

**MINNETONKA PLANNING COMMISSION
MINUTES**

NOVEMBER 17, 2005

1. CALL TO ORDER

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

2. ROLL CALL

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

Staff members present: Principal Planner Cary Teague, Planner Susan Thomas, Natural Resource Manager Jo Colleran, and Planning Intern David Abel.

3. APPROVAL OF AGENDA: The agenda was approved as submitted with changes and additions listed in the change memo dated November 17, 2005.

4. APPROVAL OF MINUTES: October 27, 2005

Cheleen moved, second by Dahl, to approve the October 27, 2005, meeting minutes as submitted.

Allendorf, Bonoff, Britain, Cheleen, Dahl, and Frisque voted yes. Hart 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 November 14, 2005:

- Approved plans for an addition and parking lot reconfiguration of the Wendy's Restaurant at 4912 County Road 101 for Wendy's International in accordance with the planning commission's recommendation.
- Approved items concerning a four-lot plat (Minnetonka Highlands) at 5516 Glenavon Avenue for Floyd Calhoun in accordance with the planning commission's recommendation.

6. REPORT FROM PLANNING COMMISSION MEMBERS: None

7. PUBLIC HEARINGS: CONSENT AGENDA

Item 7C, a front yard setback variance for a trash compactor and recycling enclosures at 17501 Minnetonka Boulevard for Lakewinds Natural Foods (87074.05a), was removed from the consent agenda for discussion and separate action.

Dahl moved, second by Frisque, to approve Items A, B, and D listed on the consent agenda as recommended in the respective staff reports as follows:

A. Sign setback variance for a monument sign at 1600 Hopkins Crossroad for Shelter Corporation (86103.05a)

Adopt the resolution on pages A1–A3 of the staff report which approves the proposed variance from 10 feet to 0 feet to construct a monument sign for Shelter Corporation. This resolution is based on the following findings:

- 1) There is a unique hardship to the property caused by:
 - a. The small irregular shape of the lot.
 - b. The right-of-way for Hopkins Crossroad.
- 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 proposed sign would not alter neighborhood character.
 - c. The signage would meet all size requirements.

Staff approval is based on the following conditions:

- 1) Submit proof of having recorded this resolution with the county before the city issues a sign permit.
- 2) Any outstanding taxes must be paid before the city issues a sign permit.
- 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 an addition to the home at 10309 Minnetonka Boulevard for Custom Home Remodeling Inc. (05088.05a)

Adopt the resolution on pages A1–A3 of the staff report, which approves the front yard setback variance from 50 feet to 44 feet to build an addition at 10309 Minnetonka Boulevard. This resolution is based on the following findings:

- 1) There is a unique hardship to the property caused by:
 - a. The 44 feet front yard setback on the existing 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 proposed addition would not alter neighborhood character.
 - c. The proposed addition would have the same setback as the existing home.

Staff approval is based on the following conditions:

- 1) Submit proof of having recorded this resolution with the 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 building material and color of the addition must match the existing home.
- 4) 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.

D. Minor amendment to a master development plan to replace cedar shakes with asphalt shingles on the businesses at 15300 and 15320 Minnetonka Boulevard (05089.05a)

Approve the minor amendment to the master development plan to allow asphalt shingles to be used on the buildings at 15300 and 15320 Minnetonka Boulevard. Approval is based on the following findings:

- 1) The intent of the master development plan is to provide a consistent appearance between the Westdale buildings. The proposal meets that intent.
- 2) Asphalt shingles are a permitted building material in all zoning districts.

Approval is subject to the following conditions:

- 1) The same neutral color shingles must be used on both buildings.

Bonoff, Britain, Cheleen, Dahl, Frisque, and Allendorf voted yes. Hart was absent. Motion carried and Items A, B, and D on the consent agenda were approved as submitted.

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

8. PUBLIC HEARINGS

A. Front yard setback variance for a trash compactor and recycling enclosures at 17501 Minnetonka Boulevard for Lakewinds Natural Foods (87074.05a)

Acting Chair Allendorf 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.

