

**MINNETONKA PLANNING COMMISSION  
MINUTES**

**JULY 12, 2007**

**1. CALL TO ORDER**

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

**2. ROLL CALL**

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

Staff members present: City Planner Julie Wischnack, Principal Planner Susan Thomas, Planner Josh Metzger, Planning Technician Jeff Thomson, Natural Resource Manager Jo Colleran, and Assistant City Engineer Steve Lillehaug.

- 3. APPROVAL OF AGENDA:** The agenda was approved as submitted with additional comments and changes provided in the change memo dated July 12, 2007.

- 4. APPROVAL OF MINUTES:** June 28, 2007

*Dahl moved, second by Adams, to approve the June 28, 2007 meeting minutes as submitted.*

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

**5. REPORT FROM STAFF**

Wischnack briefed the commission on land use applications considered by the city council at its meeting of July 9, 2007:

- Adopted a resolution approving a conditional use permit for transient sales at 17507 Minnetonka Boulevard for Sever's Farm Market and Great Gardens by Grandma.
- Adopted a resolution approving a floodplain alteration permit and floodplain and front yard setback variances for construction of a two-story home at 16094 Gray's Bay Boulevard for Structures Unlimited, Inc.
- Adopted a resolution approving items concerning a maintenance/storage building at 3500 Williston Road for Minnetonka Christian Academy: (1) a major amendment to an

existing master development plan; and (2) site and building plan review, with an access drive setback 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.

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

**A. Conditional use permit for a detached garage at 4915 Highland Road for Tim and Dawn Kraskey. (Project 07031.07a)**

Recommend that the city council adopt the resolution on pages A8–A11 of the staff report, which approves a conditional use permit for a garage over 12-feet in height and 1,000 square feet in area at 4915 Highland Road. This resolution is based on the finding that the proposal meets all conditional use permit standards as outlined in city code. Approval is subject to the following conditions:

- 1) Before issuance of a building permit:
  - a. Submit a revised survey. The survey must include existing and proposed elevations at the corners of the proposed garage.
  - b. Submit a recorded copy of this resolution.
  - c. Submit a conservation easement 25-feet upland from the existing wetland for the city attorney's review and approval.
  - d. Install tree protection and erosion control fencing for inspection by natural resources staff. This fencing must be maintained throughout the course of construction.
- 2) A 25-foot wetland buffer must be maintained upland from the existing wetland edge. This buffer must be placed in conservation easement and the easement recorded with the County.
- 3) The city council may reasonably add or revise conditions to address any future unforeseen problems.

- 4) 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.
- 5) The applicant must agree to the above conditions in writing.

**B. Variance for a commercial accessory structure greater than 600 square feet in area at 3900 Williston Road for Ken's Upholstery. (Project 07035.07a)**

Adopt the resolution on pages A4–A7 of the staff report, which approves the proposed variance. This resolution is based on the following findings:

- 1) The proposed structure complies with structure height and setback requirements for detached accessory structures in the B-2 zoning district and will be adequately screened from surrounding properties by existing vegetation.
- 2) The proposed structure will improve the visual aesthetics of the subject property by providing interior parking of business vehicles and removal of existing accessory structures.

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) The proposed structure must be used for vehicle and material storage only and shall not be used for manufacturing or assembly of any kind.
- 3) A permanent, 30-foot, hard surface driveway must be installed at the site entrance off Williston Road.
- 4) All existing accessory structures must be permanently removed from the subject property.
- 5) The existing vegetation on site must be maintained or replaced, when necessary.

- 6) Install temporary rock driveway, erosion control, tree protection, and lake protection fencing, subject to review by the city's natural resources manager.

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.

**C. Conditional use permit, variance, and site and building plan review for an expansion of the Mobil gas station convenience store located at 3864 Hopkins Crossroad for Croix Oil Company. (Project 86088.07a)**

- 1) *Recommend that the city council adopt the resolution on pages A6-A11, approving the applicants request for a conditional use permit to operate a non-service station retail facility having gasoline pumps. Approval is based on the following findings:*
  - a. The proposed use meets the general and specific standards for granting of a conditional use permit.

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. Secure all applicable licenses and approvals from the city, Hennepin County, or other appropriate jurisdictions.
3. This conditional use permit does not approve any signs at the site. A sign permit application must be submitted for staff review and approval. Any proposed sign must meet requirements outlined in city code.
4. The city council may reasonably add or revise conditions of approval to address any future unforeseen problems.
5. 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.

6. The city council may revoke this conditional use permit if any future traffic, parking or public safety issues arise as a result of the proposed use.
  7. Violation of any of these conditions of approval or conditional use permit standards outlined in the city code will result in immediate revocation of this conditional use permit.
  8. The applicant must agree to the above conditions in writing.
- 2) *Recommend that the city council adopt the resolution on pages A6-A11 approving the site and building plan, with a rear yard setback variance. Approval is based on the following findings:*
- a. The applicant's proposal complies with the site and building plan review standards.
  - b. The existing building was constructed in 1967 with a nonconforming rear yard setback of 8 feet. Due to the location of vehicular site entrances and existing gas pumps, the construction of an addition meeting the required 35-foot rear yard setback is not possible.
  - c. The proposed addition will not extend closer to the rear property line than the existing structure.
  - d. The proposal would have no negative impact on the surrounding area and would not alter the essential character of the neighborhood.

