

**MINNETONKA PLANNING COMMISSION
MINUTES**

JULY 28, 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, Dahl, Frisque, and Hart were present.

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

- 3. APPROVAL OF AGENDA:** The agenda was approved as submitted with a modification listed in the change memo dated July 28, 2005 regarding Item 8D, multiple variances to tear down and rebuild the home at 2425 Bantas Point Road for Donald Peterson (05050.05a).

- 4. APPROVAL OF MINUTES:** June 30, 2005

Allendorf moved, second by Cheleen, to approve the June 30, 2005, meeting minutes as submitted.

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

5. REPORT FROM STAFF

Olson briefed the commission on land use applications considered by the city council at its meeting of July 25, 2005:

- Adopted a resolution approving a conditional use permit for a restaurant at 11000 Red Circle Drive for Michael Jennings (87075.05a).
- Adopted a resolution approving a conditional use permit for an oversized, detached garage at 3501 Shady Oak Road for Ryan Abrahamson (05043.05a).

Olson invited commissioners and the public to a public hearing regarding the rebuilding of Shady Oak Road between Excelsior Boulevard and Highway 7. The

Hopkins City Council, Minnetonka City Council, and representatives of Hennepin County will host the public hearing on August 23, 2005 at 7:00 p.m. in the community room of Minnetonka City Center.

Olson advised that the next planning commission meeting will be August 11, 2005.

6. REPORT FROM PLANNING COMMISSION MEMBERS: None

7. PUBLIC HEARINGS: CONSENT AGENDA

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

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

A. Side yard setback variance for a detached garage at 5030 Mayview Road for Jay Hernandez (05039.05a)

Adopt the resolution on pages A1–A3 of the staff report, which approves a side yard setback variance from 10 feet to 5 feet for a detached garage at 5030 Mayview Road. The resolution is based on the following findings:

- 1) There is a unique hardship to the property caused by:
 - a. The small lot of 9,624 square feet.
 - b. The narrow width of the lot. (70 feet.)
- 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 garage would be located further away from the side lot line than the previous detached garage.
 - c. The proposed addition would not alter neighborhood character. The setback would be the same as the garage on the property to the north.

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 garage must be setback 15 feet from the rear lot line to preserve an existing ash tree on the adjacent property.
- 3) 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.

B. Front yard setback variance for a new garage at 18215 Jonathan Circle for Mike and Catherine Langer (01036.05a)

Adopt the resolution on pages A1–A3 of the staff report, which approves a front yard setback variance from 35 feet to 22 feet for a garage addition at 18215 Jonathan Circle. The resolution is based on the following findings:

- 1) There is a unique hardship to the property caused by:
 - a. The restrictive setbacks from the Jonathan Circle cul-de-sac and Highway 7.
 - b. The mature trees located east of the home.
- 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 garage would line up with the home to the west.
 - 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) 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.

C. Preliminary plat, with lot area and lot width variances, for a two-lot subdivision at 13209 Northridge Road for Joey and Kristi Jankord (90051.05a)

Recommend that the city council give preliminary approval to the Jankord Addition, date stamped June 15, 2005, with lot area and lot width at building setback variances. Approval is based on the following findings:

- 1) Except for the variances, the proposal meets the required standards and ordinance for a preliminary plat.
- 2) The proposal meets the required standards for a variance, because:
 - a. The applicants are proposing to use the property in a reasonable manner. The size of the property relative to the size of area properties presents a practical difficulty. Though the property is disproportionately large, current lot area requirements prevent it from being divided into lots more characteristic of the area.
 - b. Given the size of the property, its width, and the location of the existing home, the side yard of the property has the appearance of an undeveloped lot. The proposal would create two lots similar in size to the existing lots in the neighborhood.

Approval is subject to the following conditions:

- 1) Complete the following before final plat approval:
 - a. Show the following on the final plat:
 - (1) At least ten-foot-wide drainage and utility easements next to the Northridge Road and Plymouth Road rights-of-way and seven-foot-wide drainage and utility easements along both sides of the newly created lot line.
 - (2) Utility easements over existing or proposed public utilities, as determined by the city engineer.
 - b. Pay the city a park dedication fee of \$2,375.
 - c. Remove the bushes in the northeast corner of the property as required by the city engineer.

