

**MINNETONKA PLANNING COMMISSION  
MINUTES**

**AUGUST 7, 2003**

**1. CALL TO ORDER**

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

**2. ROLL CALL**

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

Staff members present: Planning Director Geoff Olson, Principal Planner Cary Teague, Planner Susan Thomas, and Environmental Coordinator Jo Colleran.

- 3. APPROVAL OF AGENDA:** The agenda was approved as submitted. Due to a conflict of interest, Chair Wagner recused himself from the discussion and action on Item 8D, a minor amendment to the master development plan for a proposed parking ramp at 401 Carlson Parkway for Carlson Real Estate Company (98068.03a).

- 4. APPROVAL OF MINUTES:** July 17, 2003

*Egge moved, seconded by Maes, to approve the July 17, 2003, meeting minutes as amended and as follows:*

Last paragraph of page 31:

Knight questioned what made the proposed units proximity to the wetland acceptable. Chair Wagner stated that the zero wetland buffer setback application was such a unique situation that it could stand on its own and not cause a precedent. He noted that the Council will probably want to discuss this issue because it is a departure from past practice. The goal of the wetland setback variance to zero feet is proposal was to increase the wetland area. Colleran stated that the restoration of the wetlands is the overall ~~component~~ goal of the proposal. Colleran did not believe that the wetland setback variance would have any adverse impact to the wetlands. An agreement would be entered into that would restrict the use of pesticides and chemicals. The type of purchasers who would buy one of the proposed units would police themselves, as well as the City and the homeowner's association.

*Egge, Gallop, Hart, Knight, Maes, Britain 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 July 28, 2003.

- Adopted Ordinance 2003-18, approving an amendment to the master development plan for Yellowstone Trail at 408 Parkers Lake Road.
- Adopted Resolution 2003-058, approving a conditional use permit for construction of a 26-foot by 45-foot detached garage with a height of 15 feet at 12201 Golden Acre Drive for Randy Gerard.
- Adopted Resolution 2003-061, approving a conditional use permit for a religious facility at 11901 Excelsior Boulevard and 11815 Pioneer Road and the site and building plans for West Oaks Community Church at 11901 Excelsior Boulevard and 11815 Pioneer Road. The City Council noted that the project would improve drainage for the area.

Olson reported that a neighborhood meeting was held the previous evening regarding a proposed senior housing project proposed to be located on the north side of Highway 7, across from the Minnetonka High School. A completed application had not been received by the City for the project.

Olson announced that a neighborhood meeting is scheduled Wednesday, August 13, 2003, at the Minnetonka School District Center, 5621 County Road 101, at 7:00 p.m., to discuss constructing a dome for the Minnetonka High School

## **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.

*Gallop moved, second by Britain, to approve the items listed on the Consent Agenda as recommended in the respective staff reports as follows:*

### **A. Site and building plan review to remodel a restaurant at the Ridgedale Shopping Center at 12461 Wayzata Boulevard for Schreiber & Mullaney Construction (03027.03a)**

Approve the site and building plans. Approval is based on the following findings:

- 1) The proposal meets all architectural and site plan standards outlined in city code.

- 2) The proposal would not impose any negative impacts on the mall or surrounding area.

Approval is subject to the following conditions:

- 1) Construction must be in substantial conformance with the following plans:
  - (a) Site plan dated 06/04/03
  - (b) Elevations dated 06/04/03
  - (c) Landscaping plan dated 06/04/03
- 2) The existing “Lakeshore Grill” sign must be removed before placement of any new sign above the proposed vestibule.

**B. Rear yard setback variance from 25 feet to 14 feet to build a screen porch at 14617 Orchard Road for Carole Ann Mengelkoch (03033.03a)**

Adopt the resolution on pages A1–A3 of the staff report, approving a setback variance from 25 feet to 14 feet for a screened porch on the back of the home at 14617 Orchard Road. Approval 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 hardship is caused by the existing location of the home, and the change in required setbacks for lots without frontage.
2. The variance would be consistent with the spirit and intent of this ordinance for the following reasons:
  - a. The large lot character of the neighborhood completely separates and screens the impact of any addition to the home.
  - b. The closest home to the proposed porch is 130 feet away and provides adequate separate of uses.

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 garage must compliment the existing home.

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

Chair Wagner explained that both of the Consent Agenda items were final decisions subject to appeal to the City Council.