Approval is subject to the following conditions:

- a. The site must be developed and maintained in substantial conformance with the plans stamped "Received June 8, 2007."
  - b. Separate building and sign permits are required.
- D. Conditional use permit to move over 1,000 cubic yards of dirt from property adjacent to 601 Carlson Parkway for Carlson Real Estate Company. (Project 87001.07a)**

Recommend that the city council adopt the resolution on pages A11-A14 of the staff report, which approves a conditional use permit to move more than 1,000 cubic yards of earth from the site adjacent to 601 Carlson Parkway. This resolution is based on the following findings:

- 1) The proposal would meet the general conditional use permit standards as outlined in city code.
- 2) The proposal is consistent with the master development plan and approved grading plan for the site.

Approval is subject to the following conditions:

- 1) Complete the following work before the city issues a grading permit:
  - a. Install temporary rock driveways, erosion control, and tree protection fencing, subject to review by the city's natural resources staff. The temporary rock construction entrance must be located to the east side of the property away from the curve in the roadway and median area. An erosion control fence shall be placed along the entire length of Deer Creek Parkway adjacent to the site. The silt fence shall be orange in color, shall not exceed 300-feet in length, and shall be overlapped with the appropriate "J" hooks.
  - b. Submit a letter of credit or cash escrow for 150% of the estimated cost to comply with grading permit requirements and restore the site.
  - c. Submit a construction management plan for staff approval that addresses the following information:
    - (1) Haul routes and hours
    - (2) Truck turning movement and routing plan
    - (3) Grading schedule and hours of operation
    - (4) Designated construction parking area
    - (5) Streets must be swept daily
    - (6) Location where fill will be deposited

- d. Obtain an MPCA NPDES permit and provide a copy of the approved permit to the city.
  - e. Submit a stormwater pollution prevention plan (SWPPP) for review and approval by city staff.
  - f. Submit a cash escrow to the city to ensure the repair of any road damage resulting from construction traffic, as required by the city engineer.
  - g. Record this resolution with the county and return a recorded copy to the city.
- 2) The city council may reasonably add or revise conditions to address any future unforeseen problems.
- 3) The applicant must agree to the above conditions in writing.

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

Items recommended to the city council are tentatively scheduled to be reviewed at its July 23, 2007 meeting. An appeal of the planning commission's final decision must be made in writing to the planning director within 10 days.

## **8. PUBLIC HEARINGS**

### **A. Side yard setback variance for an additional garage stall at 4925 Arlington Drive for Dean and Margaret Halverson. (Project 07006.07a)**

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

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

Dahl asked what size garage would fit within ordinance requirements. Thomas explained that a 24-foot-by-24-foot garage could be built in front of the existing garage, over the concrete driveway. The driveway could remain in the same place or be extended around the side.

In response to Dahl's question, Thomas explained that building code requirements are greatly increased on structures built three feet within the property line and engineering requirements would not be met due to drainage not being able to be contained on the site.

Adams assumed that the alternative was discussed with the applicant. Thomas explained that the applicants favored the proposal for function and aesthetic features.

Cheleen asked if a written agreement from the adjacent property owner authorizing the use of the property during construction would be acceptable. Thomas stated that doing so might offer the applicant protection, but property ownership changes over time. Staff's position would remain the same regardless of an agreement between property owners.

Dean Halverson, 4925 Arlington Drive, applicant, hoped to improve his property and the neighborhood. He stated that:

- The proposal would increase his property value and the value of the neighborhood.
- He was open to the best alternative.
- He provided illustrations of other possibilities he considered.
- A large garage located in front of the residence would change its aesthetics considerably. It would not fit the characteristics of the neighborhood.
- Kids play in the area.
- The best option would be to extend the single-car garage to the side.
- Decreasing the width to 22 feet could be considered.
- The angle of the lot line gets narrower towards the rear. The proposal would be workable.
- The neighbor's adjacent side is non-living space.
- The proposal would be aesthetically pleasing.
- Each situation is unique. A precedent would not be set.
- Ten out of 10 of his neighbors favor the proposal. He received no negative responses.
- There are houses in the neighborhood that are very close to the property line. A precedent has already been set for the neighborhood.

The public hearing was opened.

Glenn Byers, 4931 Birchwood Lane, fully supported the proposal. His home is lopsided on his lot, similar to the applicant's. Locating the garage in front of his home would alter the site lines. He preferred the proposal. He hoped the planning commission approved the application.

No additional testimony was submitted and the hearing was closed.

Chair Hart reviewed the primary issues.

Adams asked what the shortest setback of all time was approved by the planning commission. Thomas explained that a site with a drainage and utility easement has not been allowed a setback less than seven feet. The neighborhood does not have drainage or utility easements. She recalled three-foot and four-foot side yard setbacks located along narrow lake-shore properties.

Adams asked if another option would be for the applicant to acquire part of the neighbor's lot. Thomas agreed that may be an option; although, the acquisition could not cause the neighboring property to become nonconforming. The neighboring property appears to have a minimal width along the property line.

Cheleen noticed houses in the neighborhood that appeared to not have any setback. The residences appeared to be on the property line. Thomas explained that the graphic was not survey accurate; however, some of the residences are very close to the side property line. Cheleen struggled with the decision. He considered if a rock path could be used to control drainage. Since there was no utility or drainage easement and houses in the area are close together, it was a tough decision. Thomas explained that a condition of approval could require rain gutters be installed along that property line to direct the roof drainage to the front or rear of the property. Cheleen noted that landscaping at the base of the garage could help control the drainage pattern.