- 2) The following items must be submitted to the city before the city releases the final plat:
 - a. An electronic CAD file of the final plat in microstation or DXF on a CD disk.
 - b. The following documents for the city attorney's approval:
 - (1) Title evidence that is acceptable to the city attorney. Title evidence must be current within thirty days before release of the final plat.
 - (2) Provide restrictive covenants to be recorded against the individual lots with the plat. The covenants must include the conditions that have not been met as of the release of the plat. These covenants must first be submitted for the city attorney's approval.

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

- c. Any other requirements included with final plat approval.
- 3) The following must be submitted to the city before the city issues a building permit:
 - a. A grading and tree preservation plan, subject to the planning director's approval. Any new house on Lot 1 must maintain a 20-foot setback from the west property line. The city may require adjustments in the house pad location to maximize tree preservation.
 - b. The sewer and water services must be shown to minimize impact to any significant trees.
 - c. A temporary rock driveway, erosion control, and tree protection fencing must be installed, subject to review and approval of the city's environmental resources coordinator. The fencing must be installed outside of the drip line of the spruce trees near the west property line.

- d. A copy of the recorded plat and any easement or covenants required to be recorded.
 - e. A hookup fee for sanitary sewer and water.
 - f. A letter from the surveyor stating that boundary and lot stakes have been installed as required by ordinance. If the grading for proposed streets has not been completed, the planning director may approve a time extension to this requirement.
- 4) The existing deck must be removed from the house.
 - 5) During construction, the streets must be kept free of debris and sediment, and the tree protection fencing, and erosion control fencing must be maintained.
 - 6) Trees must be planted to compensate for significant trees removed from each site that would be outside of the building pad and driveway area. The trees must be primarily species native to the area. They must be at least 2 ½ inches in diameter for deciduous trees and 6 feet tall for coniferous trees. The property owner or original developer must replace the required trees if they die within one year after installation.
 - 7) The city must approve the final plat within one year of preliminary approval or receive a written application for a time extension or the preliminary approval will be void.

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

8. PUBLIC HEARINGS

- A. Side yard setback variance from 10 feet to 6.5 feet for a garage addition at 4946 Highland Road for Stuart and Jean Hanley (05044.05a)**

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

Thomas reported. She recommended the planning commission deny the application based on the findings listed in the staff report.

Stuart Hanley, 4946 Highland Road, applicant, stated that he and his wife did not fully understand the city's ordinances. He stated that:

- He was willing to adhere to a seven-foot setback to avoid encroaching on the drainage easement.
- Issues with the site include that the house is not centered and it is positioned at an angle.
- He and his wife looked at other options with an architect. They did not feel the options were appropriate. An addition to the front of the garage would eliminate most of the area to back out of the garage, turn around, and exit facing the street. An addition to the back of the garage would appear large and be unappealing to the neighbors.
- Out of 25 houses in the immediate area, 21 of them have 3-car garages and not 1 third stall is located in the rear or front of the other 2 stalls.
- Because of the angle of the house, the front corner of the house would require a three-foot variance; the back corner of the garage would require a one-foot variance.
- He spoke with his neighbors and no one objected to the proposal.
- Drainage has always been an issue. He will work with the city and the neighbors to make sure drainage is handled properly and would not create a problem.

Chair Hart asked if staff would support the revised variance request, with a setback of seven feet and no need for a utility easement vacation. Thomas responded that staff's recommendation would not change because the applicants have reasonable use of the property. Staff had not had the opportunity to discuss Mr. Hanley's seven-foot setback proposal as a group.

The public hearing was opened.

Bill Monk, 4930 Highland Road, neighbor to the north, was impressed with the Hanley's improvements to their home. He and his wife encouraged the Hanley's to pursue the variance. The proposal is the best option. Putting the addition to the front or back would be more visible to them. If ordinance requirements were adhered to, the addition would be obtrusive to neighbors. The proposal meets the intent of the ordinance because it is good for the applicant and the neighbors. If the variance would be denied, the applicant could build in a less desirable location and the neighbors would have no influence. He fully supported the application and petitioned commissioners to consider it seriously.

No additional testimony was submitted and the hearing was closed.

Britain asked if the applicant could expand the garage without a variance. Thomas answered that the garage's overall size could be expanded. A side by side third stall would not be possible without a variance.

Bonoff questioned if staff believed that a two-stall garage is a reasonable use. Thomas answered in the affirmative. The city's policy has been that a 24-foot by 24-foot, standard 2-car garage constitutes a reasonable use on a single family property. With an existing 24-foot by 30-foot garage, the applicants' have reasonable use. The garage could be expanded in size without a variance.

