

**MINNETONKA PLANNING COMMISSION  
MINUTES**

**SEPTEMBER 18, 2003**

**1. CALL TO ORDER**

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

**2. ROLL CALL**

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

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

**3. APPROVAL OF AGENDA:** The agenda was approved as submitted.

**4. APPROVAL OF MINUTES:** September 4, 2003

*Britain moved, second by Hart, to approve the September 4, 2003 meeting minutes as submitted with the changes listed in the change memo dated September 18, 2003:*

Page 10, last line: ~~80~~ 180

Page 12, fifth bullet point: ~~Wood~~ would

Page 12, seventh bullet point: site specific standard for DRO's.

Page 12, eighth bullet point: ~~area~~ are

Page 13, fourth paragraph: ~~generator~~ generated

Page 15, third bullet point: . . .be ~~more closely boundaries by~~ closer to adjacent houses.

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

**5. REPORT FROM STAFF**

Teague briefed the Commission on land use applications considered by the City Council at its meeting of October 15, 2003:

- Adopted a resolution approving a comprehensive guide plan amendment from RL, low-density residential to RM, medium density residential; an ordinance approving a

rezoning from R-1 low density residential to PUD planned unit development, and approving a PUD master development plan, with final site and building plans; and a preliminary plat for a 23 Unit Townhouse project called the Sanctuary at 3230 and 3306 Groveland School Road and 3305 County Road 101 for Halley's Custom Homes, Incorporated. The impervious surface amount was reduced from 50 percent to 43 percent and four affordable units were included in the project.

- Adopted a resolution changing the guide plan from open space to low-density residential; ordinance rezoning from R-1, low density residential, to PUD planned unit development, and approving a master development plan, with final site and building plans, including variances for rear and wetland setbacks for all lots; ordinance changing the wetland overlay district boundaries; wetland alteration permit; wetland Conservation Act replacement plan; and a preliminary pat, with lot width at the setback variances for eight lots and lot area variances for further subdivision of Lot 6, Block 3 concerning the Meadowwoods development at 18300 Ridgewood Road for Nedegaard Custom Homes, represented by Roger Humphrey, Agent. The project's density was reduced from 20 units to 17 units due to the poor soils located on the north end of the property. Two affordable housing units were included in the project.

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

**7. PUBLIC HEARINGS: CONSENT AGENDA**

No items were removed from the Consent Agenda for discussion or separate action.

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

**A. Resolution approving a conditional use permit for an accessory apartment at 2929 Merlen Drive for Kari Fath (03054.03a)**

Recommend that the City Council adopt the resolution on pages A1–A4 of the staff report, which approves conditional use permit for an accessory apartment at 2929 Merlen Drive for Kari Fath. Approval is based on the finding that the proposal meets the required conditional use permit standards and is subject to the following conditions:

1. Record this resolution with the County.
2. The City Council may reasonably add or revise conditions to address any future unforeseen problems.

3. Any change to the approved use that results in a significant increase in traffic or a significant change in character would require a revised conditional use permit.
4. The applicant must agree to the above conditions in writing.

**B. Resolution approving the aggregate side yard setback variance from 30 feet to 23 feet and a side yard setback variance from 10 feet to 8 feet for an attached garage at 10500 Belmont Road for Jerry Broberg (03055.03a)**

Adopt the resolution on pages A1–A3 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 the existing home and the property's substandard lot width. A two-stall garage could not be attached to the home without requiring a side yard setback variance.
- 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.

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) 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.

In response to Knight's question, Teague explained that while the policy restricting approving a variance to allow the construction of a garage because the existing garage was made into living space was taken into consideration, the location of the front entrance and the

location of the drainage and utility easements restricted the location of an addition and qualified as a hardship standard.

**C. Resolution approving the aggregate side yard setback variance from 30 to 20 feet and a side yard setback variance from 10 to 8 feet for an attached garage at 12901 Burwell Drive for Lawrence Peterson and Claudia Gundlach (03056.03a)**

Adopt the resolution on pages A1–A3 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 the existing home and the property's substandard lot width. A two-stall garage could not be attached to the home without requiring a side yard setback variance.
  - b. Hardship is further caused by the current layout of the applicant's home. The proposed 8-foot side yard setback would still provide for functional access into the existing home.
- 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.

