

**MINNETONKA PLANNING COMMISSION  
MINUTES**

**OCTOBER 2, 2003**

**1. CALL TO ORDER**

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

**2. ROLL CALL**

Commissioners Maes, Britain, Egge, Gallop, Hart, Knight, 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 with the removal of Item 8A, a resolution denying a request to reduce a side yard setback from 10 feet to 8 feet for a detached garage at 4742 Forest Circle for Delano Homes (03035.03a). The applicant withdrew the application.

- 4. APPROVAL OF MINUTES:** September 18, 2003, and August 7, 2003

*Hart moved, second by Britain, to approve the September 18, 2003, meeting minutes as submitted.*

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

*Hart moved, second by Britain, to approve the August 7, 2003, meeting minutes as submitted with the following amendments:*

Page 11 – additional bullet

The variances were denied in February because: there were other options, there was a lack of hardship demonstrated by the applicants, there were a large number of variances requested, the residence would be close to the property line and could not be constructed and maintained with the existing setbacks, if granted the variances would encourage the non-conforming use.

Page 10 – bullet six

The number of variances requested changed from February to August. The applicant's are seeking more variances than ~~they previously asked for~~ they have actually asked for.

Page 10 – bullet eight

Moving the air conditioner does not mitigate a non-conformity, as it is already an illegal use.

Page 11 – bullet five

The application does not meet the findings standards to justify a variance. Under the undue hardship test, as applied and as should be applied in this case, the Randalls do not meet that test to grant a variance.

Page 12 – paragraph five

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

Page 12 – bullet three

He was disturbed by partying in the house at 12:45 a.m. one night last week. He has been wakened at 12:45 a.m. three times by people in the Randalls' house, partying and making noise.

Page 12 – paragraph five

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~~ Mr. Randall moved in, ~~Randall~~ he told ~~him~~ Mr. Sorenson that he did not plan on adding a second story

Page 13 – paragraph two

Eric Galetz, Suite 2300, 150 South Street, attorney for the Randalls, thanked staff for providing the Randalls with a copy of Mr. ~~Rosten's~~ Roston's letter. He felt the City Attorney did a great job of responding to Mr. ~~Rosten's~~ Roston'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~~ Roston 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.

Page 18 – Agenda Item C

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~~ Roston(03030.03a)

Page 19 – paragraph five

Howard Roston, Suite 1750 220 South 6th Street, Minneapolis, stated that he and his client would accept staff's interpretation of the 25-foot setback, though was not

conceding any rights. The fence will be moved back to the 25-foot setback as proposed by staff. He encouraged staff to address its fence ordinance.

*Maes, Britain, Egge, Gallop, Hart, Knight, 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 September 29, 2003:

- Adopted a resolution approving a conditional use permit for a detached garage taller than 12 feet and larger than 1,000 square feet at 16108 Birch Lane for Victor and Dianne Carlson.
- Overturned the Planning Commission's denial of a side yard setback variance for a two-car garage at 4923 Clean Spring Road for Tim O'Conner. Changes were made to the application in accordance with the Planning Commissioners comments to reduce the size of the garage and setback variance.
- Adopted a resolution to vacate a public right-of-way over 5707 and 5715 Kipling Avenue for John and Jill Velure.
- Adopted a resolution approving items concerning a temporary sports dome at the Minnetonka High School stadium at 18301 Highway 7 and 18325 Delton Avenue for Minnetonka Independent School District 276.

**6. REPORT FROM PLANNING COMMISSION MEMBERS:** On behalf of the Commission and staff, Chair Wagner congratulated Knight on becoming a father.

## 7. PUBLIC HEARINGS: CONSENT AGENDA

No item was removed from the Consent Agenda for discussion or separate action. Knight complemented staff for the proactive updating of the ordinance.

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

**A. An ordinance declaring certain zoning ordinance violations to be public nuisances (03060.03a)**

Knight complemented staff for the proactive changing of the ordinance.

Recommend that the City Council adopt the attached ordinance.

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

## 8. PUBLIC HEARINGS

### **A. Resolution denying a request to reduce a side yard setback from 10 feet to 8 feet for a detached garage at 4742 Forest Circle for Delano Homes (03035.03a)**

Was removed from the agenda in accordance with the applicant withdrawing the application.

### **B. A seven-lot subdivision, with a lot width variance and wetland alteration at 2501 Plymouth Road for Lecy Construction Inc. (94045.03a)**

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.

