

**MINNETONKA PLANNING COMMISSION  
MINUTES**

**MAY 12, 2005**

**1. CALL TO ORDER**

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

**2. ROLL CALL**

Commissioners Bonoff, Britain, Cheleen, Dahl, Frisque, and Hart were present. Allendorf was absent.

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

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

**4. APPROVAL OF MINUTES:** April 28, 2005

*Dahl moved, second by Bonoff, to approve the April 28, 2005 meeting minutes as submitted.*

*Bonoff, Britain, Cheleen, Dahl, Frisque, and Hart voted yes. Allendorf was 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 9, 2004:

- Adopted a resolution approving conditional use permits and variances for microwave antennas and associated equipment on city water towers at the following locations:
  - (1) 11614 Bren Road (05010.04a);
  - (2) 4525 Williston Road- no variance (05011.05a); and
  - (3) 13001 Wayzata Boulevard (05012.05a).
- Adopted a resolution approving items concerning the Minnetonka Civic Center Campus master development plan at 14600 Minnetonka Boulevard for the city of Minnetonka.
- Adopted a resolution approving items concerning a salt storage building and equipment/materials storage bins at 11522

Minnetonka Boulevard for the City of Minnetonka. The proposal will provide up to \$5,000 in landscaping that the city will plant on residents' properties. Air louvers were removed from the plan with the condition that they will be included if the engineer determined they are necessary. The architect determined that nothing else could be done do minimize noise.

Olson announced that an open house regarding the upgrading of Shade Oak Road from Excelsior Boulevard to Highway 7 will be held May 25, 2005 at the Hopkins fire station.

**6. REPORT FROM PLANNING COMMISSION MEMBERS:** None

**7. PUBLIC HEARINGS: CONSENT AGENDA**

Item 7A, a front yard setback variance for a two-stall detached garage at 13101 Greenwood Road for Sussel Corporation (05022.05a), was removed for discussion and separate action.

***Cheleen moved, second by Dahl, to approve Item 7B, a site and building plan review, with side yard setback variance, for an addition to the building at 15012 State Highway 7 for Lecy Brothers Homes (89012.05a), on the consent agenda as recommended in the respective staff reports as follows:***

**B. Site and building plan review, with side yard setback variance, for an addition to the building at 15012 State Highway 7 for Lecy Bros. Homes (89012.05a)**

Adopt the resolution on pages A1–A3 of the staff report, which approves a side yard setback variance from 35 feet to 8 feet for an addition to the building at 15012 State Highway 7. Approval 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 existing building was built before the current ordinance. It has an existing, non-conforming side yard setback. Any functional addition of the proposed size would require a setback variance.
- 2) The variance would be consistent with the spirit and intent of this ordinance for the following reasons:

- a. There is an unused canopy and associated driveway on the property; the addition would be built over this drive, replacing the canopy. This is a unique circumstance not common to every B-2 property in the city
- b. The addition would not be closer to the side property line than the existing canopy. As such, the addition would not alter the character of the neighborhood.

Approval is subject to the following conditions:

- 1) Before the city issues a building permit:
  - a. Submit proof of having recorded this resolution with the county.
  - b. Install a temporary rock driveway, erosion control, and tree protection fencing must be installed and inspected as required by environmental staff.
- 2) Install automatic fire sprinklers as required by the fire marshall.
- 3) The existing drive aisle south of the proposed addition must be removed prior to the final building inspection.
- 4) All building materials stored outside on the property must be removed.
- 5) This variance will end on December 31, 2006, unless the city has issued a building permit for the project covered by this variance or approved a time extension.

***Bonoff, Britain, Cheleen, Dahl, Frisque, and Hart voted yes. Allendorf was absent. Motion carried and Item 7B, a site and building plan review, with side yard setback variance, for an addition to the building at 15012 State Highway 7 for Lecy Bros. Homes (89012.05a), on the consent agenda was approved as submitted.***

## **8. PUBLIC HEARINGS**

### **A. Front yard setback variance for a two-stall detached garage at 13101 Greenwood Road for Sussel Corporation (05022.05a)**

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

Teague reported. He recommended approval of the application based on the findings listed in the staff report.