Lehman appreciated that the current neighbor agreed with the proposal. Unfortunately, neighbors change over time and he had trouble accepting the shrinkage of the setback to two feet. Many houses in the neighborhood appear to have minimal setbacks on the side, but he was not comfortable accepting a two-foot setback.

Dahl acknowledged that the north-west corner of the proposed garage would be nine feet from the property line. The property line angles back which results in the rear corner being two feet from the property line. He struggled with the decision. He understood the alternative and appreciated the neighbor's appearance at the hearing. The proposal would flow with the house. The size of

the garage would be reasonable. A potential future property owner would be aware of the setback at the time of purchase. He did not want to set a precedent, but felt comfortable approving the project because of the uniqueness of the neighborhood and the fact that there were no utility or drainage easements.

Brandt questioned what part of the fire code would be violated. Thomas and Wischnack explained that the building code regulates construction materials to ensure materials that close to the property line would be properly rated for fire suppression.

Schmitz thought fire suppression materials would be the answer to the situation. The proposal would meet the setback for most of the garage. Locating the garage in the front would cause some problems. The driveway is fairly steep. She was fairly comfortable considering the proposal. Many other homes in the area are close to the property line. The neighbor's home is not close to the property line, so that made her feel better.

Chair Hart recalled the commission approving numerous setback variances for garages. In most cases, it was because there was no other option. In this case, that was not the situation. There is an option to construct it without a variance. She was concerned with setting a precedent in the neighborhood. There are a number of properties with one-car garages that could ask for a variance. If there are other options, she would rather not grant a variance.

Cheleen considered if moving the garage forward would be enough to help the situation.

Thomas explained that if the commission was inclined to approve the application, then staff suggested that the item be tabled, staff be directed to provide findings for approval, and guidance be given regarding what distance the commission would approve. Chair Hart commented that the findings could be provided now.

Brandt agreed with Chair Hart and Cheleen. The precedent would be set for the city, not just the one neighborhood. It was important to grant variances only if that would be the only option. He wished to see alternatives including moving the proposal forward to allow a setback of four feet or five feet wide.

Lehman asked when action was due on the item. Thomas stated that action needed to be done by the end of September.

Chair Hart reviewed the applicant's choices to table the item or request a vote now.

***Lehman moved, second by Adams, to adopt the resolution on pages A10–A12 of the staff report, which denies a side yard setback variance from 10 feet to 2 feet for a garage addition at 4925 Arlington Drive.***

Cheleen questioned if the motion to deny failed, then would the application be approved. Chair Hart stated that a motion to approve the variance could be done if the motion to deny failed and if findings were included. Brandt clarified with Chair Hart that a new plan could be submitted for review and action. Thomas explained that a new application would trigger a new 120-day action deadline and cost another application fee. Brandt suggested that tabling the item would be better for the applicant to prevent the applicant from having to start over.

Chair Hart asked the applicant if he would like to table action on the proposal. Mr. Halverson stated that he would like to find a solution and the easiest path possible. He supported looking at a few more options, like moving the garage forward and having a three-foot or four-foot variance.

***Lehman withdrew his motion and Adams withdrew his second, to adopt the resolution on pages A10–A12 of the staff report, which denies a side yard setback variance from 10 feet to 2 feet for a garage addition at 4925 Arlington Drive.***

***Lehman moved, second by Adams, to table action on the application for a side yard setback variance from 10 feet to 2 feet for a garage addition at 4925 Arlington Drive until the July 26, 2007 planning commission meeting.***

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

Thomas stated that staff would meet with the applicant as soon as possible.

**B. Front yard setback variance for a detached garage at 14333 Oakwood Road Ext., for Jeffrey Rogness. (Project 07030.07a)**

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.

Lehman asked if the undeveloped right-of-way does not extend south beyond a certain point. Thomson answered affirmatively. In order to extend the right-of-way

further south, one house would need to be removed. Lehman asked how that would effect the setback requirements. Thomson explained the setbacks. The garage would not meet the front yard setback requirement.

Brandt asked if the addition behind the garage would be removed. Thomson explained that the illustration referred to a previous garage addition.

Chair Hart asked if vacation of the right-of-way had been considered. Thomson explained that the abutting property owner on the west side would need to petition the city to vacate the right-of-way. That application has not been submitted to the city.

Chair Hart commented that the remainder of the dedicated right-of-way did not line up. She asked if the city would be inclined to vacate the right-of-way. Thomson stated that it has been determined that there are no utilities located in the right-of-way and the city council could consider vacating it.

Jeff Rogness, 14333 Oakwood Road Extension, was surprised that the right-of-way on his neighbor's property was an issue. He addressed the side-yard setback. The garage would be designed architecturally. The garage would maintain the character of the residence. The site location would be done to set it into the trees and make it as inconspicuous as possible. Having the doors face the opposite way of Oakwood Road would prevent massive garage doors facing the front. He was open for input.

Adams asked if a garage addition had already been done. Mr. Rogness responded that an addition was done in 2003 to allow room for his car. His wife presently used it as a home office. The space is totally finished off. It is heated and has a finished floor and built-in cabinetry. Mr. Rogness stated that the home currently has a two-car garage.