In response to Knight's question, Teague stated that the site has sufficient buildable area.

Gallop asked if staff knew when the land to the south of the site would be developed. Teague answered in the negative.

Gallop was concerned with traffic. He asked if there have been problems with congestion at the Amy Lane and Plymouth Road intersection. Teague stated that he was unaware of any problems.

Hart asked if the owners of 2503 and 2505 Plymouth Road would be obligated to pay for the street improvement, along with the seven properties to the south, since their properties are located on the right-of-way. Teague was unsure. He stated that the twenty-five foot easement was established when the lot was split.

Maes asked how many lots the property to the south could be divided into. Teague estimated twelve. Maes asked if purchasers would be informed of the possibility of the property to the south being developed. Teague stated that the goal is to inform the buyer that a future assessment for the street would be imposed.

Maes questioned the status of a proposed house to be located north of the plat. Teague stated that the City had not received a building permit for the house yet.

Peter Knaeble, of Terra Engineering, civil engineer representing the applicant, stated that the property owners and Mark Lecy, the builder of the proposed homes, were also present to answer questions. He stated that the proposed house on the lot to the north was conceptually drawn during the development of the grading plan. It did not indicate where the residence would ultimately be located. He read the staff's report and concurred with the conditions. He complimented staff with being patient with the applicant and for hosting several meetings and site visits. The need for the variances for Lots 2 and 3 would be illustrated when the builder submits his plans. The residences require the variances to save the trees located in the rear of the lots. He requested direction from the Planning Commissioners regarding Lots 2 and 3.

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

Chair Wagner asked if the lots would need the variances if the rear yards did not abut the private drive. Teague stated that if the private drive would be a public street, a 35-foot setback would be required. The proposal would meet the 35-foot setback.

Hart noted that houses would be difficult to locate on Lots 2 or 3 because of the triangular shape of the lots. She stated that the conservation easement would severely restrict the flexibility of building on the property. Teague explained that the conservation easement area itself would be located within the setback requirement; however, he agreed that trees outside of the easement would be worth protecting.

Hart stated that there would be no way to build residences on Lots 2 and 3 without variances, unless it would be a really small house. A small house would be out of character with the neighborhood. Teague concurred that the residences in the area are quite large and the proposed house pads are smaller than the house pads to the north. She struggled with the concept of approving an application with two lots that would be unbuildable without variances.

Chair Wagner stated that a justification for the variances would be that the lots would still meet the 35-foot setback requirement. Teague explained that the mitigated wetland was the original building site designated in 1995. The 1995 plan also provided the sites with direct access onto Plymouth Road.

Hart supported future setback variances for Lots 2 and 3 due to the proposal's unique circumstances.

Gallop asked what prevented the house pads from being located further west, within the buildable area. Teague responded that it would result in tree loss.

Maes reviewed the 1995 map and pointed out the current plan's benefits.

Hart noted that if the residence was moved all the way back on Lot 2, it would still need a variance. Teague concurred.

Britain asked if the developer would be held to the standard of the sizes presented. Teague felt it was the applicant's intention to develop residences similar to the presentation, but that each lot would be considered individually with the wishes of the buyer taken into consideration. The application's proposed buildable area is much larger than what the ordinance requires. The proposal includes a one-foot lot width variance for Lot 1.

Chair Wagner reviewed the primary issues.

Britain complimented staff and the developer for creating a plan that saves trees and utilizes the assets of the site.

Knight concurred with Britain. He felt that the current plan was an improvement over the 1995 plan. He had no preference regarding constructing Woodbridge Trail.

Chair Wagner concurred. He supported establishing the conservation easement, the private driveway, and not constructing the extension to Woodbridge Trail at this point.

***Britain moved, second by Gallop, to recommend the City Council approve the following items for Lecy Construction, Inc.:***

*A. Recommend that the City Council give preliminary approval to the Emerald Trail 4<sup>th</sup> Addition dated August 15, 2003. Approval is based on the following findings:*

- 1) With the exception of the lot width variance for Lot 1, Block 1, the proposal meets the required standards and ordinances for a preliminary plat.
- 2) The proposal meets the required standards for a variance, because:
  - a. There is a unique hardship to the property caused by the existing width of this lot.
  - b. The lot configuration is consistent with the "Official Map" of this area, which references the need for a lot width variance for this lot.