Adam Morris, 15012 State Highway 7, applicant, stated that he felt the proposal was necessary. He stated that:

- An attached garage would cost over \$100,000.
- He was happy to put in erosion control and tree protection fencing.
- The slope is steep. He is unable to mow the slope because it is too steep.
- He questioned what the environmental resource coordinator would suggest for the property.
- The condition that required paving the driveway was unjustified. He and his wife plan on paving the driveway eventually, but he objected strenuously to being required to pave it now.
- He was unaware of an ordinance requiring the paving of the driveway. Several expensive homes in the area also have crushed rock driveways. He understood the trend, but the rock fits the characteristic of the wooded lot.
- The rock driveway prevents erosion. A paved driveway would increase the run off.
- His tires were able to gain traction on the rock when the driveway was iced.
- The cost of paving the driveway added to the cost of the proposed project and would prevent them from being able to afford the project.

Chair Hart stated that it is the commission's responsibility to act on staff's recommendation, not to change the conditions. The applicant could withdraw the application to discuss options with staff or the commission would vote on staff's recommendation as it was presented.

Teague explained that the conditions of approval would be required even if the project met setback requirements. A building permit requires a driveway to be paved a minimum of 35 feet from the setback. The erosion control standards would also be required by a building permit.

Mr. Morris questioned what erosion controls would be needed. Colleran stated that the existing retaining wall should remain. Erosion control is a standard applied to all building permits. It ensures that during construction sediment and

soil is prevented from running off the site, protects trees, and prevents soil from being tracked into the street.

Britain asked why other residences in the area are allowed to have crushed rock driveways. Teague stated that the residences were constructed before the ordinance requirement. If a property owner applied for a building permit for a garage, a paved driveway would be a requirement.

Mr. Morris asked where the paved driveway requirement was located. Teague explained that it is not in the land use ordinances, but he would research it for him.

Mr. Morris considered postponing action on the application. Teague stated that staff would not recommend the application be approved with a variance allowing the driveway to remain unpaved.

Mr. Morris wanted to understand how the street code was incorporated in the land use ordinances. He wanted the chance to review it before making a decision. The contractor was also surprised.

While Mr. Morris consulted with his wife, Britain asked if the application was approved with staff's recommendation, then could the applicant still apply for a variance from the paving requirement. Chair Hart answered in the affirmative. The applicant would have until December of 2006 to apply for a building permit.

Dahl asked if there were plans to widen State Highway 7 in that area. Teague was unaware of any.

Mr. Morris discussed tabling the proposal with Chair Hart and Teague. Teague stated that the commission could vote on staff's recommendation and the applicant could still apply for a variance from a condition of the application's approval. Mr. Morris would be comfortable with that as long as his consent to have the commission vote on staff's recommendation would not bind him to the conditions. Chair Hart stated that the variance would be considered on the merits of whether it is justified.

Olson stated that the record will show that Mr. Morris is opposed to the condition requiring paving of the driveway. The commission approving staff's recommendation would not be held against Mr. Morris. The variance application would be considered on its own merits in the future.

Mr. Morris requested the commission vote on his application. He made it clear, for the record, that he felt that the condition to pave the driveway was arbitrary and he wanted to see the ordinance. He requested the commissioners approve the application.

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

***Bonoff moved, second by Cheleen, to adopt the resolution on pages A1–A3 of the staff report, which approves a front yard setback variance from 35 to 18 feet to construct a two-stall garage at 13101 Greenwood Road. This resolution is based on the following findings:***

- 1) There is a unique hardship to the property caused by:
  - a. The slope towards the rear of the property that limits the location of any new structure.
  - b. The location of the existing home limits location possibilities of a garage addition.
- 2) The variance would meet the intent of the ordinance since:
  - a. The variance request is for a reasonable use of the property.
  - b. The proposal would not require modification of the slopes.
  - c. The proposed addition would not alter neighborhood character.

Staff approval is based on the following conditions:

- 1) Submit proof of having recorded this resolution with Hennepin County before the city issues a building permit.
- 2) The installation and maintenance of erosion control and tree protection fencing, subject to review by the city's environmental resources coordinator.
- 3) The slope to the back yard must be maintained.
- 4) The building material and color of the garage must match the existing home.

- 5) The driveway for the proposed garage must be paved.
- 6) Any new driveway location would require a driveway permit.
- 7) This variance will end on December 31, 2006, unless the city has issued a building permit for the project covered by this variance or approved a time extension.

***Bonoff, Britain, Cheleen, Dahl, Frisque, and Hart voted yes. Allendorf was absent. Motion carried.***

Chair Hart stated that an appeal of the planning commission's decision must be made in writing to the planning director within 10 days.