The public hearing was opened.

Patrick Sutter, 14325 Oakwood Road Extension, represented himself and others opposed to the proposal. He stated that:

- It would not pass the three tests.
- The site currently has reasonable use with a large, four-car garage.
- He agreed with the city engineer, that the extension of Woodhill Road is neither practical nor necessary.
- The garage would be right in front of his house.
- The addition would be 8 feet above grade and would be 22 feet tall.

- Every neighbor is strongly opposed to the project.
- It would negatively impact the character of the neighborhood.
- The location would impact multiple properties.
- The Rogness family has been a great neighbor.
- Each person opposed to the project is saddened by the impact the proposal is having on the neighborhood.
- The lots in the neighborhood are not traditional. Open spaces and tree lined views are the norm.
- The full impact of the addition would be devastating when the leaves fall.
- He thanked commissioners for their time and consideration.

Chair Hart pointed out that the garage could be placed in the middle of the lot without a variance. Mr. Sutter did not think the applicant would do that in front of the house.

Mr. Rogness provided a photograph that illustrated that trees would surround the proposal. He stated that the side of the garage facing the Sutter's would be landscaped to obscure the retaining wall. Boulders would keep a natural look.

No additional testimony was submitted and the hearing was closed.

Chair Hart reviewed the primary issue.

Schmitz was conflicted because the garage could be moved over and meet ordinance requirements. She had not heard a reason explaining why it had to be located where it was proposed.

Adams concurred with Schmitz. The addition would be imposing to the neighbors on the west side. There was sufficient storage on the site. It could be done without a variance.

Lehman believed the variance is necessary only because of the right-of-way that has limited to no purpose. It would be reasonable to consider the variance for that reason. The variance is justified by the right-of-way being located where it is with no purpose.

Brandt agreed with Lehman. The garage could be located somewhere else, but the reason not to was a technicality. He understood the neighbor not wanting to vacate the property and increase his property taxes. It could be moved 20 feet to the right and the driveway relocated, but that would be punishing the applicant for no reason.

Cheleen agreed with Lehman and Brandt due to the right-of-way's location. While the proposal would be imposing, he suggested that the landscaping be done as well as planting of additional pines.

Thomson provided Chair Hart with the 26,000 square-foot size of the lot. Chair Hart felt there was sufficient room. The issue is artificially imposed by an unnecessary right-of-way easement. The landowner has nothing to do with it. If the right-of-way was not there, the proposal would meet setback requirements.

***Lehman moved, second by Brandt, to adopt the resolution on pages A12-A14 of the staff report, which approves a front yard setback variance from 35 feet to 15 feet to construct a detached garage at 14333 Oakwood Road Extension. 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 undeveloped Woodhill Road right-of-way requiring a front yard setback from the western property line, when the lot line functions as a side yard.
- 2) The variance would meet the intent of the ordinance since:
  - a. The garage would be located more than 110 feet from Oakwood Road Extension.
  - b. There is no present or future need to extend a public road within the undeveloped Woodhill Road right-of-way.
  - c. The garage would not alter the character of the neighborhood since it would match the materials and style of the existing house, and it would be screened by the wooded area to the north.

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

- 3) 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.

***Brandt, Cheleen, Dahl, Lehman, and Hart voted yes. Adams and Schmitz voted no. 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. Items concerning multiple variances to demolish the existing home for the construction of a new home at 16930 Gray's Bay Boulevard for Chad Badiyan. (Project 04023.07a)**

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.

Adams asked if the silver maple would be removed. Metzer answered affirmatively. Colleran explained that right-of-way actually belongs to the underlying property owner to maintain. The city has the right to trim trees or remove trees that are hazardous to the right-of-way. The property owner does not need the city's permission to remove a tree within the right-of-way.

Chair Hart asked Colleran if she was comfortable with the floodplain variance. She and Lillehaug are comfortable with the elevations.

Arya and Chad Badiyan, 16930 Gray's Bay Boulevard, applicants, stated that their residence is one of the last residences in the area to be redone. Ms. Badiyan stated that the neighbors are very supportive of reconstruction. She stated that a variance was granted in 2004 for a very similar plan. Mr. Badiyan stated that the new variance would allow the residence to be torn down and rebuilt. Ms. Badiyan stated that the current structure was based on the current footings that exist. The side property is an easement property and not buildable land. There is a significant hardship in the change from two feet to four and a half feet. They have worked with staff to make concessions like the wildflower buffer, a smaller foundation, and removing the existing deck from the back of the residence to allow more room between the house and the lake. The impact of not granting the variance would mean more time and significant cost to them. Subcontractors are scheduled to begin next month. The loft space above the

garage could be converted to attic, for storage only, and then meet the mcmansion policy requirements.

Chair Hart asked if changing the loft space to attic storage space would bring the proposal in compliance with the mcmansion policy. Metzger explained that as long as there was seven feet between the floor and ceiling, the space would be included as usable space. A written guarantee that the space would not be used as livable space would not make a difference.

Mr. Badiyan asked if the floor of the loft was removed, then would the mcmansion policy be met. Chair Hart explained that the mcmansion policy attempts to regulate the volume impression of the house. The intent of the policy would not be met. She understood the concern.