Bonoff asked Thomas to explain the machinery enclosures. Thomas explained that the mechanical system would be located inside the building. The storage unit for the compacted cardboard would be outside the building. Thomas invited the applicant to elaborate.

Stephen Colhane, store manager of Lakewinds Natural Foods, stated that the mechanics inside the store would be comprised of the pump that operates the hydraulics. The ram itself would be outside. The higher pitched noise would be inside. The compacting container would allow pick up to be decreased from three times a week to once a month. Right now, employees must move a 200 pound bail. The recycling companies are requiring businesses to use compactors exclusively to decrease employee injuries.

Mr. Colhane mentioned that there would be no smoking allowed on the premises.

The public hearing was opened.

Mary Glover, 17508 Manor Road, was present with Mary Ann Hendrickson, 17500 Manor Road. Both were concerned that the recycling compactor would not be masked by trees, because the trees had been removed. The tree screening that remains consists of scruffy elm trees. Sight, noise, and smell are their primary concerns. She was pleased that vehicles would not have to drive behind the building to do pick ups. The recycling pick up occurs at 4:30 a.m. and is very noisy. It does wake her up. The east side would be a better location for the trash compactor and recycling enclosures.

William Glover, 17508 Manor Road, added that Ms. Hendrickson does not have a fence separating her property from the proposed site. She would not have a buffer.

Ms. Glover asked where the trash pick up is located. Mr. Colhane answered that the enclosure on the west side would house the recycling and trash.

Mr. Colhane has been the manager since July. He had not received a complaint from the neighbors. He pointed out an alternative location, but it would be difficult to access due to the change in grade and may create more of an impact for neighbors. The city uses one side of the building for egress access for trucks and the remaining side is the front.

No additional testimony was submitted and the hearing was closed.

Acting Chair Allendorf asked Thomas to explain staff's reasoning for preferring the proposed location over the east side. Thomas explained that enclosures located on the east side would have to be accessed from outside of the building or hauled through a deli-preparation area. The environmental health department has indicated that it will require additional freezer space in the future. The logical

location for the additional freezer space would be on the south side. There would be practical short term and long term issues with an east side location.

Acting Chair Allendorf reviewed the primary issues.

Britain did not see a perfect solution. Staff's recommendation is the least negative alternative. The proposal would be better than what is currently done. He supported staff's recommendation.

Cheleen concurred with Britain. Lakewinds Natural Foods could adhere to the noise ordinance. The store could negotiate with the garbage hauler to pick up later. It would make sense as a good neighbor.

Bonoff agreed with Britain and Cheleen. She is a member of Lakewinds Natural Foods Cooperative and hoped that the business would address the noise at 4:30 a.m. problem and requested the neighbors to notify staff if the problem continues.

Acting Chair Allendorf agreed that neighbors could notify the city to enforce the nuisance ordinance.

Britain moved, second by Cheleen, to adopt the resolution on pages A1–A4 of the staff report which approves front yard setback variances from 20 feet to 7 feet for a trash compactor enclosure and from 20 feet to 8 feet for a recycling enclosure at 17501 Minnetonka Boulevard. 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 proposed location of the enclosures is the most reasonable location on the property, given site constraints and building design.
 - (1) Generally, trash enclosures are located at the rear of commercial buildings. The enclosures are then screened from the more public areas of the site and are easily accessible from interior storage space.
 - (2) The existing building is set back 20 feet from the south property line. No enclosure could be located at the rear of the building without requiring a variance.

