

**MINNETONKA PLANNING COMMISSION  
MINUTES**

**JUNE 5, 2003**

**1. CALL TO ORDER**

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

**2. ROLL CALL**

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

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

**3. APPROVAL OF AGENDA**

The agenda was approved as submitted with the postponement of Item 8D, a minor amendment to the master development plan for a service and office at 12520-12550 Wayzata Boulevard for Morries Properties L.L.C. (86127.03a), to the June 19, 2003, Planning Commission meeting. Olson explained that, due to the absence of two Commissioners, three votes equaled a majority and were necessary to pass a motion. The items that required five votes to pass a motion still required five votes.

**4. APPROVAL OF MINUTES:** May 15, 2003

*Gallop moved, second by Maes, to approve the May 15, 2003, meeting minutes as amended and as follows:*

Add to Item 8A:

- Chair Wagner excused Commissioners Hart and Egge from the discussion and action taken on The Sanctuary project due to a conflict of interest.

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

## **5. REPORT FROM STAFF**

Olson briefed the Commission on land use applications considered by the City Council at its meeting of June 2, 2003:

- Introduced an ordinance amending the city's floodplain overlay zoning district.
- Introduced an ordinance rezoning 3051 and 3111 County Road 101 and 3030 Groveland School Road from R-1, low density residential, to PUD, planned unit development, and adopting a master development plan for CoPar Development, LLC. The PUD zoning would preserve trees. Off-site drainage and traffic were main issues discussed.
- Approved the revised Hopkins School District Management Plan. Four plans addressed different events held at the facility. Hart suggested providing neighbors with copies of the plans.
- Adopted a resolution approving a conditional used permit to allow up to 15 percent of the floor area of a building for storage at 11100 Cedar Lake Road for Mount Properties.
- Adopted a resolution approving a conditional use permit, with a parking lot setback variance, and site plan review concerning an automated teller machine and night deposit box at 9999 Wayzata Boulevard for General Mills Federal Credit Union.

Olson informed the Commissioners that a complete application has been received by the City for the Meadowwoods Golf Course. A public hearing is tentatively scheduled for July 17, 2003. The Sanctuary project will be reviewed by the City Council on June 23, 2003. The School Board is planning to have two meetings to discuss the parking and traffic for the ice arena and neighbors concerned with the height and appearance of the bubble.

Olson announced that a special study session will be held with the Planning Commission, City Council, and auto dealers to review the Interstate 394 ordinance in relation to storage of vehicles on commercial sales lots. The tentative date is July 21, 2003. Olson welcomed Commissioners to contact him to discuss the issue.

Olson provided background on a flyer regarding the Sensible Land Use Coalition. Real case scenarios that used creative solutions to handle drainage problems will be discussed. Clarion Hills will be used as one example.

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

## **7. PUBLIC HEARINGS: CONSENT AGENDA**

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

*Hart moved, second by Maes , to approve the item listed on the Consent Agenda as recommended in the respective staff report as follows:*

**A. Resolution approving a front yard setback variance from 35 feet to 29 feet for an enclosed entry at 3811 Dartmouth Drive for Debi Berns (03007.03a)**

Adopt the resolution on pages A1–A3 of the staff report, which approves a front yard setback variance from 35 feet to 29 feet at 3811 Dartmouth Drive for Debi Burns. This resolution is based on the following findings:

1. Strict enforcement would cause undue hardship because of the following circumstances that are unique to this property:
  - a. The applicant is proposing to use the property in a reasonable manner.
  - b. The proposed 66 square-foot addition is an entryway or vestibule, and does not constitute a significant addition of livable space.
2. The variance would meet the intent of the ordinance since:
  - a. Adequate separation would be provided between the entry and Dartmouth Drive. Right-of-way in front of the home is 15 feet in width; so the addition would be 44 feet from the paved roadway.

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, 2004, unless the City has issued a building permit for the project covered by this variance or approved a time extension.