## 8. PUBLIC HEARINGS

### A. Front yard setback variance from 35 feet to 25 feet to build a house on a vacant lot at 14906 Williams Lane for Terry Picha (03029.03a)

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

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

Gallop and Davis reviewed the setbacks of the neighbor east of the site. Davis explained that the residence's setback requirement would be 25-feet, but because it is a corner lot, the ordinance allows the front setback to be reduced by ten feet.

The public hearing was opened.

Terry Picha, applicant, introduced himself and his wife, Kathy. He stated:

- The proposal would allow the construction of the seventh residence on a small cul-de-sac.
- He measured curb to garage for the other houses on the street and believed that his house would be in character with the other setbacks.
- 14970 Williams Lane has a larger setback because of a spring in the front yard.
- 14901 Williams Lane and 14911 Williams Lane were 39 feet from the curb to the garage.
- The setback for 15101 Williams Lane was 42 feet.
- He could excavate the hill to build the residence further back. The proposal would be more environmentally friendly.
- He has a landscape business and is familiar with landscape architecture.
- The proposal, with less excavation, would fit the neighborhood better.
- The proposed house was designed as narrowly as possible.
- He desired a porch in the rear.

- He spent \$7,000 in construction loans without completing any construction yet.
- He asked the Commissioners to consider the application. He felt it was reasonable.
- He was present to answer questions.
- After speaking with Davis last summer, he had the impression the variance would be approved. He was shocked when staff recommended denial.

Egge asked if the existence of the spring was part of the reason for the proposal. Mr. Picha stated that the spring does not affect his property.

Egge referred to the character of the neighborhood and what was currently being done at 14900 Williams Lane. She questioned if the new structure would be flush with the residence at 14900 Williams Lane.

Knight asked if Mr. Picha's measurements were comparable to the City's measurement of setbacks. Davis explained that Mr. Picha measured from the road edge instead of where the property line met the street easement. Mr. Picha confirmed that his measurements were from curb to residence.

Knight asked what the applicant would do if the variance was denied. Mr. Picha stated that he would have to excavate more of the rear hill and construct a series of retaining walls.

Gallop asked if the right-of-way is equal on the north and south sides of the street and if the hill constituted a hardship unique to the site. Olson stated that the hill could be considered a hardship. Each Commissioner would make his or her own judgment call. Commissioners may wish to determine if the porch was causing the need for grading. City policy considers porches accessories and not cause for a variance hardship.

Davis explained that the street is not centered. The paved part of the street is closer to the residences on the south side of the street.

Egge confirmed with Thomas that the applicant's proposed house would line-up with the house on the east.

Britain asked if staff gave the applicant an opportunity to revise the application after the applicant received staff's recommendation. Olson explained that large development applications usually include negotiations between staff and the applicant. The current application basically has two options, with or without the variance, with little room left for compromises.

Britain asked Mr. Picha if he was made aware of staff's recommendation of denial and decided to proceed with the application anyway. Mr. Picha thought the application would be

approved. He corrected that he was requesting eight feet off the curb. Chair Wagner explained that the curb is part of the street easement.

No additional testimony was submitted and the hearing was closed.

Egge asked if the front of the proposed residence would be flush with the house located on the east. Teague pointed out the setbacks and confirmed that it would.

Chair Wagner reviewed the issues.

Hart received confirmation that 14900 Williams Lane was as built in 2002. Teague explained the setback requirements for a corner lot. The ordinance allows one of the two front setback's to be reduced ten feet. 14900 Williams Lane reduced its front setback by ten feet on the Williams Lane side.

Knight recognized that the proposed residence would be flush with 14900 Williams Lane, but that 14900 Williams Lane met ordinance requirements because it is a corner lot. No variance was needed.

Chair Wagner supported staff's recommendation. He referred to the part of the ordinance that considered porches as accessory structures and its determination that accessory structures are not considered a hardship to justify a variance.

Knight concurred with Wagner. He noted that the proposal was not for an addition, it would be new construction. He did not think grading and a retaining wall met the hardship justification. He did agree that, aesthetically, the house would line up with the house to the east.

Egge drives County Road 4 every day as she lives down the road. The residences on the end of the street, that have larger front yard setbacks, are not visible from County Road 4. She leaned toward approving the variance because of what was currently going on in the neighborhood. She supported the application.

Gallop could be swayed either way, but he did not see a hardship. Aesthetically, the 25-foot setback appeared to fit in with the neighborhood, but, in reality, it would not.

