

**MINNETONKA PLANNING COMMISSION
MINUTES**

MAY 24, 2007

1. CALL TO ORDER

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

2. ROLL CALL

Commissioners Dahl, Lehman, Schmitz, Adams, Brandt, Cheleen, and Hart were present.

Staff members present: Community Development Director Ron Rankin, City Planner Julie Wischnack, Principal Planner Susan Thomas, Planner Josh Metzger, and Planning Technician Jeff Thomson.

- 3. APPROVAL OF AGENDA:** The agenda was approved as submitted with additional comments and one modification provided in the change memo dated May 24, 2007.

- 4. APPROVAL OF MINUTES:** May 10, 2007

Dahl moved, second by Cheleen, to approve the May 10, 2007 meeting minutes as submitted.

Dahl, Lehman, Schmitz, Brandt, Cheleen, and Hart voted yes. Adams abstained. Motion carried.

5. REPORT FROM STAFF

Wischnack briefed the commission on land use applications considered by the city council at its meeting of May 21, 2007:

- Adopted a resolution that added perimeters to the temporary structures ordinance.
- Introduced an ordinance establishing an interim moratorium on subdivisions. Exemptions include: an application which has received preliminary plat approval; administrative lot divisions; and planned unit development applications that are sensitive to tree preservation issues, steep slope conservation, and do not have major grading impact or shore land management issues. The moratorium is for one year. The city council will review the item at its June 4, 2007 meeting.

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

A. Front yard setback variance for a pool and deck at 14721 Wellington Road for John and Cynthia Cochran (07020.07a)

Adopt the resolution on pages A9-A11 of the staff report, which approves a front yard setback variance from 25 feet to 15 feet for the pool, and 25 feet to 10 feet for the surrounding deck apron at 14721 Wellington Road. 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 lot is a double frontage lot requiring a front yard setback from the undeveloped right-of-way to the south.
- 2) The variance would be consistent with the spirit and intent of this ordinance for the following reasons:
 - a. The south side of the lot functions as the rear yard for the property as well as for surrounding properties. The setbacks are consistent with the required rear yard setbacks.
 - b. The above-ground pool and deck apron would not alter the character of the neighborhood because they would be screened from neighboring properties by the existing topography and vegetation.

Approval is subject to the following conditions:

- 1) Adhere to site plan dated May 16, 2007.

- 2) Submit proof of having recorded this resolution with the county before the city issues a building permit.
- 3) Install and maintain a temporary rock driveway, erosion control, and tree protection, as required by the city's natural resources staff.
- 4) Install and maintain a permanent fence around the perimeter of the pool as required by city code.
- 5) Comply with all city ordinance requirements pertaining to drainage, noise, and lighting.
- 6) This variance will end on December 31, 2008, 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 a second story addition at 14500 Minnehaha Place for TimberRidge Homes. (07021.07a)

Adopt the resolution on pages A7–A9 of the staff report approving the applicant's request for a 5-foot variance from the 30-foot aggregate side yard setback requirement for the construction of a second level addition to a home located in the R-1 zoning district. Approval is based on the findings:

- 1) The subject property has an existing nonconforming aggregate side yard setback, which complied with ordinance regulations at the time the house was built.
- 2) The proposed addition will not be located any closer to the side property line than the existing house.
- 3) The addition will not negatively impact the essential character of the neighborhood.

Approval is subject to the following conditions:

- 1) The building and roof materials and colors must match the existing house.
- 2) Submit proof of having recorded this resolution with the county before the city issues a building permit.

- 3) Install and maintain a temporary rock driveway, erosion control, and tree protection, as required by the city's natural resources staff.
- 4) This variance will end on December 31, 2008, unless the city has issued a building permit for the project covered by this variance or approved a time extension.

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

8. PUBLIC HEARINGS

A. Lot area, buildable area, and lot width variances for a new house at 17209 Grays Bay Boulevard for Wooden Dreams. (07022.07a)

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.

In response to Chair Hart's question, Thomas confirmed that the property to the west has a nonconforming rear yard setback.

The applicant was present to answer questions.

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

Chair Hart commented that the neighborhood is eclectic.

