

**MINNETONKA PLANNING COMMISSION
MINUTES**

AUGUST 5, 2004

1. CALL TO ORDER

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

2. ROLL CALL

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

Staff members present: Planning Director Geoff Olson, Principal Planner Cary Teague, Planner Susan Thomas, Environmental Coordinator Jo Colleran, Planning Intern Kyle Sobota, and Assistant City Engineer Jennifer Posma.

- 3. APPROVAL OF AGENDA:** The agenda was approved as submitted with the modifications listed in the change memo dated August 5, 2004 and the removal of item 8D, items concerning auto-related businesses at 13114 and 13118 Excelsior Boulevard for Bauer's Express Lube/Bauer's Custom Hitches (86165.04a), at the applicant's request.

- 4. APPROVAL OF MINUTES:** July 15, 2004

Bonoff moved, second by Maes, to approve the July 15, 2004, meeting minutes as submitted.

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

5. REPORT FROM STAFF

Olson briefed the commission on land use applications considered by the city council at its meeting of July 26, 2004:

- Adopted a resolution approving a conditional use permit for a daycare/preschool facility for up to 100 children at 13613 Orchard Road for Bet Shalom Synagogue/Shalom Yeladim Preschool.
- Adopted a resolution approving the following items pertaining to a proposal for a two-lot subdivision, with variances, at 309 Plymouth Road for Bernadette Benson: preliminary plat, with lot area from 22,000 square feet to 20,104 square feet and lot width at building setback from 110 feet to 102.

- Adopted a resolution approving the following items concerning the expansion of the Gianna Homes residence at 4605 Fairhills Road East for Gianna Homes-Sursum Corda, Inc.: a revision of a conditional use permit and site and building plan review, with setback variances.
- Adopted a resolution approving a preliminary plat to divide one lot into three-lots at 11413 Fetterly Road West for Capestone Builders.

Olson reported that a neighborhood meeting was held regarding a proposed 500-space, 2-level park and ride lot to be located at the southwest corner of Interstate 394 and Hopkins Crossroads. Ten residents attended the meeting and were primarily concerned with increased traffic. A traffic study would be completed. A formal applicant has not yet been received.

Olson introduced Kyle Sobota, the new planning intern.

6. REPORT FROM PLANNING COMMISSION MEMBERS: None

7. PUBLIC HEARINGS: CONSENT AGENDA

Item 7B, a resolution approving a front-yard setback variance for an addition to the home at 11705 Live Oak Drive for M. Jay Shahidi (04046.04a), was removed from the consent agenda for discussion and separate action.

Maes moved, second by Gallop, to approve items 7A, 7C, and 7D listed on the consent agenda as recommended in the respective staff reports as follows:

A. Resolution approving front yard setback variances for two buildings in the northeast corner of the State Highway 7 and Highland Road intersection for Delta Environmental (04045.04a)

Adopt the resolution on pages A1–A5 of the staff report, which approves front yard setback variances from 50 feet to 0 feet for two buildings within state right-of-way at the Highway 7 and Highland Road intersection. This resolution is based on the following findings:

- 1) Strict enforcement would cause undue hardship because of the following circumstances that are unique to this property:
 - a. The location of the gas station building, gas pumps, and drive aisles present practical difficulties. There is no other location the

buildings could be located without severely affecting circulation through the gas station site.

- 2). The variance would be consistent with the spirit and intent of this ordinance for the following reasons:
 - a. The locations of BP/Amoco building, gas pumps, drive aisles, as well as the location of the leak site and state right-of-way are all unique. The circumstances associated with the property are not common to all B-2 zoned properties in the city.
 - b. The proposed buildings and their temporary location would not alter the commercial character of the area.

Approval is subject to the following conditions:

- 1) Record this resolution with the county.
- 2). Remediation efforts must focus on the contamination area in the state right-of-way until July 1, 2005 or until the contamination is eliminated, whichever comes first.
- 3). The applicant must schedule and attend quarterly meetings with city engineering and planning staff to provide updates on the remediation process.
- 4). If the city engineer determines that the system or buildings will impact the frontage road alignment, any or all parts of the system must be moved to a location acceptable to the city engineer.
- 5) The buildings must be removed when site remediation is complete.
- 6) This variance will end on December 31, 2005, unless the buildings are installed or the city approves a time extension.

