

**MINNETONKA PLANNING COMMISSION
MINUTES**

AUGUST 30, 2007

1. CALL TO ORDER

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

2. ROLL CALL

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

Staff members present: City Planner Julie Wischnack, Principal Planner Susan Thomas, Planning Technician Jeff Thomson, and Natural Resources Manager Jo Colleran.

3. APPROVAL OF AGENDA: The agenda was approved as submitted, and with additions provided in the change memo dated August 30, 2007.

4. APPROVAL OF MINUTES: August 9, 2007

Dahl moved, second by Brandt, to approve the August 9, 2007, meeting minutes as submitted.

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

5. REPORT FROM STAFF

Wischnack briefed the commission on land use applications considered by the city council at its meeting of August 20, 2007:

- Adopted a resolution approving an ordinance correcting the non-conforming use ordinance for the City of Minnetonka.
- Upheld the planning commission's decision approving multiple variances to demolish the existing home for the construction of a new home at 16930 Gray's Bay Boulevard for Chad Badiyan.

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.

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

A. Lot-behind-lot setback variance for construction of a new house at 2337 Linner Road for Rolling Brock Homes. (07045.07a)

Michael Crow, 2324 Linner Road, was concerned with construction traffic parking by his house. His bedroom faces the street and the construction traffic inconveniences his family and access for postal workers and garbage haulers. He requested that temporary "no parking" signs be installed in front of his house. Thomas included a condition of approval that the majority of contractor parking must occur on the site and not be located in front of the neighbors' mailboxes.

Adopt the resolution on pages A7–A10 of the staff report, which approves a lot-behind-lot setback variance from 40 feet to 20 feet for construction of a new house at 2337 Linner 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 property owners desire to use a portion of the existing foundation for construction of the new house. Therefore, the location of the foundation presents a practical difficulty.
 - b. When constructed, the existing house met all setback requirements. The current non-conforming status is based on subsequent changes to the zoning ordinance.
- 2) The variance would be consistent with the spirit and intent of this ordinance for the following reasons:
 - a. The proposed setback variance would have no impact on the essential character of the surrounding neighborhood. Rather, the proposal would decrease an existing non-conformity.

Approval is subject to the following conditions:

- 1) Prior to issuance of a building permit:
 - a. Submit proof of having recorded this resolution with the county.
 - b. Submit a construction management plan for staff approval. The management 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; and (3) how contractors will prevent tracking of earth onto the street. The majority of contractor parking must occur on the subject property.
 - c. Install erosion control and tree protection fencing for staff inspection and approval. These items must be maintained throughout the course of construction.
- 2) 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. Conditional use permit for a massage business in the basement of the home at 6170 Creek View Ridge for Dean and Deborah Little. (07044.07a)

Recommend that the city council adopt the resolution on pages A9-A12 of the staff report. This resolution approves a conditional use permit for a home occupation at 6170 Creek View Ridge. Approval is based on the finding that the proposal meets the required conditional use permit standards and is subject to the following conditions:

- 1) This resolution must be recorded with Hennepin County.
- 2) The property and business owner must obtain a massage business license from the city, and comply with the massage service regulations of Section 810 of the City Code.
- 3) All customer and visitor parking must be located on the paved driveway. Parking is not permitted on Creek View Ridge.
- 4) No exterior signs are permitted, and any interior signs must not be visible from surrounding properties.
- 5) Business hours are limited between 8:00 a.m. to 9:00 p.m.

- 6) Any change to the approved use that results in a significant increase in traffic or a significant change in the character of the business would require a revised conditional use permit.
- 7) Any violation of the terms or conditions of this conditional use permit renders the permit null and void.
- 8) The applicant must agree to the above conditions in writing.

C. Minor amendment to an existing master development plan at 3500 Williston Road for the Minnetonka Christian Academy. (99020.07b)

Adopt the resolution on pages A9–A12 of this staff report, approving a minor amendment to the existing master development plan for a storage/maintenance building at 3500 Williston Road. This resolution is based on the following findings:

- 1) The proposal meets the required site and building plan standards.
- 2) The proposal meets the required standards for a variance, because:
 - a. The proposed access drive setback variance is reasonable:
 - (1) The existing master development plan presents a practical difficulty. The plan establishes functional connections between various site components. While the proposed storage/maintenance building and associated access drive could be moved to the north to reduce or eliminate the setback variance, such a shift would negatively impact these functional connections.
 - (2) Unlike a drive aisle which accesses parking spaces, the proposed access drive would only access the proposed storage/maintenance building. The access drive would see very infrequent traffic.
 - b. The proposed access drive would be located adjacent to a vacant, wooded property owned by the city. As such the access drive would have little to no impact on the neighboring area.