Maes agreed that the application is for new construction and there should be an attempt to construct within ordinance requirements. The residences 14910 and 15100 Williams Lane seem to be more the character of the neighborhood than the house on the corner. She referred to the porch being an accessory structure and supported staff's recommendation.

Britain mentioned that the applicant was aware of the situation when he purchased the property. He favored sticking to the code on new construction unless there is a clear hardship. He identified the residence's design and the financial aspect as the issues for the applicant. He supported staff's recommendation.

***Hart moved, seconded by Maes, to deny the proposed front yard setback variance from 35 to 25 feet at 14906 Williams Lane for a new home. Denial is based on the following findings:***

- a. The property does not contain any unique physical circumstance to justify a hardship for the variance.
- b. The applicant could fit the proposed home on the lot without significant modifications.
- c. A 25-foot front yard setback is not a characteristic setback of the neighborhood.

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

Chair Wagner stated that an appeal of the Planning Commission's decision must be made in writing to the Planning Director within ten days.

**B. Variances for a second-story addition to the home at 2819 McKenzie Point Road for Jack and Betsy Randall (02062.03b)**

- **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 4 feet for the north side wall;**
- **side yard setback variance from 7 feet to 3 feet for the over-hand on the north side of the home; and**
- **side yard setback variance from 7 feet to 1-foot for the existing air-conditioner.**

Gallop requested a recess to review the materials provided that night. Olson reviewed the 30-page addition to the agenda. Olson stated that staff received the items at 3:30 p.m. the day of the meeting. The City Attorney provided a response to the items received. Olson referred the audience to copies of the additional materials.

Hart felt a short recess would not be adequate to review the 46 pages. She suggested either postponing the item to another meeting or disregarding the material since it was submitted so late.

Knight asked if the Commissioners could legally disregard material that was submitted for review. He currently favored tabling the item. Olson stated that the City Attorney read every page of the submission when she prepared her response. He suggested the Commissioners focus on the merits of the case. The City Attorney clearly advised that the Planning Commission has the ability to either approve or deny the variance with the appropriate findings.

Chair Wagner favored having the opportunity to review the materials, as long as a deadline would not be violated.

Britain favored conducting the public hearing to allow those present the opportunity to present their comments. The item could still be continued to another meeting.

Gallop favored holding the public hearing at the same time the Planning Commission's decision was made.

Hart reminded that the Planning Commission has sufficient information to review and make its decision. She was inclined to proceed with the full review.

Knight concurred with Hart that there was adequate information to make a decision.

Britain clarified that the new information could be presented at the public hearing and that the whole review could be completed at the meeting.

***Gallop moved, seconded by Knight, to table Item 8B, variances for a second-story addition to the home at 2819 McKenzie Point Road for Jack and Betsy Randall (02062.03b), to give Planning Commissioners the opportunity to review materials received at the last minute, until the August 21, 2003 Planning Commission meeting.***

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

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.

Maes asked if the windows shown on the plan would be removed. Teague answered that the windows within the three-foot setback, on the north side of the home, would be removed from the plan.

Maes asked if the addition built within the 7-foot setback would decrease the size of a loft. Teague answered in the affirmative. Maes summarized that the proposal's plan would have the structure run straight back to the porch. Teague answered in the affirmative.

Gallop asked if the chimney would be abandoned. Teague stated that the chimney would stay.

Gallop questioned if the tree would be removed because of the addition's overhang. Teague referred that question to the applicant.

Jack Randall, 2819 McKenzie Point Road, applicant, spoke on behalf of himself and his wife Betsy. He thanked staff for their assistance. He stated:

- They offered to make changes in mediation such as removing windows or adding a screen on the porch for privacy for Mr. Sorenson, but the suggestions were not accepted by Mr. Sorenson.
- The architect advised against moving the addition back toward the lake or a seven-foot setback, because the structure would be like a bowling alley, value would be lost, and it could cause water issues.
- A four-foot setback would give them more room than most of their neighbors have.
- He referred to variances approved for 2809 McKenzie Point.
- The nature of the neighborhood was two-story homes.
- He understood the City's concerns with the air conditioner. He thought the air conditioner may be better off where it is, rather than on the north side of the roof where it would be more of a detraction that it is now. He had no preference.
- There would be no site line problems.

Betsy Randall explained that the Sorenson's fence currently deflects the air conditioner noise. Putting it on the roof would be more of a nuisance for the Sorenson's. It would not be an option to move the conditioner to the other side of the house because it would be next to that neighbor's bedroom windows.

Mr. Randall had his attorney present to answer questions.

