

**MINNETONKA PLANNING COMMISSION  
MINUTES**

**SEPTEMBER 14, 2006**

**1. CALL TO ORDER**

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

**2. ROLL CALL**

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

Staff members present: Community Development Director Ron Rankin, Planner Susan Thomas, Natural Resource Manager Jo Colleran, and Planning Technician Jeff Thomson.

- 3. APPROVAL OF AGENDA:** The agenda was approved as submitted with additional comments provided in the change memo dated September 14, 2006.

- 4. APPROVAL OF MINUTES:** August 31, 2006

***Adams moved, second by Brandt, to approve the August 31, 2006 meeting minutes as submitted.***

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

**5. REPORT FROM STAFF**

Rankin briefed the commission on land use applications considered by the city council at its meeting of September 11, 2006:

- Adopted a resolution approving an amendment to an existing conditional use permit for an existing accessory apartment at 17310 Bay Circle for Edward De Gregoire (90013.06a).
- Adopted a resolution approving a conditional use permit for a two-story detached garage at 304 Sunnyvale Lane for Trenton Steel (06045.06a).
- Adopted a resolution approving vacation of a drainage easement at 13201 Ridgedale Drive for Target Corporation (94034.06a).
- Adopted an ordinance revising scoreboard requirements (04070.06a).

Rankin announced that the next planning commission meetings are scheduled for September 28, 2006, October 12, 2006, and October 26, 2006.

Rankin reminded commissioners that a joint study session will be held Monday, October 16, 2006, with the planning commission, city council, and economic development authority to discuss redevelopment in the Opus area.

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

**7. PUBLIC HEARINGS: CONSENT AGENDA**

**A. Rear yard setback variance for additions to the house at 3627 Druid Lane for Mary Brandenburg. (06055.06a)**

Adopt the resolution on pages A1–A3 of the staff report which approves a rear yard setback variance from 28 feet to 10.5 feet at 3627 Druid Lane for Mary Brandenburg. 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 setback variance is reasonable. While technically the rear of the property, the east property line functions as a side property line. If it were a side property line, a 10-foot setback would be required and no variance would be needed.
  - b. Rather than centered within the buildable area of the property, Ms. Brandenburg's house was tucked into a corner of the lot. (See page A7.) This is a unique circumstance not common to every similarly zoned property.
- 2) The variance would be consistent with the spirit and intent of this ordinance for the following reasons:
  - a. The proposed variances would not alter neighborhood character for several reasons:
    - (1) The proposed addition would not be closer to the east property line than the existing porch.

- (2) The Brandenburg house sits at a lower elevation than surrounding homes.
- (3) The proposed additions would be nearly 40 feet from the closest neighboring home.

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 before the city issues a building permit.
  - b. Install a temporary rock driveway, erosion control, and tree protection fencing for staff review and approval. These items must be maintained throughout the course of construction.
  - c. Pay any delinquent utility bills.
- 2) 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.

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

## **8. PUBLIC HEARINGS**

### **A. Preliminary plat for a two-lot subdivision, with lot depth variance, at 11601 Timberline Road for Michael Burg. (06024.06a)**

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

Rankin explained that the project had been postponed a few times and public hearing notices had not been sent out. He recommended that the applicant be given the choice of opening the public hearing and continuing it until the September 28, 2006 meeting or continue the item immediately and mail the public hearing notices for the next meeting.

Michael Burg, applicant, agreed to open the public hearing and continue the item until the next meeting.

Thomas provided the staff report. Staff recommended denial of the application based on the findings listed in the staff report.

Ryan Boe, an attorney with Larkin Hoffman, representing the applicant, objected to the planning staff's recommendation. He stated that:

- A variance application has not been submitted. The application complies with ordinances.
- The project's one issue is the lot depth.
- The client is willing to work with staff regarding storm-water runoff and drainage issues. Those are not issues sufficient to deny the plat.
- There is a clear difference of opinion in determining how lot depth is measured.
- Public opposition is not grounds for denial of an application.
- The plat submitted complies with the lot depth and zoning requirements for the city.
- He had measurements prepared in accordance with the city's analysis. The lines varied from 102 feet to 170 feet. The average is in excess of 125 feet. The planning staff used 3 lot lines that are less than 125 feet.
- His client is aware of the drainage issues, but they can be dealt with by the building process.
- Neighborhood comments related to the original plan that located the building footprint on block 1. The location was revised to save trees which then caused a setback issue.
- The applicant would prefer to build it in its original location. No ordinance restricts the removal of the significant trees. They would have to be replaced.
- The environmental issues would be dealt with through the building permit process.
- He requested the commission recommend approval of the plat.