Approval 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 August 22, 2007.
 - Building elevations date-stamped August 22, 2007.
- 2) The following must be submitted/completed prior to issuance of a building permit:
 - a. Submit the following:
 - (1) Final engineered site, grading, drainage, utility, and erosion control plans for that area of the property affected by the proposed maintenance/storage building. The plans must meet the city engineer's requirements.
 - (2) Final building elevations. The metal siding/roofing of the maintenance/storage building must match the metal roofing of the existing church building.
 - (3) A final landscape plan for staff review and approval. Black Hills spruce or Norway pine and linden or maple trees must be substituted for Colorado spruce and box elder trees shown in the original site plan. The plan must meet minimum landscape values as outlined in city code.
 - (4) A letter of credit or cash escrow for 150% of the estimated cost or 125% of a bid cost to comply with grading requirements and restoration of the site.
 - (5) A letter of credit or cash escrow for 150% of the estimated cost or 125% of a bid cost for all required landscaping.
 - (6) Recorded copy of this resolution.
 - b. Complete the following:
 - (1) Install erosion control and tree protection fencing for inspection and approval of the city's natural resources staff.

These items must be maintained throughout the course of construction.

- (2) Pay any delinquent utility bills.
- 3) All busses must be parked in the building or on the south side of the maintenance/storage building.
- 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) Construction must begin by December 31, 2008, unless the planning commission grants a time extension.

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

Chair Hart reviewed that an appeal of the planning commission's decision for Consent Agenda Items A and C may be appealed in writing to the planning division within 10 days: Item A, a lot-behind-lot setback variance for construction of a new house at 2337 Linner Road for Rolling Brock Homes; and Item C, a minor amendment to an existing master development plan at 3500 Williston Road for the Minnetonka Christian Academy. She further reviewed that Item B, a conditional use permit for a massage business in the basement of the home at 6170 Creek View Ridge for Dean and Deborah Little, is tentatively scheduled to be heard by the city council on September 10, 2007.

8. PUBLIC HEARINGS

Item 8A, a front yard setback variance to tear down the existing garage and build a new three-stall garage at 3705 Hazelmooor Place for Arthur Speck, was delayed to allow time for the applicant to arrive.

B. Conditional use permit and variances to demolish the existing home and build a new home at 2529 Bantas Point Road for Gary Medin. (00032.07a)

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.

Chair Hart confirmed with Thomas that the floor area ratio includes the garage. The actual, livable square footage is a little over 3,300 square feet.

In response to Adams' question, Thomas explained the location of houses included in the floor area ratio calculation. The property with the largest floor area ratio was located on Crosby Road.

A resident interrupted discussion. He was present to discuss the shoreland ordinance at 6:30 p.m., not to hear staff discuss what they have or have not done for the last week. He refused to yield the floor. Chair Hart recessed the meeting.

Chair Hart reconvened the meeting. She reviewed the order of the agenda and continued consideration of the application for 2529 Bantas Point Road.

In response to Cheleen's question, Colleran explained that rip rap would be allowed in the buffer. Cheleen commented that the boulders reinforce the shoreline and the buffer zone provides filtering. Colleran agreed.

Duane Meyers, St. Louis Park, stated that he works with the applicant's builder. He submitted that staff did an excellent job of pointing out areas of concern with the project. There are no other concerns other than the fact that the property needs to be updated. The only way to do that would be to tear down the residence. He was present for questions.

The public hearing was opened.

