

**MINNETONKA PLANNING COMMISSION
MINUTES**

MAY 20, 2004

1. CALL TO ORDER

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

2. ROLL CALL

Commissioners Britain, Maes, Periolat, Bonoff, and Hart were present. Gallop and Allendorf were absent.

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

- 3. APPROVAL OF AGENDA:** The agenda was approved as submitted with the modification to staff's recommendation of Item 8A, a resolution approving a side yard setback variance on the east side from 7 feet to 6 feet, a side yard setback variance on the west side from 7 feet to 2 feet, a front yard setback variance from 20 feet to 2 feet, an impervious surface coverage variance from 30 percent to 35 percent, and a floodplain setback variance from 35 feet to 13 feet at 16930 Gray's Bay Boulevard for Chad Badiyan (04023.04a), as listed in the May 20, 2004 change memo.

Olson stated that the city council is tentatively scheduled to review item 8B, a resolution approving a conditional use permit for telecommunications antennas and ground equipment at 10700 Cedar Lake Road for Voicestream Minneapolis (04030.04a), at its May 24, 2004 meeting.

Olson explained that, due to the absence of two commissioners, four-vote items would require three votes to pass a motion. Five-vote items would still require five votes to pass a motion.

4. APPROVAL OF MINUTES: May 6, 2004

Maes moved, second by Periolat, to approve the May 6, 2004, meeting minutes as submitted.

Britain, Maes, Periolat, Bonoff, and Hart voted yes. Gallop and Allendorf were absent. Motion carried.

5. REPORT FROM STAFF

Olson briefed the commission on land use applications considered by the city council at its meeting of May 10, 2004:

- Adopted a resolution approving a conditional use permit for a medical clinic, with variance, at 12455 Ridgedale Drive for the Rotenberg Companies, Inc.
- Adopted an ordinance rezoning from R-1, low-density residential to a planned unit development, and a resolution approving a preliminary plat concerning a five-lot subdivision at 4701 and 4717 Williston Road for Michael J. Leuer.
- Adopted a resolution rezoning from planned unit residential district to planned unit development, with a master development plan; and a preliminary plat concerning a proposed development of 6 single-family homes on the vacant property at the end of 34th Circle West for Curt Fretham. The city council does not want to approve off site affordable unit projects until it is determined how well it worked when this project is completed. A letter of credit will be held by the city that may be used to build an affordable housing on a lot if the affordable housing requirement is not met.
- Denied a request to relocate an existing sanitary sewer line and approve a preliminary plat with multiple variances concerning 12918, 12910, and an unaddressed property on Rutledge Circle for Thomas and Patricia Harris.

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 Maes, to approve the items listed on the consent agenda as recommended in the respective staff reports as follows:

- A. Resolution approving a side yard setback variance on the east side from 7 feet to 6 feet, a side yard setback variance on the west side from 7 feet to 2 feet, a front yard setback variance from 20 feet to 2 feet, an impervious surface coverage variance from 30 percent to 35**

percent, and a floodplain setback variance from 35 feet to 13 feet at 16930 Gray's Bay Boulevard for Chad Badiyan (04023.04a)

Adopt the resolution on pages A1–A5 of the staff report. This resolution approves a side yard setback variance on the east side from seven feet to six feet, a side yard setback variance on the west side from seven feet to two feet, a front yard setback variance from 20 feet to two feet, an impervious surface coverage variance from 30 percent to 35 percent, a floodplain setback variance from 35 feet to 13 feet at 16930 Gray's Bay Blvd, 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 yard is narrow, less than 8,000 square feet in size, and has an existing house that was built before the zoning ordinance was in effect. The right-of-way of Gray's Bay Boulevard is exceptionally wide through this lot, approximately 28 feet from the pavement of the street to the property line.

- 2) The variances would be consistent with the spirit and intent of this ordinance for the following reasons:
 - a. Some of the variances involve the second story, which would be directly over the first floor and would not increase the nonconformity of the existing structure. The kitchen addition does not require any variances on its own. The garage addition does require a significant front yard setback variance and a small point intrusion into the side yard setback, but it is consistent with other garages on the same side of the street.
 - b. The existing nonconformities involving an excessively wide driveway approach and a driveway that is used only as a parking area would be corrected. The look of a paved front yard would be reduced. Even though the percentage of impervious surface on the property itself would be increased, there would be a net decrease in impervious surface when the road right-of-way is included.
 - c. The applicant has agreed to add a buffer in the back yard and use pervious pavers for the drive and walkways.