Cheleen moved, second by Schmitz, to adopt the resolution on pages A12–A15 of the staff report, which approves lot and front yard setback variances for construction of a new house at 17209 Gray's Bay Boulevard. This resolution is based on the following findings:

- 1) LOT VARIANCES
 - a. The non-conformity of the existing lot presents a practical difficulty. The requested lot variances are not related to a specific house design. Rather, these variances would be necessary for any construction on the site.

- b. The subject property was platted in 1916. Required lot dimensions have dramatically increased over the last 90 years. While not necessarily unique to the immediate area, this circumstance is not common to every R-1 property in the city.

2) SETBACK VARIANCE

- a. The location of adjacent structures presents a practical difficulty. Given the location of these buildings, an 87-foot, front yard setback is required. This setback is more than double the general setback in the R-1 zoning district.
- b. In the case of the subject property, the small lot setback requirements result in a significantly more restrictive front yard setback than would generally be required. (See page A11 of the staff report.) This is a unique circumstance not common to every similarly zoned property.

- 3) The requested variances would result in construction of a single-family house on a property that has long had a single-family house. The variances would not have a negative impact on the adjacent properties or on the essential character of the area.

Approval is subject to the following conditions:

- 1) Prior to issuance of a building permit:
 - a. Submit a revised grading plan acceptable to the city engineer.
 - b. Submit proof of having recorded this resolution with the county before the city issues a building permit.
 - c. 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;

- (3) how contractors will prevent tracking of earth onto the street; and
 - (4) where contractors will park during the course of construction.
- d. Install a temporary rock driveway, and erosion and tree protection fencing as required by natural resources staff. Heavy duty metal fencing must be installed along the property line to ensure all construction activities occur on the subject property. These items must be inspected, approved, and maintained throughout the course of construction.
- 2) Non-compliance with the approved construction management plan or natural resources requirements may result in issuance of stop work orders.
 - 3) Gutters must be installed along the east, west, and south sides of the roof to direct runoff to the north.
 - 4) This variance will end on December 31, 2008, unless the city has issued a building permit for the project covered by this variance or approved a time extension.

***Dahl, Lehman, Schmitz, Adams, Brandt, Cheleen, 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 division within 10 days.

**B. Conditional use permit for an educational institution at 12007
Excelsior Boulevard for Faith Presbyterian Church. (91008.07a)**

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.

Cheleen asked if the parking area was sufficient to accommodate parent vehicles for an all-school function. Thomson explained that the parking area would accommodate vehicles for the sanctuary at its capacity. An all-school function would not exceed the maximum occupancy of the sanctuary.

Chris Carlson, Senior Pastor of Faith Presbyterian Church, applicant, stated that the church has approximately 1,000 members with 400 members usually in attendance each Sunday. The church has 180 parking spaces.

Cheleen felt a school would be an excellent complimentary use with the church.

Mr. Carlson felt the project would be a win-win situation for the children, community, and school. It would provide the opportunity to utilize rooms that are currently not used.

The public hearing was opened.

Melodie Brumbacker, who serves on the board of International Spanish Language Academy, provided a history of the school. Hopkins School District is the sponsor for the school. The board has been meeting for a couple of years, but the program has not started yet. The proposal is a good fit for the school. Pioneer Park would be used by small groups.

Adams asked if enrollments had been received. Ms. Brumbacker understood 109 were currently enrolled. The maximum capacity would be approximately 135 students.

No additional testimony was submitted and the hearing was closed.

Chair Hart reviewed the primary issues. The use is a permitted use for the site. Traffic has been addressed.

Brandt is a member of the church. The facility would be ideal for the proposed use. Traffic would not be an issue. The parking area would be sufficient.

Brandt moved, second by Adams, to recommend that the city council adopt the resolution on pages A13-A17 of the staff report. This resolution approves a conditional use permit for a charter school to be located within the existing church building at 12007 Excelsior Boulevard. Approval is based on the finding that the proposal meets the required conditional use permit standards and is subject to the following conditions:

- 1) Submit yearly enrollment numbers to the city prior to July 15th of each year. Any significant increase in school enrollment would require review by the city council.