- (3) No enclosure would be allowed on the west side the building. The area west of the building must remain open for vehicle traffic.
 - (4) Locating the enclosures on the east side of the building would:
 - require that trash be hauled outside or through a deli prep area; and
 - occupy space that may be required as future cooler space per health requirements.
- 2) The variance would be consistent with the spirit and intent of this ordinance for the following reasons:
- a. There is a 50-foot-wide, city-owned property between the property and the residential properties to the south. The proposed enclosures would be 57 feet from the residential lots, 37 feet more than would be required by code. This is a unique circumstance not common to every commercial-zoned property.
 - b. The Minnetonka Boulevard/County Road 101 intersection is characterized by commercial properties with residential lots beyond. The variances would not alter the essential 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. Stake the rear property line.
- 2) A temporary rock driveway, erosion control, tree protection fencing must be installed, as required by and subject to review by environmental staff.
- 3) No trees may be removed from the city property as part of this project.
- 4) The enclosures must match the remodeled building in color and materials.
- 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 Allendorf voted yes. Hart was absent. Motion carried.

B. Items concerning the Fetterly View Plat at 11519 Fetterly Road West for Dick and Jill Heimerl (05057.05a)

Acting Chair Allendorf 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.

Scott Massey, attorney representing Dick and Jill Heimerl, stated that the Heimerls have worked diligently with staff to create a plan beneficial to the city and the applicants. Neighbors' concerns have been dealt with early. The Mahaney and Robinson property owners have been working with the applicants to come up with a plan to deal with construction issues. The applicants have agreed to plant trees to create a screen and enhance the neighboring properties. The subdivision would result in three new houses and enhance the value of the neighborhood. Fetterly Road traffic is currently a concern, but two additional residences would not create a significant impact. The proposal would maintain the slopes, increase the wetland area, and upgrade a private road into a public street. He requested the planning commission's approval and support.

The public hearing was opened.

Harvey Robbins, 2475 Ridgewater Drive, initially was concerned with the proposal creating the view of an 80-foot circle from his bedroom window. He was initially angry that the private road could be made public. He congratulated the developers at doing a tremendous job. They have bent over backwards to appease the neighbors, including himself. The only concern he had left was the location of the cul-de-sac, but he understood the reasoning. The proposal would be beneficial for the neighborhood. He now was in favor of the project and supported it.

No additional testimony was submitted and the hearing was closed.

Acting Chair Allendorf reviewed the primary issues.

Britain identified that the proposal could be done without many of its additional benefits to the neighbors and the environment. It was well thought out and planned. He supported staff's recommendation.

Bonoff appreciated the developer working closely with staff and the neighbors. It made such a difference. She sympathized with Mr. Robbins, but supported the project.

Dahl and Cheleen echoed Britain and Bonoff's comments. Cheleen gave the applicants and their development team congratulations for being concerned with addressing the neighbors' concerns. It made the commissioners' jobs easier.

In response to Cheleen's question, Teague stated that the applicant would fund the cost of the road improvements.

Frisque felt that the variance worked in the project's favor. It could have been done without the variance, but it helped preserve the wetland.

Frisque moved, second by Dahl, to recommend approval of the following items concerning the Fetterly View Plat with changes provided in the change memo dated November 17, 2005 at 11519 Fetterly Road West for Dick and Jill Heimerl:

PRELIMINARY PLAT

- 1) *Recommend that the city council give preliminary approval to the Fetterly View plat, date stamped October 27, 2005, with a right-of-way variance from 50 feet to 40 feet. Approval is based on the following findings:*
 - a. Except for the variance, the proposal meets the required standards and ordinance for a preliminary plat.
 - b. The proposal meets the required standards for a variance, because there is a unique hardship to the property caused by the large wetland located on Lot 3.
 - c. The variance would meet the intent of the ordinance because there would still be 10 feet of right-of-way on the west side of the street. The additional 10 feet of right-of-way would not be used.