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) Install temporary rock driveway, erosion control, tree protection and lake protection fencing, subject to review by the city's environmental resources coordinator.
- 3) Use pervious pavers for the driveway and pathways. Retain the pervious area under the deck.
- 4) Revegetate areas in front of the house where pavement is removed.
- 5) Place no fill between the new garage foundation and the east side property line.
- 6) Maintain a low floor elevation above 933.5 for all new living space.
- 7) Ensure that the second floor addition is fire rated on the west side where it is less than 3 feet from the property line.
- 8) Plant a 10-foot buffer of natural vegetation across the back yard, behind the beach. Plant at least 20 native lakeshore plants among the rocks of the rip rap wall. Establish a conservation easement over the buffer (not including the beach area). The easement and drawing must be recorded with the county.
- 9) This variance will end on December 31, 2005, unless the city has issued a building permit for the project covered by this variance or approved a time extension.

B. Resolution approving a conditional use permit for telecommunications antennas and ground equipment at 10700 Cedar Lake Road for Voicestream Minneapolis (04030.04a)

Recommend that the city council adopt the resolution on pages A1–A4 of the staff report, which approves the proposed conditional use permit. This resolution is based on the following findings:

- 1) The city code recognizes telecommunications facilities as valuable public resources.
- 2) The proposal meets all of the conditional use permit standards.

Approval is subject to the following conditions:

- 1) Record this resolution with the county before the city issues a building permit.
- 2) The site must be developed and maintained in substantial conformance with the plans dated April 9, 2004.
- 3) The exterior surface of the antennas and equipment must be painted to match the existing light towers.
- 4) A green mesh screen must be woven into the chain link fence, similar to the adjacent tennis courts, to provide screening.
- 5) The city council may reasonably add or revise conditions to address any future unforeseen problems.
- 6) The applicant must agree to the above conditions in writing.

C. Resolution approving a front-yard setback variance from 50 feet to 23 feet for a second-story addition at 4803 Woodland Road for Matthew and Shari Schmitz (04028.04a)

Adopt the resolution on pages A1–A3 of the staff report. This resolution approves a front-yard setback variance from 50 feet to 23 feet at 4803 Woodland Road, 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 existing home is non-conforming.
- 2) The variance would be consistent with the spirit and intent of this ordinance for the following reasons:
 - a. The proposed additions are consistent with sightlines established with the homes to the northeast and south.
 - b. There will be no adverse impact on neighboring properties.
 - c. The addition would not encroach further into the existing setback.

Approval is subject to the following conditions:

- 1) Submit proof of having recorded this resolution with the county before the city issues a building permit.
- 2) This variance will end on December 31, 2005, unless the city has issued a building permit for the project covered by this variance or approved a time extension.

Britain, Maes, Periolat, Bonoff, and Hart voted yes. Gallop and Allendorf were absent. Motion carried and the items on the Consent Agenda were approved as submitted.

8. PUBLIC HEARINGS

A. Sideyard setback variance from 10 feet to 5 feet and a front-yard setback variance from 35 feet to 32 feet for a garage addition at 16843 Scenic Lane South for Thomas Butler (04027.04a)

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

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

Chair Hart asked what the distance would be between the proposed wall and the neighbor's wall. Kelly stated that the neighbor's residence is 15 feet from the lot line, so it would be 20 feet from wall to wall.

Thomas Butler, 16843 Scenic Lane South, applicant, stated that the home to the north is 25 feet from the property line, so it would be 30 feet from the proposed garage. He stated that:

- The proposed garage would reduce the vehicle clutter in the yard. The boat would be kept in the garage.
- The proposed garage would solve the noise and smell problem from vehicles being warmed-up on the current drive pad.
- Adding the garage would enclose the vehicles.
- The proposed garage would have no windows on the north side.
- Realtors and other neighbors agree that the proposed improvement would increase the value of the neighbor's home, rather than decrease it.