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) 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.

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

## 8. PUBLIC HEARINGS

### A. Resolution approving a floodplain setback variance from 35 feet to 30 feet for a detached garage at 11517 Minnetonka Boulevard for Robert P. Mack (03052.03a)

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

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

Egge asked what staff would evaluate in the future regarding the floodplain ordinance and how it might impact that night's decision. Thomas explained that the review of the floodplain ordinance has been ongoing. Staff felt that the vertical separation, rather than horizontal setback, provided more protection for structures and drainage patterns. Collieran added that the City Council reviewed the floodplain ordinance in the spring of 2003. Staff recommended a zero horizontal flood plain setback. The City Council was not comfortable with totally eliminating the setback, but they did believe a reduction of the 35-foot setback was reasonable. Staff is in the process of analyzing what recommendation to next present to the City Council this fall.

Maes noted that the applicant agreed to remove two sheds, but it was not included as a condition. She asked it could be included as a condition. Thomas answered in the affirmative.

Maes questioned if a twenty-five-foot or ten-foot buffer would be required. Collieran explained that there is a ten-foot buffer currently. The project would require an additional fifteen feet to total twenty-five feet of buffer.

Britain asked if there are currently any drainage issues. Thomas referred the question to the applicant.

Michelle Prelay, 976 Fairfield Court, realtor for the current homeowner, who is a co-applicant, stated that the house is 58 years old and never experienced water in the basement. The basement is a walkout with two bedrooms, kitchen and family room. She has been marketing the property since January of 2003. It has been a tough property to sell because it is not dividable and does not have a big enough buildable area to build a residence comparable to the rest of the houses in the neighborhood. A purchase agreement has been entered into contingent upon the City authorizing a garage being constructed. The residence has five bedrooms and a single-car garage. The single-car garage is a hardship for whoever

purchases the property. Her client stated that her view was blocked when the residences across the street were constructed. If a garage would be constructed on the north side of the house, mature oak trees would have to be removed.

Hart pointed-out that the property drops off sharply on the north side. Ms. Prelay agreed that extensive fill and grading would need to be done to construct a garage on the north side.

Knight asked if adding one stall to the current garage was considered. Ms. Prelay stated that a larger variance problem would be created. She pointed-out that the proposal keeps the two stalls inside the setback intrusion. She invited the purchaser to provide additional comments.

Todd Fairbanks, 5104 South and 29<sup>th</sup>, Minneapolis, explained how the proposal was the best option for the property to save the trees. The entire neighborhood has three-car garages. He pointed-out a house in the area that has a detached double garage.

In response to Knight's question, Mr. Fairbanks stated that the proposal was created to minimize the infringement on the wetland.

Maes asked if the sheds would be removed. Mr. Fairbanks indicated which sheds would be removed and one solid, brick structure that would remain.

The public hearing was opened.

Steve Singer, 3248 Honeywood Lane, asked if the concrete shed violated any setback requirements and if it would have to be removed if it was. Thomas stated that it appeared that one of the sheds was located in the floodplain area. Colleran explained that since the sheds were erected prior to the current restrictions, they were considered legal, nonconforming uses. As part of the project approval, the Planning Commission could require the sheds be removed.

Mr. Singer asked if a permit would be required for the property owner to modify a shed. Teague stated that a permit would be required for a structure larger than 120 square feet. As part of staff's recommendation, a twenty-five foot buffer would be required to be maintained around the edge of the wetland.

Colleran clarified that the applicant supported removing the two metal sheds. There would be no requirement, unless it was included as a condition, to remove additional structures. The nonconforming use could exist in the buffer.

Mr. Singer stated that Mr. Fairbanks told him that the deck and an oak tree would be removed. He provided photographs for the Planning Commission to view.

Mr. Singer asked how many Planning Commissioners had driven by the site. All answered in the affirmative.