Approval is subject to the following conditions:

- a. Complete the following before final plat approval:
 - (1) Show the following on the final plat:

- (a) At least ten-foot-wide drainage and utility easements next to any existing or proposed public street rights-of-way and at least seven-foot-wide drainage and utility easements along all other lot lines.
 - (b) Utility easements over existing or proposed public utilities, as determined by the city engineer.
 - (c) Drainage and utility easements over wetlands, floodplains, and storm water ponds, as determined by the city engineer.
- (2) Pay the city a park dedication fee of \$4,750.00.
- (3) If the developer is petitioning the city to construct the public improvements, the city council must order the improvements.
- b. The following items must be submitted to the city before the city releases the final plat:
 - (1) An engineering/utility inspection fee.
 - (2) Payment for traffic signs and installation, as required by the city engineer.
 - (3) An electronic CAD file of the final plat in microstation or DXF on a CD disk.
 - (4) If the developer is constructing any public improvements, the developer must submit a signed agreement with the city. This agreement must guarantee that the developer will complete all public improvements and meet all city requirements. This agreement must include an escrow to ensure that the developer completes all public improvements and complies with all city regulations. This escrow must be a letter of credit or cash deposit. The amount must be 150% of the estimated cost of the improvements or 125% of the cost if based on actual bids.
 - (5) The following documents for the city attorney's approval:

- (a) Title evidence that is acceptable to the city attorney. Title evidence must be current within thirty days before release of the final plat.
- (b) Conservation easements over the area 25-feet out from the two wetlands, including a drawing of the easements for the approval of the city attorney. The easements and drawings must be recorded with the final plat.
- (c) Public right-of-way easement established over 30 feet of the property to the east.
- (d) Provide declaration and restrictive covenants over all mitigated wetland areas per the WCA, for review by the city's environmental resources coordinator.
- (e) 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.

- (6) Any other requirements included with final plat approval.
- c. The following must be completed before the city issues a grading permit or any site work is started.
- (1) Final grading, drainage and erosion control plans must be submitted for the city engineer's approval. If the developer is building the streets and utilities, the developer must submit final street and utility plans for the city engineer's approval, including removal of the poor soils where the road is to be located. Plans must include submittal of revised storm water calculations showing compliance with the requirement that the post development discharge rate is at or less than the pre-development discharge rate for a 1-, 10-, and 100-year storm event.

- (2) Sanitary sewer extension must be increased to an 8-inch pipe.
 - (3) A letter of credit or cash escrow for 150% of the estimated cost to comply with grading permit requirements and restore the site must be submitted to the city. The city will not release the letter of credit or cash escrow until the developer submits as-built drawings and a letter certifying that the utilities, driveway, and grading have been completed according to the plans approved by the city.
 - (4) All trees to be preserved must be fenced and erosion control measures installed for the planning director's approval.
 - (5) A construction management plan must be submitted for the planning director's approval.
 - (6) Submit evidence of the watershed district approval. The city may require revisions to the preliminary plat to meet the district's requirements.
- d. The following must be submitted to the city before the city issues a building permit:
- (1) A grading and tree preservation plan for each lot, subject to the planning director's approval. The plans must be in substantial compliance with the building pads shown on the preliminary plat and must preserve trees designated for preservation at the time of preliminary plat approval. The city may require adjustments in the house pad location to maximize tree preservation. The sewer and water services must be shown to minimize impact to any significant trees.
 - (2) A temporary rock driveway, erosion control, tree protection and wetland protection fencing for each lot must be installed, subject to review and approval of the city's environmental resources coordinator.
 - (3) A copy of the recorded plat and any easement or covenants required to be recorded.

- (4) Minimum low floor elevation must be at or above 914.8.
 - (5) A hookup fee for sanitary sewer and water.
 - (6) Submittal of proof of compliance with MPCA regulations relating to the abandonment of the existing septic system.
 - (7) 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.
- e. During construction, the streets must be kept free of debris and sediment, and the tree protection fencing, and erosion control fencing must be maintained.
 - f. The width of the proposed street must be reduced from 26 feet to 24 feet to reduce impervious surface and allow more room for a wetland buffer.
 - g. 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.
 - h. 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.

WETLAND ALTERATION PERMIT

- 2) *Recommend that the city council approve the Wetland Conservation Act replacement plan and adopt the resolution on pages A1–A2 of the staff report, which approves the proposed wetland alteration permit. This resolution is based on the following findings:*
 - a. The wetland would ultimately have a higher function and value.

