

**MINNETONKA PLANNING COMMISSION
MINUTES**

NOVEMBER 20, 2003

1. CALL TO ORDER

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

2. ROLL CALL

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

Staff members present: Planning Director Geoff Olson, Principal Planner Cary Teague, Planner Susan Thomas, and Planning Intern Megan Kelly.

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

4. APPROVAL OF MINUTES: November 20, 2003

Gallop moved, second by Hart, to approve the November 20, 2003, meeting minutes as submitted.

Gallop, Hart, Knight, Maes, Britain, Egge, 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 November 10, 2003:

- Approved the preliminary plat for a two-lot subdivision at 5517 Vine Hill Road for Harold and Debi Luddy with the Planning Commission's recommendation.
- Introduced an ordinance that would modify the planning fees and referred it to the Planning Commission. It is tentatively scheduled to be reviewed by the Planning Commission at its December 4, 2003 meeting.

Olson announced that the City Council scheduled a study session regarding temporary signs on December 18, 2003.

Olson noted that a study session would be held at the end of the regular meeting to discuss operating procedures. The study session would not be televised.

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.

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

A. Sign plan review for the Barnes and Noble Booksellers at the Ridgehaven Mall, 13101 Ridgedale Drive, for Thrivent Financial for Lutherans (94034.03a)

Approve the proposed amended sign plan for Ridgehaven Mall at 13101 Ridgedale Drive, to allow stacked signs, up to a maximum of 62 inches, for tenants over 12,000 square feet. Approval is based on the following findings:

- 1) Allowing the increase in height for stacked signs for tenants with over 12,000 square feet, is in character with the anchor tenants of this mall.
- 2) The building is located 280 feet from Ridgedale Drive, which is further than the two anchor tenants are.

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

8. PUBLIC HEARINGS

A. Conditional use permits for an accessory apartment and a detached garage exceeding 1,000 square-feet in area and 12 feet in height at 9597 Sandra Lane for Rich Lee (03071.03a)

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.

Knight questioned what process determined if an application required a conditional use permit or a variance. Chair Wagner stated that the application needed no variances. Chair Wagner explained that a conditional use permit is required for the specific use proposed. As long as it was determined that the requirements for a conditional use permit were met, the application met the requirements for approval.

Knight asked if the applicant could apply for a variance if he wanted the height of the garage taller than the ordinance allowed. Chair Wagner summarized the requirements for a

permitted use with a conditional use permit and explained the difference between conditional use permit and variance approval standards. Olson clarified that a conditional use permit is a permitted use, subject to meeting the standards listed in the ordinance. A variance is a request to deviate from the ordinance regulations. Staff found that the application met all of the regulations for a conditional use permit permitted use. The standard regarding an undue adverse impact on public health, safety, and welfare was considered. Character of the neighborhood is not a standard used when considering a conditional use permit application.

Knight asked if neighboring land uses should be considered. Olson stated that the garage is set back and the area would be surrounded by existing and additional landscaping. Staff determined that the proposal would not have an adverse impact on the surrounding uses. Staff was comfortable that the proposal met the findings.

Gallop asked if the conditional use permit would terminate with a new owner. Thomas explained that a conditional use permit is attached to a property, with the same conditions enforced for each subsequent property owner.

Gallop questioned if the conditional use permit would be valid if the owner rented out the home. Thomas explained that the property owner is required to live in either the house or the accessory apartment. The property owner could not rent both.

Rich Lee, 9597 Sandra Lane, applicant, was present to answer questions.

Gallop preferred a shorter garage. He understood that it met ordinance requirements, but felt that the proposed height was too obtrusive. Mr. Lee stated that the height of the proposed garage's roof line was chosen to match the roof line of the house.

Egge felt it made better design sense to match the pitch of the proposed garage roof with the pitch of the house. It would appear less obtrusive when the house is in place.

Chair Wagner acknowledged that it was not a factor in the Planning Commission's decision, but asked, in response of neighbors asking, the reason for the accessory apartment. Mr. Lee stated that his father would reside in the accessory apartment. His father has been living with him since his mother died.

Knight asked how the attic area of the garage would be utilized. Mr. Lee stated that the trusses would not be high enough for living space. He would not finish the area. It would only be used for storage.

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

Chair Wagner reviewed the primary issues. He informed the audience that the existing amount of garage space is not taken into consideration when determining if a conditional use permit meets eligibility requirements.

Britain saw the project met ordinance requirements. No variance would be necessary. He saw no reason not to approve the project.

Hart concurred with Britain. She also agreed with Egge and felt that the proposed garage plan would be compatible with the design of the house. She felt it would be better to have a larger garage than to have boats and vehicles stored in the driveway. The lot size can easily accommodate the plan.

Egge agreed with Hart. She commended the applicant on providing an apartment for his father to maintain his independence and provide daily interaction with his family.

Gallop was comfortable with the accessory apartment. He was concerned with the garage height, although he understood it was within ordinance standards.