- A detached garage would need a new driveway that would not be in character with the neighborhood.
- He agreed to the change memo prohibiting garbage storage on the north side of the garage.

The public hearing was opened.

Richard Struck, 16844 Scenic Lane North, stated that:

- His residence is 24 feet from the lot line. The applicant's current drive is located right on the lot line. That is why he is concerned with the fumes and the noise of the vehicles in the winter. The bedrooms are located on that side of the house. The proposal would increase the problem rather than alleviate it.
- The applicant's vehicles are always outside.
- No hardship existed.
- A garage could be built on the south side. There is currently a shed located there.
- The proposed garage would look out of character with the neighborhood because there is 40 feet between the other homes in the neighborhood.
- The applicant's residence was originally constructed without a garage. One owner constructed a garage and a breezeway. The applicant converted the breezeway into living space.

Bonoff asked if the proposal would change the location of the driveway. Mr. Butler confirmed that the part of the driveway that would extend past the proposed garage would be removed and replaced with grass.

Britain asked when the garage was converted into a breezeway. Mr. Struck estimated 20 years ago.

Britain confirmed with Mr. Struck that his residence has a two-car garage and so do the majority of residences in the area.

Mr. Butler stated that the breezeway was used as a kitchen when he purchased the home.

No additional testimony was submitted and the hearing was closed.

Maes confirmed that the city considered a 24-foot by 24-foot garage a reasonable size. She asked how many vehicles are allowed to be stored outside.

Teague confirmed that a boat is considered a vehicle, since it is licensed. Up to 4 vehicles may be outside at one time.

Periolat confirmed that Mr. Struck's residence is 24 feet from the lot line. Mr. Butler's new garage addition would be 5 feet from the same lot line. So, 29 feet would exist between the two walls. She suggested the applicant consider evergreen type landscaping between the driveway and the lot line to help buffer the noise and provide a visual buffer. Olson explained that the city does not require landscaping between homes and it has been determined that a row of evergreens would not help the sound.

Chair Hart observed that the proposal would allow the idling cars to be further away than they are currently from Mr. Struck's residence, because the garage would be in the way.

Bonoff noted that the proposal does meet the variance standards, but appreciated that it would be very close to Mr. Struck's residence. She appreciated Mr. Struck's concerns, but acknowledged that the city tries to allow for each home to have a double car garage.

Britain concurred with Bonoff. Change is difficult. He stated that the city has approved these requests in the past. The standards have been met. The property value would increase and it would be consistent with the neighborhood. He supported approval of the project.

Chair Hart interpreted the intent of setbacks to provide separation between residences. She felt the intent was met, since homes can be 20 feet apart and meet code.

Britain moved, second by Maes, to adopt the resolution on pages A1–A3 of the staff report with the changes listed in the May 20, 2004 change memo. The resolution approves a side yard setback variance from 10 feet to 5 feet and a front yard setback variance from 35 feet to 32 feet at 16843 Scenic Lane South, 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 existing single-stall garage could not be expanded to a two-stall garage without the need of a variance.

- 2) The variance would be consistent with the spirit and intent of this ordinance for the following reasons:
 - a. The proposed garage addition is consistent with sightlines established with the homes to the north and south.
 - b. There will be no adverse impact on neighboring properties.

Approval is subject to the following conditions:

- 1) Garage must be sheet rocked.
- 2) Submit proof of having recorded this resolution with the county before the city issues a building permit.
- 3) This variance will end on December 31, 2005, unless the city has issued a building permit for the project covered by this variance or approved a time extension.

Britain, Maes, Periolat, Bonoff, and Hart voted yes. Gallop and Allendorf were absent. Motion carried.

Chair Hart stated that an appeal of the planning commission's decision must be made to the planning director within ten days.

B. Ordinance rezoning 5621 Smetana Drive from B-2, limited business, to R-5, high density residential, for JLT Group, Inc., represented by Kurt Williamson (00033.04a)

Chair Hart 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.

Teague gave the staff report.

Chair Hart asked if there would be one entrance to the garage. That was Teague's understanding, but he welcomed the applicant providing a clarification.

Maes asked what would happen if the cost went above \$50,000. Teague stated that the maximum he would be required to pay would be \$50,000. The city would be responsible for the rest. The cost is not expected to exceed that amount.

