

**MINNETONKA PLANNING COMMISSION  
MINUTES**

**JULY 27, 2006**

**1. CALL TO ORDER**

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

**2. ROLL CALL**

Commissioners Dahl, Frisque, Adams, Brandt, Britain, Cheleen, and Hart were present.

Staff members present: Community Development Director Ron Rankin, City Planner Geoff Olson, Principal Planner Cary Teague, Planner Susan Thomas, and Planning Technician Jeff Thomson.

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

**4. APPROVAL OF MINUTES:** July 13, 2006

*Cheleen moved, second by Adams, to approve the July 13, 2006, meeting minutes as submitted.*

*Dahl, Frisque, Adams, Brandt, Britain, Cheleen, 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 24, 2006:

- Adopted a resolution approving items concerning the construction of two multi-tenant buildings at 6001 Shady Oak Road for True North Investments (06006.06a). The developer shifted the position of the buildings and downsized them. The driveway located on the common lot line was preferred by the city council and will be allowed if Jimmy's Restaurant owners agree to terminate an easement. The city council approved the project either way. Olson commented that Jimmy's Restaurant owners will be applying for a parking variance.

**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. Adams was concerned with clutter in the yards of both consent agenda items.

***Adams moved, second by Brandt, to approve the items listed on the consent agenda subject to the properties owners' compliance with the city's nuisance ordinance before building permits are issued and as recommended in the respective staff reports as follows:***

**A. Aggregate side yard setback variance for an addition to the rear of the garage at 5208 Mayview Road for Daryl Dechaine (06042.06a).**

Adopt the resolution on pages A1–A3 of the staff report, which approves an aggregate side yard setback variance from 30 feet to 21 feet, to construct an addition to the home at 5208 Mayview Road. This resolution is based on the following findings:

- 1) There is a unique hardship to the property caused by:
  - a. The location of the existing home on the lot.
- 2) The variance would meet the intent of the ordinance since:
  - a. The variance request is for a reasonable use of the property since the addition would be a standard two-car garage.
  - b. The garage addition would not extend any further into the required setback than the existing garage.
  - c. The garage addition would not alter neighborhood character since it would be located on the rear of the existing garage and would be screened to the south by landscaping.

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) Install and maintain a temporary rock driveway, erosion control, tree protection, as required by the city's natural resources staff.

- 3) The water bill for the subject property must be paid in full to the city before the issuance of a building permit.
- 4) The property must comply with the city's nuisance ordinance before the issuance of a building permit.
- 5) This variance will end on December 31, 2007, unless the city has issued a building permit for the project covered by this variance or approved a time extension.

**B. Aggregate side yard setback variance for an addition to the home at 16341 Temple Terrace for Excellence in Remodeling. (06043.06a)**

Adopt the resolution on pages A1–A4 of the staff report, which approves an aggregate side yard setback variance from 30 feet to 25 feet to construct an addition to the home at 16341 Temple Terrace. This resolution is based on the following findings:

- 1) There is a unique hardship to the property caused by:
  - a. The location of the existing home on the lot.
- 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 addition would not alter neighborhood character.
  - c. The addition would not extend into the required setback any further than the existing house.

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) Install and maintain a temporary rock driveway, erosion control, tree protection, as required by the city's natural resources staff.
- 3) The water bill for the subject property must be paid in full to the city before the issuance of a building permit.

- 4) The property must comply with the city's nuisance ordinance before the issuance of a building permit.
- 5) This variance will end on December 31, 2007, unless the city has issued a building permit for the project covered by this variance or approved a time extension.

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

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

## **8. PUBLIC HEARINGS**

### **A. Lot division, with lot width and lot area variances, for a two-lot subdivision at 5454 Mayview Road for Engineering Design & Surveying. (06021.06a)**

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

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

Dahl asked if there were any changes to the proposal since the last meeting. Thomas responded in the negative.

Britain questioned the history of the surrounding small lots. Thomas provided the history.

Vladimir Sivriver, the applicant, strongly disagreed with staff's recommendation. He thanked the city for its excellent and professional staff. He has been working on the project for eight months.

Brian Lubben, 4501 Hunters Ridge Road, architect for the applicant, stated that the current house is rented and in disrepair. He stated that:

- The proposal would increase the front setback from 20 feet to 35 feet.
- The application was submitted prior to the new ordinance that disallowed land under water from being included in the lot area

calculation. The application was deemed incomplete, but later determined adequate.

- Lots in the neighborhood are similar in size to the proposed lots.
- The variances would restore the buildability of the two lots.
- The proposal would increase neighborhood property values.
- The site's current value is lower than surrounding lots in the neighborhood.
- The proposal would make the site more in character with the neighborhood.