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

Chair Hart commented that numerous properties along the lake can not be built without a variety of variances because of the current requirements and the size of the small lots. The front yard, side yard, and floodplain variances have been addressed adequately.

Dahl asked the size of the proposed garage. Metzger responded 24 feet by 24 feet. Metzger clarified that 29 feet would exist between the paved road and the front of the garage. Of the 29 feet, 28 feet would be street right-of-way. Chair Hart felt the intent of the ordinance is to visually prevent residences from being located on the road.

Cheleen noted that the front of the proposed residence would line-up with surrounding houses.

Cheleen considered moving the proposal over two feet. Metzger explained that the slope on the east side would prevent that option.

Lehman understood that variances in effect right now would allow the applicants to have a two-foot setback. Metzger explained that a two-foot setback was approved with the condition that the current foundation remained in place. If the foundation is destroyed, a four-and-a-half-foot setback would be required to provide area for the property owner to maintain that side of the residence. It would be consistent with the abutting setback.

Adams understood the inconvenience to the applicants. It would be hypocritical for the commission to approve the proposal with a two-foot variance. He favored a four-and-a-half-foot variance. He apologized that the applicants did not find out sooner. He agreed with staff's recommendation.

Chair Hart reviewed the primary issues.

Brandt asked if the blacktop driveway would be replaced with a pervious surface. Metzger explained that the 2004 approval and a condition of the current proposal would require pervious pavers.

Cheleen felt the house fit in the neighborhood quite well. The mcmanion policy would be exceeded by only two hundredths of a square foot.

***Adams moved, second by Schmitz, to adopt the resolution on pages A6–A10 of the staff report approving the applicant's request for the following variances at 16930 Gray's Bay Boulevard:***

- lot area variance from 22,000 square feet to 7,796 square feet;
- lot width at right-of-way from 80 feet to 79 feet;
- lot width at front yard setback from 110 feet to 71 feet
- side yard setback variance on the east side from 7 feet to 6.3 feet;
- side yard setback variance on the west side from 7 feet to 4.5 feet;
- front yard setback variance from 20 feet to 1.1 feet;
- impervious surface coverage variance from 30% to 34.2%;
- a floodplain setback variance from 20 feet to 0 feet;

Approval is based on the following findings:

- 1) The subject property is a nonconforming lot of record that has been used as a single-family residence many years containing a home that was built in 1949 with nonconforming setbacks. The unique circumstances are the subject properties' substandard lot area, lot width, and presence of floodplain. The construction of a new home compatible with the surrounding neighborhood is greatly encumbered by these site features.
- 2) The Gray's Bay Boulevard right-of-way extends unusually far into what would appear to be the front yard of the subject property. The actual roadway edge of Gray's Bay Boulevard is located 28 feet from the front property line of the site. Given the proposed structures setback from the actual roadway, and the existence of similar setbacks on neighboring properties, staff feels a front yard setback is reasonable.

- 3) The proposed home would make the subject property more compatible with surrounding homes and would not alter the essential character of the neighborhood.
- 4) Although the hard surface coverage on the subject property would increase with the applicant's proposal, through the removal of the existing driveway from the right-of-way and demolition of the storage shed, the overall hard surface coverage between Gray's Bay Boulevard and the lake will actually be reduced.
- 5) The existing structure's low floor elevation is not located at least two feet above the floodplain elevation of 931.5 as required by ordinance. The proposed home will meet ordinance requirements for low-floor elevation separation from floodplain, thus, eliminating a nonconforming situation on the subject property.

Approval is subject to the following conditions:

- 7) Submit/complete the following 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. Submit a revised survey and grading plan, subject to staff approval. The proposed home must be redesigned to maintain a 4.5-foot side yard setback from the west property line.
  - c. Submit a construction management plan; this plan must outline parking and construction access and stockpile and material storage.
  - d. Install temporary rock driveway, erosion control, tree protection and lake protection fencing, subject to review by the city's natural resources staff. These items must remain in place throughout the course of construction.
- 8) Pervious pavers must be used for the driveway and pathways. Retain the pervious area under the deck.
- 9) The existing driveway, storage shed and sand blanket must be permanently removed from the subject property.

- 10) Revegetate areas where driveway, storage shed and sand blanket are removed.
- 11) Place no fill between the new garage foundation and the east side property line.
- 12) Maintain a low floor elevation above 933.5 for all new living space.
- 13) Install and maintain a 25-foot buffer of native vegetation adjacent to the shoreline. A 25-foot conservation easement must be dedicated over the vegetative buffer and must be recorded with the county.

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.

***Adams, Brandt, Cheleen, Dahl, Lehman, Schmitz, 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. Items concerning the expansion of the Opus Corporate Center at 5700, 5720, and 5740 Green Circle Drive and 10350 Bren Road West for Opus Corporate Center LLC. (97096.07a.)**

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

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

Adams asked how the proposal would affect the future location of light rail. Wischnack explained that the Opus area has been identified as a preferred route to locate light rail. The alignment was currently planned west of the wetland. That alignment could shift radically depending on numerous variables.

Adams was relieved to see that accommodations had been made for a trail. He assumed that there would be no access to the trails during construction. Wischnack agreed.

A ten-minute recess was taken.

Chair Hart commented that the proposal was for a change to an already approved expansion.