Bonoff questioned if the intent of the fencing requirement on the garage was to provide shelter from the weather or for security. Teague stated that the fence would provide both. The main purpose would be to provide security. Bonoff questioned if the fence met the ordinance's requirement for an enclosed parking area for a building consisting of a certain number of units. Bonoff asked if the ordinance intended on protecting vehicles from cold weather. She was unsure if the fence would meet the requirement of being enclosed. Teague stated that staff determined that the fence would meet the ordinance requirement of enclosing the parking spaces.

Periolat asked what type of fence would be used.

Jay Lindgren, land use attorney for Dorsey and Whitney, 50 South 6th Street in Minneapolis, represented the applicant, stated that he was present with Kurt Williamson of JLT Group, Inc., and John Wanninger with CB Burnet, to answer questions. He agreed with all of the conditions. He stated that the fencing would be a high quality, black, vinyl, chain link fence. He supported staff's view on the enclosure. He supported the city council reviewing the application on May 24, 2004.

Chair Hart applauded the inclusion of 16 affordable housing units. Mr. Lindgren explained indexing of the affordable housing units.

Chair Hart asked if a surface parking area existed close to the site. Mr. Lindgren stated that the site only has enclosed parking.

Britain asked if the upper level of the parking ramp would be changed. Mr. Lindgren stated that there were currently no plans. In the future, constructing something on top of the ramp might be considered, but that it was not anticipated immediately.

Periolat asked how the property would be signed. Mr. Wanninger stated that the permanent signage for the property is still being designed. The plan would be submitted. Currently, there are two signs, the current *Medica* sign and a small, monument sign located on Smetana Drive.

Periolat questioned if the affordable units would be distributed throughout the building. Mr. Wanninger answered in the affirmative. There would be affordable units on each floor. It would not be able to be determined which units were the affordable units by walking down the hall.

Periolat asked how the restrictive covenants would “run” with the units. Mr. Lindgren explained the economic development authority’s requirement that the affordable housing units have a restriction that they would not be sold for more than 50 percent of the affordable housing metropolitan average. The covenant would be registered on the title with the county.

Periolat asked if an owner could buy two adjacent affordable housing units and combine them. Mr. Wanninger stated that there would be market rate units that could be combined, but owners would not do this with affordable units because the restrictive covenant would still apply.

Mr. Lindgren stated that the floor plan would allow the market rate units to be combined, but it would not be likely that it would be done with the affordable housing units because of the covenant. He stated that he has found that combining units in a project similar to this one is extremely rare.

Periolat has seen it happen in mature buildings, not in a setting where the units were intended to be affordable, but combining starts to become an issue as the building matures. If the covenant would be attached to that particular unit, she asked if it could be assumed that that could not happen. Mr. Wanninger stated that it could happen, but part of the owner’s property would have a restriction on the amount that it could be sold for in the future. It would be counter intuitive.

Bonoff was impressed with the project and appreciated the affordable units.

The public hearing was opened.

No testimony was submitted and the hearing was closed.

Chair Hart reviewed the primary issues.

Maes felt the project fit perfectly with the mixed uses in the area.

Chair Hart was impressed with the range of prices.

Maes moved, second by Bonoff, to recommend that the city council adopt the ordinance on pages A1–A3 of the staff report, which approves the proposed rezoning. This ordinance is based on the following findings:

- 1) The rezoning is consistent with the City’s Comprehensive Plan.

- 2) The proposed use would generate less traffic than the existing office use.
- 3) The use would be consistent with adjacent land uses.
- 4) The rezoning has no negative effect on public health, safety, and welfare.

Approval is subject to the following conditions:

- 1) Planting of additional trees along Highway 169, subject to review and approval of the City's Environmental Resources Coordinator.
- 2) Add a buffer of native vegetation along the existing pond subject to review and approval of the City's Environmental Resources Coordinator.
- 3) The lower level of the parking ramp must be completely enclosed.
- 4) The applicant must enter into an agreement to pay for the costs of upgrading the lift station, not to exceed \$50,000, payable before issuance of the first certificate of occupancy.
- 5) Thirty-four (34) units must be priced at a cost not to exceed the Metropolitan Council's definition of affordable housing at least 60 days prior to the closing of the affordable units, and that the 16 units priced under \$170,000 have resale prices indexed using 50 percent of the average metropolitan sales price to maintain affordability.