Mr. Singer asked if the new homeowner could cut all of the trees down. Chair Wagner confirmed with Collieran that a private property owner has the right to remove every tree on his or her own property.

In response to Mr. Singer's question, Chair Wagner explained that the City's policy considers a two-car garage a standard for a single-family residential property and that it would qualify as a hardship to justify a variance. A three-car garage is not considered a hardship standard.

Mr. Singer reviewed the photographs, he provided, of all of the residences on the block. The proposal would block his view to the wetlands. He did not think it would be fair. The proposal would "not even be close" to the character of the other residences. He was not opposed to having neighbors, but he favored another option than constructing a two-car detached garage.

Tom Lindee, 3296 Honeywood Lane, wished the owner well on the sale of her house. He felt that the residence should be sold on the merits of the existing property, not contingent on the authorization of a variance that would increase the value of her property. He felt that there were other options that would not be as obtrusive as a detached, two-car garage. A two-car garage should be attached to the existing structure and it should be blended-in with the residence. Mr. Lindee stated that seven houses had been built since 1990 and every one of them planted new trees. He planted sixteen trees. He did not think cutting down trees on the north side to locate the garage would be a "big obstacle."

Mr. Fairbanks pointed-out that Mr. Singer had an issue earlier with removing the tree for the removal of the deck, but he had no problem with removing the trees on the north. He reiterated that there are three-car garages in the neighborhood and a detached two-car garage, which fit in with the property, in the area.

Edge asked Mr. Fairbanks to address the options suggested by the neighbors. Mr. Fairbanks stated that if a garage would be located on the north or south, it would be a two-car garage, separate from a single car garage and require substantial grading, filling, and removal of mature oak trees. The remaining alternatives would require the setbacks to be further encroached upon. The proposal would provide the appearance of an attached garage. The residence was built in the 1950s and is as solid as any of the residences in the neighborhood.

Britain asked what factors prevented locating the proposed garage directly south of the existing garage. Mr. Fairbanks did not see a problem with that option, except that the wetland setback requirement would not be met.

Knight asked if the setback would be met if one stall would be added to the existing stall. Mr. Fairbanks stated that the proposal was based on the lifestyle of typical occupants of a five-bedroom house.

Knight acknowledged that the area consisted of three-stall and two-stall garages, but they are all attached, and the proposal would be different because it would be detached. It would not be exactly the same as the neighbors. Mr. Fairbanks explained that the property is large and private. The proposal would save significant trees.

Knight asked what the height of the proposal would be and if the upper level could accommodate living space. Mr. Fairbanks stated the dimensions to be 26 feet by 22 feet. Thomas provided the proposed garage's height to be at twelve feet.

Thomas explained that a two-stall garage, added to the south side of the existing one-stall garage, would not meet wetland or floodplain setback requirements.

Maes asked if the purchaser, Mr. Mack, planned on living in the residence. Mr. Fairbanks explained that Mr. Mack acquires properties and fixes them up. Mr. Fairbanks stated that Mr. Mack has eighteen grandchildren.

Ms. Prelay stated that the neighbors did not seem to mind a detached garage, as long as it would be located on the north side. She had a hard time understanding why it would not be acceptable in the proposed location. Ms. Prelay made it clear that the large shed on the west was an enclosed screened area that fell into disrepair and should be removed. The full-wall, brick chimney that is approximately ten feet high, that has footings in the ground, may be left as a brick fireplace, grill, entertaining area. Removing the permanent part of the structure would be a hardship. The outdoor grill area would enhance the property, but the front of it should definitely be removed.

Chair Wagner asked if the remaining brick wall would be considered a shed if the screened-in area and roof were removed. Colleran stated that the structure could not be rebuilt because it did not meet the wetland setback, but the part in disrepair could be removed and the remaining brick chimney could remain.

Knight asked if the applicant would be agreeable to a condition that required the removal of the sheds, except for the chimney structure. Ms. Prelay understood that the applicant favored keeping the brick holding bins for wood and the brick chimney. The wall and roof would be removed.