Gallop asked what was planned for the chimney. Ms. Randall stated that it is used for the furnace. Gallop calculated that the chimney would be located in front of the windows. Mr. Randall stated that those windows would be for a loft and would not be used for a view.

Gallop asked if the tree would need to be removed. Ms. Randall stated that only a section of a branch would need to be removed. She was hopeful the tree would be saved.

Gallop asked if the air conditioner could be located at the back of the house. Mr. Randall stated that it would affect the driveway and the steps leading into the house.

Britain's questions had been addressed except for his biggest issue that the addition could not be done without trespassing on the neighbors' property. Mr. Randall invited Britain to speak with their builder and architect who advised them that it could be done. The walls would be constructed from the inside up. The only problem would be siding around the chimney. Scaffolding going up, rather than ladders, would accommodate the situation.

Britain mentioned the possibility of locating the air conditioner on top of the garage.

Maes asked about the south-side sidewalk. Ms. Randall explained that they removed a cement slab that would be replaced with grass on the south side. They plan to remove the north sidewalk cement slab as well and replace it with slate or stones to make it more like a pathway.

Knight asked about removing the porch. Ms. Randall preferred not to remove the porch because the windows open up the front of the house.

Mr. Randall explained that the porch is located the same distance back as the neighbor's residence to the south, which has two stories.

Chair Wagner called for a short recess, and the meeting was then reconvened.

The public hearing was opened.

Howard Roston, attorney representing Scott Sorenson, stated:

- He worked diligently to get his materials submitted as soon as possible. Eighty percent of his material was presented at the last meeting.
- He was willing to answer questions.
- He requested that the variances be denied.
- The current request is similar to the previous request that was denied.
- He questioned what had changed since last February.
- The applicants are seeking more variances than they previously asked for.
- This request does not reduce the existing non-conforming setbacks on the house, which is a goal of the ordinances.
- Moving the air conditioner does not mitigate a non-conformity.
- There are other reasonable options that do not require variances. The Randalls are not pursuing other options for aesthetic and/or economic reasons. Economic reasons alone are not a justification for a variance.

- The City Attorney did not render an opinion that the City should approve the application. She concluded that that was to be determined by the Planning Commission based on consideration of a number of factors.
- The property is not unique. He noted that all the other lots in the neighborhood are similarly narrow. All have similar lake frontage and similar sized structures.
- In every one of the other variances in the area, the non-conforming setbacks were reduced.
- He was unclear what was happening with the hard surface coverage.
- The application does not meet the findings standards to justify a variance.
- The Department of Natural Resources submitted a correspondence suggesting the application be denied because it did not meet the undue hardship test.
- Three other neighbors objected to the variances.
- The variances would encourage the non-conforming use.
- He provided an affidavit David Phillips' filled-out. It was similar to the last one submitted.

Chair Wagner asked Teague to describe the hard-surface coverage. Teague agreed with Mr. Roston that the change in the amount of hard surface coverage would be minor.

Knight noted that most of the other properties in the area have a second story. He asked why Mr. Roston felt the current proposal is not unique. Mr. Roston stated that Mr. Sorenson was not opposed to a second story if it met setback requirements. All of the other variances resulted in reduction of nonconformities.

Knight asked what could be done to reduce nonconformities. Mr. Roston was not comfortable discussing hypothetical situations, but referred to the options provided in the staff report.

Hart asked Teague to clarify if Mr. Hagen's initial request was to demolish the house because it was in such bad shape, but then he changed the plan to move the house. Teague confirmed her recollection.

Scott Sorenson, 2815 McKenzie Point Road, stated:

- Hans Hagen is the only neighbor out of eight that has not suggested tearing the house down and moving it back.
- Mr. Hagen did not because he was applying for his own variance.
- He moved his house back so it could be constructed wider.
- He advised the commission of the history of the previous variances on McKenzie Point Road. Every other variance applicant improved the non-conformities as part of the approval of the variance requests.

- He did not believe that the house could be maintained with the current setbacks. He provided a photograph of a person doing maintenance on the applicant's house while his foot was braced on the Sorenson's fence.
- His biggest concern is the porch. A deck constructed on top of the porch would allow those on the porch to look into his bedroom windows.
- He was disturbed by partying in the house at 12:45 a.m. one night last week.
- The air conditioner was "not that big of a deal."
- The other neighbors all had small lots or moved their residences back to justify the approval of their variances.