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

## **8. PUBLIC HEARINGS**

**A. Preliminary plat, with lot-width-at-frontage variance, to divide one lot into two lots at 14400 Woodhaven Road for Timothy J. Uzzell (03016.03a)**

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

Thomas reported. She recommended denial of the application based on the findings listed in the staff report.

In response to Maes' question, Thomas explained that the drainage and utility easement would not affect the buildable area.

Gallop asked if staff talked to neighbors in a similar situation to determine their intentions. Thomas responded in the negative. Gallop noticed a lot of items stored on the site that he assumed were in violation of the City's ordinances. Thomas stated that equipment and material used as part of a home business is required to be stored inside. While construction is taking place, construction materials can be stored outside

Knight asked if there is a time limit to complete a construction project. Thomas explained that a project may continue until completion as long as work is being done and a building permit is approved.

Olson agreed with Thomas and explained that a time limit is given for construction to start once a site and building plan review has been approved. An extension may be granted.

Chair Wagner asked if the existing gravel driveway would become an easement. Thomas answered in the affirmative.

Timothy Uzzell, 14400 Woodhaven Road, applicant, requested that the lot-width-at-frontage variance be approved. He would construct a rambler, one-story residence. He is a general contractor. Mr. Uzzell explained that if no work was done within one year, a new building permit would need to be obtained and additional fee paid.

In response to Knight's question, Mr. Uzzell stated that the residence he would construct on the proposed lot would be done in six months.

Gallop asked where the access was for the lot-behind-lot to the east of his property. Mr. Uzzell stated that access is off Orchard Road.

The public hearing was opened.

Brian Franks, 14128 Woodhaven Road, supported the variance and lot division. He appreciated the remodeling done by the applicant on his current house. He felt it benefited the neighborhood and the City. He was confident that the residence Mr. Uzzell would construct on the proposed lot would be aesthetically pleasing and of high quality. From Woodhaven, it would be located back far enough so it would not impact the neighborhood.

Mr. Gallus, 14355 Woodhaven Road, stated that the applicant's house was not livable when he took possession of it. Now, the current house is better than any other house in the neighborhood.

No additional testimony was submitted and the hearing was closed.

Hart reviewed with Thomas the history of previous similar lot divisions.

Chair Wagner asked if there had been a policy change since the late seventies/early eighties, when the last "neck" lot divisions were approved. Olson reviewed past city policies and changes in ordinances concerning creating lots behind lots. He noted the City's concerns with open space. The previous approvals predated the buildable area ordinance. Olson stated that lots behind lots are being looked at on a case-by-case basis. Issues looked at include whether proposals "fit" with the neighborhood and setting a precedent for additional situations that would also impact the character of the neighborhood.

Knight asked if steep slopes and trees are part of open space and if they are all taken more seriously now. Olson noted that Minnetonka residents passed a referendum to preserve open space, thus demonstrating the support for saving open space.

Knight was concerned with being consistent with similar lots that were approved in the neighborhood. He asked if an application approved twenty years ago should get less weight than an application approved three years ago. Olson stated that courts have determined that anything over one year old is no longer a precedent. The fairness issue is a subjective decision. To the extent that granting this application or potentially multiple lot-behind-lot subdivision applications would change the neighborhood needs to be considered. Staff's recommendation is to deny the application because staff is concerned with setting a precedent, but the Commission will make its own determination.

Hart felt that the previous splits were done under different ordinances and policies. Some of the earliest lot splits did not require a variance. She agreed with staff's conclusion.

Chair Wagner echoed Hart's comments. After looking at the worst-case scenario, he supported staff's recommendation.

Maes felt the proposal, and potential additional lot-behind-lot divisions, would change the open space pattern in the neighborhood. She was concerned with approving variances that would result in loss of open space.

Gallop saw both sides of this case. The application only needed one variance. On the other hand, he was not a supporter of lots-behind-lots. The precedent has been set in the

neighborhood already. His biggest concern was that the proposal would set a precedent for the lots on the north side of Woodhaven Road. He leaned toward denial of the application.