C. Resolution approving a conditional use permit for a seasonal vegetable stand in the Westwind Plaza parking lot for Sever Peterson of Sever's Farm Market (88030.04a)

Recommend that the city council adopt the resolution on pages A1–A6 of the staff report. This resolution approves a conditional use permit for a vegetable stand in the Westwind Plaza parking lot for Sever Peterson of Sever's Farm

Market. Approval is based on the finding that the proposal meets the required conditional use permit standards and is subject to the following conditions:

- 1) Record this resolution with the county.
- 2) The vegetable stand may be operated July through September.
- 3) Any display of items must be limited to representative samples and must be arranged in as compact a manner as reasonably practicable.
- 4) Any change in the person, location, or items sold at the stand renders this permit invalid.
- 5) This approval does not approve any signs at the site. A sign permit application must be submitted for staff review and approval. Any proposed sign must be requirements outlined in city code.
- 6) Violation of any conditional use permit standards outlined in city code will result in immediate revocation of the conditional use permit.
- 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) The applicant must agree to the above conditions in writing.

D. Resolution approving an aggregate side-yard setback variance for an addition to the home at 16623 Jealam Road for Ben Adamowski (04048.04a)

Recommend that the planning commission adopt the resolution on pages A1–A3 of the staff report, which approves an aggregate side-yard setback variance from 30 feet to 23 feet at 16623 Jealam 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 home is non-conforming; any addition would require a variance.

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

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.

Bonoff, Britain, Gallop, Maes, Periolat, Allendorf, and Hart voted yes. Motion carried and items 7A, 7C, and 7D on the consent agenda were approved as submitted.

Chair Hart stated that all final decisions by the planning commission are subject to appeal to the city council. Written intent to appeal the decision must be given to the planning director within 10 days of the planning commission's decision.

8. PUBLIC HEARINGS

A. Resolution approving a front-yard setback variance for an addition to the home at 11705 Live Oak Drive for M. Jay Shahidi (04046.04a)

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.

When Allendorf visited the site, he discovered that the residence was closer to the street than the surrounding properties. The addition of a front porch would bring the residence closer to the street. He questioned whether the variance was justified. The neighbors seemed more concerned with the site's current nuisance state than the proposal. He suggested adding a condition requiring the addition of evergreens to provide screening and a deadline for the proposal's completion.

Chair Hart asked Teague if an end date requirement could be utilized. Teague explained that the building code requires progress to be made on a project every six months to keep the building permit from expiring. A building permit must be applied for within a year of a variance approval. Olson received advice from the city attorney that an end date requirement must tie in with a variance. Olson saw a clear connection for requiring landscaping to screen the addition because the variance would make it necessary. Olson invited the applicant to provide comments.

M. Jay Shahidi, 11705 Live Oak Drive, applicant, stated that he has had a construction business since 1977. He has remodeled over 2,000 homes. He purchased the home in 1986 with the intent to renovate and sell it. He stated that:

- The upstairs had water damage from a leaky roof. After making repairs, he discovered that the exterior siding contained asbestos. He was financially unable to remove the asbestos at that time.
- He called the city and learned that there is a 12-foot right-of-way, and that he could build an addition.
- He upgraded the floors and kitchen. He hired an asbestos removal contractor who removed the asbestos last week.
- Staff now learned that the right-of-way is larger than previously thought.
- He plans to put brick or stone on the front of the residence, cedar on the other three sides, construct a deck patio, and add landscaping.
- He would have finished the job by November if it had not been for the delay. He has bids to complete the job.
- The objections relate to the “junk” in the garage. He understood, agreed with the neighbors, and was really embarrassed. He explained that the garage stores his own tools and items from finishing the inside of the house.
- He would really like to complete the job because it would eliminate the situation that irritates the neighbors.
- It would upgrade the neighborhood.
- The site has a steep hill that creates a hardship. Two people have fallen on it. He plans to construct steps.
- He has planted over 40 trees, including evergreens, in the front of the property. The proposal would cause the removal of one tree and a branch being removed from a large maple tree.

- He apologized that buckthorn has taken over. He has started cutting it.

Allendorf reviewed the location of the trees in the front yard. Chair Hart asked Mr. Shahidi if he would be agreeable to adding more screening in the front. Mr. Shahidi had absolutely no objection. Mr. Shahidi described the vegetation and trees on the site. He described the house and property.

Bonoff asked if a time deadline could be a condition of approval of the variance. Olson asked if the applicant would agree on a date. Mr. Shahidi's wife provided him with a strong motivation to finish the project by winter. Mr. Shahidi is financially ready, has the workers ready to complete the project, and is prepared to complete the project before December, unless unexpected problems occur.

Gallop agreed with Allendorf, but was concerned that it could appear as if the city would be requiring screening between residential properties. He supported the applicant agreeing to do so, but wanted to clarify that the city does not require screening between residential properties. Olson agreed with Gallop, but added that the situation is unique because it is the closest house to the street and the variance would allow it to be even closer. A screening requirement could be tied to the variance in this case. Gallop appreciated the clarification.

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

Allendorf was satisfied with the good intentions of the applicant to complete the project by December. It would be difficult to enforce a deadline.