Britain asked if the shed located on the north would be removed. Ms. Prelay answered in the affirmative. She stated that there is another, small shed that would also be taken down.

Mr. Lindee clarified his opposition to a detached garage. He is not opposed to an additional garage space that would tie-in along with the rooflines that is attached to the house. He thought it would work-out better for the neighborhood to locate it on the north.

Mr. Singer opposed a detached garage on the property. There was no way a garage could be located on the north side. He felt that trees would be lost on the north or south sides. He favored an attached garage on the south side that would conform with the rest of the homes in the neighborhood. He was not 100 percent opposed to seeing a detached garage on the north side.

Hart asked Mr. Singer if a wetland was located behind his residence. Mr. Singer stated that it was located outside of his rear property line. Hart asked if the area was wooded before the construction of the wetland behind the residences on Honeywood Lane. He did not know.

No additional testimony was submitted and the hearing was closed.

Maes requested that Mr. Lindee point-out the location of his residence. He obliged.

Britain asked what staff's recommendation would be for an attached garage to the residence. Thomas explained that if a garage would be attached to the south side of the home, it would encroach into the floodplain and wetland setbacks. Staff believed that the wetland area is sensitive and preferred to maintain the wetland setback. Colleran stated that she met with Mr. Fairbanks and walked and measured the property. The wetland and floodplain setback boundaries were determined and the proposal was created with those in mind.

Chair Wagner reviewed the standards regarding single-family residences.

Chair Wagner asked Colleran to speculate on what staff would propose the floodplain setback to be changed to. Colleran estimated that twenty feet would be the planning staff's recommendation.

Commissioners looked at different views of the site. Thomas provided a drawing that showed that a single stall added to the existing garage would create a point intrusion similar in size to the one included in the proposal. The point intrusion would be on the southeast corner into the floodplain setback.

Knight asked if the point intrusion would be one foot to three feet in length. Thomas estimated that it would be three feet in depth.

Britain confirmed with Thomas that the proposed garage would be physically detached from the existing structure.

Hart stated that if this house had been constructed in 1990, it would have been built with a three-car garage within the buildable area. It is a five-bedroom house. She felt three garage stalls was reasonable for the site. From straight on, it would appear to be attached. The property is so large and wooded that the street view is the only angle the garage would be seen from. The intrusion would be a point intrusion and even adding one stall to the existing garage would cause a point intrusion into the floodplain setback. The proposal is imminently reasonable.

Knight stated that the proposal would look different than an attached three-stall garage. He struggled with deciding if the hardship standard had been met. He was concerned with setting a precedent and remaining consistent. The best proposal would be to build the garage, totaling either two or three stalls, on the south side, attached to the existing garage, considering all of the factors.

Chair Wagner acknowledged that if the floodplain setback requirement had been changed to twenty feet, the application would be allowed to complete the project without a review process. After looking at the appearance of the neighborhood, the City's standards, and the fact that staff, the Planning Commission, and the City Council historically upheld that vertical separation is more important than horizontal, he supported the detached structure since it would be as close as an attached garage could be.

Egge supported the proposal because the facts consisted of a five-foot point intrusion of a floodplain setback, which would still leave a 30-foot floodplain setback, and staff is currently recommending the City Council consider amending the floodplain setback to twenty feet. The neighbors favored locating the addition in the back, but wetland setback requirements would be violated. The plan would minimize the garage's detachment as much as possible. The sheds would be removed with the exception of the fire pit. She heard no reason not to support the application.

Britain did not support a detached garage and felt that a two-car garage would be the most reasonable use of the property

Maes felt that the existing single-car garage is a hardship to the property. She favored a detached, two-stall garage over seeing vehicles parked in the driveway or street. Other neighbors would not support locating the proposed garage to the north. The project should be done with the least amount of variances. The architecture of the residence is consistent with the proposal. The house would benefit from some work by Mr. Mack.

Hart asked if the floodplain setback was twenty feet, at that time, if the Planning Commission would be reviewing the item. Thomas stated that the applicant would have proceeded directly to the building permit process.