Bonoff understood staff's reasoning. She noted that a three-stall garage is becoming more typical.

Allendorf asked staff to explain why minutes were included in the meeting's packet of information regarding a similar case in 2001. Thomas confirmed his understanding that the previous minutes were included to illustrate the city's position in the past and provide a precedent.

Britain asked if commissioners could act on the applicant's revised proposal of a seven-foot setback. Olson stated that would be a possibility. Another option would be for the commission to request the applicant resubmit a revised application, but he favored the commission taking action.

Britain asked if the vacation of the utility easement was the sticking point for staff. Olson explained that the easement was not the main reason for staff's recommendation for denial. Staff would also not support an application for a seven-foot setback.

Chair Hart reviewed similar applications that were denied. The principle reason for denial was that the sites sustained reasonable uses. Unfortunately, a variance is required for the site to construct a three-stall garage.

Allendorf identified a physical circumstances issue that was raised in relation to the location of the house on the lot. Allendorf asked if that was considered in staff's recommendation. Thomas answered affirmatively.

Dahl felt this was a tough decision. He appreciated Mr. Hanley's comments and the neighborhood support provided by Mr. Monk. The lot does sustain a reasonable use and the hardship standard has not been met. He agreed with staff's recommendation based on the precedent.

Frisque agreed with Dahl. She appreciated Mr. Monk's concern that a different expansion would not be as aesthetically pleasing. But, the applicants do have reasonable use of the property and do not meet the hardship standard for a variance.

Chaleen concurred with commissioners. He noted that a small addition could be made to that side, but not enough for another stall.

Chair Hart agreed that the garage could also be expanded toward the back. If the intent would be for storage, it may be adequate. She reviewed city's policy that a 24-foot by 24-foot garage accommodates reasonable use. It already has a larger garage than the acceptable standard.

Dahl moved, second by Allendorf, to deny the requested side yard setback variance from 10 feet to 6.5 feet at 4946 Highland Road. Denial is based on the following findings:

- 1) The owners have reasonable use of the property. There is currently an attached, 24-foot by 30-foot garage on the property.
- 2) There are no unique physical characteristics of the property. The property is regularly shaped and meets or exceeds lot area, width, and depth requirements. Based on the site plan provided, the existing house also exceeds all setback requirements.
- 3) The easement vacation would make future public drainage and/or utility work along this lot line difficult.
- 4) The easement vacation would set a precedent for future requests to build within drainage and utility easements.

Allendorf, Bonoff, Britain, Cheleen, Dahl, Frisque, and Hart voted yes. 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. Variance to build a new house at 3149 Lake Shore Boulevard for Louis Colson (05040.04a)

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

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

Chair Hart asked if the entire lot is located in the floodplain. Thomas clarified that only part of the lot is located in the floodplain. She pointed out the area on the map.

Chair Hart asked if Colleran was comfortable with the proposal. Colleran answered affirmatively. No fill would be added. The road would be no higher than the driveway.

Louis Collson, 3149 Lake Shore Boulevard, applicant, stated that he intends to live in the house. The existing house is in bad shape. All the neighbors he met with support the proposal. He designed the house to save as many of the big, quality trees as possible. The shed and hard surface adjacent to it would be removed. Very little hard surface would be added for the driveway.

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

Britain moved, second by Frisque, to approve the following items to build a new house at 3149 Lake Shore Boulevard for Louis Colson:

- 1) **Adopt the resolution on pages A1–A4 of the staff report, which approves: (1) side yard setback from 10 feet to 5 feet; and (2) aggregate side yard setback from 30 feet to 20 feet for a new house 3149 Lake Shore Boulevard. This resolution is based on the following findings:**
 - a. Strict enforcement would cause undue hardship because of the following circumstances that are unique to this property:
 1. The subject property is 0.62 acres in total size. However, the lot is substandard in buildable area and total width. While not necessarily unique to the immediate area, this circumstance is not common to every R-1 property in the city.
 - b. The variance would be consistent with the spirit and intent of this ordinance for the following reasons:
 1. Though still requiring variances, the proposed house would reduce an existing non-conformity.