Approval is subject to the following conditions:

- 1) Complete the following before final plat approval:
  - a. Show the following on the final plat:
    - (1) At least ten-foot-wide drainage and utility easements next to any existing or proposed public street right-of-ways and at least seven-foot-wide drainage and utility easements along all other lot lines.
    - (2) Utility easements over existing or proposed public utilities, as determined by the city engineer.
    - (3) Drainage and utility easements over storm water ponds, as determined by the City, including the stormwater pond on Lot 1, Block 1.
  - b. Pay the City a park dedication fee of \$14,250.
  - c. Submit evidence of watershed district approval. The City may require revisions to the preliminary plat to meet the district's requirements.
  - d. If the developer is petitioning the City to construct the public improvements, the City Council must order the improvements.
- 3) The following items must be submitted to the City before the City releases the final plat:
  - a. An engineering/utility inspection fee.
  - b. An electronic CAD file of the final plat in micro-station or DXF.
  - c. If the developer is constructing any public improvements, the developer must submit a signed agreement with City. This agreement must guarantee that the developer will complete all public improvements and meet all City requirements. This agreement must include an escrow to ensure that the developer completes all public improvements and complies with all City regulations. This escrow must be a letter of credit or cash deposit. The amount must be 150% of the estimated cost of the improvements or 125% of the cost if based on actual bids.
  - d. The following documents for the city attorney's approval:
    - (1) Title evidence that is acceptable to the city attorney. Title evidence must be current within thirty days before release of the final plat.

- (2) Conservation easements over the areas identified on the preliminary plat, and a drawing of the easements for the approval of the city attorney. The easements and drawing must be recorded with the final plat.
- (3) Provide restrictive covenants to be recorded against the individual lots with the plat. The covenants must include the conditions below that have not been met as of the release of the plat. These covenants must first be submitted for the city attorney's approval.
- (4) Provide declaration and restrictive covenants over all mitigated wetland areas per the WCA.
- (5) Submit a special assessment waiver in recordable form acceptable to the city attorney agreeing to pay half of the cost of constructing a public street connecting Woodbridge Trail to Emerald Trail; the total construction costs not to exceed 125% of the city's current estimate, which will be increased annually for inflation. The waiver will bind all parcels in the subdivision, and the special assessments will be spread equally on each of them.

These documents must be recorded with the final plat, and a drawing of any easements must be attached to the easement deed.

- 1) The following must be completed before the City issues a grading permit or any site work is started:
  - a. A construction management plan must be submitted for staff approval. The plan must include installation and maintenance of a temporary rock driveway, erosion control, and tree and wetland protection fencing. The plan is subject to review by the City's Environment Resources Coordinator.
  - b. The items listed in the construction management plan must be installed and inspected by the City's Environmental Resources Coordinator.
  - c. Final grading, drainage, and erosion control plans must be submitted for staff approval. The revised plan must include the following:
    - (1) Provide a minimum of 1-foot freeboard between the 100-year storm elevation and the emergency overflow at the pond.
    - (2) Provide a control structure and piped outlet from the mitigated wetland.
    - (3) Rather than grading a 1% temporary swale along the north side of the future Woodbridge Trail, a storm sewer pipe must be installed now.

- d. Final utility plan must be submitted for staff review and approval. If the developer is building the streets, the developer must submit final street plans for staff approval. The revised plans must include the following:
    - (1) Sanitary sewer must 8 inch rather than 6 inch.
    - (2) Two manholes are needed on each side of Plymouth Road for the sanitary sewer.
    - (3) Add two catch basins on the storm sewer line between catch basin 1 and existing catch basin 8.
    - (4) Must use city standard casting on catch basin R-3250-1.
    - (5) Provide new sewer and water services for Lots 2 and 3 Block 2, and abandon the existing services along Plymouth Road.
  - e. A letter of credit or cash escrow for 150% of the estimated cost to comply with grading permit requirements and restore the site must be submitted to the City. The City will not release the letter of credit or cash escrow until the developer submits as-built drawings and a letter certifying that the utilities, road, and grading have been completed according to the plans approved by the City.
  - f. Submit a letter of credit or cash escrow, or other form acceptable to the City Attorney for the estimated cost to restore the wetlands, including the wetland plantings, and the upland forest. The amount must be 150% of the estimated cost of the improvements or 125% of the cost if based on actual bids.
- 2) The following must be submitted to the City before the City issues a building permit:
- a. A grading and tree preservation plan for each lot subject to staff approval.
  - b. The installation and maintenance of a temporary rock driveway, erosion control, wetland and tree protection fencing where applicable, for each lot must be installed, subject to review and approval of the City's Environmental Resources Coordinator.
  - c. A copy of the recorded plat and any easements, covenants, and any other homeowners' document required to be recorded for the development.
  - d. All required hookup fees for sewer and water.