Jodana Flynn, 2533 Bantas Point Road, stated that:

- She and her husband fully supported improving the property, but were concerned with the size and orientation of the proposal.
- Her house was the most recently constructed. Her lot's hard surface was increased by 9 percent, on a much larger lot. The

- o proposal would increase hard surface coverage by 29 percent on a much smaller lot.
- o The proposed residence square footage would be 33 percent larger than her house. The proposed house would almost be the largest house in the neighborhood, located on the smallest lot. It is easily seen that the lot is the smallest.
- o She calculated the size of the lot to be 8,040 square feet. That would make the hard surface cover equal 37 percent of the lot.
- o The proposed angle of the residence would not minimize setbacks and would not solve ingress and egress issues.
- o She was baffled why the city would consider building such a large house on such a small lot in such a position that would not allow a vehicle to be parked in the driveway.
- o The residence size needs to be reduced “a touch” and orientated parallel. She enthusiastically supported improving the property.

In response to Chair Hart’s request, Thomas explained that based on a survey done by a licensed and registered land surveyor and staff’s calculation of the square footage, staff was confident that the lot area of the site is equal to 8,758 square feet. Staff had not been provided a survey indicating a decrease in size.

Chair Hart asked if the residence would be oriented parallel to the lot line, would the driveway situation be improved. Thomas acknowledged that the depth of the driveway would be increased. The commission could make that a requirement of approval. Reorienting the house would move it closer to the Flynn’s driveway. Chair Hart saw it as a difficult trade-off. The driveway would not be improved significantly, only a small portion.

Gary Berg, 2520 Bantas Point Road, echoed Ms. Flynn’s comments. He asked if off-street parking is considered a vehicle housed in a garage. At Chair Hart’s request, Thomas noted that off-street parking can be on a driveway or in a garage. In cases similar to the proposal, staff considered the depth between the residence and the bituminous edge.

Mr. Berg stated that orienting the residence parallel to the lot line would prompt new construction to be oriented similarly and provide a longer driveway. Any edge to obtain additional parking for the area would be a bonus. He favored orienting the residence parallel to the lot line if it would not be too much of a hardship for the owner. The applicant would still have a great view. The footprint could be reduced slightly. It would conform better to the neighborhood.

William Pribble, Junior, 16624 Grays Bay Boulevard, apologized for previously interrupting the meeting. He understood that the meeting would focus solely on the proposed shoreland ordinance. He recommended that the chair take charge of the commission and move that the matters be resolved. Chair Hart requested that Mr. Pribble take a seat until the proposed shoreland ordinance was discussed.

Mr. Pribble stated that the proposed shoreland ordinance would violate the laws of the United States of America. He refused to yield the floor. He apologized for shouting and left with a police officer summoned by staff during his remarks previously.

Chair Hart apologized to the audience and staff for Mr. Pribble's outburst.

No additional testimony was submitted and the hearing was closed.

Adams asked how close to the neighbor's driveway and what impact on trees would occur if the proposed residence would be parallel to the property line. Thomas explained that the proposal would locate the residence four feet from the driveway. If it would be oriented parallel with the property line, it would be three feet from the driveway. The trees would not be removed, but impacted by either scenario.

Mr. Meyers stated that there would barely be enough room to push a lawn mower. If it was moved any closer, it would be located on the driveway easement. Chair Hart confirmed with Mr. Meyers that if the east corner was pushed back, it would almost be on the driveway. If the west corner was pushed forward, it would make the situation with the driveway in the front worse. The off-street parking for the residence would be located in the garage. It would not be improved.

Cheleen asked why the same footings would not be used or the house moved to the south. Colleran explained that the residence could be moved approximately four feet closer to the lake and meet setback requirements. Mr. Meyers stated that the foundation structure has to be removed. The other part is slab on grade. Without doing excavation under the slab, it is unknown what type of a footing is underneath. The type of equipment needed to engineer the type of foundation required would require a lot of room.

As far as moving the residence closer to the lake, Mr. Meyers stated that 50 percent of the land between the lake and the home would be required as a

shoreland buffer. Moving the home forward, would reduce the remainder of yard available to provide more room for a driveway that has nothing going on.

Colleran clarified that if the home would be moved closer to the lake, the buffer width would be reduced to half of the principal structure setback. If the residence setback would be 35 feet, it would need a total buffer of 17 ½ feet. The 4 feet of existing rip rap would be included in the buffer so the remaining portion would equal 13 ½ feet.

Thomas stated that the increased impervious surface of the driveway may significantly impact the small lot. Colleran explained how pervious pavers were calculated as hard surface coverage.

Chair Hart reviewed the primary issues. A key point is that nothing could be built on the site without variances. It has been a single-family lot since 1954.