Dave Bangasser, 10350 Bren Road West, vice president of project management for Opus, applicant, was present with additional Opus staff to answer questions. The project is complicated. He stated that:

- A plan has been approved. If the proposal was rejected, the approved plan would move forward.
- An agreement was made with a third commercial property that provided an opportunity.
- The proposal would provide a better plan for Opus and the roadway system.
- The expansion would allow housing the architects and engineers in the new space.
- The new location would skirt around the wetland.
- Trees would be added to create more of a park-like feel.
- The curves in the road would be decreased.
- The proposal would be comparable in size and architecture to what was already approved.
- A neighborhood meeting was conducted. The driveway extension for 5697 was discussed. The condominium owners would be compensated for long-term maintenance. Additional meetings were scheduled.
- The pond would be dredged and more storm water would be directed to it.
- Coniferous trees would be added for year-long screening.
- Preservation of the large stand of oak trees was a priority. The driveway was extended to avoid the oak trees.
- Impact to the wetland and trees was minimized.
- The wetland would be mitigated and a higher quality wetland would be created.
- He agreed with staff's support of the project.
- He provided his traffic consultant's results.
- Two exits for the ramp should remain.
- The park dedication fees have already been paid.

Adams asked what caused the change. Mr. Bangasser stated that the proposal would be more expensive than the already approved plan. One building on one campus would be better and that is what prompted the change.

Lehman asked why two exits would be needed for the parking ramp. Mr. Bangasser stated that the parking consultant recommended two exits. Essentially, one internal road might qualify as one exit.

Cheleen received confirmation that the parking ramp would be part of Phase 2. Chair Hart stated that the preliminary plan includes Phase 2. Traffic would be reexamined after construction of Phase 1. Wischnack agreed that the site and building plan review would be conducted at a later time. Staff's intention is to put the developer on notice regarding potential issues.

Mr. Bangasser objected to the strict prohibition of two exits. Wischnack supported the strict prohibition.

Chair Hart commented that the applicant could submit a different site and building plan when requesting approval for Phase 2. Wischnack answered affirmatively. The exit onto Green Circle Drive could be included during the site and building plan review for Phase 2; however, that could be a significant enough change to warrant a master plan review.

Lehman clarified that staff's recommendation opposed exiting onto the new Green Circle Drive. Staff would not oppose one exit on the north and one exit on the east.

Wischnack was researching the park dedication fees already paid. The determination would be made before the city council reviewed the application.

The public hearing was opened.

Lynda Allen, 5697 Green Circle Drive, objected to:

- increased traffic;
- icy driveway extension;
- cost of redoing the condominiums bylaws;
- response times of emergency vehicles during construction; and
- the new plan.

Lillehaug explained the new traffic pattern. Proper sight lines, approached grade to the roadway, and right-of-way easement issues would be considered.

Wischnack stated that Opus representatives and the property owner would work to come to an agreement regarding the bylaws. The city would intervene if there was difficulty reaching an agreement.

In response to Lehman's question, Lillehaug and Chair Hart explained the ramp's accesses. Lehman felt the proposed plan would decrease traffic on Green Circle Drive. Wischnack stated it would be a matter of direct access. The difference in trip generations would be negligible.

Lehman asked if staff's recommendation would eliminate the ramp on Green Circle Drive. Wischnack clarified that staff was only opposed to exiting onto Green Circle Drive.

Maria Klein, 5627 Green Circle Drive, thanked Wischnack and Lillehaug for their cooperation, confidence, and professionalism. She stated that:

- The current proposed light rail route is a problem.
- The animals and humans appreciate the existing ecosystem.
- She questioned how the animals would know to relocate where the mitigation would be located.
- Opus should care more for the trees. Make the trees part of the campus.
- Replant with native vegetation species.
- Replant an inch for every inch of trees removed.
- Opus has an opportunity to create a sustainable campus.
- Use pervious pavers instead of bituminous.
- Locate a green roof on the parking ramp.
- Locate flower boxes on the windows.
- Slow the process down.

Bob Thiel, 5643 Green Circle Drive, agreed with Ms. Kline. He was concerned with the landscaping. His house has a direct view of the site. The replacement trees would take a while to grow. He requested more communication with Opus. He thanked Wischnack for walking the site with him.

Alfred Bliss, 5645 Green Circle Drive, requested to be involved in construction traffic planning as a condominium representative. He asked what the minor changes to traffic control during construction plan preparation referred to in the staff report. His issues were:

- Green Circle Drive realignment would not be completed before the current Green Circle Drive is disabled.
- During the construction period, there would be only one lane of travel.
- It would be the only route for emergency vehicles.

- The hours that construction would take place.
- What would be the target date for completion.

Wischnack stated that meeting with the neighborhood to discuss the construction management plan would occur once it is prepared.

Jane Ochrymowycz, 5607 Green Circle Drive, loved the Opus area. She could get to her garage without traveling on the rest of Green Circle Drive, but none of the rest of her neighbors could. She stated that:

- An increase in the number of employees would cause an increase in traffic.
- The slope and curve causes a dangerous intersection. Motorists ignore the stop sign.
- Green Circle Drive is the only area in Opus that has residential housing.

Kathy Johnson, 5643 Green Circle Drive, chair of the condominium board, stated that Opus did not contact condominium residents except through the condominium's management firm yesterday.