- e. A letter from the surveyor stating that boundary and lot stakes have been installed as required by ordinance. If the grading for proposed streets has not been completed, the planning director may approve a time extension to this requirement.
- 3) Minimum house elevation for Lots 1-4, Block 2 must be two feet above the overflow elevation for the wetland. (976.2.) Minimum house elevation for Lots 1-3, Block 1 must be 979.3.
- 4) The private driveway entrance must be revised to one entrance off Emerald Trail.
- 5) The homes on Lots 2 and 3, Block 2, must be constructed with indoor sprinkler systems.
- 6) The conservation easements must be maintained in accordance with a conservation plan approved by the City.
- 7) During construction, the streets must be kept free of debris and sediment, and the wetland and tree protection fencing, and erosion control fencing must be maintained.
- 8) Existing driveways off Plymouth Road must be removed, and seeded or sodded.
- 9) All existing structures must be removed from the site.
- 10) Trees must be planted to compensate for significant trees removed from each site that would be outside of the building pad and driveway area. The trees must be primarily species native to the area. They must be at least 2 1/2 inches in diameter for deciduous trees and 6 feet tall for coniferous trees. The property owner or original developer must replace the required trees if they die within one year after installation.
- 11) The City must approve the final plat within one year of preliminary approval or receive a written application for a time extension or the preliminary approval will be void.

*B. Recommend approval of the wetland replacement plan application and the wetland alteration permit subject to the following conditions:*

- 1) Obtain approval from all appropriate agencies, including the Technical Evaluation Panel (TEP), as assigned by the Wetland Conservation Act; and meet any conditions that would be required.
- 2) Submittal of a plan for re-vegetation of the buffer area around the wetland. The plantings shall be subject to review and approval of the city's environmental resources coordinator.

3) Erosion control fencing must be installed and maintained until the area has vegetated.

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

Chair Wagner stated that the City Council is tentatively scheduled to review the application at its October 27, 2003 meeting.

**C. Preliminary plat for three lots at 11600 and 11610 Timberline Road for James Tice Jr. (03058.03a)**

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

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

Chair Wagner asked Thomas to explain the small, triangular portion of property. Thomas recently learned that the portion in question was combined with the property on the west in 1979. Hennepin County provided the records that would eliminate the need for condition 1a.

James Tice, 11610 Timberline Road, applicant, noted that he had the support of his neighbors. The application complied with all City requirements. He also tried to keep the application in character with the neighborhood. The neighbors to the east, Lloyd and Mary Jean Pearson, at 11600 Timberline Road, are partners in the proposal. He encouraged the residence's placement near the 35-foot setback by voluntarily proposing the establishment of a conservation easement that would maintain in perpetuity the western slope. He was available for questions.

The public hearing was opened.

Chrystie Woshiol, 1921 Timberline Spur, stated that her group had not arrived yet. She received a letter that stated that the application would be discussed closer to 8:00 p.m. She stated that the lots in the area are larger and residents paid more for the privacy. She feared that the deer and other wildlife would be forced to leave the site. She was concerned with additional lot splits that would lead to more houses than trees in the neighborhood. She and many other people in her neighborhood oppose the proposal.

Knight confirmed that the letter Ms. Woshiol referred to was generated by the neighborhood, not the City.

Fred Burmer, 1915 Timberline Spur, opposed the split. He was concerned with loss of trees causing a change in the neighborhood character. Neighborhoods are not made "like that anymore." The oldest homes were built in 1951. The lots are over-sized with wooded buffers.

His wife announced that they would purchase the house based on the character of the neighborhood. The Tice's project would open the floodgates for similar projects. Ultimately, it would affect the neighborhood's property values and character. He was not comfortable interfering with his neighbor's activity, but this was being done as a profit-making venture. He was trying to protect his investment. He opposed the project and respectfully requested the Commissioners to oppose it as well. The supporters of the project live on Timberline Road where there would be no impact from the proposal. Those against the proposal paid premium prices for their homes, within the past three years. The large, wooded, lots prompted them to purchase in that neighborhood.