Cheleen suggested that the applicant and city council consider orienting the residence parallel with the property line and moving it four feet closer to the lake to allow a longer driveway.

Adams moved, second by Dahl, to recommend the city council adopt the resolution on pages A12-A17 of the staff report which approves a conditional use permit and variances for construction of a new house at 2529 Bantas Point Road. Approval includes the following:

Lot Variances:

- Lot area 22,000 square feet to 9,842 square feet
- Lot depth 125 feet to 53 feet
- Buildable area:
- Minimum size from 3,500 square feet to 536 square feet
- Minimum dimension (length/width) of buildable area from 40 feet to 7.5 feet

Building Variances:

- Front yard setback 35 feet to 5.5 feet; and from 25 feet to 9.1 feet
- Flood plain setback 20 feet to 0 feet
- Impervious surface coverage from 30% to 32.69%
- Required low floor elevation from 933.5 to 932.2 for the attached garage

- Required elevation of driveway from 932.5 to 930.8

Approval is based on the following findings:

- 1) There are practical difficulties caused by the small size of the lot, the presence of floodplain and a neighboring properties' driveway crossing the subject property, further increasing its impervious surface. Together, these factors make construction of a home, which is compatible to the surrounding neighborhood, difficult.
- 2) The lot variances would be required to construct any new home on the site.
- 3) Numerous variances have been approved for various homes in the surrounding neighborhood, including similar lot, front yard setback, floodplain and impervious surface coverage variances.
- 4) The construction of a modern home would make the property more compatible with others in the surrounding neighborhood and would not alter the essential character of the neighborhood.
- 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, with the exception of the attached garage, 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:

- 1) 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 construction management plan; this plan must outline parking and construction access with defined stockpile and material storage areas.
 - c. 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.

- d. The property owner must submit an emergency evacuation route from the structure directly to land above the designated 100-year flood elevation, subject to staff approval.
- 2) Maintain a low floor elevation above 933.5 for all new living space and a low floor elevation of 932.2 for the attached garage.
- 3) Structure must be designed to comply with ordinance 300.24.9(j).
- 4) Install and maintain a 19.5-foot buffer of native vegetation adjacent to the shoreline. A 19.5-foot conservation easement must be dedicated over the vegetative buffer and must be recorded with the county.
- 5) Revegetate areas where demolished structures are removed.
- 6) Permits may be required from other outside agencies, including but not limited to the United States Army Corps of Engineers, Minnesota Department of Natural Resources, Minnehaha Creek Watershed District and the Lake Minnetonka Conservation District. It is the applicant's and/or property owner's responsibility to obtain any necessary permits.
- 7) The applicant/property owner must have a National Flood Insurance Program *Elevation Certificate* completed, as required by the Federal Emergency Management Agency (FEMA) before issuance of a certificate of occupancy.

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.

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

- A. **Front yard setback variance to tear down the existing garage and build a new three-stall garage at 3705 Hazelmoor Place for Arthur Speck. (07038.07a)**

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

Thomson reported. He recommended denial of the application based on the findings listed in the staff report.

Lehman asked how the existing garage would compare to a typical garage constructed with a new home. Thomson responded that policy considers a reasonable garage to be 24 feet by 24 feet in size. The existing garage is 20 feet by 20 feet in size. It is a little smaller than a standard garage. The variance would allow the garage to equal a standard-sized garage.

Brandt questioned if the garage was built at the same time as the residence.

Art Speck, 3705 Hazelmoor Place, applicant, lived in his house since 1971. When he purchased the residence, the garage was there. Some of the residences in the area are at 23 feet. There are some obstacles that prevent moving the garage back, such as an underground electrical service and deck.

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

Chair Hart reviewed the primary issues. She stated that the commission tried hard not to increase nonconformities when there would be a viable option.

Cheleen agreed that there are ways to construct the garage further to the rear without having to move the electrical service. He agreed with staff that there are alternatives.

Chair Hart clarified that a vote to approve the motion would deny the proposal.