Brandt questioned if the application should be on the agenda if staff indicated that the project requires a variance when the applicant has not applied for one. Chair Hart saw the issue to be determining the acceptable method of measuring the lot to determine its depth. If staff and the city attorney's measurement would be correct, then a variance would be required. Rankin concurred. The request for a lot division cannot proceed on its own without the variance. The city attorney provided a memorandum agreeing with staff's determination of the lot depth. The lot and the division line are irregular which complicates the measurement of the

lot depth. It is the city's position that staff has acted properly and the application cannot proceed without a lot depth variance.

Chair Hart confirmed with Rankin that the 3 lot depth measurements did not meet ordinance requirements.

Chair Hart assured Mr. Boe that if he had seen prior meetings, he would know that staff and the commission are not unduly swayed by neighborhood comments. She appreciated his respectful disagreement.

Britain asked if the commission should review the application without a request for a variance. Thomas explained that staff determined that the plat does not meet ordinance requirements. It should be denied. It does not meet lot depth requirements. In general, when plats are received that have variances imbedded in them, the plat application is filled out with the variance included in its approval.

In response to Cheleen's question, Thomas explained that staff initially accepted the 136-foot lot depth measurement, but once a thorough review had been completed by staff and the city attorney, a revised method was established. Mr. Burg was notified of the change.

Cheleen agreed that the most logical place to locate a house should be considered in the calculation. He asked if the angled line was relocated to split the lot, then would the lots meet ordinance requirements. Thomas explained that the south property has minimal buildable area. As proposed, it would have 3,506 square feet of buildable area; 3,500 square feet is required. Adjustments to the lot line would affect the buildable area.

Adams asked if a previously considered plat included in his agenda packet was rejected because it would not meet minimum ordinance requirements. Thomas answered in the affirmative.

Brook Oldre, 3417 West 102<sup>nd</sup> Street, Bloomington, business partner of Mike Burg, stated that:

- The original plat was changed because the wetland size required the buildable area to be decreased.
- The plat has changed seven or eight times.
- Staff met with him June 27, 2006 and found the plat to be in accordance with ordinances.
- He did not understand why one way to measure would be better than another.

Chair Hart opened the public hearing.

***Adams moved, second by Britain, to continue the public hearing for Item 8A, a preliminary plat for a two-lot subdivision, with lot depth variance, at 11601 Timberline Road for Michael Burg (06024.06a), until the September 28, 2006 meeting.***

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

Chair Hart apologized for the delay.

**B. Side yard setback variance for an addition to the home at 14603 Woodhill Circle for Lawrence and Nancy Wigley. (06036.06a)**

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

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

In response to Brandt's question, Thomson stated that the proposal's variance would not determine the ultimate setback for the adjacent properties.

Chair Hart clarified that the setback would be 7 feet wide instead of the required 10 feet wide and the deck would be removed. Thomson also confirmed that the access for the adjacent lot connects to Williston Road.

Lawrence Wigley, 14603 Woodhill Circle, applicant, stated that his goal would be to make the addition look the same as the home. He was present to answer questions.

The public hearing was opened.

Larry Lutz, 14419 Woodhill Circle, supported the addition. It would add value to the neighborhood without detracting from its character. He and his wife requested the commissioners approve the variance.

No additional testimony was submitted and the hearing was closed.

Chair Hart confirmed with Thomson that the applicant was not the owner of the property at the time it was originally subdivided.

Chair Hart reviewed the primary issue.

Britain felt the plan would be reasonable.

***Britain moved, second by Cheleen, to recommend that the city council adopt the resolution on pages A1–A4 of the staff report, which approves a side yard setback variance from 10 feet to 7 feet for an addition to the house at 14603 Woodhill Circle. 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 includes a standard two-car garage.
  - b. The proposed addition would not alter neighborhood character because it will be screened from surrounding properties by the existing topography and vegetation.