Gallop asked if neighborhood character was a consideration that could be used for denial of an application. Olson explained that staff recommended approval of the application because, while neighborhood character can be considered for some applications, it cannot in the case of a plat. The City must approve plats that meet the City's ordinances. Olson shared the "discretionary triangle" to illustrate the Commission's discretion regarding each type of application. Zoning and comprehensive plan changes offer the Commission the discretion to set neighborhood characteristic standards.

Olson mentioned that Minnetonka's minimum lot size requirement is the largest in the metropolitan area. Neighborhood support or opposition to a preliminary plat is not part of the Planning Commission's discretion.

Knight stated that neighborhood character is important, but it cannot be a basis for denying a plat that meets the ordinance.

No additional testimony was submitted and the hearing was closed.

Maes asked under what conditions 1920 Timberline Spur was granted a variance to be located so close to the front lot line. She questioned how close 1920 Timberline Spur would be to the proposed residence. Thomas explained that a variance was granted to protect the wetland and steep slope.

Knight appreciated the neighbors' perspectives and information. The application met the City's standards.

Gallop felt the proposal would not change the character of the neighborhood. There are three lots in the neighborhood similar in size to the proposal. He supported staff's recommendation.

***Hart moved, second by Egge, to recommend that the City Council give preliminary approval to Timberline Knoll, dated September 25, 2003. Approval is based on the finding***

*that the plat meets the required standards and ordinances. Approval is subject to the following conditions:*

- 1) Complete the following before final plat approval:
  - a. Show the following on the final plat:
    - (1) All of 11610 Timberline Road must be included in the plat. The triangular part of the lot not included in the preliminary plat must be added to proposed Lot 3 or platted as an outlot.
    - (2) At least ten-foot-wide drainage and utility easements next to any existing or proposed public street rights-of-way and at least seven-foot-wide drainage and utility easements along all other lot lines
    - (3) Utility easements over existing or proposed public utilities, as determined by the city engineer
  - b. If the developer is petitioning the City to construct the public improvements, the City Council must order the improvements.
  - c. Submit evidence of Bassett Creek Watershed District approval. The City may require revisions to the preliminary plat to meet the district's requirements.
  - d. Pay the park dedication fee of \$2,375.
- 2) The following items must be submitted to the City before the City releases the final plat:
  - a. An engineering/utility inspection fee.
  - b. An electronic CAD file of the final plat in microstation or DXF.
  - c. The following documents for the City Attorney's approval:
    - (1) Title evidence that is acceptable to the City Attorney. Title evidence must be current within thirty days before release of the final plat.
    - (2) Conservation easements over the wooded slope on proposed Lot 3 and a drawing of the easements for the approval of the City Attorney. The easements and drawing must be recorded with the final plat.

- d. A letter from the surveyor stating that boundary and lot stakes have been installed as required by ordinance.
- 3) The following must be submitted to the City before the City issues a building permit:
    - a. Minimum lowest floor elevation for any new home is 924.0.
    - b. A grading and tree preservation plan, subject to staff approval.
    - c. The conservation easement must be staked and signed in the field.
    - d. A temporary rock driveway, erosion control, and tree protection fencing must be installed, subject to staff review and approval.
    - e. An amended utility plan showing water service adjacent to proposed sewer service as illustrated on preliminary plat dated September 25, 2003. The plan and utility connections are subject to review and approval of the City Engineer
    - f. An estimated utility hook up fee of \$2,832.54 for sanitary sewer and water.
    - g. A copy of the recorded plat and any easements or covenants required to be recorded.
  - 4) During construction, the streets must be kept free of debris and sediment, and the tree protection fencing, and erosion control fencing must be maintained.
  - 5) Trees must be planted to compensate for significant trees removed from the site that would be outside of the building pad and driveway area. The trees must be primarily species native to the area. They must be at least 2 1/2 inches in diameter for deciduous trees and 6 feet tall for coniferous trees. The property owner must replace the required trees if they die within one year after installation.
  - 6) The City must approve the final plat within one year of preliminary approval or receive a written application for a time extension or the preliminary approval will be void.

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

Chair Wagner stated that the application is tentatively scheduled to be reviewed by the City Council at its October 27, 2003 meeting.

**9. ADJOURNMENT**

*Britain moved, second by Knight, to adjourn the meeting at 7:47 p.m. Motion carried unanimously.*

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