Lehman moved, second by Adams, to adopt the resolution on pages A9-A11 of the staff report, which denies a front yard setback variance from 25 feet to 23 feet for a garage addition at 3705 Hazelmoor Place. This resolution is based on the following findings:

- 1) Strict enforcement would not cause undue hardship because of the following circumstances:
 - a. The proposed garage could be constructed on the property and conform to all zoning ordinance requirements.
 - b. The hardship is self-created since the variance results from the applicant's chosen garage design, not from an inherent hardship on the lot.
- 2) The variance would not meet the intent of the ordinance since:

- a. The applicant has reasonable use of the property. The site currently includes a two-stall garage, and a three-stall garage could be constructed within the buildable area of the lot.

***Lehman, Schmitz, Adams, Brandt, Cheleen, Dahl, 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.

C. Items concerning the shoreland ordinance and other associated ordinances for the city of Minnetonka (05099.07a):

- (1) ordinance amending the shoreland district;
- (2) ordinance amending the conditional use standards in the wetland, floodplain, and shoreland districts; and
- (3) ordinance amending other sections of city code relating to the shoreland district.

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

Lehman recused himself from discussion.

Wischnack reported. She recommended approval of the application based on the findings.

Colleran provided a brief history of legislation regarding shoreland properties. The proposed changes deal with definitions, setbacks, maximum allowable impervious surfaces, height, grading, and incorporation of shoreland buffers related to water bodies in Minnetonka. Other ordinances will be changed to align them with the proposed shoreland ordinance.

Colleran stated that the proposed shoreland ordinance was written for all of the lakes and numerous creeks and tributaries in Minnetonka. Colleran explained the following shoreland issues: creation of the shoreland district by measuring 1,000 feet from the ordinary high water level of a lake; setbacks, grading, and impervious surface regulations for properties located adjacent to each type of body of water; and the benefits of shoreland buffers and under what conditions a buffer would be required.

The shoreland buffer is not a requirement of the Department of Natural Resources. The Department of Natural Resources does have a shoreland impact

zone that prevents removal of vegetation in that area. Staff felt cases of redevelopment or subdivision of a property would be a reasonable time to require a variance or implementation of a shoreland buffer. The buffer would not apply to residents who do not require approval from the city for a conditional use permit, site plan review, variance, subdivision, or redevelopment of the property.

The buffer area would allow a 15-foot-wide access to the water, water-oriented structures, fences, existing shoreland stabilization, winter time storage of boats, docks and lifts, and gardens. Colleran provided several examples of properties in the shoreland district and demonstrated how the proposal would impact the property if a change was requested that needed to be approved by the city.

Colleran stated that the proposal serves the city's goals by recognizing, preserving, and protecting the city's lakes and creeks.

Wischnack stated that the Department of Natural Resources has given official approval of the proposed ordinance.

In response to Adams' question, Colleran explained that the Department of Natural Resources mandated a shoreland ordinance in 1974. In 1989, the Department of Natural Resources wrote its model ordinance. In 1994, the Department of Natural Resources determined that the City of Minnetonka needed to update its shoreland ordinance. The Department of Natural Resources is empowered by the state to enforce shoreland regulations. The Department of Natural Resources can take over the city's zoning authority. Adams asked how many cities are in compliance with the requirement. Colleran stated that many communities adopted the Department of Natural Resources model ordinance. Minnetonka is one of the last. Time was spent negotiating flexibility and working with the Department of Natural Resources over the past few winters.

In response to Schmitz's question, Colleran explained how the buffer width was determined. A 25-foot buffer would be reasonable. A 50-foot buffer would be better. The city will not make a resident install a buffer unless the property owner requests a variance, conditional use permit, site plan review, subdivision, or redevelopment of the property. Colleran explained the filtration process.

Colleran confirmed for Schmitz that the conservation district regulates the number of docks and slips a property owner may have on a lake. Colleran reviewed those regulations.

Wischnack mentioned that it is currently not uncommon for the city to require a shoreland buffer for properties requesting a variance. The practice is being formalized in the ordinance.

Cheleen observed that in 99 percent of the cases, a homeowner would not have to worry about coming close to maximizing their property's impervious surface. Colleran concurred. Colleran explained that 3,700 postcards were mailed to property owners. Most callers in response to the postcard stated that they were not close to the impervious surface 75 percent maximum.

Cheleen reiterated that if nothing was done to the property, a buffer would not have to be installed.

Dahl noted that the variance process would still be the same. Dahl asked if a property owner was allowed two docks, then would the property be allowed two 50-foot accesses. Colleran responded that one 15-foot access would be allowed, regardless of the number of docks allowed for a single-family residence. A variance for a second access could be considered.