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 temporary rock driveway, erosion control, tree protection, as required by the city's natural resources staff.
- 3) 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.

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

- C. **Items concerning a three lot subdivision of 15549 Ranchview Court, for Evergreen Development Corporation. (06009.06a)**

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.

Cheleen recalled an issue with the length of the cul-de-sac. Thomas explained that the city council may approve a cul-de-sac that is longer than 500 feet if it meets certain conditions.

Cheleen asked how the two lots would be accessed. Thomas directed him to an illustration in the agenda packet. The cul-de-sac would still be required for the plat to meet the R-1 district requirement of having frontage on a public street.

Tom Goodrum, senior planner for Schoell and Madson, 15050 23<sup>rd</sup> Avenue North, Plymouth, stated that the intent of the project was to construct three homes to house the property owners and their kids. He thanked staff for being courteous and professional. He stated that:

- The property is guided for medium density, but zoned as an R-1 district. The comprehensive guide plan and zoning ordinances were considered when developing the proposal.
- The property was guided for medium density in 1987. At that time, Ranchview Court was guided for medium density.
- In 1990, the comprehensive guide plan was updated and the property remained guided medium density.
- Single family homes would be the best use of the property, but would not be allowed if zoned R-2, R-3 or R-4.
- Three past documents indicated that small lot, single-family homes would serve as a good transition between a single-family neighborhood on Ranchview Lane and high-intensity, commercial development of the Carlson site.
- The only tool within zoning ordinances to meet the goal of having single-family homes located on property guided for medium density is a planned unit development.
- R-1 ordinance requirements conflict with medium comprehensive guide plan standards.
- The adjacent neighbors would not be impacted.
- There would be significant separation between the proposed development and the neighbors on the west side.
- The applicant considered following R-2 zoning requirements. It would allow for small-lot, single-family residences. Lots could be 15,000 square feet in size.

- The planned unit development zoning was not used with the intent of maximizing the lots, but as a tool to move the cul-de-sac back in the corner, save more trees, and push the lots closer to the wetland to decrease the impact on the trees.
- He pointed out flag-lots and irregular lots in the area. Having a “tail” would match the character of the neighborhood.
- The property is intended to be used as a transitional area.
- The proposal is an appropriate use for the property.
- The trees and wetland on the property would provide a buffer for the R-1, single-family homes.
- The planned unit development was not used to gain a third lot. The applicant made a good faith effort to create a plan to match the applicant’s objectives, the guide plan, past documents, and the neighbors’ preference for single-family homes.
- The proposal was well thought out to meet ordinance requirements.

Adams asked why it was not as feasible to use lift pumps in the past as it is today. Goodrum explained that 20 years ago a lift station would have been much more expensive and less feasible than it would be today because of new technology.

Chair Hart reviewed that the property had been given outlot status when it was subdivided. The historical documents did not support releasing the property’s outlot status until public sewer and water would be available from Parker’s Lake Road. The outlot status on outlot A would not be removed until such time that street access would be available. The additional development potential on outlot A would only be realized if access could be provided from the east. It seemed pretty straight forward why the outlot was created.

Thomas confirmed for Chair Hart that R-2 zoning allows for a smaller lot. Rankin stated that R-2 zoning has been part of the ordinances since the comprehensive plan was created in the 1970s. Rankin stated that it is quite clear that the intent was to tie development of the property to the development of the property on the east in terms of access, utilities, and the type of development that would occur. Two residential lots would meet the ordinance requirements. The outlot’s connection to the property on the east is the reason why it remained guided as medium density all this time.

Chair Hart confirmed with Rankin that the comprehensive guide plan provides a future plan, but the zoning ordinance is the current law that governs.

Goodrum acknowledged the site's connection with the sewer requirements. He did not mention it because it was well explained in staff's report. Staff's report also stated that lifting the outlot status could be supported for an R-1 development. A lot of time and money was spent putting together an application. Sewer services would originate and travel the same route for a two-lot or a three-lot subdivision. The site is unique. R-2 zoning has been used for numerous transitional areas over the years. Both interpretations of the documents have valid reasons. He was hoping for a short presentation, but he wanted to provide an explanation of how the proposal was created.

