

**MINNETONKA PLANNING COMMISSION  
MINUTES**

**MAY 1, 2003**

**1. CALL TO ORDER**

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

**2. ROLL CALL**

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

Staff members present: Planning Director Geoff Olson, Planner Susan Thomas, Environmental Coordinator Jo Colleran, and Planning Intern Ed Davis.

**3. APPROVAL OF AGENDA:** The agenda was approved with the removal of Item 7B, a side yard setback variance from 10 feet to 5 feet for a home addition and a new garage to replace the existing garage at 4927 Dominick Drive for Bill and Lynn Zuidema (03009.03a).

Olson corrected an error located at the bottom of the agenda that read, “. . . applications that are pulled and tentatively rescheduled for March 15, 2003 . . .” The date should have read May 15, 2003. The Sanctuary project and an application for a lot division on Dominick Drive are included in the items tentatively scheduled to be reviewed by the Planning Commission on May 15, 2003.

**4. APPROVAL OF MINUTES:** April 3, 2003

*Egge moved, second by Britain, to approve the April 3, 2003, meeting minutes as submitted.*

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

**5. REPORT FROM STAFF**

Olson briefed the Commission on land use applications considered by the City Council at its meeting of April 28, 2003:

- Approved an ordinance rezoning the property from R-1 low-density residential to PID planned I-394 district and approving a master development plan, with final and site building plans, and an ordinance approving a wetland rezoning for a proposed 53-unit condominium project at 408 Parkers Lake Road for Yellowstone Trail LLC. The main issue was determining the appropriate density for the site. The developer reduced the density from 53 units to 46 units and reduced the length of the east end of the building by 26 feet. The developer made the changes in response to the neighbors’

and staff's concerns regarding the floor-area ratio and market research results that showed that larger units are preferable.

Councilmembers discussed if the wetland should be considered a nature area. Nine tenths of an acre of green space was created.

The traffic consultant explained that traffic fluctuated each day of testing which created the appearance of 60 missing trips.

Olson stated that the City Council discussed options to fill Planning Commissioner absences. The Commission discussed having former Commissioners substitute for absent Commissioners and those with a conflict of interest regarding a specific item. Complications may arise when items are continued and a different Commissioner may not have heard the first meeting's discussion. The City Council will discuss the issue at a joint meeting with the Planning Commission.

Knight asked how the open meeting law applied to the joint work sessions. Olson stated that the joint work session is an open meeting. It will be advertised and the public is welcome to attend.

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

**7. PUBLIC HEARINGS: CONSENT AGENDA**

Item 7A, a rear yard setback variance from 39 feet to 25 feet for an addition to the home at 14933 Excelsior Boulevard for Nicolai Avdulov (03008.03a), was removed from the Consent Agenda for discussion.

Item 7 B, a side yard setback variance from 10 feet to 5 feet for a home addition and a new garage to replace the existing garage at 4927 Dominick Drive for Bill and Lynn Zuidema (03009.03a), was removed from the agenda in accordance with the applicants' request. The applicants wanted to discuss the project design and the conditions of the variance with staff.

*Egge moved, second by Hart, to approve items 7C and 7D listed on the Consent Agenda as recommended in the respective staff reports as follows:*

**C. Sign plan review for Chasewood Gates Apartments at 6100, 6010, 6145, 6125, 6025, and 5950 Chasewood Parkway for Imaginality, Inc. (03014.03a)**

Approve the proposed sign plan subject to the following conditions:

1. The attached Table 1a on page A4 of this report shall become the official sign plan for the Chasewood Gates development.

2. Before issuance of a sign permit, the applicant must install temporary rock driveways, erosion control, tree protection and wetland protection fencing, subject to review by the City's Environment Resources Coordinator.
3. The property owner must replace damaged landscaping due to installation of the signs.
4. The lighting of the signs must conform to all City Code requirements.

**D. A front yard setback variance from 23 feet to 17 feet for a detached garage at 16924 Cottage Grove Avenue for Michelle and Dave Truax (03011.03a)**

Adopt the resolution on pages A1–A4 of the staff report, which approves the proposed variance. 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 location of several large oak trees on the property. .
2. The variance would be consistent with the spirit and intent of this ordinance for the following reasons:
  - a. Though the garage could be built meeting required setbacks, it would be necessary to remove several large oak trees. The proposed location would minimize impact to these trees.
  - b. Adequate separation would be maintained between the proposed garage and Cottage Grove Avenue.
  - c. Front yard setbacks vary significantly in the Cottage Grove Avenue area.
  - d. Adequate separation would be maintained between the proposed garage and adjacent structures.

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 compliment the existing home.

3. Prior to issuance of a building permit:
  - a. Submit a construction management plan for staff review and approval. The plan must indicate location of tree protection and erosion control fencing, as well as areas for stockpiling earth and construction materials.
  - b. Tree protection and erosion control fencing must be installed for staff review and approval. Fencing must be maintained throughout the course of construction.
  - c. Locate existing sewer and water lines on the property. Care should be taken regarding these lines during construction.
5. The existing driveway must be removed and the area restored. A new hard surfaced driveway is required for the new garage
6. This variance will end on December 31, 2004, unless the City has issued a building permit for the project covered by this variance or approved a time extension.