Dahl asked if staff would supply recommendations regarding what type of vegetation to plant in the buffer. Colleran stated that staff is working on preparing a brochure that would provide types of vegetation for all types of water resource buffers. The Department of Natural Resources currently has a book that covers everything. Wood chips and organic-material mulch would be allowed in the buffer.

In response to Chair Hart's request, Thomas explained that redevelopment occurs when 50 percent of the value of the principle use of a property is removed. The standard is taken directly from Minnesota's statutes.

Schmitz asked if small-lot property owners, on Gray's Bay or Bantas Point, would be treated differently. Thomas stated that the ordinance would not change staff's recommendations for smaller-size lots.

Chair Hart noted that the size of the buffer is dependent on the size of the lot and the distance from the lake. Thomas agreed. The city attorney has advised that the city has the opportunity to apply conditions of approval to permit requests as long as there is a correlation between the request and the condition that is being applied.

The public hearing was continued.

Ken Pucel, 2608 Crosby Road, stated that:

- He is responsible for the environmental health and safety programs for Boston Scientific.
- Based on his professional background, he has seen a tremendous favorable impact on the environment since the prohibition of phosphorus in fertilizers.
- He purchased his residence 8 years ago with the intent to rebuild. His house was built in 1946 and has seasonal mold issues.
- The back yard has 50 feet between the house and the lake.
- A 25-foot buffer would be excessive. It is theoretically the right thing to do, but not in a practical sense.
- Life plans and property values could be impacted. Very small lots would be impacted disproportionately to the value to the benefits to the environment.
- Limiting fertilizers or requiring shoreland inspections for areas of concern may be alternatives.
- Grandfathering current homeowners after an implementation period of 5 years would be an option.
- She thanked the commission for its time.

Robert Simpson, 16816 Gray's Bay Boulevard, stated that:

- Colleran made a good presentation.
- Many property owners have rip rap and lawns.
- He questioned the measurable quality difference between having the buffer and not having a buffer. He requested a fact-based justification.
- Gray's Bay already has good water quality.
- The buffer would significantly restrict the use of the property and property value.
- The lots are already small.
- A buffer would limit sitting by the lake.
- Patios, fireplaces, and boathouses are already in place which would be impacted during the sale or remodeling of a house.
- The buffer would restrict the view of a child playing in the water.
- The buffer would be a haven for rodents, nuisances, and pests. There is already a raccoon problem. He has had 2 pet ducks killed by raccoons.
- People would spray more insecticides in the buffers and weed killer in their yards.
- It would be harder to clean up after a dog in the buffer area.

- The buffer would diminish the value of the property.
- He questioned if the city would be liable for someone injured due to the buffer decreasing visibility of the shoreline.
- He only recently learned about the proposed ordinance.
- He is not opposed to the concept of buffer strips to improve water quality if it would be applied to undeveloped land, but one size does not fit all. There should be different standards for each area based on need. Gray's Bay and Libbs Lake should be treated differently.
- The buffer disregards the rights of the property owners when there is no fact-based justification for the buffer.

Chair Hart clarified that rip rap and gardens are allowed in a buffer area.

Corrine Ricard, 16822 Gray's Bay Boulevard, thanked Colleran who spent an hour answering her questions yesterday. She questioned if the redevelopment included any construction project that would increase the value of the appraised home by 50 percent or if it must include removal. Thomas clarified that 50 percent of the principal structure must be removed. If the removal consists entirely of the inside of the residence, a buffer would not be required. A residence could increase its value by 50 percent and would not be required to have a buffer.

Ms. Ricard was concerned with the disparity between Minnetonka's proposed ordinance and the ordinances controlling other cities' properties on the lake. Minnetonka has gone much more progressive by requiring the buffer areas. It would have a disproportionate impact on the City of Minnetonka home owners. The process should allow a phase-in period to give residents a chance to make a modification to their property. There are 13 other cities around the lake who are not adopting a buffer regulation. There are other things that could be done to mitigate the impact of the lake. Fertilizer bans of all nutrients could be implemented. She is a senior executive for the second largest fertilizer company in the world. A reasonable phase-in period would be a year or two.