Shari Baxter, 12977 Cardinal Creek Road, Eden Prairie, one of the property owners, explained the history of the project. She and her husband purchased the property to build a home for themselves and two additional homes for their sons. She stated that her sons and their spouses are public servants with limited budgets. The building pads indicated would be larger than the residences. The natural features of the site would be retained as much as possible.

Deb Haley, 2020 West 65<sup>th</sup> Street, Excelsior, one of the property owners, provided her understanding of why the property was designated as an outlot originally. She knew the original owners. At the time the property was developed, the owners did not have the funds to provide a lift station to develop the site. At their request, the property was designated an outlot. It was not the intent of the city to restrict development of the site.

The public hearing was opened.

Paul Engelman, 15575 Ranchview Court, stated that the site is wooded and full of wildlife. He stated that:

- He has lived there five years.
- He knew the outlot would be developed eventually.
- He agreed with the city's determination that the proposal's lot sizes are too small.
- It is questionable when the property to the east would develop. It will not stay a farm forever, but it did not seem fair that one of the proposed houses would be set right up against it.
- To be consistent with the neighborhood, the outlot should be divided into two lots. Two lots would have acceptable setbacks.
- The reason he moved to Minnetonka was because he wanted to build a garage addition on his half-acre lot in Plymouth. It would have exceeded the buildable house size by one percent, so he could not do it.

- The proposed houses, if built too small, could decrease the surrounding properties' values.
- He questioned if the city would rebuild the cul-de-sac so that there would be only one continuation of the road to reach the proposed subdivision. It seemed odd that there would be a cul-de-sac with a road connecting it to another cul-de-sac.
- He supported keeping the site zoned as an R-1 district.

Chair Hart questioned what would happen to the cul-de-sac. Thomas explained that it would be removed if it is located in a temporary easement.

No additional testimony was submitted and the hearing was closed.

Chair Hart reviewed the primary issues.

Brandt asked if the east property owner has any development plans. Rankin stated that the owner has not shared any plans with the city.

Cheleen felt that the proposal did not fit the planned unit development criteria. Two lots would fit on the property which is zoned R-1. He was puzzled as to why that would be changed.

Adams had sympathy for the applicants. One would have expected that the property on the east side would have been developed by now. Staff was clear in 1987 regarding the outlot status and how it should be served in the future. He did not have a problem with the R-1 status.

Britain knew both developers to be good people, but he agreed with Adams. The way the site is today supports its R-1 zoning. The other option would be to wait until the property owner on the east is ready to develop the property.

Chair Hart explained that a planned unit development is used to protect trees, slope, or create a conservation easement, but not increase the number of lots.

***Adams moved, second by Brandt, to recommend that the city council deny the following items concerning a three lot subdivision of 15549 Ranchview Court, for Evergreen Development Corporation. (06009.06a)***

### **REZONING**

- 1) *Recommend that the city council adopt the resolution on pages A1–A2 of the staff report, which denies the proposed rezoning from R-1, low-density*

*residential to PUD, planned unit development. This resolution is based on the following findings:*

- a. The intent or purpose of a planned unit development district would not be met.
- b. The lot sizes and widths are not consistent with existing lots in the Ranchview Court area.
- c. Most of the site's mature trees would be removed.
- d. The site could not be developed to meet current R-1 zoning standards with three lots.

**PRELIMINARY PLAT**

2) *Recommend that the city council deny preliminary approval of the plat. Denial is based on the following findings:*

- a. The intent or purpose of a planned unit development district would not be met.
- b. The lot sizes and widths are not consistent with existing lots in the Ranchview Court area.
- c. Most of the site's mature trees would be removed.
- d. The site could not be developed to meet current R-1 zoning standards with three lots.

**REMOVAL OF OUTLOT STATUS**

3) *Recommend that the city council leave the outlot status in place. Leaving the outlot status of the site is based on the following findings:*

- a. The proposed lot sizes and widths are not consistent with existing lots in the Ranchview Court area.
- b. The proposed development plans would require removal of most of the site's mature trees.

- c. The site could not be developed to meet code and get three lots as proposed.
- d. As proposed, the intent of the planned unit development would not be met.

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

Chair Hart stated that it is tentatively scheduled to be reviewed by the city council at its September 25, 2006 meeting. She thanked everyone for their input.

**9. ADJOURNMENT**

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

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