Mr. Sivriver stated that all of the lots on the south side of Mayview Road are substandard. He stated that:

- His application was filed before the city changed the ordinance disallowing land under water from being included in the minimum lot area calculation and should be grandfathered.
- The ordinance is ambiguous and unrealistic. There is a mistake in the originals. The words do not correspond with the graphical information of 300.10.h.
- The ordinance provision calls for 110 feet of lot width at the setbacks and 80 feet from the right-of-ways. In this case, the proposal would more likely be a cul-de-sac that would require 65 feet of frontage. No variance should be required.
- The only variance needed for the project would be the lot width at right-of-way variance from 80 feet to 75 feet for each lot.
- He respectfully requested the planning commission recommend approval of the proposal.
- The field work, certificate of survey, grading plan, and wetland delineation have been completed.
- He found out two weeks ago about the new ordinance.
- He thanked the commissioners for listening.

Britain asked staff to comment on the timing of the application and the adoption of the ordinance. Thomas explained the application's review process and timing.

Britain asked what lot sizes would have been allowed prior to adoption of the ordinance that prevented the inclusion of land under the lake. Thomas explained.

Chair Hart confirmed with Thomas that the property is the result of a previous combination of two lots. It has one property identification number. She further confirmed that it would be possible for a wedge-shaped lot on a cul-de-sac to meet lot width requirements. Thomas explained that the code requires specific

minimum lot widths. It does not dictate that all lots have just 80 feet of frontage and 110 feet of width at setback.

The public hearing was opened.

Lee Kaster, 5442 Mayview Road, asked how the lot areas were calculated. He asked if the original survey done in 1906 was used. The water level was lower then. The dam permanently raised the water level of the lake. Chair Hart commented that many of the lots in the Glen Lake area extend into the water. An illustration showed lots on the west and north of the site that extend into the water. The new ordinance prevents land located under water from being included in the lot's area calculation. That policy was followed prior to adoption of the ordinance.

Mr. Kaster stated that most of the neighbors object to the subdivision. There are only two lots on the road that are 75 feet wide. The rest of the lots are much larger. Lots have been combined to make them larger. It appeared that the owner had no intention of living on the property. The site should be left as it is and developed as one lot. The neighbors do not object to the renters, but do object to the way it was set up. It was dishonest.

Isabelle Chaon, 5453 Mayview Road, stated that her husband sent a letter in opposition to the proposal. She stated that:

- The neighbors are upset.
- The neighbors were lied to about the proposed use of the property. She was told by Mr. Zhuk that if she did not sign the applicant's petition, one large home would be constructed and would block her view of the lake. What was written in the petition was not what was portrayed to her by the applicant.
- One residence on a conforming lot would be better than two houses on non-conforming lots.
- The proposal would change the character of the neighborhood.
- She was offended by the manner it was presented by Mr. Zhuk.

Chair Hart explained that a plan for a residence that meets code requirements would not be reviewed by the planning commission. Ms. Chaon has no faith in what Mr. Zhuk says. She requested a police officer's assistance to remove him from her residence when he became threatening. She appreciated the planning commission's denial of the application due to the number of variances.

Judy Kaster, 5442 Mayview Road, stated that there are many properties in the area that could be subdivided if a precedent is set by this proposal. It would negatively impact the character of the neighborhood, the lake, and the traffic congestion.

David Jones, 5429 Mayview Road, has lived at his residence for 37 years. The size of the residence constructed today would be much larger than the size of a residence constructed in 1906. The lot should be left the size it is now.

No additional testimony was submitted and the hearing was closed.

Chair Hart reviewed the primary issue.

Britain felt the lot size was the primary issue. Two lots east of the site do set some precedent; however, they are still at least 1,000 square feet larger than the proposed lots. The proposed lots would be the smallest in the area. He opposed setting a precedent by creating such small lots. He supported staff's recommendation.

Adams stated that the proposal does not meet the hardship standard. The current lot is acceptable. The only gain would be personal benefit, which is not a valid hardship standard.

Chair Hart confirmed with Thomas that two lots southeast of the site were two, separate lots.

Frisque asked if a variance would be required for the site to create a lot behind a lot. Thomas answered in the affirmative.

***Britain moved, second by Adams, to recommend that the city council adopt the resolution on pages A1–A3 of the staff report. This resolution denies a lot division at 5454 Mayview Road, with a lot width at right-of-way, lot width at setback, and lot area variances. Denial is based on the following findings:***

- 1) The proposed lot division does not meet city code standards.
- 2) The proposal does not meet variance standards for the following reasons:
  - a. The variances requested are based entirely on the owner's desire to divide the lot. This is a self-created circumstance, not justifying a variance.

- b. The owner has reasonable use of the lot, as there is a house currently on the property. Division of the property would result in maximum, rather than reasonable, use of the site.
- c. The proposed lot division may alter neighborhood character. The proposed lots would be narrower and smaller than the majority of lots in the area. Approval may result in similar requests.

***Dahl, Frisque, Adams, Brandt, Britain, Cheleen, and Hart voted yes. Motion carried.***

**9. ADJOURNMENT**

***Britain moved, second by Frisque, to adjourn the meeting at 7:35 p.m. Motion carried unanimously.***

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