Nancy Mcgonagle, 5643 Green Circle Drive, member of the condominium board, thanked Wischnack for her professional manner. She stated that:

- The residents need to be involved in a project that would impact the quality of their lives.
- The condominium residents have worked with representatives regarding light rail and other businesses' expansions.
- Action should be delayed until the safety and quality of life issues are addressed.

Jim Platt, 5697 Green Circle Drive, felt that Opus should have discussed moving the driveways with the homeowners. He preferred to keep his driveway as it is. Chair Hart explained that a condition of approval would require Opus to make agreements with all condominium associations before permits may be issued. She guaranteed Opus would be talking to him now. A legal agreement would have to be in place before anything can happen.

No additional testimony was submitted and the hearing was closed.

Chair Hart reviewed the primary issues.

Adams was looking forward to having a skyway in Minnetonka, but felt the proposal would be more reasonable than the originally approved plan.

Cheleen concurred with Adams. He agreed with the concern regarding wildlife. The proposal would provide a larger wetland than the proposed plan. Colleran agreed. She explained how the wetland would be improved. The first priority was to save the oak trees, second priority was floodplain mitigation, and the third priority was wetland protection. Cheleen appreciated looking at the big picture and planning for the future. If it is done right, wildlife will find the habitat.

In response to Chair Hart's request, Colleran explained which trees would be removed and replacement requirements. Staff would need to approve the final landscape plan. She hoped Opus representatives listened to Ms. Kline and utilize a variety of native vegetation. A mix of evergreen and deciduous throughout the project would be preferred. She explained how small trees go through less transplant shock and will outgrow a larger tree in a few years. Colleran explained that the city's ordinances do not require the replacement of an equal amount of bio mass. Cheleen felt large evergreens would work to screen the loading dock.

Chair Hart acknowledged that Wischnack would continue to meet with the residents and Opus representatives to discuss the construction management plan. She was confident it would be a tightly controlled plan.

Schmitz supported staff's recommendation regarding prohibiting an exit on Green Circle Drive. The trucks unloading on the dock would be enough increased traffic for a residential area. Wischnack explained the traffic flow for the trucks.

Adams stated that Green Circle Drive does not provide an easy route to State Highway 169. Bren Road would be the preferred exit route. He suggested that Green Circle Drive be made a two-way street during construction to allow exiting onto Bren Road.

Cheleen suggested looking at improving the safety for 5697 Green Circle Drive. Lillehaug explained that the "T" intersection would be the safest possible access.

Chair Hart commented that Opus representatives would have to work out driveway relocation agreements with condominium associations. Lillehaug saw decreasing the curvature of the road as a benefit to the city.

Wischnack reviewed the conditions regarding approval of the driveway relocations.

***Schmitz moved, second by Brandt, to approve the following items concerning the expansion of the Opus Corporate Center at 5700, 5720, and 5740 Green Circle Drive and 10350 Bren Road West for Opus Corporate Center, LLC., with a modification provided in the change memo dated July 12, 2007:***

**Preliminary Plat**

- 1) *Recommend that the city council give preliminary approval to the Opus Campus Addition, date stamped July 2, 2007. Approval is based on the finding that the plat meets the required standards and ordinances. 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 public stormwater ponds, as determined by the city engineer.
    - (2) Pay the city a park dedication fee.
    - (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 current within thirty days before release of the final plat.
  - (b) Conservation easements over wetland and wetland buffer areas and a drawing of the easements. The easements and drawings must be recorded with the final plat.
  - (c) Provide declaration and restrictive covenants over all mitigated wetland areas per the Wetland Conservation Act (WCA), for review by the city's natural resources staff.
  - (d) 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.
  - (e) Any other requirements included with final plat approval.
- (6) A drainage and utility easement must be granted over the alternate stormwater plan and the stipulations of its use must be provided in a separate document approved by the city attorney.

- c. The following must be completed before the city issues a grading permit or any site work is started.
  - (1) Approval of final grading, drainage and erosion control plans by the city engineer. If the developer is building the streets and utilities, the developer must submit final street and utility plans for the city engineer's approval.
  - (2) 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.
  - (3) All trees to be preserved must be fenced and erosion control measures installed, as approved by the city.
  - (4) Approval of a construction and traffic control management plan by the city planner.
  - (5) The applicant must submit evidence of the watershed district approval, in specific, approval of the floodplain alteration on Outlot A (owned by the city). The city may require revisions to the preliminary plat to meet the district's requirements.
  - (6) NPDES permit required from Pollution Control Agency.
- d. The following must be completed before the city issues a building permit:
  - (1) All conditions provided in the site and building plan review.

**Planned Unit Development Rezoning with Master Development Plan Amendment with Conditional Use Permit for over 1,000 cubic yards of material.**

- 2) *Recommend that the city council adopt the ordinance on pages A120–A124 of the staff report. The ordinance approves the following for the*

*Opus Corporate Expansion at 5700, 5720, 5740 Green Circle Drive and 10350 Bren Road:*