**B. Preliminary plat, with variances, for a two-lot subdivision at 3848 Haven Road for Lorraine J. Sorenson (04076.05a)**

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 was not a supporter of flag lots, but several already exist in the neighborhood. He asked if the location of the current home prompted staff's recommendation to deny the application or if the size of the lot was a bigger factor. Teague said that the size of the lot, the size of the variance, and the difference in screening from the site and other lots-behind-lots were the primary factors considered. Chair Hart clarified that the existing home would be torn down.

Cheleen asked if the applicant considered purchasing land from the adjacent property owner to construct a driveway from parcel A to the cul-de-sac street. Teague stated that the applicant did contact that property owner, but they were unable to come to an agreement.

Lorraine Sorenson and Rayland Sorenson, 3848 Haven Road, applicants, have lived there for 44 years. Mrs. Sorenson stated that:

- Mr. Sorenson planted 44 trees on the property when they moved in. The trees of concern were planted by them.
- Mr. Sorenson is 90 years old. Mrs. Sorenson is not that old.

- She explained the neighborhood's history from 1961. Three flag lots were created across the street from their property.
- The property at 3835 Haven Road is 18,391 square feet in size. Consideration was given to that lot because 3,000 square feet of right-of-way was dedicated to the city. She and her husband felt that consideration should be given to them because they dedicated 3,250 square feet of right-of-way to the city which reduced the size of their lot.
- The division of her lot would be similar to the one on the north, with a shared driveway, and two houses of equal quality and size. This would conform to the character of the neighborhood on both sides.
- The division of the property is reasonable.
- She has no objection to staff's recommended changes to the plat as shown on page A-7 of the staff report.
- They would appreciate the commission's recommendation for approval.

Britain asked if she opposed the other flag-lots when they were proposed. Mrs. Sorenson did oppose the first proposed flag-lot, because she felt it would change the character of the neighborhood because all of the lots were set back 100 feet or more. At that time, the city council agreed that it would change the character of the neighborhood, but it was approved anyway.

The public hearing was opened.

Mr. Winter, 3939 Haven Road, spoke on behalf of cul-de-sac and some Woodhaven Road property owners who opposed the variance. He stated that:

- The matter is not personal. All the neighbors like the Sorensens.
- He agreed with Teague's comment that there is no hardship. The motivation to subdivide the lot is for economic gain.
- The proposal would change the unique character of the neighborhood. It is different from the previous variance that allowed a lot behind a lot. In that instance, the lots equaled a half acre, had proper setbacks, and were screened by trees. The residences to the east have a buffer. The proposal would have no buffer.
- The street would become less quiet and less safe.
- If the variance was granted, then all of the residences on Woodhaven would seek variances to create lots-behind-lots.

- Sight lines would be lost, trees would be removed, and exacerbation of the existing water runoff problem would be created by the proposal.

Chair Hart stated that most of the surrounding properties average 22,000 square feet and could not be subdivided. Mr. Winter stated that the neighbors did not want the proposed houses to block their sightlines.

Kris Newcomer, 3918 Haven Road, south neighbor of the applicants, stated that:

- Her house was the last house built in the cul-de-sac in 1987. She requested a variance before the construction of her house, but she was told it had to be built in the setback requirements.
- More money had to be spent to create a uniquely shaped house. It would not be fair for her variance to be denied, but the applicant's to be granted.
- She has an aesthetic problem with the proposed location of the driveway. It would run along her property line.
- All five driveways converge at the hairpin turn. It is a safety issue. The street is 25 feet wide.
- She opposed the application due to the issues of fairness, safety, and aesthetics.

Paul St. Clair, 3830 Haven Road, lives north of the proposed division. He has lived in Minnetonka for 42 years. He chose the property because of the view to the lake. The two spruce trees are very old and valuable. The drainage issue needs to be addressed. He already has runoff from other properties draining onto his property. A major torrent occurs in the spring. He appreciated the Sorensons as great neighbors, he understood the position they were in, and if he was in their position he would be doing the same thing.

Jim Fenning, 1551 Hunter Drive, Wayzata, spoke in favor of the variance on behalf of the Sorenson's. The proposal would be consistent with the neighborhood. Staff could improve the water drainage issues at the time the building permits were applied for. A single house would not increase the traffic noticeably.

