

**MINNETONKA PLANNING COMMISSION
MINUTES**

FEBRUARY 24, 2005

1. CALL TO ORDER

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

2. ROLL CALL

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

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

- 3. APPROVAL OF AGENDA:** The agenda was approved as submitted. Chair Hart welcomed John Cheleen to the planning commission. He has lived in Minnetonka for 35 years.

- 4. APPROVAL OF MINUTES:** February 10, 2005

Allendorf moved, second by Maes, to approve the February 10, 2005, meeting minutes as submitted.

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

5. REPORT FROM STAFF

Teague briefed the commission on land use applications considered by the city council at its meeting of February 14, 2005:

- Upheld the planning commission's approval of staff's administrative decision to issue an occupancy permit for a group home at 1708 Pondview Terrace for English Rose Suites.
- Overturned the planning commission's denial of a variance to relocate a driveway at 6043 Fairwood Circle for Maria Boley. The council found that the angle of the house created a hardship, the residence predated the existing ordinance, and the variance would preserve trees.
- Adopted a resolution approving the preliminary plat and a master development plan with variances to remodel the existing Chi Chi's

restaurant into office space and build a new office building at 15550 Wayzata Boulevard for Mohagen/Hansen Architectural Group.

6. REPORT FROM PLANNING COMMISSION MEMBERS: None

7. RECOGNITION OF CRAIG GALLOP

Gallop expressed his appreciation of working with fellow commissioners and city staff for five years. He will miss it. Chair Hart acknowledged that five years is a long time to volunteer in a position. She thanked Gallop for acknowledging all views related to an issue, asking a lot of hard questions, and offering unique perspectives.

8. PUBLIC HEARINGS: CONSENT AGENDA

No items were removed from the consent agenda for discussion or separate action.

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

A. Front and side yard setback variances for a senior housing facility at 18605 Old Excelsior Blvd for Sunrise Development, Inc. (03069.04a)

Recommend that the planning commission adopt the resolution on pages A1–A3 of the staff report, which approves the proposed variance. This resolution is based on the following findings:

- 1) Strict enforcement would cause undue hardship because of the following circumstances that are unique to this property:
 - a. The practical difficulties include the small lot size, the narrow depth, and the pie shape of the lot.
 - b. Variances are caused by conflicting zoning standards for building setbacks in a PUD.
- 2) The variance would be consistent with the spirit and intent of this ordinance for the following reasons:
 - a. The proposal is for minor point intrusions into the previously approved setbacks.

- b. The proposal would not alter the neighborhood character.

Approval is subject to the following conditions:

- 1) Submit proof of having recorded this resolution with Hennepin County before the city issues a certificate of occupancy.
- 2) The approved landscape plan from 2004 must be implemented.
- 3) The property owner is responsible for replacing any required landscaping that dies.

B. Conditional use permit for a flower and bedding plant stand at the southwest corner of the Westwind Plaza parking lot, 4795 County Road No 101, for Sever's Farmers Markets (88030.05a)

Recommend that the city council adopt the resolution on pages A1–A4 of the staff report. This resolution approves a conditional use permit for a flowering and bedding plant 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 the resolution with Hennepin County.
- 2) The vegetable stand may be operated April 15 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.

Allendorf, Bonoff, Britain, Cheleen, Maes, Periolat, and Hart voted yes. Motion carried and the items on the consent agenda were approved as submitted.

9. PUBLIC HEARINGS

A. Front yard setback variance to remodel the home at 3926 Vandan Road for Kenneth Heim (04080.04a)

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

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

Kenneth Heim, 3926 Vandan Road, applicant, stated that he looked at different plans. The proposal is the best, functional solution. He has worked with staff. The proposal would blend in with the neighborhood and still look good.

Chair Hart asked why a straight drive would not work. Mr. Heim had drawings made that illustrated a similar plan, but the grade difference would cause access problems to the house. Chair Hart was concerned that it would be too close to the street that has no right-of-way, although she noted an existing similar situation around the corner on Ridgeview Drive. Mr. Heim stated that a larger, side drawing illustrates the appearance that the residence is dug into the hill. It would not be as aesthetically appealing.

Allendorf questioned what the drawbacks would be to locating the garage on the other side of the residence. Mr. Heim acknowledged that there would be plenty of room to build on the other side of the house. He preferred to add a garage without additional living space on top of it. The existing garage would be turned into living space in the basement. If he added the proposed garage to the floor of the existing garage, it would create an awkward structure to cover. If it would be added above grade, it would be four feet higher than the basement floor. Steps to

the main floor would need to be added or an entry into the top floor, where the bedrooms are located.