- 2) Daytime church activities, such as funerals, must be scheduled as to not conflict with the peak traffic times of the school.
- 3) Install and maintain signs which clearly identify the entrance only and exit only accesses along Nelson Drive.
- 4) Obtain a permit from the city's recreation department for group use of a public park.
- 5) Obtain any permits or licenses required by the city's environmental health division.
- 6) Comply with all state and federal requirements (MN Statue 121A.035) to develop a Crisis Plan for the facility, as required, and in conjunction with the Minnetonka Police Department.
- 7) All external doors must be signed to meet requirements for emergency response.
- 8) The building must meet all minimum building code requirements for schools.
- 9) Record this resolution with the county.
- 10) The city council may reasonably add or revise conditions to address any future unforeseen problems, including parking and increased traffic through surrounding residential areas.
- 11) Any change to the approved use that results in a significant increase in traffic or a significant change in character would require a revised conditional use permit.
- 12) The applicant must agree to the above conditions in writing.

***Dahl, Lehman, Schmitz, Adams, Brandt, Cheleen, and Hart voted yes.
Motion carried.***

The city council is tentatively scheduled to review the item at its June 4, 2007 meeting.

C. Preliminary plat for a two-lot subdivision with variances at 3515 Meadow Lane (McKelley Addition) for Thomas Fretham. (07012.07a)

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

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

Chair Hart asked Metzer to explain how the floor area ratio was calculated. Metzer explained that floor area ratio includes livable area on first and second floors, attached garages, and 50 percent of a walk-out or look-out basement. That total is divided by the area of the lot.

Adams asked if consideration was made to save the perimeter trees. Colleran explained that trees on the east property line have health issues. The south lot line area would not be graded and many of the trees would be saved. The north property line trees would be removed for grading. There is no screening requirement between two R-1 districts. Since the application requires a variance, the planning commission could add a condition to protect the trees on the south property line. To save trees on three sides, the proposed houses would have to be modified.

Tom Fretham, 4930 Baker Road, applicant, intended to leave every tree possible. The lots were created in a manner that would save the big, white pine. The tree had sustained considerable damage over the winter. It is leaning by 15 percent and may not survive. Setbacks on the side of the lot were increased to 10 feet. The footprint was moved further away from the property line in order to preserve trees. The presale residence would be built on the north lot and positioned to save the trees. The more trees he saves, the more potential buyers would like it. There are 10 lots to 12 lots in the neighborhood that are smaller than 11,000 square feet. He described floor plans that would meet mcmansion policy requirements. The residences would be moderate-sized, luxury homes. New plantings and landscaping would be provided. The results would make the neighborhood proud.

The public hearing was opened.

Maris Kurmis, 3510 The Mall, spoke on behalf of himself and Dave Mischio, 3516 The Mall. He stated:

- They were not opposed to division of the lot.
- Having two lots did not create a hardship.
- The proposed development sounds very nice.

- They were concerned with saving the mature pine trees along the east property line.
- A 3,000-square-foot residence would not be in character with the neighborhood. Most of the residences are around 2,000 square feet in size.
- A 1 ½-story or 2-story residence would not be in character with the neighborhood.
- If the trees and his privacy could be maintained, he would not have a problem with the residences equaling 3,000 square feet in size.
- The 2-story residence located across the street set a bad precedent. It should not be used as a precedent. It destroys the character of the neighborhood.
- Cutting down the trees would destroy the character of the neighborhood.
- He does not want the older homes replaced with residences sized way too large for the neighborhood.

Al Rashid, 3525 Meadow Lane, has lived in the area for 35 years. He would hate to see the trees removed. He would like the fence to remain on the north and south property lines. The fence in the front is ridiculous. He requested the garage be on his side of the house. The character of the neighborhood must be preserved. Out of 17 residences on Meadow Lane, 1 is a 2-story. It would not have been approved today.

Mr. Fretham clarified that 3,000 square feet includes the garage area, so livable space would be about 2,400 square feet of the residence.

No additional testimony was submitted and the hearing was closed.

Chair Hart reviewed the primary issues. She stated that design of a house is not within the planning commission's jurisdiction. In response to Chair Hart's request, Colleran explained that trees within the building footprint, within 20 feet of the building footprint, or in or within 10 feet of the driveway would not be required to be replaced. Any tree outside of those areas would have to be replaced. Chair Hart stated that the rest of the issues would be considered when the building permit is reviewed.

Brandt requested Metzger explain the floor area ratio and mcmansion policy. Metzger provided his gold-star explanation.