Knight strongly supported staff's recommendation. He felt it would not be consistent with the neighborhood character; it would result in the loss of open space; and it would set a precedent for many lots behind lots in the neighborhood. He was not comfortable with the proposed split, let alone additional similar splits in the neighborhood. He wanted to protect neighbors' expectations that there would not be a residence located in a back yard. He acknowledged the applicant's good reputation.

***Hart moved, second by Gallop, to recommend that the City Council deny preliminary approval to the plat, with variance. This denial is based on the following findings:***

- 1) The proposal is not consistent with neighborhood character.
- 2) The proposal is not consistent with the City's open space preservation policies.
- 3) Approval of the proposed plat may set a precedent for future lot divisions and/or lot division requests with variances in the Woodhaven Road/Orchard Road area.

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

Chair Wagner stated that the item is tentatively scheduled to be reviewed by the City Council at its June 23, 2003, City Council meeting.

**B. Preliminary plat for a two-lot subdivision, with lot area and depth variances, at 4760 Dominick Drive for Christopher J. Sirianni (03005.03a)**

Chair Wagner introduced the proposal and called for the staff report. Gallop excused himself from the discussion and action on this item due to a conflict of interest.

Thomas reported. She recommended denial of the application based on the findings listed in the staff report.

Maes asked what would need to be done to build on the site because of its low elevation. Thomas explained that a low area on the site was not a wetland, but it was incorporated into the City's storm water management plan. The proposal would relocate this area, but maintain the same water volume and allow more buildable area.

Chair Wagner asked what effect one larger property in the neighborhood had in calculating the neighborhood's average lot size. Thomas explained that the median lot size is used to avoid a couple odd-sized lots from skewing the results.

Chris and Tanya Sirianni, 4760 Dominick Drive, applicants, thanked staff for their hard work. Ms. Sirianni stated that their proposal would slightly increase the volume of water the drainage and utility easement would hold. Ms. Sirianni stated:

- When Dominick Way was paved, the City overlapped onto their property one and a half feet in the front and almost three feet in the back of the lot. Approximately 500 feet of the Sirianni's property was covered. Upon approval of the proposal, the applicants would quick deed that property to the City. The error was discovered during the survey process.
- The applicants purchased their house as an abandoned HUD home. She noted the difficulty of finding affordable housing and described the residence's condition of disrepair. The Sirianni's remodeled the inside and outside of the residence. They believed that a new home would compliment the neighborhood.
- Ms. Sirianni believed that their neighborhood is a good one for affordable housing. Her neighborhood welcomes affordable single-family homes. People will continue to build outside of the metropolitan area if affordable housing is not found in the metro area.
- She noted the difficulty neighbors have with maintaining the rear of their long deep lots. Their rear yard appears to be a vacant lot. They have found items dumped there.
- Not all people prefer to maintain a larger lot.
- The proposal would be consistent with the median lot area.
- She did not feel that the proposal would set a precedent.
- The proposal would not negatively affect the market value of the neighboring homes.
- The person who opposed the project may have had the wrong address, because the complaint referred to police responding to the address and they have not had police respond to their home.
- They have no intention to rent their current home.
- The characteristic of the neighborhood would not change. In fact, it currently appeared awkward that a home is not located on the vacant lot.
- The lots are narrow and deep, so one does not get a sense that the lots are big when driving down Dominick Drive.
- She pointed-out large, average, and small size lots in the area.
- She provided an overview of the "huge" variety of lot sizes.
- The proposed lot division would be in the decent range of the median.
- The proposed lot division would not change the median.