Chelee agreed that if the proposed garage would be located on the right hand side, it would result in a long rambler. The proposal would create a nice architectural structure. Chelee questioned what landscaping would be added to the south side of the garage.

Mr. Heim provided an illustration of the current location. The grass and lawn is relatively flat in that area. A couple trees would need to be removed, but one is not a good tree. He would discuss with his neighbor what would make the site most visibly appealing. The structure would have similar siding with brick. Mr. Heim planned on planting trees and shrubs to make it look nice. He agreed to plant more trees, but liked to keep the open grass area for the kids to play on.

Perolat asked if there would be architectural elements to the garage rather than a large side wall. Mr. Heim stated that the building permit stage would finalize the plan. He perceived it more as a four-season porch. He had an illustration with a number of windows.

Maes asked how many vehicles could fit in the current garage. Mr. Heim explained that a small car and small truck fit tightly. It is 18 feet wide and 26 feet deep. Maes has a similar garage. She can fit only one vehicle in it. She felt it is a needed request. Mr. Heim stated that the current garage's size limits the type of vehicles he can purchase. He has to duck when he walks into the garage. It is not even 6 feet in height.

Britain stated that alone the steep slope would be difficult. Britain asked if curving the driveway was considered. Mr. Heim stated that it had been considered, but he was concerned with the turn coming into the garage. Britain suggested backing out to the left and traveling forward out of the driveway. Mr. Heim's opposed having curves and sharp angles in the driveway. Mr. Heim stated that a small back up could be added. Mr. Heim thought the bend located closer to the street would make it easier to back out of the driveway.

Bonoff asked if the driveway could be straight if the proposed location had a lower elevation. Mr. Heim stated that there is an 8-foot drop from the house to the street. A straight driveway would have a 20 percent grade. The ordinance maximum grade allowed is 15 feet.

Allendorf reviewed the commission's duty to consider the application presented. The decision is whether to grant the variance or not. Determining what could happen if the slope would be two feet lower is not.

Mr. Heim noted that he has spent two years considering the options. He and his wife developed a few options that they could live with and spend the money on to add value and functionality to the property. He worked with staff and considered the slope. He understood that the commission would consider whether the application would fit with the neighborhood. He felt the proposal would add value to the area.

The public hearing was opened.

Steve Howell, 3938 Van Road, favored the addition. It would add value to the property. Mr. Howell stated that Mr. Heim takes good care of his home and that he would provide attractive landscaping. He supported the proposal.

No additional testimony was submitted and the hearing was closed.

Chair Hart reviewed the primary issues.

Bonoff agreed with staff's finding that the site is unique, including the slope of the land, position of the home, and the existing garage. The residence next door has the same variance. It would not alter the essential character of the neighborhood.

Allendorf felt the proposal would change the character of the neighborhood. It would change the line up of the residences on Vandan Road. The garage door would not line up. Neighbors have an expectation that ordinances will be followed. He did not support the variance. It would be out of character with the neighborhood.

Maes disagreed with Allendorf. When she visited the site, she saw a variety of garage locations and house designs. The proposal would fit in the unique neighborhood. The residences are not currently lined up. She considered the safety of the slope. She felt the proposal would be the best solution. She agreed with Mr. Heims that it would not be functional to locate the garage on the other side of the house and have to walk through bedrooms to get to the kitchen from the garage. She concurred with staff.

Britain saw an alternative. From his experience, he felt curving the driveway would work. He did not see that the variance was the only option.

In response to Periolat's question, Sobota recalled the point intrusion to be 200 square feet in size. Periolat agreed with the proposal to address the slope and safety concerns. Periolat noted that a new driveway would increase the hardcover surface of the site. Sobota confirmed for Chair Hart that there is no hardcover surface restriction for a single-family residence.

Periolat agreed that the garage should be on the side of the house that is being proposed. She would prefer more windows, but, since the neighbor is okay with it, she is okay with it.

Chair Hart felt that there is another way to make the entry and keep the proposed garage on the left side of the residence.

Bonoff moved, second by Maes, to recommend that the planning commission adopt the resolution on pages A1–A3 of the staff report, which approves the proposed variance.

Bonoff, Cheleen, Maes, Periolat, and voted yes. Allendorf, Britain, and Hart voted no. Motion failed.

Commissioners in opposition to the application found that the project would not be in character with the neighborhood and that there are other options available to complete the project.

