commission to discuss. She looked at the facts and at the reasonableness of the application. She supported staff's recommendation.

Britain complimented the staff on the detailed report. His main concern was the possibility of trespassing. He did not see any way to build and maintain the addition without trespassing. He did not support the current proposal until the applicant can show a way that trespass would not be an issue.

Knight counted pluses and minuses on both sides. He determined that the proposal had more negatives than positives. The proposal would allow an addition to make the residence similar to the Sorenson home. He felt a small lot did not meet the hardship standard. There are other options, such as building over the garage. He was concerned with the number of variances and the closeness of the house to the property line. He had environmental concerns with the residence being close to the lake. Removing the porch would be a good compromise. He did not feel it was reasonable to remove the house.

Maes stated that the proposal would not change the character of the neighborhood. She disagreed that it would devalue the Sorenson property. She did not support the application because she favored a solution that would meet ordinance requirements.

Chair Wagner thanked staff for their five months of work as well as the change memo that addressed issues brought-up recently. He would need additional conditions to support approval of the variances to address drainage, appraisal and privacy issues. He asked if the conditions of approval addressed the DNR suggestions. Colleran confirmed that the City required compliance with all of the DNR's suggestions except the removal of the porch.

Chair Wagner stated that an addition constructed over the garage would only remove one or two of the current variances. Chair Wagner favored the proposal because approving a variance allowed the City the opportunity to add conditions and the proposal would not increase the building footprint.

Chair Wagner confirmed with Teague that the application needed five votes for approval and four votes for denial.

Gallop moved, second by Knight, to deny the resolution on pages A1–A5 of the staff report, which approves variances at 2819 McKenzie Point Road, based on the findings that there are other options, there is a lack of hardship, the large number of variances, the residence would be close to the property line, a lack of compromise to meet ordinance requirements, and it would encourage other non-conformities.

Knight suggested that the City Council refer to Mr. Phillips comments.

Egge asked if the Commissioners understood that the variances are inherent to the current structure and would still need to be approved if the addition was constructed over the garage. Gallop acknowledged.

Gallop, Knight, Maes, and Britain voted yes. Hart, Egge, and Wagner voted no. Motion carried.

Chair Wagner explained that the Planning Commission's action was final, but subject to appeal to the City Council. To appeal to the City Council, the applicant must provide written notice to the Planning Director within ten calendar days.

9. ADJOURNMENT

Knight moved, second by Egge, to adjourn the meeting at 10:33 p.m. Motion carried unanimously.

By: _____
Bernadette H. Leaf
Planning Administrative Assistant