- The proposal would not affect the baseball field area. She enjoyed watching the games. The large, open space would remain. Possibly the City planners did not visualize that open space remaining.
- The proposal would not create a privacy issue.
- The majority of the homes east of the four hundred foot radius are smaller homes and would be the homes viewing the proposed lot.
- The proposal would complement the neighborhood.
- The backyards would come together nicely.
- There are few principles with the proposal that would support a precedent for other lot divisions within the Dominick Drive area. Many factors contradict the fact that the proposal could be used as a precedent. She reviewed how the size and shape of the other lots identified are smaller and less suitable in shape. There is also a greater distance from the back of the applicant's residence and the back of the neighboring lot.
- She requested the Commissioners consider the overall support of the proposal by the neighborhood.

In response to Chair Wagner's request, Ms. Sirianni indicated where the grove of trees was located in the rear yard.

Knight asked about the applicant's use of median lot size. He was unclear why the applicant's felt the proposal would not create a precedent. Ms. Sirianni stated that the other lots have different median lot sizes surrounding them. She provided the dimensions.

Chair Wagner clarified that open space is defined as a "non-developed area," not necessarily green space with nothing on it.

Knight noted that splitting a lot does not, in itself, create affordable housing. Ms. Sirianni stated that they would create a smaller lot, which would result in a smaller home, which is the norm for their neighborhood. The median residence price in Minnetonka is \$280,000. Mr. Sirianni stated that their current residence was just appraised at \$180,000 and \$170,000 would meet affordable housing standards.

Chair Wagner asked if the applicants would agree to a restriction that would limit the value of the house to affordable standards. Ms. Sirianni felt it was a great idea, but it was difficult to commit without getting estimates for the price of residences built in the neighborhood.

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

Chair Wagner reviewed the primary issues.

Chair Wagner asked if there were other cases of approving a lot split with affordable housing as a condition of approval. Olson answered in the negative. He recalled the closest example would be the Halley project on Sussex, which included a single affordable housing residence and three townhouses.

Maes stated that it would change her opinion of the proposal if it could be indexed or put into a trust to preserve it as affordable housing.

Hart asked when the applicant's neighborhood and the neighborhood across the street were developed. Thomas stated that properties on both sides of Dominick Drive were developed in the 1950's.

Chair Wagner thanked the Siriannis for the well thought-out and professional presentation.

Maes felt the current proposal would not change the character of the neighborhood. She could go either way.

Hart understood what Maes was saying. She pointed-out the shaded, smaller lots on Dominick Drive. She felt subdividing the proposed lot would change the character of the neighborhood on the other side of Dominick Drive. She felt staff's reasoning was right-on that aspect of it.

Knight agreed with Maes and Hart. He liked the variety of lot sizes, but agreed with Hart that the smaller lots are on the other side of Dominick Drive. He supported staff on that point.

Chair Wagner generally does not support approving lot sizes below the minimum ordinance standard, but, after viewing the site, he saw that the proposed area appeared to be an abandoned lot. He favored a condition to keep a proposed future residence affordable housing long-term. The applicants provided a valid argument that the site is located in a different median range and a number of close properties are similar in size.

Hart and Maes agreed with the staff report in regard to the open space impact.

Knight clarified that a property owner has the right to build a structure on his or her property if the structure conforms to ordinance requirements.

Chair Wagner noted that the Commission agreed that there was the potential for setting a precedent.

Knight stated that the smaller lots were done a long time ago. He was concerned with setting a recent precedent for smaller lots.

Chair Wagner confirmed with the Commissioners that they agreed that reconfiguring the lot to create buildable area from the storm water easement was acceptable.

Chair Wagner thanked the applicant for an excellent presentation. He suggested the applicant consider proposing a commitment to an affordable home as a basis for supporting the application.

***Maes moved, second by Hart, to recommend that the City Council deny the preliminary plat approval of the Sirianni Addition, date stamped February 26, 2003. Denial is based on the following findings:***

1. Given the average median size of properties in the Dominick Drive and Dominick Way neighborhoods, the proposed plat would not be in character with the surrounding residential area.
2. Approval of the proposed plat may set a precedent for future lot divisions and/or lot division requests with variances in the Dominick Drive area.