In response to Chair Hart's request, Colleran listed appropriate vegetation and hedges for the site.

Allendorf moved, second by Bonoff, to recommend that the planning commission adopt the resolution on pages A1–A3 of the staff report with a condition requiring screening be added between the new addition and the street as determined appropriate by staff, which approves a front-yard setback variance from 35 feet to 22 feet at 11705 Live Oak Drive, based on the following findings:

1. Strict enforcement would cause undue hardship because of the following circumstances that are unique to this property:

- a. Excessive right-of-way (25 feet) exists between the applicant's home and Live Oak Drive.
2. The variance would be consistent with the spirit and intent of this ordinance for the following reasons:
 - a. There will be no adverse impact on neighboring properties.
 - b. Existing underbrush will properly screen the home from Live Oak Drive.
 - c. The addition would appear to meet the required setback from the street due to the large right-of-way.

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. Steps may not extend into the right-of-way.
3. The building material and color of the proposed addition must match the existing home.
4. 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.
5. Screening be added between the new addition and the street as determined appropriate by staff.

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

B. Detachment and annexation agreement to build 28 town homes (Deephaven Cove) at 3600 County Road 101 for Steven Scott Development (04017.04a)

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.

Perolat asked what the process would be and the time frame involved with the city of Deephaven approving or denying the proposal. Olson stated that the annexation would be reconsidered if Deephaven did not agree to the proposal. The application process has progressed quickly to this point. Deephaven's city council is expected to make a decision in August. At this point, Deephaven's staff indicated their support of the proposal and agreement with the conditions.

In response to Maes' question, Posma indicated the area where four town homes would not be built because the lots would be used for ponding and a conservation easement.

Gallop asked if the City of Deephaven would be open to trading the proposed site for land adjacent to Lake Minnetonka. He thought he would take a shot.

Chair Hart asked when the County Road 101 upgrade would be done. Posma stated that preliminary plans have been submitted for review. The applicant is currently applying to acquire the right-of-way. There may be preliminary work done this year, but the bulk will be done in 2005.

Chair Hart asked if the sign plan had been submitted. Teague indicated that it would be required to meet the ten-foot setback from the property line.

Teague and Chair Hart discussed the grading and visibility of the retaining walls. Teague confirmed for Chair Hart that the retaining walls would be behind the north buildings. The retaining walls would be visible only to the owners of the units. Teague stated that there would be one retaining wall near the south units.

Gallop asked if Minnetonka would have recourse if Deephaven did not agree to the annexation. Teague explained that the agreement would contain a condition allowing the city to recover its losses and attorney fees.

Bonoff asked what purpose the outlots would serve. Colleran explained that the outlots would provide drainage. They would be owned by the city.

Scott Bader representing Steven Scott Development, applicant, was present with the architect and civil engineer working on the project. He stated that Teague provided a good presentation, and that the applicant has been working hard to present a reasonable project. The Deephaven Planning Commission and Deephaven City Council have already approved the proposal's concept review.

Dean Dovolis, one of the architects for the project, discussed the rear elevation and limitations of the site. The applicant worked to keep the building site tight, conserve green space, and maintain character behind the buildings.

The public hearing was opened.

Mary Davy, 17603 Susan Lane, represented a group called "Neighbors Organized for Responsible Development" (NORD). The group's spokesperson, Chris Brown, was unable to be present. She provided an overview of who was present to speak.

Dan Duffy, 17200 Susan Lane, stated that:

- The group favored the architectural design of the proposal.
- Three of the 4.7 acres is buildable. The proposed density would result in severe cuts that would cause erosion problems and cause a negative impact on the south side of the property. In 1995, when development occurred on the north side, the south side flooded. The water broke through a temporary berm and flooded the property. Drainage is a big issue.
- The group questioned the necessity of having a walk out on the south side.
- The group appreciated that the grade was lowered 5 feet to 6 feet, from the original 10-foot height.
- Lowering the grade further would eliminate some of the drainage problem.
- The group wanted to make sure that the construction agreement would be enforced.
- He requested that item six of the annexation agreement be amended to include compensation to the residents, as well as the city.
- Request that as much evergreen screening be planted as possible on the south and north sides.
- Minimize the removal of existing vegetation to help prevent erosion.

Ms. Davy, resident on the corner of County Road 101 and Susan Lane, across from Bennett Park, wondered how the number of 432 trips was determined. Teague stated that the applicant provided the estimated 432 trips per day. It was based on the number of employees and estimated deliveries at the site. She has lived there 20 years and has not seen that many trips. The proposal would cause

extra congestion. The area is already tight with the drive to Bennett Park and Susan Lane. She proposed a serious traffic study be done.