Chair Hart stated that the applicant has ten days to submit a written request to the planning director to appeal the planning commission's decision to the city council.

B. Ordinance changing the setbacks and variance standards for lots behind lots (99047.05a)

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.

Periolat asked if she understood correctly that if a home has been built closer to the lot line, then another home may be constructed closer on the other side of the same lot line. Teague stated that there would be the potential for that to happen. Both residences would maintain a 25-foot setback. Chair Hart identified that this would address the character of a neighborhood issue. Teague stated that the ordinance created in the mid-1990s allowed 15-foot side setbacks for flag lots.

Bonoff asked why the city council's discussion regarding size restrictions for houses constructed on lots behind lots was not included in the materials. Teague recalled the discussion from the study session. He explained that the proposed ordinance would allow flexibility to consider each application on a case-by-case basis, rather than requiring specific standards. The character of each neighborhood would be a large factor during the review process.

Bonoff felt that commissioners needed more guidance in the past. Each commissioner's perspective is different. She asked if it would be possible to add height and size limits to the ordinance. Teague stated that the commission could recommend that staff incorporate more guidelines.

Maes agreed with Bonoff. Limiting the size and location of the footprint would provide more meat to the ordinance. Specific requirements or basic guidelines would be helpful.

The public hearing was opened.

Curt Fretham, 15400 Highway 7, was not sure whether he liked the proposed ordinance change or not, but he was curious why the changes were being proposed. Teague explained that councilmembers and planning commissioners desired to address concerns regarding the size of residences being built and to provide more green space.

Chair Hart noted that some people are opposed to lots behind lots no matter what. The ordinance is meant to provide guidance and regulate lot behind lot applications.

Allendorf felt that the proposed ordinance was capricious without the inclusion of a definition of the height and size. He supported defining consistent restrictions, including setbacks. He does not want to look at specific designs, but he favored an objective definition. He concurred with Maes and Bonoff.

Chair Hart discussed using a three dimensional concept to describe the mass of a structure. She preferred numbers.

Allendorf favored defining a three dimensional box. Looking at the best alternative to combine coverage and structure with a calculation to define what the height would be without determining the design of the building.

No additional testimony was submitted and the hearing was closed.

Chair Hart favored more of a set standard to determine to what extent an application must be in character with the neighborhood.

Maes stated that it would be nice to have a set ratio to know to what extent to keep residences in character with neighbors' residences. She favored including an objective number in the proposed ordinance.

Chelee felt that a benchmark would give residents a place to start.

Chair Hart stated that lots behind lots have been difficult decisions in the past. She favored more objectivity be included in the ordinance.

Periolat felt the more specificity provided the better. The decision would then be based on something other than feeling. It turns into a very subjective thing. There have been too many times when she viewed a huge house and wondered how it happened. She understood that the city council could override the commissioners' request, but she favored the tool.

Britain supported staff's recommendation. Landowners naturally wish to maximize one's profitability.

Bonoff moved, second by Allendorf, to table action on the ordinance changing the setbacks and variance standards for lots behind lots until the March 10, 2005 planning commission meeting to allow time for staff to create language to provide requirements for a three-dimensional boxed dimension regarding a residence's size.

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

C. Lot division to re-divide the properties at 13 Westwood Road and 15 Westwood Road into two buildable lots for Lance Rosenberg (04090.04a)

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.

Allendorf asked if staff felt comfortable with the jog in the lot line. Teague explained that staff did have reservations defining the lot as a standard R-1 lot at first, but agree with the city attorney who is comfortable with the jog in the lot line.

Chair Hart asked what the difference between the new lot line and the existing lot line would be. Teague stated that the difference would be less than 40 feet. The depth of the lot would be 125 feet, so the required setback would be 20 percent of the depth. The ordinance requirement is 25 feet. Teague confirmed that the existing residence would remain in compliance with ordinance requirements.

Lance Rosenberg, 13 Westwood Road and 15 Westwood Road, applicant, complimented staff for being professional, empathetic, and outstanding to work with. He purchased the properties to build a dream house on the back lot and to keep both lots. He is from the area. He stated:

- The site could be developed as a single-family residential lot as it is right now.
- Up until February 10, 2005, the site met all ordinance requirements.
- He invested in a wetland specialist, survey specialist, and surveyor.
- Teague called, on February 12, 2005, and informed him that a new ordinance would affect his application.
- He does not disagree with the neck and lot proposals.
- His circumstance is a little different because his properties are not neck or flag lots. The entire north and west sides are 2,000 feet from another residence.
- The residence he currently owns would be the only affected residence.
- He felt the application should be approved and move on to the city council.
- He felt guilty because he liked a 25-foot setback. A 40-foot setback would box the property in.
- From an ethical and integrity standpoint, consideration should be given to the application since it was started prior to the adoption of the ordinance.
- He is okay with staff's proposed setbacks. He acknowledged that Minnetonka is unique in that it has numerous large single-family lots that could be divided.
- He supported protecting the trees on the east and securing that the wetland would never be built on by utilizing the conservation easement.