Knight asked about removal of trees from the tree line. Thomas noted that some of the trees had been removed, which is why staff include a requirement that more trees be planted on the south side. The applicant would work with staff to determine the best type of tree to break-up the mass of the structure.

Knight supported the proposal. He was a bit uncomfortable with the garage height. He thought the zoning code may provide the Planning Commission with some discretion, but deferred to staff.

Maes supported the proposal. Lowering the pitch of the garage roof would not be compatible with the house style. She was fine with the proposed pitch of the roof and its height.

Gallop suggested the City consider an ordinance change to limit the height of garages permitted with a conditional use permit. He felt the current standard was "pretty outrageous."

Chair Wagner suggested talking about this in the study session. Olson confirmed that the Planning Commission could make a recommendation to the City Council. The City Council would need to approve a modification to the ordinance. Knight suggested staff research other cities' garage height requirements.

Chair Wagner reiterated that the proposed uses are permitted with a conditional use permit.

Egge moved, second by Maes, to recommend that the City Council adopt the resolution approving conditional use permits for an accessory apartment and a detached garage

exceeding 1,000 square-feet in area and 12 feet in height at 9597 Sandra Lane for Rich Lee (03071.03a):

A. Recommend that the City Council adopt the resolution on pages A1–A4 of the staff report, which approves a conditional use permit for an accessory apartment at 9597 Sandra Lane for Rich Lee. This resolution is based on the finding that the proposal meets city code. Approval is subject to the following conditions:

- 1) Record this resolution with the County prior to issuance of a building permit.
- 2) Prior to issuance of a certificate of occupancy, submit proof of having recorded a 16.5-foot conservation easement adjacent to the wetland on the property.
- 3) The City Council may reasonably add or revise conditions to address any future unforeseen problems.
- 4) 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.
- 5) The applicant must agree to the above conditions in writing.

B. Recommend that the City Council adopt the resolution on pages A5–A8 of the staff report, which approves a conditional use permit for a detached garage exceeding 1,000 square feet and 12 feet in height at 9597 Sandra Lane for Rich Lee. This resolution is based on the following findings:

- 1) The garage must maintain a 21-foot setback from the south property line.
- 2) Tree protection/erosion control fencing must be installed and maintained throughout the course of construction. The existing tree lines to the south and west of the proposed garage must be maintained
- 3) Additional screening must be planted along the south property line. The applicant must work with the Environmental Resources Coordinator to determine a species and location that will not negatively impact the existing vegetation.
- 4) No additional curb cuts are allowed.
- 5) The structure may not be used for commercial activity.
- 6) Building materials must compliment the future house.

- 7) The City Council may reasonably add or revise conditions to address any future, unforeseen problems.
- 8) 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.
- 9) Record this resolution with the county before the city issues a building permit.
- 10) The applicant must agree to the above conditions in writing.

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

Chair Wagner stated that the City Council was tentatively scheduled to review the application at its December 15, 2003 meeting.

B. Preliminary plat with a rear yard setback variance for a three-lot subdivision at 15318 Minnetonka Boulevard for Kris and Peter Maritz (03061.03a)

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.

Maes asked if the property could be divided into four lots. Teague answered in the affirmative. One lot could be further subdivided, without any variances, into two 30 square foot lots.

Maes asked why the property at 15709 was not able to subdivide. Teague explained that the existence of a 100-year storm water retention area caused inadequate buildable area.

Maes questioned if the storm water and street project could be done before 2006. It seemed to be a major problem. Teague stated that residents could petition the City to speed-up the process.

Britain asked if the lot to the west could be subdivided. Teague noted that that property also has storm water ponding areas. He did not know how many lots could be subdivided, probably one, possibly two. He had not looked closely at that lot.

Gallop asked if the lot could have been divided into two lots without a variance. Teague answered in the affirmative.

Chair Wagner confirmed with Teague that three lots could be created without a variance by moving the lot lines.

Hart clarified with Teague that storm water areas are not buildable areas.

Knight asked why staff determined there was a unique hardship. Teague stated that lots of the application's size are unique in Minnetonka. Knight stated that there are a lot of over-size lots in Minnetonka. Knight did not understand what was unique. Chair Wagner stated that the question to be answered is if the position of the existing house in the center of the lot was a reasonable reason to allow a 25-foot variance. Teague explained that the alternative would be to tear down the existing residence. Staff felt that would be unreasonable.

Hart calculated the lot size to be close to two and a half acres, which is enormous for one residence. The lot size provided the application's uniqueness.

Knight stated that there are plenty of oversize lots in the City.

Peter Maritz, 15318 Minnetonka Boulevard, applicant, was present to answer questions.

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

Gallop confirmed with Teague that the requirement of the rear yard setback was calculated based on the size of the lot.

Maes commented that a residence positioned in the middle of its lot is not unusual for Minnetonka Boulevard. Teague provided a graphic that showed at least three homes located in the center.

Chair Wagner reviewed the primary issues. He acknowledged that there are existing drainage concerns, but the proposal could not be delayed because of them.