*Egge, Hart, Knight, Maes, Britain, and Wagner voted yes. Gallop was absent. Motion carried and items 7C and 7D on the Consent Agenda were approved as submitted.*

**A. Rear yard setback variance from 39 feet to 25 feet for an addition to the home at 14933 Excelsior Boulevard for Nicolai Avdulov (03008.03a)**

Davis gave the staff report.

Chair Wagner noted that the floor plan showed an angled rear building line, while the site plan represented a 25-foot setback at all points. Davis stated that, according to the site plan, the setback would be 25 feet in length at all points.

Chair Wagner asked if the porch or deck met setback requirements. Davis explained that it would not be a porch or deck, just patio blocks in the ground.

Alex Bershteyn, 14933 Excelsior Boulevard, property owner, agreed with staff's presentation. He agreed with all of the conditions.

Britain asked the age of the existing residence. Mr. Bershteyn was not sure. The residence was purchased in 1995. The house had an addition constructed in 1986.

The public hearing was opened.

Joe Wallin, 5631 Glen Avenue, located behind the applicant's house, stated:

- His home was built in 1915.
- Mr. Bershteyn's home was first built in the 1920's.
- He requested the Commission deny the variance.
- He did not oppose an addition, but he was against the variance and the specific design.
- The hardship standard was not met. The large lot would accommodate an addition without the need for a variance.
- The addition is proposed at this location because it is the cheapest place to build it. Cost is not a basis for a variance.
- A two-story addition would not be consistent with the character of the neighborhood, which are one-and-a-half story homes.
- Mr. Wallin misunderstood the process when he first replied to the neighborhood feedback form.
- He has other improvements he would like done to the applicant's property, but found that the changes he would like cannot be done.
- He apologized for not sharing his concerns earlier.
- He met with his neighbor to discuss the application. The applicant said the plan was created with the primarily goal of saving money.
- He provided photographs of the site.

Knight noted that one reason for the proposed location was to save a tree. Mr. Wallin thought the addition could be redesigned to save the tree and meet the setback. He stated that there is plenty of room on the north and the west sides of the residence. Another option is to change the garage to living space and add another garage to the north. Mr. Wallin was concerned that the addition would be located directly behind his house.

Knight asked for suggestions on how the house could be redesigned. Mr. Wallin stated that a different type of addition could be done on another part of the home or reduce the distance the addition would extend into the yard. Currently, his residence and yard and the applicant's residence and yard are not visible to each other. The proposal would create a second story that would extend into the setback and over his residence.

Britain confirmed with Mr. Wallin the location of his residence on the map. Britain confirmed with Mr. Wallin that the addition would not be located closer to the property line, but that the applicant's house would create a second-level view of Mr. Wallin's back yard and residence. Mr. Wallin stated that currently the residences are off-set. The proposal would make the applicant's house L-shaped and extend directly towards his residence.

Raisa Bershteyn, 14933 Excelsior Boulevard, property owner, stated that the floor plan is the ideal design. Every side of the house is impeded by a setback or road. The second story addition was the only option for the south east side of the residence. They tried to follow the guidelines and do it as small as possible. There is no basement in the house. They decided to

improve their living space. They tried to save the trees. She will keep the site clean. She stated that Mr. Wallin stated they could have the variance, but he wanted them to move the power line. She and her husband believed that the power line is not part of the variance issue.

No further testimony was submitted. The public hearing was closed.

Chair Wagner reviewed the primary issues.

Knight asked if there was an alternative to construct the addition without a variance in an effort to determine if a hardship existed. Olson stated that Commissioners may look at the floor plan and determine if it would be a reasonable configuration of the property. The Commission and staff respond to what is in the application.

Chair Wagner clarified that the existing residence is setback 25 feet. On the east side, the residence is also located in the setback. Chair Wagner asked if the residence was currently nonconforming. Olson stated that there may be a way to construct an addition that would not require a variance, but the issue to decide is if the proposal is reasonable for the site.

Knight stated that the residence does not currently conform to ordinance standards. Davis agreed. Knight felt that considering other options would help him determine what would be reasonable. Olson agreed that simple solutions existed for previous applications. The current proposal is not as simple. Preserving the tree was a consideration. The Commission's role does not include attempting to assess an applicant's living space needs.

Edge felt that the addition was reasonable and that it met the intent and spirit of the variance ordinance. She empathized with the adjacent neighbor. She resides near the proposed site and understood its restrictions. She supported staff's recommendation.

Britain agreed with Edge. The design of the residence and the restrictions on each side of the residence make the application the best use of the property. He asked if conditions could be included prohibiting windows located on the south side of the proposed addition. Olson stated that several factors would need to be considered to determine the rationality of such a condition.