Chair Hart explained the improvements planned for County Road 101. Ms. Davy was concerned that there would not be room for the turn lanes. Ms. Davy stated that it is currently difficult to get on County Road 101. The proposal would have a big impact on traffic. The safety and ease of getting in and out needs to be addressed.

Mr. Devolis explained why the elevation could not be lowered any further due to drainage patters. He stated that a walkout is preferred over a lookout and would affect the economic outcome. Mr. Devolis stated that the natural vegetation would help reduce the impact. Chair Hart asked if the natural vegetation would remain. Mr. Devolis answered in the affirmative. Mr. Devolis pointed out where the rear line of the conservation easement would be. It would be difficult to add pine trees, because it is already densely shaded. The existing trees would have to be cut down in order to plant new trees. Colleran stated that the area on the east and west is heavily wooded. The area in the middle is open enough to add some evergreen plantings. It would have to be done on top of the retaining wall. Colleran agreed that the forest would not provide enough sun for new plantings to amount to anything.

Chair Hart asked for reassurance that flooding would not occur similar to what had happened previously. Posma indicated the location of the existing berm and described the drainage flow pattern.

Carrie Murphy, 1771 Jericho Road, Deephaven, was concerned:

- That the site was not being looked at as a whole.
- With the degradation of the northern slope.
- The trees on the north side act as a filter.
- That a landscaping plan be submitted.

Mr. Devolis indicated on the plan which trees would be removed. He described the over-story and undergrowth areas. He indicated areas that additional screening would provide an impact.

Ms. Murphy asked if the developer would request neighborhood input regarding the landscaping. Mr. Devolis was currently accepting the residents' comments at the meeting.

Ms. Murphy felt there must be a better solution than having a 10-foot to 14-foot retaining wall in the backyard. She asked if the project would be lighted. Mr. Devolis stated that lighting would be on a pedestrian scale, primarily on each side of the garage door. He clarified where the ten-foot retaining wall would be located and that grading had been changed to eliminate the need for previously illustrated retaining walls.

Ms. Murphy reiterated that the site has three flat, buildable acres. She wondered if the topography of the site had been taken into account. The site has challenges. She requested that the proposal positively affect the surrounding properties.

Chair Hart clarified with Teague what slopes would be considered buildable. Slopes over 30 percent would be allowed to be developed with the city council's approval. Chair Hart asked if Deephaven's medium residential density is comparable to Minnetonka's 4.1 units per acre to 12 units per acre range. Mr. Devolis said that Deephaven would allow 32 units on the site. The proposal includes 28 units.

Allendorf stated that retaining walls are normal and the buyer of the proposed home would be the one who would view the wall. The developer addressed concerns of residents on the north and south. Deephaven residents would not be able to see the retaining walls.

Chad Montgomery, 17833 Powderhorn Drive, on the corner of County Road 101 and Lake Street Extension, stated that he bought his property in 1998. The west property line of his property is the utility drainage ditch where he believed the Susan Lane runoff is diverted to. When he purchased his property, he could jump over the creek. Last week it was 23 feet wide. He was concerned with where the runoff water would go from the temporary ponds. Posma explained how the subject property would drain into the wetland located on the north side of Susan Lane, onto the outlots, across the street to Susan Lane, and into another land locked basin. The downstream improvements would pipe the drainage along Susan Lane into another ponding area that has an existing outlet that would go south into Deephaven and eventually into Purgatory Creek. Posma stated that it would not go through Mr. Montgomery's utility ditch.

Mr. Montgomery stated that his utility ditch widened nearly 20 feet in six years. He would like to expand hard surface on his property. He wanted to make sure that the proposal would not compound his problems.

Mr. Montgomery was concerned with the traffic pattern on County Road 101. A motorist running the red light is a daily occurrence. County Road 101 is louder, brighter, and more hazardous with each additional access. Chair Hart hoped that the widening of County Road 101 would help those problems.

In response to Bonoff's question, Posma explained that she and Colleran had met with Mr. Montgomery at his property and would be happy to do so again.

Mr. Devolis clarified that the landscaping plan only illustrated the new trees. The existing trees would remain in place as much as possible.

Maes noticed that the retaining wall's second tier would need to be screened by taller vegetation. Mr. Devolis stated that those walls would be invisible to anyone other than someone on the property. She supported the developer meeting with the neighbors to discuss adequate screening. Mr. Devolis explained that there would be a limited root area that would be taken into consideration.

Britain was still concerned with some of the drainage. He asked for the proposal's total amount of hard surface coverage. Mr. Devolis pointed out the paved areas of the site and explained the present and proposed drainage patterns. The proposed plan would create more greenery surrounding the drainage pattern to capture 90 percent of the water. The proposal would improve the current drainage situation and reduce the hard surface coverage.