2. The proposed house would not alter the essential character of the neighborhood. The “character” of Lake Shore Boulevard is unique; homes vary in design, size, and setbacks. The proposed side yard setbacks would be similar to or greater than other setbacks in the area

Approval is subject to the following conditions:

- a. The design/elevations of the house must be in substantial compliance with the plans date stamped July 11, 2005.
 - b. The house must be sprinklered as required by the fire marshal.
 - c. Prior to issuance of a building permit:
 1. Submit proof of having recorded this resolution with the county.
 2. Submit a construction management plan for staff review and approval. The plan must indicate: (1) how equipment will avoid roots of trees to be saved; (2) location for stockpiling of earth and construction materials and equipment; and (3) how contractors will prevent tracking of earth onto the street.
 3. Install a temporary rock driveway, erosion control, tree protection and shoreland protection fencing for staff inspection. These protections must be maintained throughout the course of construction.
 - d. Minimum lowest floor elevation is 933.5
 - e. No fill may be placed in the floodplain.
 - f. 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
- 2) *Adopt the resolution on pages A5–A7 of the staff report, which approves a floodplain separation variance from 1 foot to 0 feet for part of a new driveway at 3149 Lake Shore Boulevard. This resolution is based on the following findings:*

- a. Strict enforcement would cause undue hardship because of the following circumstances that are unique to this property:
 - 1. There is no way to access the buildable portion of the lot without either: (1) a floodplain alteration permit; or (2) floodplain separation variances. This is a unique circumstance not common to every similarly R-1 property in the city.
- b. The variance would be consistent with the spirit and intent of this ordinance for the following reasons:
 - 1. The proposed variance is reasonable. There is a house currently on the property that is accessed by a non-conforming driveway. Mr. Colson's proposal would not change the use of the property. There would continue to be a single-family home accessed by a drive.
 - 2. The "character" of Lake Shore Boulevard is unique; homes vary in design, size, and setbacks. The proposed variances would not alter this unique neighborhood character.

Approval is subject to the following conditions:

- a. Submit proof of having recorded this resolution with the county.
- b. No fill may be placed in the floodplain.
- c. This variance will end on December 31, 2006, unless the city has issued a building permit for the new house associated with the driveway.

***Allendorf, Bonoff, Britain, Cheleen, Dahl, Frisque, and Hart voted yes.
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.

C. Variance to construct a monument sign at 14820 State Highway 7 (Minnwest Bank) for Color Sign Systems, Inc. (04073.05a)

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

Thomas reported. She recommended denial of the application based on the findings in the staff report.

Britain asked if the existing nonconforming signs were grandfathered in and if they could be required to be removed or reduced in size. Thomas explained that the majority of signs are legal non-conformities. The city cannot require the signs to be removed at this time. The bank sign approved four years ago is an illegal non-conforming sign. Olson stated that, technically, the city could require the illegal non-conforming sign be removed. Practically, it was the fault of the city and would not be fair to require the bank to remove it. An agreement was reached with the bank that would prevent product advertising from being displayed on the sign.

Chair Hart speculated that the existing signs prompted the desire for the new restriction. Chair Hart asked when the ordinance was updated. Thomas stated in the early 1990s.

Chair Hart asked if the city had denied product advertisement on identification signs. Thomas answered affirmatively and provided CVC Pharmacy as an example.

Dave Shannon, 11391 Hillcrest Drive North, Champlin, Color Sign Systems representative, was present with bank representative Greg Sorinski to answer questions. He stated that:

- It would be unethical to design a sign that does not work on a 4-lane highway.
- He could live with a 15-foot tall sign.
- A 50-square foot maximum is pretty hard to accommodate a 55-mile per hour highway.
- The bank across the street has a 120-square foot sign. The applicant wants a "level playing field" with the bank across the street.
- The reason for the request is to have the sign workable and readable.
- If there were no sign regulations, he would design a 150-square foot sign to fit the location.
- A 70-square foot sign could be made to work as a good public service and commercial message center. The proposal would be a small sign and message center. There is only one sign with a

message center manufactured smaller in the industry. The sign would appear quite small from the highway.

- He served on the sign task force 15 years ago in Minnetonka. It is unfair that the city could have the only usable message center because the information would all be public service information.
- There is case law that supports that a city cannot restrict content unless it is offensive or obscene.

Chair Hart commented that the Mid-Country bank sign is further back from Highway 7 than the proposed sign would be located. There is a stop light at the intersection, so there is ample time to see the sign. The variance would allow it to be located fairly close to Highway 7. Chair Hart asked if the message center was removed, then could the bank message be expanded. Mr. Shannon stated it could be done, but it would still be a 50-square foot sign. The advantage of the message center is that it rewards the viewer for looking at it. It would increase the awareness of the sign.