Terry Bryce, 16828 Gray's Bay Boulevard, stated that:

- The proposed ordinance is quite interesting.
- He and his wife purchased the home in 1980. They love being able to see the water. The beauty of the water is enhanced by the shoreline. He opposed putting anything between his house and the lake.

- His house is his retirement. He has a small lot. He would lose a large piece of his property for the buffer. It would be like having a lien on his property. There are many other lots available to purchase.
- The water quality of the lake is better now than it was 10 years and 20 years ago. It supports loons.
- He has to find out what he can plant and bear the cost of planting it.
- Someone else is trying to control a precious piece of his property.
- Residents he talked to could not believe the 25-foot buffer.
- The lake is taking care of itself.

Whitney Pidot, 17009 Gray's Bay Boulevard, stated that:

- Virtually all of the residences do need a variance to remodel.
- The neighborhood has been improved over time.
- The buffer requirement would slow down the pace of improvements and renovations.
- It certainly would not make a buyer more excited about the property.
- A phase-in period would make sense. It would give residents a chance to complete works in progress.
- He understood that it would codify what city and staff would do anyway.

Genevera Koonce, 16524 Gray's Bay Boulevard, spoke at the last public hearing. She stated:

- The shoreland buffer should be removed or make it applicable to only undeveloped properties.
- It would not work for a general development lake, like Lake Minnetonka.
- The buffer is not required by the Department of Natural Resources and is a key issue. A Department of Natural Resources representative told her that buffer zones were never meant for urban lake shore. They were developed for the Brainerd area and further north. The shoreland buffer zones were optional for the cities on the north and depended on what the city government decided to do.
- The buffer would decrease her property value. She would not want to deal with a buffer and a buyer would not want to deal with a buffer.

- It would be punitive because it would make property owners responsible for runoff.
- The water quality is very good.
- Easements have the potential for becoming an involuntary taking of private property.
- The proposed buffer zone would deny her the full use of her property and has the potential of burdening her with the care and maintenance of unwanted vegetation.
- Her dog and grandchildren may access the lake through the buffer instead of the dock.
- The buffer would be unfair.
- Libbs Lake property owners would not have enough room to tear the house down and build a new one. It would not be fair for them to get more of a variance than someone with a larger lot.
- She hoped that the commission would agree with the ordinance except the shoreland buffer.
- It would better serve the lake by banning all fertilizer than requiring a buffer.

Patrick Alexander, 16540 Gray's Bay Boulevard, attended the last public hearing. He provided comments for the resident of 16588 Gray's Bay Boulevard. She opposed the buffer zone. Being able to see children in the water was one of her main concerns. He was concerned with the buffer serving as a mosquito breeding ground. West Nile Virus is a real concern.

Mr. Alexander asked if any of the commissioners lived in the shoreland district. Wischnack explained that a commissioner must recuse himself or herself if he or she would have a financial gain from either passage or denial of the proposal. Brandt would not have a financial gain.

Mr. Alexander was concerned that people who were not affected by the ordinance were inflicting it on other people. Chair Hart explained a conflict of interest. Mr. Alexander understood, but did not agree.

Mr. Alexander thought the Department of Natural Resources was the driving force behind the ordinance change. The buffer is not required by the Department of Natural Resources.

Mr. Alexander noted the increase in boating slips for Locust Hills. Wischnack provided that the Lake Minnetonka Conservation District controls the number of boat slips allowed. Each city has a representative on the Lake Minnetonka

Conservation District Board. There are 14 members. Chair Hart directed Mr. Alexander's comments be related to the proposed shoreland ordinance.

Mr. Alexander stated:

- Pets would use the buffer as a latrine.
- Racoons cause problems.
- A neighbor saw a coyote in his yard. He had one in his driveway.
- It is a very bad ordinance that takes property.
- It would make a duck slew out of Lake Minnetonka.
- Lakes up north do not have buffers. The ideal would be unnatural.
- The Locus Hill commissioner who visited the site changed her vote to oppose the project.