Brandt was not happy with dividing a 22,000 square foot lot, but more of a concern would be to locate a 6,000 square foot residence on a small lot. He

preferred to see the site split and house two small residences rather than one mcmansion.

Cheleen echoed Brandt. The lot split makes more sense. Most of the lots in the area are similar in size to the proposed lots. The split would be in character with the area.

Adams was encouraged by how the mcmansion policy worked in this case. The proposed lots would be in character with the neighborhood.

Dahl concurred with Adams. The mcmansion policy provided a good compromise. He liked the effort to save the trees.

In response to Dahl's request, Mr. Fretham provided a map that illustrated the lot sizes in the area used to compare floor area ratios. Chair Hart reviewed the lot sizes shown on the map along Meadow Lane and behind the proposed site. Metzger explained that within the 400-foot radius, of the approximate 40 properties, 10 were smaller than Lot 1 and 11 were smaller than Lot 2.

Chair Hart felt placement of the properties was also important. The bulk of the small lots are contiguous with the proposed site.

Schmitz moved, second by Cheleen, to recommend that the city council approve the preliminary plat (McKelley Addition) date-stamped April 27, 2007. Approval is based on the following findings:

- 1) With the exception of variances for lot area and lot width at front setback, the proposal meets all standards and ordinance requirements for lot division.
- 2) The proposal meets the required standards for granting of a variance, because:
 - a. There is a unique hardship to the property caused by the existing lot area, which is disproportionately large relative to other lots in the surrounding neighborhood, and lot width at setback which would prevent subdivision of the lot similar to other lots in the neighborhood.
 - b. The variances would meet the intent of the ordinance because the lot area and lot width at setback would be consistent with other lots in the neighborhood.

Approval is subject to the following conditions:

- 1) The following items must be submitted to the city before final plat approval:
 - a. Amend the plat to include:
 - (1) The plat must be titled McKelley Addition; Parcel A must be renamed Lot 1 and Parcel B must be renamed Lot 2.
 - (2) Ten-foot-wide drainage and utility easements adjacent to the public street right-of-way and seven-foot-wide drainage and utility easements along all other lot lines.
 - (3) Location of existing sewer and water services shown on the survey so that the location of new services may be determined.
 - (4) Label the 28-inch white pine at the front property line of Lot 1 to be preserved.
 - b. An electronic CAD file of the final plat in microstation or DXF on a CD disk.
 - c. The following documents for the city attorney's review and 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) 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 documents must be recorded with the final plat, and a drawing of any easement must be attached to the easement deed.
 - d. Pay a park dedication fee of \$2,375.
 - e. Any other requirements included with final plat approval.

- 2) The following must be completed before the city issues a building permit:
 - a. An additional sewer and water service may be required to be installed.
 - b. Submit a grading plan for each lot. The plans must be in substantial compliance with the building pads shown on plans date-stamped April 27, 2007.
 - c. A temporary rock driveway, erosion control, tree protection, and wetland protection fencing must be installed subject to review and approval of the city's natural resources staff.
 - d. A copy of the recorded plat and easements required to be recorded.
 - e. A letter from the surveyor stating that boundary and lot stakes have been installed, as required by ordinance.
 - f. A hook-up fee for sanitary sewer and water.
 - g. All garbage and debris be removed from the property.
- 3) During construction, the streets must be kept free of debris and sediment, and the tree protection fencing and erosion control fencing must be maintained.
- 4) Based on the mcmanion policy, the largest home that can be built on the newly divided lots is as follows:

Lot 1: 2,990 square feet
Lot 2: 3,069 square feet

Included in the calculation of floor area ratio shall be:

- Area of above ground living spaces
- Area of attached garages
- 50% of floor area of walkout or lookout basements (full basement square footages will not be included).

- 5) A driveway permit is required for Lots 1 and 2 to connect the new driveways to the street.
- 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.

***Dahl, Lehman, Schmitz, Adams, Brandt, Cheleen, and Hart voted yes.
Motion carried.***

The city council is tentatively scheduled to review the item at its June 4, 2007 meeting.

9. ADJOURNMENT

Brandt moved, second by Dahl, to adjourn the meeting at 7:45 p.m. Motion carried unanimously.

By: _____
Lois T. Mason
Planning Secretary