Mike Murphy, 1771 Jericho Road, asked what type of damage would be done to his trees' roots. His view would be level with the windows, not the roof.

Mr. Devolis illustrated what trees would be affected. During a length of eight feet to ten feet, removal of trees would occur within five feet of Mr. Murphy's property. Mr. Devolis stated that the top of the tree equals the root ball. If the tree's canopy would be cut to match the remaining roots, it would survive. Colleran explained the critical root zone of the tree. As a certified arborist, she did not recommend the pruning of any tree. The tree would naturally die back and, at that point, indicate what limbs would need to be trimmed. For oaks, if 50 percent of the root zone is cut into, tree loss should be expected.

Mr. Devolis stated that the tiebacks would be secured in the tiers, rather than one straight wall, so that the tieback would not be as close to Mr. Murphy's property.

Mr. Murphy stated that the elm trees that would be saved have Dutch elm disease. Mr. Devolis did notice that. There would be loss due to the disease. Chair Hart asked if the trees would be replaced. Mr. Devolis stated that during

construction, the diseased trees would be removed as soon as possible. Mr. Murphy questioned if replacement trees would be comparable in size to the trees they would replace. Chair Hart encouraged Mr. Murphy to work with the developer.

Ms. Davy appreciated the drainage plan. She asked if the improvement to County Road 101 in regard to increased drainage was taken into consideration. Posma answered in the affirmative. She explained that the improvement to County Road 101 is necessitating the downstream improvements, not the proposed development.

Allendorf suggested that staff and the developer work specifically with the neighbors adjacent to the site to adjust lines to make the best possible solutions. The trees on the property's side are not real quality trees. The location of the tiebacks requiring the cutting of tree roots is a sensitive area.

Mr. Bader was happy to work on specific issues with neighbors, but he did not want to submit a new landscape plan. Chair Hart agreed that only a couple key areas needed to be worked out with neighbors.

No additional testimony was submitted and the hearing was closed.

Bonoff acknowledged that the site was currently considered an eye sore. The city, developer, and neighbors have an opportunity to clean up an area in desperate need of being cleaned up.

Chair Hart reviewed the primary issues.

Britain asked how the annexation of the site into Deephaven would benefit Minnetonka. Olson explained that there was an understanding at the time the property was originally subdivided and the homes built on the south, that if the remainder of the property would be developed it would be annexed into Deephaven. The city attorney found the records pertaining to the site. Deephaven viewed the annexation as an opportunity for them to provide some diversity in housing and meet the Met Council's concerns. Olson stated that the goal for Minnetonka is to ensure that the development meets Minnetonka's ordinance requirements.

The annexation did not make a lot of sense to Britain since the homeowners would have to drive in and out of Minnetonka to get to their property. Gallop stated that the property to the north is Deephaven's, so the west side of County Road 101 is Deephaven. Chair Hart clarified that the current access is in

Deephaven city limits. Olson confirmed that the actual access is in Deephaven. Britain felt that Minnetonka services would be utilized more than Deephaven's. Olson explained that the site's utilities would be provided by Deephaven. Britain felt it would make more sense for the site to remain in Minnetonka.

Gallop understood Britain's point that a Minnetonka snowplow driver would naturally go into Susan Lane, rather than a Deephaven snowplow driver having to travel down Minnetonka Boulevard and County Road 101. Chair Hart confirmed with Olson that the street would be private and that plowing would be contracted out by the homeowners.

Maes asked how long the ponds would be used. Pasma thought it would be until the end of 2005 or early 2006. The temporary ponding would improve the drainage to the existing wetlands until the downstream improvements. Maes felt the engineer did a great job.

Periolat drives that area at least four times a week. She agreed that when Bennett Park is busy, it is a very dangerous and tedious area. She was satisfied that the improvements on County Road 101 would address those issues. The estimated car count seemed comparable to the number of vehicles at the site in the picture. She complimented the developer for the changes made to the rear view and the architectural details to the site. The development would be very attractive. She had trouble understanding the issue regarding the view. She underscored her sympathy with the developer not having to create an entirely new landscape plan. She commended the effort to save individual trees. The site is densely wooded where it needs to be and the height blocks a great deal of the view from the north side. The proposal would be a better use for the property and she supported the design.

Chair Hart concurred with Periolat. She was comfortable with the traffic and density; felt it would be a vast improvement; and appreciated the design.

Gallop noted that the wording in the annexation agreement regarding item number six should be looked at by the city attorney and city council.