Britain, Maes, Periolat, Bonoff, and Hart voted yes. Gallop and Allendorf were absent. Motion carried.

Chair Hart stated that the city council is tentatively scheduled to review the application at its May 24, 2004 meeting.

C. Preliminary plat, with buildable area variances, to divide the property at 16451 McGinty Road West into two lots for Chad Winter (03067.04a)

Chair Hart 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 Hart confirmed with Thomas that no house plans would be reviewed. The existing driveway would be shared by both lots.

Chad Winter, 16451 McGinty Road West, applicant, stated that there would be no reduction in the size of the wetlands. The proposal would increase the protection of the wetlands by creating a buffer.

In response to Bonoff's request, Mr. Winter pointed out his residence on the map. Bonoff asked how close the buildable area would be to the adjacent neighbor. Chair Hart stated that the buildable area would meet setback requirements.

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

Chair Hart asked if there would be a 40-foot by 40-foot buildable area if the floodplain ordinance is revised as suggested by staff. Thomas answered in the affirmative and explained that, if a building permit were to be submitted under the existing ordinance, a house would have to be built within the orange area to meet floodplain requirements.

Chair Hart reviewed the primary issue.

Maes noted that the lot area is three times the minimum lot size. The restriction is caused by the floodplain. Maes felt the request was reasonable.

Britain moved, second by Maes, to recommend that the city council give preliminary approval to the Winters Addition, date stamped October 1, 2003. Approval is based on the finding that, apart from requested buildable area variances, the plat meets the required standards and ordinances.

- 1) The variance is based on the following findings:

- a. Strict enforcement would cause undue hardship because of the following circumstances that are unique to this property:
 - (1) The applicant is proposing to use the property in a reasonable manner. With a 20-foot floodplain setback, as proposed by staff in an updated floodplain ordinance, the proposal would not require any variances.
 - (2) The property is unique. The staff proposed change to the floodplain setback would double the buildable area of proposed Lot 2.
- b. The variance would be consistent with the spirit and intent of the ordinance for the following reasons.
 - (1) The applicant's proposal would not alter the unique character of the area. There is wide variety in the size, access, and visual character of surrounding lots.

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) Drainage and utility easements over the 931.5 elevation.
 - (3) Dedicate an additional 7-feet of right-of-way along McGinty Road West.
 - b. Pay the city a park dedication fee of \$2,375.
 - c. Submit evidence that there are no existing driveway easements on the property, or if there is, the easement must be vacated.
- 2) The following items must be submitted to the city before the city releases the final plat:

- a. An electronic CAD file of the final plat in microstation or DXF.
- b. 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 all site wetlands and required wetland buffers and a drawing of the easements for the approval of the city attorney. The easements and drawing must be recorded with the final plat.
 - (a) A 16.5-foot wetland buffer is required around the small wetland on the north side of Lot 2.
 - (b) A 25-foot wetland buffer is required around all other wetlands on the Lots 1 and 2.
 - (3) A private driveway easement over proposed Lot 2, benefiting proposed Lot 1.
 - (4) Private utility easements over proposed Lot 2, covering all utilities servicing proposed Lot 1.
 - (5) 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 submitted to the city before the city issues a building permit:
 - a. Final grading, drainage and erosion control plans must be submitted for staff approval. The sewer and water services must be shown to minimize impact to the significant trees.

- b. All conservation easements and trees to be preserved must be fenced and erosion control measures must be installed for staff approval.
 - c. 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.
 - d. Copies of the recorded plat, conservation easements, and covenants required to be recorded.
 - e. A hookup fee for sanitary sewer and water.
 - f. 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.
- 4) The buildable area variances approved as part of the plat do not approve floodplain setback variances for any future house. Any proposed house must meet the zoning ordinance in place at the time of building permit application. 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 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.
- 6) Provide a driveway turnaround for Lot 2 before the house is occupied.
- 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, Maes, Periolat, Bonoff, and Hart voted yes. Gallop and Allendorf were absent. Motion carried.