- A rezoning from B3 (5700 Green Circle Drive) to PUD, planned unit development;
  - A master development plan and final site and building plans (Phase I); and
  - A conditional use permit to move over 1,000 cubic yards of material.
- a. The ordinance is based on the following findings:
- (1) The use would be the same as the existing office use on the site. Opus would replace the existing office buildings in the area.
  - (2) The plan would contain adequate parking.
  - (3) The site would be adequately landscaped.
  - (4) The height of the building would be consistent with the existing Opus building and buildings located in the area.
  - (5) As demonstrated in the Supporting Information section of the staff report, all minimum zoning ordinance standards would be met or mitigated by replacing natural areas.
- b. This rezoning is subject to the following conditions:
- (1) Subject to staff approval, the site must be developed and maintained in substantial conformance with the following plans, unless modified by the conditions below:
    - Site plan date stamped June 6, 2007.
    - Grading plan date stamped June 6, 2007.
    - Landscaping plan date stamped June 6, 2007.
    - Building elevations date stamped June 6, 2007.
    - Wetland and Floodplain mitigation plans, as amended - July 3, 2007.
  - (2) Before starting any site work or obtaining a grading permit, complete the following work:

- (a) The installation and maintenance of temporary rock driveways, erosion control, tree protection, and wetland protection fencing for each lot must be installed, subject to review by the city's natural resources staff.
  - (b) Submit final site, grading, drainage, utility, roadway and erosion control plans for staff approval. These plans must include cross sections.
  - (c) Submit a letter of credit or cash escrow for 150% of the estimated cost to comply with grading permit requirements and restore the site.
  - (d) Submit copies of the watershed district permit, in particular the approval of the floodplain mitigation for Outlot A. The city may require revisions to the approved plans to meet the district's requirements.
  - (e) Submit a construction and traffic control management plan for staff approval.
  - (f) Site storm sewer plans are required to be submitted for review and approval including complete storm sewer design calculations, profiles for all storm sewers, and the necessary revisions for the alternate storm sewer as noted in the May 25, 2007, memo from BARR Engineering.
  - (g) Receive approval from the property owners to relocate the driveway access to the newly constructed Green Circle Drive. If no approval is received, the ordinance needs to be revised and reconsidered by the planning commission and city council.
  - (h) A development agreement documenting the improvements and corresponding securities.
- (3) The following must be submitted to the city before the city issues a building permit:

- (a) Final landscape and irrigation plans for staff approval. Landscaping plans must equal 1% or greater of the total project value. Additional trees between the roadway and the trail must be provided and approved by the natural resource staff.
- (b) A letter of credit or cash escrow for 150% of the estimated cost of all required landscaping.
- (c) An illumination plan for staff approval.
- (d) All required hook-up fees.
- (e) Final utility plans are required to be reviewed and approved by the city engineering staff.
- (f) Revisions to the grading plan must include curbs and/or barriers to prevent traffic southbound from driving on non-roadway areas.
- (g) All utility services must be abandoned as required by the engineering department.
- (h) Plans must be in substantial compliance with items outlined in the "Green Circle Drive Realignment" dated June 6, 2007, and bridge memorandum dated June 22, 2007.
- (i) Additional traffic improvements in the area will be necessary over time. The city will further outline those responsibilities during a land use analysis of the entire Opus area, and will determine appropriate participation of property owners compliant with all applicable state statutes. This will be completed prior to Phase II of the site plan.
- (j) Complete roadway, bridge, retaining wall, and pedestrian plans need to be provided for review and approval by the engineering department.

- (k) Phase II of the site plan includes a parking ramp. This parking ramp will be an entry ramp off of Green Circle Drive, to encourage the use of Bren Road.
- (l) Record this ordinance with the county.
- (4) The property owner is responsible for replacing any required landscaping that dies.
- (5) All rooftop and ground-mounted mechanical equipment and exterior trash and recycling storage areas must be enclosed with materials compatible with the principal structure, subject to staff approval. Low profile, self-contained mechanical units that blend in with the building architecture are exempt from the screening requirement.
- (6) Approval does not include the signs shown on the drawings. Separate permits are required from staff.
- (7) With the exception of security lighting, lights within the building must be turned off by 11:00 p.m. unless there is an emergency situation or a room is being cleaned.
- (8) Spaces shown as proof-of-parking may not be paved unless approved by the city upon showing of a demonstrated need for these spaces.
- (9) Phase II would require site and building plan review.
- (10) Construction must begin by December 31, 2008, unless the planning commission grants a time extension.
- (11) Completion prior to certificate of occupancy:
  - (a) Complete a travel demand management plan.

The above plans are hereby adopted as the master development plan and as final site and building plans (Phase I).

**Wetland Conditional Use Permit and Rezoning With Floodplain Alteration**

- 3) *Recommend that the city council adopt the resolution on pages A125-128 of the staff report, which approves the proposed change in the wetland overlay district boundaries. Also recommend the city council approve wetland alteration with wetland buffer impacts and floodplain alteration. This ordinance is based on the following findings:*
- a. The floodplain impacts are also mitigated in the same sub-watershed area.
  - b. The wetland and floodplain impacts meet the standards of the city code.
  - c. The mitigation area for the wetland is being compensated within the same sub-watershed district as the wetland being altered.
  - d. The wetland will ultimately have a higher function and value.
  - e. The application meets the standards of the conditional use permit criteria.

This approval must meet the following conditions:

- a. Obtain approval from all appropriate agencies before construction.
- b. Obtain approval and comply with the requirements for the Wetland Conservation Act (WCA) replacement plan as presented in the plans dated July 3, 2007.
- c. Revegetate all disturbed areas with appropriate vegetation.

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

## 9. ADJOURNMENT

***Cheleen moved, second by Adams, to adjourn the meeting at 10:12 p.m.  
Motion carried unanimously.***

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