Chair Hart confirmed with Thomas that “instant cash” would be considered product advertising and would not meet sign ordinance requirements.

In response to Chair Hart’s question, Olson stated that the city attorney has been comfortable distinguishing between identification information and product advertising. Allendorf noted that the decision tonight would be whether there was justification to approve the variances, not whether there was case law or legal issues regarding display.

Bonoff stated that the bank would be much larger than the bank across the street. She understood his frustration with the competitor having a large sign and the applicant having to adhere to the sign ordinance. She apologized. She did not think there would be a problem with motorists knowing where the proposed large, beautiful building would be located.

Bonoff asked if the “instant cash” sign could identify that the instant cash machine is there. Thomas explained that this would be service advertising, similar to “one hour photo” in the CVS Pharmacy case.

Cheleen discussed providing time and temperature on one line of the sign and making the Minnwest Bank letters larger. He did not see an unreasonable hardship.

Mr. Shannon thanked Thomas for being courteous and helpful, even though she did not support the proposal. The ordinance is written to allow a 50-foot square

sign with an additional 50-foot square base or pylon cover not to exceed a total of 100 square feet. The proposed sign would be 103 square feet, but it would actually be 20 feet larger. The visual effect would look similar to the ordinance standard. He stated that the goal was to allow efficient reading of the sign for highway traffic.

In response to Chair Hart's question, Mr. Shannon stated that the sign on the left would be a total of 81 square feet and the sign on the right would be 103 square feet. The sign portion of the sign on the left would be 50 square feet.

The public hearing was opened.

Jerry Mitchell, 14621 Carl Drive, missed the Will-Hop Inn. He was concerned with the traffic on Carl Drive. The proposal would make the intersection more grotesque. He opposed the sign variances.

Debbie Marty, 4405 Woods Way, was concerned with the location of the proposed sign. It would be directly visible from her house, especially when the leaves drop. The project has destroyed the seclusion of the area. The city has a responsibility to limit the sign size. She supported staff's recommendation.

Chair Hart explained that the drive-through prevented the sign from being located further east. Ms. Marty asked if the sign could be moved closer to the front. Chair Hart pointed out that that property was not owned by the applicant.

Mr. Shannon explained that the sign would be internally illuminated with fluorescent lighting. It would be oriented north-south, so someone in Ms. Marty's residence would see the side of the sign.

Britain and Mr. Shannon discussed wall signage.

No additional testimony was submitted and the hearing was closed.

Chair Hart reviewed staff's recommendation.

Bonoff supported staff's recommendation. Mr. Shannon did a great job with the limitations he had to work with.

Britain supported staff recommendation. He clarified with Chair Hart that time and temperature could be displayed on the sign.

Allendorf supported staff's recommendation. This was not the appropriate forum to change the ordinance.

Chaleen agreed with Allendorf. It seemed like the purpose of the proposed sign was to include product messages, which are not allowed without changing the ordinance. He supported staff's recommendation.

Frisque moved, second by Bonoff, to approve items to construct a monument sign at 14820 State Highway 7, Minnwest Bank, for Color Sign Systems, Inc.

- 1) Adopt the resolution on pages A1–A3 of the staff report, which approves a setback variance from 10 feet to 2 feet for a monument sign at 14820 State Highway 7. This resolution is based on the following findings:
 - a. Strict enforcement would cause undue hardship because of the following circumstances that are unique to this property:
 - (1) It is reasonable for a monument sign to be located along the property's Highway 7 frontage. However, there is nowhere along Highway 7 to place a sign that meets setback and does not interfere with the bank's windows or drive aisles.
 - b. The variance would be consistent with the spirit and intent of this ordinance for the following reasons:
 - (1) There is a wide boulevard area separating the Minnwest property from the paved surface of Highway 7. Though the sign would be set back just 2 feet from the south property line, it would be set back 55 from Highway 7 itself. This is a unique circumstance not common to every B-1 property in the city.
 - (2) In the area of Minnwest Bank, Highway 7 is characterized by commercial properties with freestanding signs of various sizes and designs. The proposed sign would not alter this unique character

Approval is subject to the following conditions:

- a. Submit proof of having recorded this resolution with the county before the city issues a building permit.