Approval is subject to the following conditions:

- a. Obtain a grading permit as part of the wetland restoration.
- b. Must be developed per the plans date stamped October 27, 2005.

REZONING

- 3) *Recommend that the city council adopt the ordinance on pages A3–A5 of the staff report which approves the proposed change in the wetland overlay district boundaries. This ordinance is based on the following findings:*
 - a. The wetland will ultimately have a higher function and value.

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

C. Preliminary plat, with lot frontage variances, for a two-lot subdivision at 4232 Highview Place for Paul Vogstrom. (05087.05a)

Acting Chair Allendorf 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.

Paul Vogstrom, applicant, stated that the variances would allow the preservation of trees. He was excited about the shared driveway. The pine trees along Highview Place would be maintained. The design of the home would preserve the huge oak trees. His goal is to keep the homes built into the lot. He has a personal interest in the quality of construction. The north house would be constructed for his mom.

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

Britain recognized that the subdivision could be done without the variances. He supported the preservation of trees.

Cheleen addressed that the only opposition letter received was concerned with preservation of the oak trees. Cheleen was comfortable with Mr. Vogstrom's intent to save the large, oak trees and keep the land the way that it is as much as possible. He supported the proposal.

Bonoff noted that same letter's concern for privacy loss. The plan indicated that it would maintain as many trees as possible. She supported staff's recommendation.

Dahl moved, second by Frisque, to recommend that the city council give preliminary approval to the Vogue Estates plat date stamped October 4, 2005, with lot width at the setback variances from 110 feet to 107 feet and 106 feet, and a lot width at the right-of-way variance from 80 feet to 44 feet for Lot 1. 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. There is a unique hardship caused by the existing lot width of the property and the curve in the road in front of the existing home.
 - b. The variance would meet the intent of the ordinance because:
 - (1) The two new lots have adequate lot area.
 - (2) The substandard lot width is in character with the neighborhood.
 - (3) There are lots with substandard area 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 any existing or proposed public street rights-of-way and at least seven-foot-wide drainage and utility easements along all other lot lines.

- (2) Utility easements over existing or proposed public utilities, as determined by the city engineer.
 - (3) Drainage and utility easements over the 1026.5 storm water elevation, as determined by the city engineer.
 - (4) Dedication of 10 feet of public right-of-way along Highview place.
- b. Pay the city a park dedication fee of \$2,375.00.
 - c. If the developer is petitioning the city to construct the public improvements, the city council must order the improvements.
- 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) A private driveway easement over Lot 2 to serve Lot 1. The easement must state the maintenance responsibilities of each owner. The minimum driveway width must be as required by the fire marshal.
 - (3) Any private utility easement that cross over Lot 2 to serve Lot 1.
 - (4) 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 for each lot, subject to the planning director's approval. The plans must be in substantial compliance with the building pads shown on the preliminary plat and must preserve trees designated for preservation at the time of preliminary plat approval. The city may require adjustments in the house pad location to maximize tree preservation. The sewer and water services must be shown to minimize impact to any significant trees.
 - b. A temporary rock driveway, erosion control, tree protection and wetland protection fencing for each lot must be installed, subject to review and approval of the city's environmental resources coordinator.
 - c. A copy of the recorded plat and any easement or covenants required to be recorded.
 - d. Minimum basement elevation of 1028.5.
 - e. The home on Lot 1 must be located to save the 24" and 14" oaks and the 24" walnut tree that are adjacent to the existing home.
 - f. There may be no fill below 1026.5
 - g. A hookup fee for sanitary sewer and water.
 - h. 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.
 - i. All existing structures must be removed.
- 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 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.
- 6) 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.

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

Acting Chair Allendorf stated that the city council is tentatively scheduled to review the application November 28, 2005.

9. ADJOURNMENT

Britain moved, second by Cheleen, to adjourn the meeting at 7:25 p.m. Motion carried unanimously.

By: _____
Lois T. Mason
Planning Secretary