Gallop moved, second by Allendorf, to recommend that the city council approve the detachment annexation agreement and resolution to build 28 town homes at 3600 County Road 101 for Steven Scott Development as follows:

DETACHMENT/ANNEXATION AGREEMENT

- 1) *Recommend that the city council approve the detachment/annexation agreement on pages A1–A7 of the staff report. This annexation agreement is subject to the following conditions:*
 - a. The city councils of each city must adopt similar resolutions requesting that the State of Minnesota order the detachment of the property from Minnetonka and the annexation to Deephaven.
 - b. Deephaven will be responsible for processing the matter before the appropriate state officials, including providing the necessary documents and paying any required fees.
 - c. This detachment and annexation is contingent upon compliance with the following conditions:
 - (1) The Properties must be developed in conformance with the following plans:
 - Site plan date stamped July 21, 2004.
 - Grading plans date stamped July 21, 2004.
 - Landscaping plan date stamped July 21, 2004.
 - Preliminary Plat date stamped July 21, 2004.
 - Building elevations date stamped July 21, 2004, except for rear building elevations of the southerly buildings.
 - Rear building elevations of the southerly buildings date stamped August 5, 2004.
 - Sign plan date stamped August 5, 2004.

Minor changes to the plans may be approved by Minnetonka city staff instead of the city council.

- (2) Final utility, grading, drainage, and erosion control plans for development on the Properties must be submitted for Minnetonka staff approval before any development work commences. The Properties must be constructed and maintained in accordance with these staff-approved plans under both the temporary and final ponding situations. Maintenance must include, but not be limited to, the periodic removal of sedimentation at the base of the pond and any adjacent drainage ditches, keeping a vegetative cover within the ditches and pond, and removing any blockage of swales

or culverts that may impede the drainage of the site that was approved.

- (3) The Colorado spruce trees shown on the plans must be replaced with Black Hills spruce, Austrian pine, or Norway pine trees.
- (4) The south half of the ponding area must remain in a natural state. The south side may not be mowed to the water's edge.
- (5) Deephaven, Owner, and Developers must pay 22% of the total Minnetonka costs, in an amount not to exceed \$175,000.00, to implement the downstream storm sewer improvements within Minnetonka, including engineering, easement acquisition, and administration costs. When the final costs are tabulated, Minnetonka will bill Deephaven for the Properties' share of the costs, and Deephaven must pay within 35 days after the date of the invoice. Deephaven may choose to charge by assessment or other means the costs back to the Owner and Developers. On behalf of themselves and all future owners of the Properties, Owner and Developers waive all rights to notice and hearing for the proposed assessment and all rights to appeal assessment of this amount.
- (6) Deephaven, Owner, and Developers must defend and indemnify Minnetonka from any damages or liability associated with the pond to be constructed on the Properties, either in a temporary or permanent configuration.
- (7) The downstream storm sewer improvements planned by Minnetonka may impact property in Deephaven where the storm water is discharged across municipal boundaries from Minnetonka into Deephaven. Deephaven must defend and indemnify Minnetonka from all damage and liability within Deephaven's boundaries caused by these improvements.
- (8) Before any development work commences on the Properties, the following must be provided to Minnetonka: copies of public drainage and utility easements covering areas of permanent and temporary ponding on the

Properties, a county driveway permit, and a watershed district permit.

- (9) Conservation easements must be placed over the mature trees along the south lot lines subject to review and approval of Minnetonka city staff. The intent of the easement is to protect those trees intended to be saved on the approved grading plan.
- d. If Deephaven fails to require compliance with the requirements in paragraph 3, or if Owner or Developers fail to comply with the requirements in paragraph 3, Minnetonka may bring an action at law or in equity against one or more of Deephaven, Owner, and Developers to enforce these requirements and will be entitled to recover from those parties its costs and reasonable attorneys fees for such an action.
- e. Except for accommodating drainage from the Properties, Minnetonka is not required now or in the future to provide any public service to the Properties. Minnetonka may provide public service to the Properties in its sole discretion.
- f. This agreement runs with the Properties and is binding on, and inures to the benefit of Deephaven, Minnetonka, Owner, the Developers, and their heirs, successors, and assigns.
- g. This agreement will be effective upon the last date of execution by a principal party or a consenting party. This agreement will terminate automatically if the State of Minnesota does not order the concurrent detachment and annexation as requested by the petitions referenced in paragraph 1.

DETACHMENT AND ANNEXATION RESOLUTION

- 2) *Recommend the City Council adopt the resolution on pages A8–A10 of the staff report, petitioning for concurrent detachment and annexation for the property presently located in Minnetonka. Approval is subject to meeting the conditions of the detachment/annexation agreement.*

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

C. Conditional use permit to construct a trail and bridge footings within floodplain and wetland buffer areas in the vicinity of the Minnetonka Creek headwaters for the City of Minnetonka (04055.04a)

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

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

Gallop asked if option A would have permanent footings. Olson stated that it would utilize a flotation type anchoring system. He referred to page A10 of the staff report that illustrated the devices used. Olson described that there would be pros and cons either way.