Knight asked if the porch was removed, if it would be similar to the Mr. Sorenson's house. Mr. Sorenson pointed out that the applicant's residence would be six inches from his lot line. Mr. Sorenson wanted the applicant's residence moved three feet further away from the adjoining property line. A variance would not be needed for the sideyard setback.

Mr. Sorenson told Knight that the porch and the six-inch distance to his lot line were his primary concerns.

Gallop clarified that the applicant's residence would still not meet the seven foot setback requirement if it was moved an additional three feet. Mr. Sorenson stated that the setback would then equal approximately six feet. He preferred six feet to six inches.

Britain asked Mr. Sorenson if he was aware of the location of the lot lines and the setbacks when he bought the house. Mr. Sorenson answered in the affirmative. He stated that at the time he moved in, Mr. Randall told him that he did not plan on adding a second story.

David Phillips, 1250 East Moore Lake Drive, Fridley, a licensed architect, introduced himself.

Egge pointed out that it was not in the Planning Commission's jurisdiction to decide if a structure was buildable. Chair Wagner agreed and added that trespassing was also a civil issue, not to be determined by the Planning Commission.

Mr. Phillips stated that a house cannot be constructed within six to eight inches of a property line without trespassing on the adjacent property. He stated:

- The previously approved application required a 42-percent reduction of hardcover.
- The applicant would have more hard cover than anyone else on the street.
- The proposed variances did not meet the ordinances two tests.
- The application would not mitigate any of the nonconformities.
- The ordinance requires the reduction of the impact of the adjacent property.

- The ordinances and the Department of Natural Resources require the denial of the variances unless some of the nonconformities are mitigated.
- There are variances required for the first floor.
- Mr. Soreson's residence met all setback requirements when it was rebuilt. The application cannot be approved unless some mitigation is included and there is none.

Eric Galetz, Suite 2300, 150 South Street, attorney for the Randalls', thanked staff for providing the Randalls with a copy of Mr. Rosten's letter. He felt the City Attorney did a great job of responding to Mr. Rosten's letter in a very short period of time and that staff did a good job of reporting the facts in the matter. He stated that there are two basic points. Mr. Rosten incorrectly stated that the variance cannot be granted because there are other reasonable uses of the property. Staff and the City Attorney advised the Planning Commission that the variances legally can be approved. The Planning Commission has the discretion to make the decision.

Mr. Galetz stated that he was a licensed architect up until June. The building inspections department would make the determination if the structure could be completed without trespassing on the adjacent property. Mr. Galetz stated that the Randalls' were available to answer any questions raised. He referred the Commissioners to staff's recommendation.

Britain asked Mr. Galetz if he felt the applicant was mitigating something in exchange for the approval. Mr. Galetz deferred the question to the Randalls or staff. He was not familiar enough with the facts. The report stated that there had been some mitigation concerning nonconformities. He identified the main issue to be not increasing the nonconformity and he knew it did not increase the nonconformity.

The public hearing was closed.

Knight asked if the Commission was required to deny these variances. Olson answered in the negative. He explained that the City Attorney determined that Mr. Phillips was in error when he stated that the Planning Commission was bound to deny the variances by code. Olson referred to the ordinance and concluded that the approval or denial was at the Planning Commission's discretion.

Knight asked about the three previous instances where the residences were moved in order to add a second story. Teague explained that Hans Hagen requested to move his house back in two of the instances. Staff did ask him to come into conformance with the removal of some nonconforming accessory structures.

In response to Knight's question, Teague explained that the variance on the north lot line was eliminated because the chimney would not be changed.

Knight asked if the steps could be expanded. Teague stated that the deck must maintain the 25-foot setback.

Gallop questioned whether the chimney would be functional and raised. Mr. Randall stated that the gas furnace vents out the chimney and it would not be changed. Teague stated that it would be a building code issue.

Chair Wagner confirmed with Teague that if the building code did not approve the plans, new plans would need to be submitted and reviewed by the Planning Commission.

Gallop asked what the negatives to reconstructing the entire house would be. Mr. Randall stated that the cost would be horrendous. Under this proposal the main floor would stay as it is. They only want to add a few bedrooms. The kitchen area was already remodeled. Moving the foundation would prevent any part of the house from being salvaged.

Ms. Randall stated that ponding occurs behind the house that would prevent moving the house back. It would create drainage problems. They have to have the water pumped out. They could add fill, but that would complicate the drainage problem.

In response to Knight's comment, Mr. Randall stated that the proposed porch would not stick out. Additional properties in the area, including Mr. Sorenson's, had a deck that jetted-out and would be flush with the porch.