- D. Items concerning construction of a single-family home on the vacant property at 3505 Elmo Road for Mary Anders (04029.04a):**
- 1) A lot area variance with a floodplain setback and buildable area variance; and**
 - 2) Ordinance amending the floodplain district boundary.**

Chair Hart 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.

Britain asked if the site met the conditions for the city to purchase it as an unbuildable lot. Teague answered in the negative. The site could be tied in with the lot to the east or divided into two pieces for the adjacent lots. Olson recalled that the city attorney, Desyl Peterson, provided an example during a training session of a lot that was surrounded by wetland with buildable area in the center of the wetland. The applicant's site is different because the property owner east of the site previously owned the property. The property owner knew the situation when it was sold. It is considered a self-created hardship.

Perolat confirmed with Teague that the applicant does not own the pictured residence. Perolat asked if the seller needed to register the lot division at the time the lot was sold. Teague stated that the two properties were already, legally, two lots when the proposed site was sold.

Bonoff asked why there was a for sale sign currently on the site. Teague confirmed that the site is currently for sale.

Mary Anders, 14308 Branberry Walk, applicant, purchased the home and lot in 1995. Her realtor told her that the vacant lot was buildable when she bought it. She has been working with staff for two years on the project. She thought she had a workable plan. She has learned a lot about the process.

Ms. Anders thought that the plan could be revised to meet the 20-foot setback and the problem with the driveway. Her engineer, James Parker, was also present. She had five revisions of the plan. She has put a lot of time, energy, and money into the project. It is a complicated lot. She had originally intended to build a house and live on the lot. Her personal situation has changed and she is now planning to sell the lot. She had numerous inquiries to purchase the lot. Buyers are not too specific regarding the type of home that can be constructed, but there

has to be authorization from the city to build on it. She asked for the commissioners' consideration regarding the application.

Ms. Anders felt the size of the buildable area would fit with the neighborhood. The person who commented that her motivation was greed knows nothing about her. Chair Hart assured her that economic considerations are not part of the commission's review process.

Ms. Anders stated that no trees would be removed. Teague stated that trees in the rear would be removed to complete required excavation and filling.

Ms. Anders stated that if someone bought the lot, the buyer would know the building limitations before purchasing it. She was disappointed that she had worked with staff for two years and was not told that the lot could not be built on.

Chair Hart clarified with Ms. Anders that the issue that the planning commission was concerned with was that the lot was entirely in the floodplain. Chair Hart provided Ms. Anders with the options of withdrawing the application, postponing action to another date, an indefinite postponement, or the planning commission taking action. Chair Hart stated that if the floodplain ordinance would be changed in the future, it would offer more flexibility.

Ms. Anders asked if there would be a benefit for her to withdraw the application and come back with a new proposal. Britain asked if there was any use for the site. Teague stated that staff's recommendation probably would not change if the plan included locating all of the floodplain in the rear and a 20-foot setback. The main issue is filling a site located entirely in the floodplain to create buildable area. Teague reminded everyone that the decision is ultimately the city council's. He felt staff's recommendation would remain the same even with a revised plan. The bigger issue is filling the floodplain to create a building site. Reasonable use of the site does exist as the site exists today.

Britain asked Ms. Anders if she purchased the site with the residence that she originally owned. She answered in the affirmative. Ms. Anders stated that she was told that when the residence was constructed in 1955, that the homeowner favored a large lot. When she bought the house and the lot in 1995, she was told it was a separate, buildable lot. She never thought to verify it.

Ms. Anders wondered why she was not told a long time ago why it was such a strong denial. She presented the first plan in August of 2002. All along the way she was told to make adjustments.

Periolat asked Ms. Anders who told her the lot was buildable. Ms. Anders stated that the realtor had. It was a big selling point. Periolat assumed that she did not use an attorney at that time.

Chair Hart asked if there had always been problems with the proposals for the past two years. Ms. Anders answered in the affirmative. Staff had advised her that there were problems and there would be problems in getting the application approved. She would not have put all the money into the project that she would have if she knew the project was such a strong denial.

The public hearing was opened.