Knight asked if the building code would prohibit windows on the south side. Olson confirmed that the building code restricts windows located within a certain distance of another structure for fire safety issues.

Hart referred to the definition of "reasonable." She felt that if there were no neighbors and only the proposed site was considered, the application would seem reasonable. She felt it was a rational design and it would be difficult to do it another way. Restrictions, including the setbacks, a tree, and the wooded area in the front, made the proposal the reasonable choice.

Maes concurred with Hart. She was happy the applicant would remove a non-conforming shed and sunroom. She supported staff's recommendation.

Chair Wagner supported the proposal due to the uniqueness of the lot.

Knight felt the application was reasonable due to the lay of the land and the other available options. He supported staff's recommendation.

***Egge moved, Hart seconded to adopt the resolution on pages A1–A4 of the staff report and as modified by the May 1, 2003 Change Memo. This resolution approves a rear yard setback variance from 39 to 25 feet for a 1326-square-foot, 2-story addition to the home at 14933 Excelsior Boulevard, 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 existing home is setback 25 feet from the rear lot line and does not meet the required rear yard setback.
  - b. The floor plan of the existing home makes it difficult to locate the addition to meet the required setback.
  - c. The proposed location of the addition protects a large oak tree.
2. The variance would be consistent with the spirit and intent of this ordinance for the following reasons:
  - a. The addition does not further encroach into the existing rear yard setback.
  - b. A sunroom, currently located within the proposed 25-foot rear yard setback would be removed.

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. Before issuance of a building permit, the applicant must remove one of the two sheds on the property and move the remaining shed into compliance with City ordinances.
3. The applicant must remove the sunroom on the rear of the home before the City issues a building permit.
4. The garbage and debris must be removed from the site before issuance of a building permit.

5. Before issuance of a building permit, the applicant must submit a plan showing tree protection measures for the large oak on the west side of the home, and the stand of evergreen trees. Additionally, perimeter silt fencing along the southerly lot lines to protect trees and abutting properties from construction activities, and the applicant must prevent dirt and sediment from being tracked on Excelsior Boulevard.
6. This variance will end on December 31, 2004, unless the City has issued a building permit for the project covered by this variance or approved a time extension.

*Egge, Hart, Knight, Maes, Britain, and Wagner voted yes. Gallop was absent. 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.

## 8. PUBLIC HEARINGS

### **A. A front yard setback variance from 35 feet to 20 feet, a side yard setback variance from 10 feet to 7 feet to remodel an existing home with a living space addition, and a new two-stall garage at 12116 Brenlyn Lane for Robert Minnihhan (03010.03a)**

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

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

Chair Wagner questioned if the shed encroached into the setback. Thomas stated that sheds less than 120 square feet in size have no setback.

Robert Minnihhan, 12116 Brenlyn Lane, applicant, felt staff did an excellent presentation. The crooked lot line created the hardship.

The public hearing was opened.

No testimony was submitted and the hearing was closed

Hart noted that the lot did not strictly meet the requirement of a small lot, but that the neighborhood was very close to being a small-lot neighborhood. She acknowledged there were a lot of supportive neighborhood comments and that the addition would be very nice.

Chair Wagner commented that if the floor plan was created to meet setback requirements, it would be extremely nonfunctional.

*Hart moved, second by Egge, to adopt the resolution on pages A1–A4 of the staff report. This resolution approves front and side yard setback variances for livable and garage space additions at 12116 Brenlyn Lane for Robert Minnihan, 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 subject property's substandard size, width, and corner lot designation. A two-stall garage could not be attached to the home without requiring either a side or front yard setback variance.
  - b. Hardship is further caused by the current layout of the applicant's home. The proposed 20-foot front yard setback provides for functional access and circulation between existing and proposed living space.
2. The variance would be consistent with the spirit and intent of this ordinance for the following reasons:
  - a. The proposed side yard setback would accommodate a standard drainage and utility easement, as well as provide adequate separation between structures.
  - b. Given the 10-foot right-of-way adjacent to Brenlyn Lane, the proposed front yard setback would provide adequate separation between the addition and roadway.
  - c. The proposed front yard setback is similar to other front yard setbacks in the Brenlyn Lane area.
  - d. There are a variety of garage styles, sizes, and locations in the Brenlyn Lane 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. The building materials and color of the proposed addition must compliment the existing home.
3. Prior to issuance of a building permit:
  - a. Submit a construction management plan for staff review and approval. The plan must indicate location of tree protection and erosion control fencing, as well as areas for stockpiling earth and construction materials.

- b. Tree protection and erosion control fencing must be installed for staff review and approval. Fencing must be maintained throughout the course of construction.
- 4. This variance will end on December 31, 2004, unless the City has issued a building permit for the project covered by this variance or approved a time extension.

***Egge, Hart, Knight, Maes, Britain, and Wagner voted yes. Gallop was absent. 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**

***Hart moved, second by Egge, to adjourn the meeting at 7:45 p.m. Motion carried unanimously.***

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