Chair Wagner reviewed the primary issues.

Olson confirmed for Knight that the encroachment onto the adjacent property during construction should be left to private property law. It would be a civil issue.

Gallop had trouble finding a basis to justify a hardship. The applicants could make changes without the need for variances or for lesser variances. A hardship has not been proven. He believed that the City has been too liberal giving variances in the McKenzie Point Road area.

Egge felt there was a hardship caused by the existing structure. The fact that there are other options is not reason in itself to deny the variances. The definition of hardship is based on practical difficulties. The proposal would improve the site. The pros outweighed the cons. The proposal would be in character with the neighborhood, a second story addition. The footprint would not change. If the footprint changed, it would be completely different for her. She relied on the City Attorney's definition of "undue hardship" and challenged Gallop's view.

Knight did not believe that the standard was being met. The request was based on economics. He did not believe that the proposal improved anything. The standard for a variance was not met.

Britain felt that the new plan was the right thing to do, but he did not see enough of an improvement. There should have been some mitigation of non-conforming setbacks. It was not practical to move the entire house. He continued to oppose the variances.

Hart referred to the ordinance and stated that the second addition would be a reasonable use. The economic issues aside, it does meet the hardship standard and that was why staff recommended it.

Maes supported the findings for a hardship. The second story does work better. After walking the site today, she found the entire neighborhood has tight setbacks and the residences knew that when they purchased their residences.

Chair Wagner stated that the first floor is already six inches from the property line. The City does not prohibit the expansion of a non-conforming structure. The question is practical difficulty. He was concerned with the lack of mitigation of existing non-conforming setbacks; although, the current proposal is an improvement. The porch is a wild card. The removal of the porch could help him support the variances.

Knight stated that he would support the variances if the porch would be removed from the proposal. He felt it was a reasonable compromise. He felt the previous factors still remained.

Egge stated that the porch provided its homeowners their view. Considering that the property next door, to the south, has the same setback, she does not understand the rationale for eliminating the porch.

Maes agreed that the homeowners got their view from the porch. She stated that the best view was from the deck, on top of the porch. Homeowner's rights and privileges needed to be considered as well.

Chair Wagner asked what the setback requirements are for a deck. Teague explained that a non-enclosed deck required a 25-foot setback. The deck on the top required no variances.

Chair Wagner struggled with approving the variances with the only improvement being the wall being moved in.

Maes included removal of the sidewalks as an improvement.

Chair Wagner felt it was a given that a two-story house would be in character with the neighborhood.

Egge added that the current house was out-of-character by being only one story.

Maes stated that moving the house back would make it out of character and decrease its distance from the lake.

Gallop agreed that the addition would be in character with the neighborhood.

Knight never held the position that the house should be entirely moved back. Mr. Hagen created a trend to move his residences back. He agreed that the addition would be in character with the neighborhood.

Knight decided that the second-story would impact the privacy of the Sorenson home.

Hart determined that the privacy would be equally affected by both property owners.

Gallop stated that the addition would affect the privacy of the Sorenson home.

Maes stated that it would affect the privacy of the Sorenson home. She pointed out that the area facing the proposed addition would be a clear story space that would not be as evasive as facing the bedroom.

Chair Wagner reviewed the remaining primary issues.

Knight did not believe that the addition could be built without trespassing on the adjacent property, but recognized it was a civil issue.

Gallop concurred with Knight.

Gallop did not support the variances because there was not enough mitigation to reduce the current non-conformities. He felt it would be a bad decision. He felt the hardship standard was not proven.

Britain concurred with Gallop.

***Britain moved, Gallop seconded, to deny the application based on the findings that there would be too many variances in exchange for not enough reduction of size of the first level; the extent of the mitigation on the second level would not be enough; the hardship standard was not met; and it would contribute to non-conformities in the area.***

Knight preferred more discussion regarding eliminating the porch. Gallop stated that removing the porch was not before them. Teague stated that a stipulation in a motion for approval could include prohibiting the porch.

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

Chair Wagner reviewed that five votes were necessary to pass a motion to approve the item and four votes were needed to pass a motion to deny the application.

***Britain moved, Knight seconded, to approve item 8B with the condition that the front porch be removed.***

Chair Wagner stated that a deck could still be constructed at grade level. He invited the applicants to address the restriction. Mr. Randall stated that he would have to review the possibility with the architect. He was unsure if it would work. The porch is their view of the lake. It would put their residence back significantly from the lake. He would consider moving and shifting other pieces around, such as moving the chimney. Taking the porch off would leave the living room and bedroom on the front.