Bill Brubaker, 3502 Woody Lane, adjacent property on the west, stated that the reason that 3505 has always been a vacant lot is because it has always been low. It used to have cattails. Several years ago, the city installed a drainage culvert. The lot floods in major storms. He is concerned that any fill added to the lot would divert water to his lot. He has no problem with the applicant building a house. The lot is used for aesthetics. The kids play on it. The elevation change and subsequent runoff is his concern. It is not a real problem now, but he anticipated that it could be in the future.

No additional testimony was submitted and the hearing was closed.

Maes asked when the culvert was installed. Teague stated that a sanitary sewer and storm pipe were installed on the west lot line. Maes compared the site's buildable area to a teepee.

Periolat was sympathetic with the applicant investing her time and money, but agreed with staff's recommendation. She appreciated the applicant taking the word of a realtor.

Chair Hart commented that a similar application was denied a couple months ago for a lot that was mostly a wetland. Chair Hart stated that the situation was unfortunate, but she agreed with staff's recommendation.

Bonoff concurred with Periolat. She empathized with the applicant, but had reverence for the floodplain setbacks.

Britain felt the situation was unfortunate. He supported staff's recommendation. He felt for the applicant and wished there was something the city could do to help.

Bonoff moved, second by Britain, to recommend that the city council deny items concerning construction of a single-family home on the vacant property at 3505 Elmo Road for Mary Anders (04029.04a):

- 1) *Recommend that the city council deny the request for the proposed lot area variance from 22,000 to 16,295 square feet; floodplain setback variance from 35 to 10 feet; and buildable area variance from 3,500 square feet to 96 square feet. Denial is based on the following findings:*
 - a. Denial of the variances would not deny reasonable use of the property. The existing buildable lot to the east with the existing house constitutes reasonable use.
 - b. The requested variances are self-created. They are based on an attempt to distribute existing buildable area between two lots.
 - c. There are existing drainage problems in this area due to the 100-year floodplain.
 - d. The proposal may set a precedent for similar variance requests for filling a floodplain to create a buildable area.

- 2) *Recommend that the City Council deny the proposed floodplain boundary change. Denial is based on the following findings:*
 - a. Denial of the variances would not deny reasonable use of the property. The existing buildable lot to the east with the existing house constitutes reasonable use.
 - b. The requested variances are self-created. They are based on an attempt to distribute existing buildable area between two lots.
 - c. There are existing drainage problems in this area due to the 100-year floodplain.
 - d. The proposal may set a precedent for similar variance requests for filling floodplain to create a buildable area.

Britain, Maes, Periolat, Bonoff, and Hart voted yes. Gallop and Allendorf were absent. Motion carried.

E. Site and building plan review for a building to hold mechanical equipment, storage area, and toilet facilities at 18301 State Hwy 7 for the Minnetonka High School (97001.04a)

Chair Hart 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 Hart asked if the mechanical equipment would be located inside a fence, if the building would not be constructed. Thomas answered in the affirmative. That was included in the original site plan approval.

Chair Hart asked if the building would reduce the noise more than a fenced enclosure. Thomas answered positively.

Tom Berge, director of operations and finance for Minnetonka schools, applicant, stated that portable toilets are currently used on the site. He was planning on presenting a power point presentation, but felt that staff's report covered a number of his points. He stated that:

- The portable toilet facilities have been used for years.
- The complex is large and used during and after school.
- There would be a covered connected walkway between the toilets and the dome. The walkway would be part of the dome and would come down when the dome is taken down. The walkway would not be heated, but would provide protection from snow, rain, and wind.
- The building location is not currently being used.
- The proposal would meet a long-standing need.

Britain asked if the comments in opposition to the project are justified. Mr. Berge stated that school district representatives met with neighborhood members and put together a management plan for the dome. He felt the issues raised are not valid. Chair Hart stated that the issues referred to were not part of the planning commission's jurisdiction.

Chair Hart stated that a minor change to the site plan was being reviewed. She felt enclosing the mechanical equipment and locating the toilet facilities inside would be an improvement.

Mr. Berge indicated that the issues had been satisfactorily addressed.

Maes asked if the building was a long-standing plan or if it was prompted by the dome. Mr. Berge stated that action was prompted by the dome being a 12-month, rather than a 6-month facility.

Maes clarified with Mr. Berge the location of the walkway and grass areas. Mr. Berge indicated where a walkway would be constructed.