Perolat questioned if the problems experienced at Big Willow would be repeated. Colleran stated that the technology has changed. Muskrats and vandals broke apart the Big Willow boardwalk. The new material would be coated in plastic. Ice would not break them apart. The Department of Natural Resources and the city of Plymouth have used the new materials.

Zvi Leibovich, 3550 Fairway Lane, stated that the trail plan for Crosby Cove was presented one hour before the city council meeting. Chair Hart clarified that the park board and the city council reviewed the location of the trail. The planning commission's decision dealt with the impact of the two options on the wetland and the floodplain.

David Yasmineh, 2635 Crosby Road, pointed out his residence. He opposed plan B. He felt that plan A would be more benign. He was concerned that the spill-over height of Lake Minnetonka would be affected. It has been at record high levels for the past couple years. Plan B would impact the local shoreline. Colleran stated that the floating boardwalk would float and would be allowed by the wetland conservation act and by city ordinance. The vegetation under the boardwalk would be the same in either case. Option B would not prohibit the flow of water traveling over the spillway. The park board looked at the options and the city council would make the decision.

In response to Mr. Yasmineh's request, Chair Hart reiterated that the planning commission was reviewing the proposal to assess the impact of either one on the wetland and floodplain. Staff advised that the impact would be negligible.

Mr. Yasmineh felt the two options would warrant separate consideration. Each would affect different things. Chair Hart stated that the city council would make the choice when it reviews the application. Colleran concurred that both plan A and plan B would have a negligible impact on the wetland, wetland buffer, and floodplain.

The public hearing was opened.

No additional testimony was submitted and the hearing was closed.

Chair Hart reviewed the primary issue.

Bonoff moved, second by Allendorf, to recommend that the city council adopt the resolution on pages A1–A3 of the staff report. This resolution approves a conditional use permit for a paved trail and bridge footings within floodplain and wetland buffer areas for the city’s proposed loop trail in the Minnehaha Creek headwaters area.

Bonoff, Britain, Gallop, Maes, Allendorf, and Hart voted yes. Periolat voted no. Motion carried.

D. Request to remodel the old B-Dalton Book Store at 5101 County Road 101 into retail space and a coffee shop/restaurant by Redstag Properties, LLC (02037.04a)

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.

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

Chair Hart reviewed the primary issue. The proposal would be an improvement, since the building is currently vacant.

Britain moved, second by Periolat, to recommend that the city council approve the following items to remodel the old B-Dalton Book Store at 5101 County Road County Road 101 into retail space and a coffee shop/restaurant by Redstag Properties, LLC:

REZONING ORDINANCE

- 1) *Recommend that the city council adopt the ordinance on pages A1–A3 of the staff report, which approves the proposed rezoning from B-1, office, to B-2, limited business. This ordinance is based on the following findings:*
 - a. The rezoning would be consistent with the city’s guide plan.
 - b. The rezoning would be consistent with the public health, safety, and welfare.
 - c. The rezoning would be consistent with adjacent land uses to the north, east and west.

CUP RESOLUTION

- 2) *Recommend that the city council adopt the resolution on pages A4–A8 of the staff report. This resolution approves a conditional use permit for a 1,585-square-foot, fast-food restaurant. Approval is based on the finding that the proposal meets the required conditional use permit standards and is subject to the following conditions:*
 - a. Record this resolution with the county before the city issues a building permit.
 - b. The city council may reasonably add or revise conditions to address any future unforeseen problems.
 - c. 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.
 - d. The applicant must agree to the above conditions in writing.

SITE AND BUILDING PLAN REVIEW

- 3) *Approve the site and building plans for a fast-food restaurant and retail space at 5101 County Road 101, subject to the following conditions:*

- a. Subject to staff approval, the site must be developed and maintained in substantial conformance with the following plans, unless modified by the conditions below:
 - Site and landscape plan date stamped June 8, 2004
 - Building elevations date stamped June 8, 2004.
- b. The following must be submitted to the city before the city issues a building permit:
 - (1) Final site, utility, and erosion control plans for staff approval
 - (2) A final landscape and irrigation plan for staff approval
 - (3) A letter of credit or cash escrow for 150% of the estimated cost of all required landscaping
 - (4) An illumination plan for staff approval.
- c. The property owner is responsible for replacing any required landscaping that dies.
- d. The building must be protected with a fire sprinkler system pursuant to the NFPA 13.
- e. All rooftop and ground-mounted mechanical equipment, and exterior trash and recycling storage areas, must be enclosed with materials compatible with the principal structure, subject to staff approval. Low profile, self-contained mechanical units that blend in with the building architecture are exempt from the screening requirement.
- f. Approval does not include the signs shown on the drawings. Separate permits are required from staff.
- g. Construction must begin by December 31, 2005, unless the planning commission grants a time extension.