- b. This resolution applies only to the location of the sign. It does not approve any other deviations from the sign ordinance.
 - c. This variance will end on December 31, 2006, unless the city has issued a sign permit for the project covered by this variance or approved a time extension.
- 2) Deny a copy/graphic area variance from 50 square feet to 70 square feet and a monument area variance from 100 square feet to 103 square feet for a monument sign at 14820 State Highway 7. Denial is based on the following findings:
- a. There are no practical difficulties that prevent a reasonable use from complying with ordinance requirements. Minnwest Bank is a highly visible building located at the intersection of two well-traveled streets. Given the visibility of the building and site, the copy/graphic and monument areas allowed by city code would provide reasonable identification of the bank.
 - b. There is no circumstance unique to the property necessitating the requested area variances. Rather, the variance requests are based purely on the sign's design. The owners wish to not only identify the bank, but to include a large electronic message center. The design of the sign is clearly self-created circumstance and, as such, does not justify a variance.
- 3) Deny a variance to display non-public service information on a message center at 14820 State Highway 7. Denial is based on the following findings:
- a. The intent of the sign ordinance is to allow for reasonable identification. Denying the request to display non-public service information would not deny the bank reasonable use; the bank is allowed reasonable identification signs under the ordinance.
 - b. There is no circumstance unique to the property necessitating the requested variance. Rather, the variance request is based on the owners' wish to advertise goods and services. This is clearly a self-created circumstance and, as such, does not justify a variance.

***Allendorf, Bonoff, Britain, Cheleen, Dahl, Frisque, and Hart voted yes.
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.

D. Multiple variances to tear down and rebuild the home at 2425 Bantas Point Road for Donald Peterson (05050.05a)

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.

Donald Peterson, 15725 15th Place North, Plymouth, applicant, stated that:

- The current house was built in the 1950s and is in poor shape.
- The applicant desired not to exceed the existing ground cover.
- A lot of hard surface area would be removed.
- Because of the limited buildable area, two stories would be needed to provide reasonable floor area.
- It would meet small-lot setback requirements.
- The lot is large, but most of it is under water and causes the need for the front yard setback.
- Fill would be needed for the drive to meet ordinance requirements. He would prefer to lower the garage floor to 931.5, but he is prepared to accept staff's recommendation.
- A ten-foot wetland buffer would be maintained.

Chair Hart appreciated Mr. Peterson's sensitivity to the environment.

Bonoff questioned why the applicant preferred the garage being lower. The ordinance requires the garage and driveway to be at the same elevation. He preferred not to add the fill, but it could be done.

Colleran stated that the city engineer and the ordinance require attached structures to be two feet above the flood level to maintain the city's high flood insurance rating.

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

Chair Hart confirmed with Colleran that she was comfortable with staff's recommendation.

Britain moved, second by Cheleen, to adopt the resolution on pages A1–A4 of the staff report, which approves a wetland setback variance from 35 feet to 23 feet and 20 feet; a flood plain setback variance from 20 feet to 0 feet for the principal structure; a front yard setback variance from 25 feet to 11 feet from unimproved right-of-way on the north side of the lot, and from 35 to 22 feet from Bantas Point Road; and an impervious surface variance from 30 to 45%. 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 small buildable area on the lot due to the location of right-of-way on the west and north lot line; the wetland on the south and east side of the lot; and the entire lot being located within the 100-year flood plain.
- 2) The variance would be consistent with the spirit and intent of this ordinance for the following reasons:
 - a. The proposal reduces impervious surface on the lot.
 - b. Impervious surface for the lot would be 24% if the paved surface for Bantas Point Road were excluded from the impervious surface calculation
 - c. The applicant is proposing reasonable use of the property.
 - d. The proposed two story home 2,586 square foot home is consistent with other homes on Bantas Point Road.

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) Minimum floor elevation for the home and garage must be 933.5.

- 3) A detailed grading plan including flood plain mitigation and volume calculations must be submitted with the building permit. These plans are subject to review and approval by the city engineer.
- 4) Fill around the foundation of the home is not permitted. The crawl space below the 933.5 elevation must be designed to internally flood.
- 5) The existing driveway must be removed.
- 6) The paved parking area within the Bantas Point Road right-of-way must be removed.
- 7) A 10-foot buffer and conservation easement be established and maintained from the edge of the wetland.
- 8) 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.

Allendorf, Bonoff, Britain, Cheleen, Dahl, Frisque, and Hart voted yes. 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.

9. ADJOURNMENT

Frisque moved, second by Dahl, to adjourn the meeting at 8:05 p.m. Motion carried unanimously.

By: _____
Lois T. Mason
Planning Secretary