Ms. Randall stated that there would be no view of the lake if the porch would be removed.

Knight felt it was a reasonable compromise.

Egge stated that taking away the porch would take away the life-blood of the house. The porch is the reason the homeowners are attached to the house. She disagreed that there would be no give and take. She felt removing the porch was asking the applicant to remove a main artery. She felt that the Randalls were trying. It has been a year-long process and felt they were doing what they can with the practical difficulties of the property. She was unsure how to best articulate to anyone who felt that there was no undue hardship demonstrated. She felt it was made clear that the application would be in character with the neighborhood. She referred to page 28, where the properties were illustrated stacked-up next to each other. It was a clear example of a neighborhood with unique quirks. All of the residents in the area have the same issues. She did not understand why the Commission would expect this particular property to go an extra mile when it was not expected in the past. She read the minutes from all of the Planning Commission meetings that had variances before them and many of the discussions were not as lengthy for similar variances as they were having. She took issue with comments made regarding the number of variances included in the application since she reviewed and understood what the variances represented in the context of the current structure and the current location.

Maes asked Colleran to address the setbacks and buffer. Colleran stated that the Randalls currently have approximately 25 feet of mowed lawn. They agreed to put in a ten-foot wetland buffer. There was currently a rip-rap edge at the water and mowed lawn. Environmentally, the application would not cause a problem, because the foundation would not be expanded. Pervious pavers could be used on the drive, but the drainage there goes away from the lake. Staff had proposed dropping the floodplain setback. Given the City Council's feedback, staff is rethinking that position. She stated that runoff from rooftops is relatively clean compared to other types of runoff.

Knight recognized that improvements would be made to the wetland buffer. But, a two-foot variance was still a variance. He would be surprised if the Planning Commission approved a nine-foot setback variance. The issues included environmental, character of the neighborhood, aesthetics, mitigating more of the nonconformities, and compromises. Knight stated that Mr. Sorenson, many of the neighbors, and the Department of Natural Resources said that the porch "should probably" be removed. The proposal would increase the amount of the mass of the nonconformity.

Chair Wagner stated that the applicant could still legally have a porch that was not covered and would provide a view to the lake.

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

Chair Wagner confirmed with Olson that the recommendation would go to the City Council with the minutes for the City Council to make its decision.

***Britain moved, Gallop seconded, to deny the application based on the findings that there would be too many variances in exchange for not enough reduction of size of the first level; the extent of the mitigation on the second level would not be enough; the hardship standard was not met; and it would contribute to non-conformities in the area.***

***Gallop, Knight, Britain, and Wagner voted yes. Egge, Hart, and Maes voted no. The motion carried.***

Chair Wagner stated that an appeal of the Planning Commission's decision must be made to the Planning Director within ten days.

**C. Appeal of staff's decision requiring the removal of part of a fence at  
2815 McKenzie Point Road for Scott Sorenson, represented by  
Howard Rosten (03030.03a)**

Chair Wagner 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.

Gallop and Olson estimated the house's setback at 25 feet.

Knight asked if the ordinance is going to be amended to more clearly include a fence in the definition of a structure. Olson agreed that that would be looked at during the update of the shoreland ordinance. Knight asked what would happen to other fences in the area that are located in the setback. Olson stated that fence patrols are not done. Some may have been installed prior to the ordinance restriction.

Maes clarified with Olson that the ordinance would allow the property to have a deck, and a privacy fence surrounding it, with a 25-foot shoreland setback. Staff's recommendation would allow the fence to have a 25-foot setback.

Howard Roston, Suite 1750 220 South 6<sup>th</sup> Street, Minneapolis, stated that he and his client would accept staff's interpretation of the 25-foot setback. The fence will be moved back to the 25-foot setback as proposed by staff. He encouraged staff to address its fence ordinance.

The public hearing was opened.

No testimony was submitted and the hearing was closed.

*Gallop moved, second by Britain, to uphold staff's decision that Mr. Sorenson's fence is subject to the setback requirements of the shoreland ordinance, and must maintain a minimum setback of 25 feet from the ordinary high water elevation for Lake Minnetonka or the average setback of the adjacent structures, as described in the ordinance, whichever is greater.*

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

Chair Wagner stepped down as chair because he had a conflict of interest; the parent company of the company that he works for is the Carlson Company.