Knight disagreed with the notion that because a standard might be changed in the future, that tonight's decision should be impacted. He considered the floodplain setback to be 35 feet. He believed that expanding the attached garage on the south side made the most sense because two stalls would be a reasonable use and "possibly three."

Egge asked Colleran to comment on the variances that would be needed to add onto the existing garage on the south side. Colleran stated that to add a two-stall garage on the south side of the existing garage, a floodplain setback variance and a wetland setback variance would be needed. The current application only needs a floodplain setback variance. Colleran also reviewed that a three-foot floodplain point intrusion would be created by adding one stall to the existing stall.

Egge was confused by the directions Commissioners were giving to the applicant. She questioned the rationale of locating a two-stall garage south of the existing garage to better fit-in with the character of the neighborhood in exchange for wetland setback requirements not being met

Chair Wagner asked Britain and Knight if they preferred adding one stall to the existing garage. They answered in the affirmative.

Egge stated that the character of the neighborhood and the standard of the community supported the residence maintaining three stalls for the five-bedroom residence.

Britain stated that the fact that there are three car garages everywhere can not justify locating a garage anywhere. Putting one stall to the side or one or two stalls on the south side would be consistent with the neighborhood.

Chair Wagner stated that a wetland setback variance would be desired less than a floodplain setback.

Maes concurred with Chair Wagner. She knew that the applicant worked hard to create a buffer for the wetland.

Egge asked if the Planning Commission is able to consider aesthetics in its determination. The exchange included discussion that a three-car garage is a reasonable use for the site and fits in with the character of the neighborhood, but Commissioners suggested different locations based on aesthetics.

Teague stated that Commissioners can comment on the character on the neighborhood and attached versus detached garage additions. He referred to the ordinance that had the same setback requirements for a detached garage as an attached garage if the detached garage was

within ten feet of the house. The proposed garage would be less than two feet from the residence.

Knight disagreed that aesthetics were being argued over. The size, location, and attached or detached status of the garage were being discussed.

***Hart moved, second by Maes, to adopt the resolution on pages A1–A3 of the staff report with conditions requiring the removal of the deck, the implementation of a 25-foot wetland setback, and removal of all sheds, but not the brick fireplace. This resolution approves a floodplain setback variance from 35 feet to 30 feet at 11517 Minnetonka Boulevard for Robert Mack, 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. The proposed encroachment is considered a point intrusion into required setback.
  - b. Hardship is caused by the location of existing garage space in relation to floodplain on the site. The applicant's proposal maintains functional access to this existing space, while providing additional space with a visual connection to the home.
- 2) The variance would be consistent with the spirit and intent of this ordinance for the following reason:
  - a. The proposal is consistent with neighborhood character.

Approval is subject to the following conditions:

- 1) Install wetland buffer totaling 25-feet for staff review and approval.
- 2) Construction must be in substantial compliance with the submitted plans.
- 3) Submit proof of having recorded this resolution with the county before the City issues a building permit.
- 4) Install tree protection and erosion control fencing. The fencing must be maintained and debris and sediment controlled throughout the course of construction.
- 5) 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.

- 6) Removal of the deck.
- 7) Removal of sheds not constructed of brick.

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

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

**B. Request for a side yard setback variance from 10 feet to 3 feet to add a second stall onto an existing garage at 16608 Excelsior Boulevard for Robert Rutkowski (03039.03b)**

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

Teague reported. He recommended denial of the application based on the findings listed in the staff report.

Gallop asked if the point intrusion would extent into the easement. Teague answered in the negative.

Robert Rutkowski, 16608 Excelsior Boulevard, applicant, officially withdrew his request for a variance. Mr. Rutkowski stated that he was upset that at the last Planning Commission meeting, it was announced that he was late in paying a utility bill.

Gallop appreciated Mr. Rutkowski's comments. Chair Wagner apologized, on behalf of the City and staff.

**9. ADJOURNMENT**

***Britain moved, second by Knight, to adjourn the meeting at 8:15 p.m. Motion carried unanimously.***

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