Gallop was concerned with the significance of the variance. He was undecided.

Hart confirmed with Teague that 50 feet would exist between the buildable area and the existing residence. She felt that would be more than an adequate distance.

Chair Wagner agreed that the size of the variance is large, but that when he looked at the property, he did not favor gerrymandering the lot line to have it meet the setback requirement. He felt the variance would serve a purpose. He supported the proposal.

Britain saw Gallop's point of view, but he did not want to see a gerrymandered lot line just to avoid the variance. He felt the proposal was approvable and he supported it. He struggled

with the fact that the setback would be close, but he felt the proposal was better than the alternatives.

Chair Wagner noted that the setback was measured from the buildable area, not the residence.

Knight stated that there are many other oversized lots with residences located in the middle of the lot in the City. He struggled to see a unique hardship. He looked favorably on the fact that the lots would not require lot size or road frontage variances.

In response to Knight's question, Teague explained that the Planning Commission would not be able to prohibit future subdivision of the north lot if the proposal met all city code requirements.

Maes asked when lots 15708, 15709, and the neighboring vacant lot were platted. Teague stated that he was not aware of the date the property was divided.

Gallop asked for the distance between the existing home and the proposed residence. Chair Wagner explained that there would be a thirteen-foot setback for one lot and a 35-foot setback to the buildable area on the other side.

Edge noted that a three-unit town home is located on the east and liked the idea of the property developing into single-family housing. She also pointed-out a planned unit development located on Sussex Drive. It could be argued that the area up to Tonka Wood has the potential to be redeveloped in the future. She was glad the applicant was proposing single-family housing.

Gallop pointed-out that the site is zoned for single-family housing. Edge stated that, logically, the idea of a setback is to create space. She felt that the proposal meets that objective. There would be plenty of room between the existing house and the buildable space for new homes. Gallop agreed with Edge on that point, but was concerned with the size of the variance that was being requested.

Hart recognized that the applicant could subdivide the property into four lots. The fourth lot could be a straight subdivision of Tract A, without doing anything nontraditional with the lot lines. If the application was denied, an application with broken-up property lines would not require any variances. A fourth lot could be added with zigzagged lot lines. So, she favored the proposal as it was presented. Hart's only concern was with the substandard width of Wood Knoll Lane. She wanted the Planning Commission to strongly recommend, but not be a condition of approval, that the City Council move up the reconstruction to alleviate the street and drainage problems.

Britain moved, second by Hart, to recommend that the City Council give preliminary approval of the proposed plat, with the rear yard setback variance for Tract A from 40 to 15 feet, at 15815 Minnetonka Boulevard. This resolution is based on the following findings:

- 1) Except for the variance, 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 location of the existing home in the middle of the lot. The home would have to be torn down in order to divide the property and meet all minimum code requirements.

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 rights-of-way and at least seven-foot-wide drainage and utility easements along all other lot lines.
 - (2) The drainage and utility easement along Minnetonka Boulevard and the east lot line must be 20 feet wide to accommodate future utilities.
 - (3) Drainage and utility easements must be established over the 944.00 contours.
 - (4) Utility easements over existing or proposed public utilities, as determined by the city engineer.
 - (5) Dedication of a 7-foot road right-of-way along Minnetonka Boulevard.
 - b. Pay the City a park dedication fee of \$4,750.00.
 - c. If the developer is petitioning the City to construct the public improvements, the City Council must order the improvements.
- 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. If the developer is constructing any public improvements, the developer must submit a signed agreement with the 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) 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.

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

- 3) The following must be completed before the City issues a grading permit or any site work is started:
 - a. Final grading, drainage and erosion control plans must be submitted for staff approval. If the developer is building the streets and utilities, the developer must submit final street and utility plans for staff approval.
 - b. 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, driveway and grading have been completed according to the plans approved by the City.
 - c. All trees to be preserved must be fenced and erosion control measures must be installed for staff approval.
 - d. A construction management plan must be submitted for staff approval.

- 4) 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. The plans must be in substantial compliance with the agreed building areas as required with the final plat. The sewer and water services must be shown to minimize impact to the significant trees.
 - b. The installation and maintenance of a temporary rock driveway, erosion control, tree protection and wetland protection fencing 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 or covenants required to be recorded.
 - d. A hookup fee for sanitary 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.
- 5) During construction, the streets must be kept free of debris and sediment, and the tree protection fencing, and erosion control fencing must be maintained.
- 6) 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.
- 7) 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.

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

Chair Wagner announced that the item was tentatively scheduled to be reviewed by the City Council at its December 15, 2003 meeting.

Hart moved, second by Maes, to recommend that the City Council accelerate the timetable to complete street and drainage improvements to Wood Knoll Lane.

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

9. ADJOURNMENT

Knight moved, second by Egge, to adjourn the meeting at 7:40 p.m. Motion carried unanimously.

By: _____

Lois T. Mason
Planning Secretary