Mr. Sorenson stated that the drainage and runoff could be corrected at the time of construction. The proposed house location was designed to minimize interference with sight lines to the lake. Mr. Sorenson was willing to discuss relocating the driveway or trading some of their tree property for part of the rear lot. He was told that the spruce trees are so big, they should be harvested. The

city council required, as a condition of approval, the applicant for the development across the street to dedicate their property as right-of-way. His variance from the necessary square footage would be minimal except for the subtraction of the property the city dedicated as right-of-way.

Ms. Newcomer explained that her property was on the market for three years before she bought it because of the odd shape of the lot. The Sorensens, from 1994 to 1997, had the opportunity to purchase the entire lot and reconfigure the property.

No additional testimony was submitted and the hearing was closed.

Bonoff asked if Mr. Sorenson was correct in stating that if the 3,000 square feet of right-of-way was not considered right-of-way, then the 4,000 square foot variance would be reasonable. Teague explained that the property is 400 square feet short of 44,000 square feet. Mr. Sorenson is correct. The variance would be 400 square feet if it was not for the right-of-way dedication.

Dahl appreciated the respect the neighbors showed for each other's points of view. He asked why two sets of utilities were included for the site and if the proposed driveways would be shared. Teague explained that it is common practice for two sets of utilities to be installed for larger lots to plan for future subdividing. The current proposal plans for two separate drives. Staff would prefer one access to Haven Road with a split to the two new homes.

Frisque asked what variances had been approved for neighboring properties. The lots to the north all meet the 22,000 square feet requirement. A variance was given for lack of frontage on a public street. The requirement is 80 feet of width on a public street. The variance was from 80 feet to 0 feet. The lot on the south also received a frontage on a public street variance from 80 feet to approximately 15 feet and a lot size variance for the front lot.

Britain asked when the lot to the east was approved. Teague responded 1980.

Bonoff appreciated the Sorenson's graciousness by showing commissioners the property and appreciated the detailed report. She saw a difference between the proposed site and the other flag lots because of the fact that it is the focal point and the entry to the cul-de-sac. It is wide open and establishes the character of the property. She did not support subdividing the property, unless it was without any variances. A few years from now, a new property owner with new commission members may look at a similar plan. She wondered if there would be any type of protection to prevent it from happening in the future. Teague stated

that future applications would be considered at that time. Chair Hart stated that reference to this decision would be provided with the reasons for the decision to future commissioners considering an application for the property.

Olson commented that the trend right now seems to be that the city council discourages lots-behind-lots. Chair Hart agreed. She stated that the property is so exposed, two residences on the property would seem giant. The other lot-behind-a-lot appeared to be standard lots. The city council has been looking at the layout.

Cheleen pointed out that the flag lot is 18,000 square feet. He understood the property's importance as the focal point of the area, but there is a semi-precedent with the lot on the east. He understood that did not have to be dwelt on, but he felt it was a consideration.

Colleran responded to Bonoff's concern by explaining that the applicants could put property in a conservation easement which would limit the potential of future subdivision.

Britain struggled with the proposal. He has opposed most flag lots during his time on the commission, but in this situation, with the precedent established in the neighborhood, he personally felt it was a hard decision. Positioning the back house more toward the lake would be positive. It was hard for him to say this, but he supported the Sorenson's proposal.

Bonoff commented that the flag lots were done in 1980. If the other lot had not given the city 3,000 square feet, it would have met the lot size requirement for one lot and were close on the other lot. When they owned the property, the lots met ordinance requirements.

Frisque confirmed with Teague that with the right-of-way property, the applicants are short 400 square feet. Frisque's concern was that a lot across the street did not meet the lot size requirements as well. A change to the layout of the lot, some orientating of the residence on parcel A so that it faced the cul-de-sac, would be an improvement.

Chair Hart reluctantly agreed with staff. The character of the neighborhood and the appearance of the proposal on the property would be elevated above the cul-de-sac. The aesthetics of it would not be appealing. The property on the east is similar, but the physical layout and the screening make the difference.

***Bonoff moved, second by Dahl, to recommend that the city council deny preliminary approval of the plat, with variances.***

***Bonoff, Dahl, and Hart voted yes. Britain, Cheleen, and Frisque voted no. Allendorf was absent. The vote was split. The motion did not pass.***

The city council will review the comments and make the final decision.

**9. ADJOURNMENT**

***Cheleen moved, second by Dahl, to adjourn the meeting at 7:55 p.m. Motion carried unanimously.***

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