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

**E. Items concerning auto-related businesses at 13114 and 13118
Excelsior Boulevard for Bauer's Express Lube/Bauer's Custom
Hitches (86165.04a)**

Was withdrawn from the agenda in response to the applicant's request.

F. Ordinance amending the wetland overlay district (98063.04a)

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

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

Britain supported the proposal. He suggested having a public forum or posting it on the city's website to gain feedback from the public. It would affect a lot of residents. Colleran stated that the proposal is posted on the city's website and it was included in the August *Minnetonka Memo*. The wetland ordinance was revised in October of 2002. Two years prior, a number of public meetings were held. Five residents attended. The *Star Tribune* outlined the amendment's points in the *West Metro Section*.

In response to Periolat's question, Colleran clarified that residents with low-lying areas would be able to mow those areas, but they would not be able to fill or excavate them without going through the planning commission and city council process of applying for a wetland alteration permit. Periolat asked how the city would identify and control the areas that meet the definition. Colleran explained that the city maintains a wetland inventory. A small basin, less than half an acre in size, would not be listed on the inventory. Many times neighbors notify staff when residents are filling wetland areas. Additional vegetation may be planted and it would be able to be mowed, but the area could not be filled.

Chair Hart asked Colleran to define a type one wetland. She obliged.

Maes appreciated Colleran's work on the ordinance amendment.

The public hearing was opened.

Chad Montgomery, 17833 Powderhorn Drive, downloaded the proposed amendment off the website. He felt it was a great step in educating residents on

what they can and cannot do with their property. He is starting to get new plants in his drainage easement. He requested clarification in regard to planning remodeling of his house and the increasing width of the wetland area on his property. One third of an acre of his property may be considered a wetland. That bothered him. Colleran explained that if an area takes on wetland characteristics and it is a man-made area, the current ordinance would regulate it as a wetland. The proposed amendment would not regulate it as a wetland. Colleran stated that in Mr. Montgomery's specific situation, it would be considered a wetland. However, artificial hydrology, meaning storm water that has come into the wetland, made the wetland bigger. The proposed language does not preclude his wetland from being a wetland. Increased impervious surface and springs in the area increased the size of the wetland. It may be considered a hardship, but would not be covered by the incidental exemption because the wetland has always been a wetland.

Mr. Montgomery questioned what the patio setback from the wetland would be. Colleran responded that the setback would be 25 feet. A retaining wall, under the amendment, could not be in the setback unless it was installed for the purpose of preventing erosion.

No additional testimony was submitted and the hearing was closed.

Allendorf moved, second by Gallop, to recommend adoption of the proposed ordinance amending the wetland overlay district.

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

Chair Hart stated that the city council was tentatively scheduled to review the application at its August 23, 2004 meeting.

G. Ordinances making changes to the floodplain, shoreland, drainage, and storm water ordinances and the ordinance regarding the water resources management plan (03015.04a)

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

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

Chair Hart expressed the planning commission's appreciation of Colleran's work on the proposal.

Perolat asked what the two biggest benefits of the proposal would be. Colleran stated that the proposal would increase flood protection, as it relates to the city stormwater and 100-year elevations, and decrease the horizontal floodplain setback. It would provide more flexibility in regard to the floodplain.

Bonoff asked how the changes would be implemented. Colleran explained that planning and engineering staff review each building permit. An existing home would be considered a legal, nonconforming use. If a homeowner wished to build an addition, the setbacks would then need to be met. As building permits are received, staff works with the homeowner.

Bonoff questioned to what extent the amendment would affect a homeowner. Colleran stated that she found that most residents already meet the setbacks. Chair Hart clarified that new structures, not existing residences with no changes, would be affected.

The public hearing was opened.

Mr. Montgomery asked if the proposed changes would relate only to the floodplain restrictions or to the floodplain and wetland regulations. Colleran explained that the proposed setbacks relate to the floodplain and city storm water, 100-year elevations. There might also be a wetland located in the floodplain. Then, the site would be under the jurisdiction of the wetland ordinance. There could also be a lake that would additionally be regulated by the shoreland district regulations.

Mr. Montgomery shared that he lived in Ames, Iowa when 100-year and 500-year floods occurred. He believed that higher elevations are best.

No additional testimony was submitted and the hearing was closed.

Chair Hart expressed her gratitude, on behalf of the planning commission, to Colleran and Posma for their work on the ordinance amendment.

Maes moved, second by Bonoff, to recommend the city council adopt the proposed ordinances.

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

9. ADJOURNMENT

Allendorf moved, second by Periolat, to adjourn the meeting at 10:20 p.m. Motion carried unanimously.

By: _____

Lois T. Mason
Planning Secretary