Erin Adams, vice-chair of the Minnetonka school board, stated that she wanted the commission to know that the school board supports the project. She commended the city for its work and had a new appreciation for the close ties needed by the city and school board. The school board felt the proposal would be an improvement. The building would reduce noise and increase the longevity of equipment because it would be enclosed. Toilets would be more sanitary than using five porta-potties. The proposal would be more appropriate for the community and the quality of life the area aspires to. It would serve a real purpose.

The public hearing was opened. Chair Hart reminded those present that discussion should be in regard to the proposed building and walkway.

Liz Daitch, Tamarack Circle, felt the proposed building would not be an improvement. It would add more impervious surface that would impact the wetland. The run-off would go to a sediment pond that is overloaded. Ms. Daitch stated that the land located behind the site is protected by the city's ordinances. Chair Hart asked staff if the building would cover mechanical equipment that was already an impervious surface. Thomas stated that there would be some increase in impervious surface to the previous proposal. The proposal does include the removal of some existing impervious surface. The result would be an increase in the amount of run-off by one tenth of one percent.

Ms. Daitch provided illustrations of the wetland areas owned by the district and the remaining area of the watershed. Ms. Daitch felt that one tenth of one percent of run-off would be significant. She also had a problem with adding the lift station to remove the sewage from the toilets. She felt it repugnant that the district was spending millions of dollars on athletic amenities. Chair Hart stated that economics were not related to the planning commission's review of the application. Ms. Daitch stated that pollution had not been addressed. The district continues to increase impervious surfaces. The district's engineer has done soil borings and counted the fields as pervious surfaces. Ms. Daitch felt any addition of impervious space is significant when it borders a protected wetland. The sedimentation pond and associated mitigated wetland are not being taken care of.

Ms. Daitch requested that Maes excuse herself on ethical grounds because Maes discussed the dome project with the superintendent. Maes stated that she would be voting. Maes has no financial conflict of interest with the project.

No additional testimony was submitted and the hearing was closed.

Britain requested staff comment regarding Ms. Daitch's concerns. Colleran stated that the site is zoned as an institutional use. The ordinance allows it to have 60 percent impervious surface. With the proposal, the site would have 26 percent impervious surface. Thus, the impervious surface is significantly less than the ordinance allows. Ball fields are technically considered pervious surfaces. The city engineer asked the district to confirm that the sediment pond was working. Colleran viewed sand built up in the area, however, it was confirmed that it was functioning properly. The issue regarding diesel range organics is a Minnesota Pollution Control Agency regulation. Colleran was willing to attend a conversation with that agency, but that issue is not regulated by the city.

Chair Hart reviewed the primary issues.

Maes moved, second by Bonoff, to recommend that the city council approve final site and building plans for a building to hold mechanical equipment, storage area, and toilets associated with the stadium at 18301 State Hwy 7 for the Minnetonka High School. Approval is based on the finding that the proposal would meet the required standards and ordinances for 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:
 - Site plan, dated April 4, 2004
 - Site materials plan, dated October 3, 2003
 - Grading plan, dated October 3, 2003
 - Utility plan, dated October 3, 2003
 - Building elevations, date stamped April 19, 2004
- 2) Complete the following before the City issues a building permit or before starting any site work:

- a. Install erosion control fencing for review and approval by the environmental resources coordinator. This fencing must be maintained through construction.
 - b. Submit final grading, drainage, utility and erosion control plans for staff approval.
 - c. Submit a letter of credit or cash escrow for 150% of the estimated cost, or 125% of an actual bid to do the work, to comply with the grading permit requirements and restore the site.
 - d. Submit an illumination plan for staff review and approval.
 - e. Submit a construction management plan for staff approval.
 - f. Submit copies of any required Pollution Control Agency permits for proposed fuel oil storage tank.
- 3) The proposed fuel oil storage tank must be a “con-vault” design or as approved by the Fire Marshall.
 - 4) The building must be equipped with automatic fire sprinklers.

Britain, Maes, Periolat, Bonoff, and Hart voted yes. Gallop and Allendorf were absent. Motion carried.

9. ADJOURNMENT

Maes moved, second by Britain, to adjourn the meeting at 8:50 p.m. Motion carried unanimously.

By: _____
Lois T. Mason
Planning Secretary