Teague pointed out where the driveways would be located for Chair Hart.

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

Chair Hart reviewed the primary issues. She stated that the proposal would function within the restrictions of the proposed neck/flag lot ordinance and its natural features would be preserved more than the original proposal would have.

Perolat commended Mr. Rosenberg for being willing to comply with the proposed ordinance change and for appreciating the ordinance's intent. She also appreciated his agreement to preserve his property with the use of a conservation easement.

Britain asked how far the driveway would be located from the existing residence. Thomas provided an illustration. It appeared to be approximately 17 feet. He asked if the jog was created to provide the other residence access to the driveway. Mr. Rosenberg answered in the affirmative. It would also save many significant trees.

Maes moved, second by Britain, to recommend that the city council adopt the resolution on pages A1–A6 of the staff report. This resolution approves a lot division at 13 and 15 Westwood Road. Approval is based on the finding that the plat meets the required standards and ordinances. Approval is subject to the following conditions:

- 1) The following items must be submitted to the city before the city releases this resolution:
 - a. If applicable, evidence of watershed district approval
 - b. The following documents for the city attorney's approval:
 - (1) Ten-foot-wide drainage and utility easements next to any public street right-of-way and seven-foot-wide drainage and utility easements along all other lot lines.
 - (2) Drainage and utility easement over the 891.5 elevation.
 - (3) Conservation easements over the area 16.5 feet outward from the edge of the wetland, and a drawing of the

easements for the approval of the city attorney. The easements and drawing must be recorded with the final plat.

- (4) A private driveway easement between the street right-of-way and Tract A that is acceptable to the city attorney. The easement must state the maintenance responsibilities of each owner. The minimum driveway width must be as required by the fire marshal.
- (5) A private utility easement of Tract B to serve Tract A.

These documents must be recorded with the lot split resolution, and a drawing of any easements must be attached to the easement deed.

- c. A revised certificate of survey must be submitted. The revisions must include the following:
 - (1) The lots and buildable area must meet the newly adopted ordinance regulating flag/neck lots.
 - (2) Drainage and utility easement over the 891.5 elevation.
 - (3) Ten-foot-wide drainage and utility easements next to any public street right-of-way and seven-foot-wide drainage and utility easements along all other lot lines.
 - d. A park dedication fee of \$2,750.00
 - e. Title evidence that is acceptable to the city attorney. Title evidence must be current within thirty days before release of the lot split resolution.
 - f. Restrictive covenants to be recorded against the individual lots with the lot split resolution. The covenants must include the conditions that have not been met as of the release of the resolution. These covenants must first be submitted for the approval of the city attorney.
- 2) The following must be completed before the city issues a building permit:

- a. A grading and tree preservation plan must be submitted to the city for the new lot, subject to staff approval. The plans must be substantially in compliance to the agreed building areas as required with final approval. The sewer and water services must be shown to minimize impact to the significant trees. This plan will be subject to the planning director's approval.
 - b. The installation and maintenance of a temporary rock driveway, erosion control, tree protection and wetland protection fencing must be installed subject to review and approval of the city's environmental resources coordinator.
 - c. A copy of the recorded resolution and a copy of any easements or restrictive covenants required to be recorded must be submitted to the city.
 - d. A hook-up fee for sanitary sewer and water.
 - e. A letter from the surveyor stating that boundary and lot stakes have been installed as required by ordinance.
 - f. Minimum floor elevation of the new home must be 893.5.
- 3) The drive must be paved from at least the street to the house on Tract A before the city makes a final inspection of the house. The driveway must have at least a seven-foot setback from the side lot lines. The city may approve a time extension if weather prevents paving of the drive.
 - 4) During construction, the streets must be kept free of debris and sediment, and the tree protection fencing, and erosion control fencing must be maintained.
 - 5) Trees must be planted to compensate for significant trees removed from 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) This resolution must be recorded by the county within one year, unless the city council approves a time extension. If the council does not approve the extension, the lot division approval will be void.

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

10. ADJOURNMENT

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

By: _____
Lois T. Mason
Planning Secretary