**D. Items concerning a proposed parking ramp at 401 Carlson Parkway for Carlson Real Estate Company (98068.03a):**

1. a minor amendment to the master development plan to move a previously approved parking ramp; and
2. review of a traffic demand management plan for the Carlson campus

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

Acting Chair Egge 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.

Chris Kirby, Carlson Real Estate Company, 401 Carlson Parkway, applicant, confirmed that the letter-of-credit dollar amount would be worked out. He clarified that it may be better to complete the base line survey after Medica would move in. The applicant would work with staff, but are now leaning toward that as the better option. They looked forward to working with staff and the City and were present to answer questions.

Acting Chair Egge asked what the consequence would be if the goal was not met. Mr. Kirby stated that they commit 100 percent to the Travel Demand Management Plan and working with staff. If the goal was not reached, the letter of credit could be used by the City.

Acting Chair Egge stated that Carlson Companies has proven to be a great corporate citizen.

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

Knight supported staff's recommendation.

Hart asked if the survey would be completed before the building permit would be issued. Gutoske stated that it was not included as a requirement. It was included in the memorandum as an informational item. Part of the survey will be completed shortly.

Maes asked how often the surveys would be repeated. Mr. VanSlooten felt a minimum would be every two years. He mentioned that surveying Medica prior to the move might have some merit. Once tenants have settled into their habits, it is a little harder to change one's behavior.

***Britain moved, seconded by Knight, to approve the minor amendment to expand the existing parking deck at 401 Carlson Parkway for Carlson Real Estate Company.***

*A. Approve the minor amendment to expand the existing parking deck at 401 Carlson Parkway for Carlson Real Estate Company. Approval is based on the finding that the proposal would meet the required standards and ordinances for a site and building plan approval.*

Approval 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:
  - Parking plan, dated June 19, 2003
  - Site plan, dated June 19, 2003
  - Grading, drainage and erosion control plan, dated June 19, 2003
  - Conceptual landscape plan, dated June 19, 2003

The above plans are hereby adopted as the master development plan amendment and the site and building plans for the parking deck expansion.

2. Parking site 1c is designated as a proof-of-parking lot. Before this parking lot can be built, the applicant must demonstrate to the satisfaction of the City Council that no additional travel demand management measures can be reasonably taken to avoid the need for the parking lot.
3. The following work must be completed before the City issues a grading permit or before starting any site work for the site 2d parking deck expansion:
  - a. Staff approval of a traffic demand management (TDM) plan. Staff will review this plan with the planning commission before approval.
  - b. Submit revised erosion control and tree protection plans for staff approval.
  - c. Fence all trees to be preserved and install erosion control measures.
  - d. Submit a letter of credit or cash escrow for 150% of the estimated cost to comply with grading permit requirements and restore the site.
  - e. If required, submit copies of the watershed district permit. The City may require revisions to the approved plans to meet the districts requirements.
  - f. Submit a construction management plan for staff approval.
  - g. Submit soils information of the low area to the east of the parking deck. If this area is deemed a wetland, the approved plans must be modified so that there is no impact on the wetland.
  - h. Submit a letter signed by representatives from Carlson Real Estate and Medica that Medica has signed and executed a lease to occupy the building at 401 Carlson Parkway.

4. The following must be submitted to the City before the City issues a building permit for the parking deck:
    - a. A final landscape and irrigation plan for staff approval. The revised plan must include plant materials and sizes consistent with those used around the perimeter of the site 2c parking deck.
    - b. A letter of credit or cash escrow for 150% of the estimated cost of all required landscaping.
    - c. An illumination plan for staff approval.
  5. The proposed parking deck must have the same exterior as the site 2c parking deck.
  6. The property owner is responsible for replacing any required landscaping that dies.
  7. Within 24 months after receiving written notice from the City, the applicant agrees to have a traffic signal installed at the Carlson Parkway/Cheshire Parkway intersection. The applicant must pay for all costs associated with the traffic signal installation.
  8. Construction must begin by December 31, 2004, unless the Planning Commission grants a time extension.
- B. Review the travel demand management plan. No official action is required. Staff would appreciate comments from commissioners on the TDM plan.*

***Gallop, Hart, Knight, Maes, Britain, and Egge voted yes. Wagner did not vote or participate in the discussion because of a conflict of interest. Motion carried.***

## **9. ADJOURNMENT**

***Hart moved, second by Maes, to adjourn the meeting at 10:45 p.m. Motion carried unanimously.***

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