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

**C. Site and building plan review, with setback variances, to build a two-story office building at 5101 County Road 101 for Brian H. Burdick (02037.03a)**

Chair Wagner introduced the proposal and called for the staff report. Gallop returned to the meeting.

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

Knight asked if any project could change the service level of intersections. Gutoske stated that it would depend on the size of the project compared to the volume of traffic on nearby streets.

Brian Burdick, 684 Excelsior Boulevard, Excelsior, applicant, complemented staff's presentation. He felt the proposal would be a nice improvement for the area. Mr. Scott Nelson, the architect for the project, was also present to answer questions.

Hart asked if the space was already leased. Mr. Burdick answered in the negative and acknowledged that office vacancy rates were up. Small office space is in greater demand than large office space and would be what they would provide.

Knight asked if parking caused an unforeseen problem, if he would work with K-Mart to acquire additional parking. Mr. Burdick stated that he would be willing to work with K-Mart to alleviate a parking congestion problem.

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

Hart felt it was a good proposal.

Gallop saw the proposal as a slam-dunk. A hardship was created by the change to County Road 101 and the site's lot shape. The footprint would not be changed very much. He felt the variances were justified. He supported the project.

Knight and Maes concurred with Gallop.

***Knight moved, second by Hart, to approve the site and building plans, with the following variances:***

- Front yard setback variance from 50 feet to 32 feet;
- East side yard setback variances from 41 feet to 10 feet; and
- North side yard setback variance from 41 feet to 10 feet.

Approval of the variances is based on the following findings:

1. The proposal would meet the required standards and ordinances for a site and building plan approval.
2. The proposal would meet the required standards for a variance, because:
  - a. There is a unique hardship to the property caused by the lot's unique shape and narrow width resulting from the public improvement of State Highway 101 (now County Road 101).
  - b. The variance would meet the intent of the ordinance because it would maintain the same setbacks as the existing structure.

Approval of the site and building plans, and variances is subject to the following conditions:

1. The site must be developed and maintained in substantial conformance with the following plans, unless modified by the conditions below:
  - Site and landscape plan, dated March 13, 2003.
  - Building elevations and floor plans, dated May 22, 2003.

2. Submit the following to the City before the City issues a building permit or before starting any site work:
  - a. Final site, utility, and erosion control plans for staff approval. The following revisions must be made to the plans:
    - i) The compact parking space closest to the building must be changed to a regularly-sized parking space.
    - ii) One of the spaces next to the trash enclosure must be deleted to improve access to the trash enclosure.
    - iii) The proposed water service cannot be tapped in the private water service to K-mart. The water service must come from the public water main in County Road 101.
  - b. Final landscape and irrigation plan for staff approval. The cost of the landscape improvements must be at least equal to two-percent of the project's building and infrastructure costs.
  - c. A letter of credit or cash escrow for 150% of the estimated cost of all required landscaping.
  - d. An illumination plan for staff approval.
  - e. All required hook-up fees.
  - f. Submit a construction management plan for staff approval.
  - g. Fence all trees to be preserved and install erosion control measures.
3. The property owner is responsible for replacing any required landscaping that dies.
4. All rooftop and ground-mounted mechanical equipment, and exterior trash and recycling storage areas, must be enclosed with materials compatible with the principal structure, subject to staff approval. Low profile, self-contained mechanical units that blend in with the building architecture are exempt from the screening requirement.
5. The building must be protected with a fire sprinkler system pursuant to the NFPA 13.

6. Approval does not include the signs shown on the drawings. Separate permits are required from staff.
7. Construction must begin by December 31, 2003, unless the Planning Commission grants a time extension.

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

## **9. ADJOURNMENT**

*Hart moved, second by Gallop, to adjourn the meeting at 9:00 p.m. Motion carried unanimously.*

By: \_\_\_\_\_  
Lois T. Mason  
Planning Secretary