George Macgibbon, 11500 Timberline Road, stated:

- He appreciates his residence.
- He has a steep slope situation.
- He hoped each case would be considered on its individual merits.
- Part of the land was rescued from a developer.
- He was concerned with the steep slope ordinance when there are many good tourist attractions located on steep slopes.
- Crane Lake use to be a different size and shape. It is considerably smaller than it was.
- The Department of Natural Resources has its heart in the right place, but he wondered if its "wallet was a little too obvious" when it came to developing the hotel and St. Alban's area.
- The area has a steep slope with mature oak trees. He should be allowed to remove a few trees to subdivide his property.
- He is a good steward of the land.
- The same things that apply to Lake Minnetonka may not apply to Crane Lake. It seems too encompassing. The cost per foot on the lake is certainly not equal.

Chair Hart informed Mr. Macgibbon that the steep slope ordinance would be reviewed in a few months.

Mr. Macgibbon questioned if the view of the lake referred to the view from the lake or of the lake. Colleran explained that grading could occur on a slope that is 12 percent to less than 20 percent if it can be demonstrated how erosion would be prevented, no intensive clearing, and the land would be screened as viewed from the lake. She explained where those same principles applied.

Bob Pillsbury, 16560 Gray's Bay Boulevard, stated that his residence was built in 1915. He stated that:

- Minnetonka, proportionately, is taking an extremely aggressive position with the 25-foot buffer zone compared to other cities that have property on Lake Minnetonka.
- He had his residence appraised and found out that 95 percent of buyers would bulldoze his residence.
- He was concerned with the investment in the property.

Wischnack provided that Lake Minnetonka has approximately 14,500 acres of which 180 of those acres exist in the City of Minnetonka, mostly in the Gray's Bay area. There are 300 acres of other lake shore property in the City of Minnetonka.

A 10-minute recess was held. Cheleen was absent for the remainder of the meeting. Chair Hart reconvened the public hearing.

Chris Ueland, 16535 Gray's Bay Boulevard, stated:

- He was shocked that staff had not analyzed more carefully how the proposal would impact the different property configurations.
- He is a retired architect. He knows how complicated it can get with interlocking setback rules.
- The ordinance discriminates against small properties that will always have to apply for a variance and be subject to having the buffer.
- A corner property would be hugely affected.
- Half of Mr. Eland's property is underwater. Almost all of his backyard, not underwater, would be a buffer.
- Staff should consider every property individually and realize that it would be a burden on the property owners.
- There is no adequate motivation. The water quality is good.
- The Gray's Bay Dam looks ugly. Like a bunch of weeds. Property owners do not want their property to look like that mess.
- The Department of Natural Resources approaches lake-owner associations up north to try to get them to do things needed to clean up lakes. Each lake's property owners know what is best.
- He was afraid of a huge impact on surprised property owners.

Jim Harper, 2518 Bantas Point Road, stated that most of his comments had been covered. He stated:

- He shared Gray's Bay with Wayzata. He was at risk of having his neighbors not controlled by the ordinance. It could "get kind of ugly."
- It scared him that he would not be able to view the water near the shore. He had seen risky things happen including kids falling in the lake and canoes overturned.
- The 15-foot wide opening would not be wide enough to see what would be happening on his dock.
- The vegetation would be ugly weeds.
- His vegetation may not match his neighbors' vegetation.
- His pet was attacked by a coyote.
- He wanted Lehman to vote on the item.

Robert Marcue, 3117 Fairchild Avenue, on the east end of Libb's Lake, asked if title would be given to the city for the buffer. Wischnack explained that a buffer easement would be listed on the title. He totally opposed the buffer. He questioned how the buffer and easement was included in the proposed ordinance when it is totally out of line with the life lived in a suburb. He questioned who was "the thrust" behind the proposal. Chair Hart stated that maintaining and improving water quality is the motivation.

Mr. Marcue is the director of the Libb's Lake weed treatment. He lived on Libb's Lake 33 years. He worked with the Department of Natural Resources doing fish assessments on the lake. He stated:

- Libb's Lake and Gray's Bay are the cleanest waters in Minnetonka.
- Trying to get more water quality in the area is ridiculous.
- The buffer is totally ridiculous.
- It feels like the city is taking away his ability to use his land.
- His house was built in 1950. He had to go before the planning commission to build a shed.
- The rest of the ordinance is wonderful.

Ms. Ricard clarified that the buffer easement would be recorded on the title only for a subdivision. Wischnack explained that any buffer would be recorded on the title. The easement would not allow use of the land, but would require the property owner to maintain the buffer area conservation effect. The homeowner's property would still include the buffer easement.

No additional testimony was submitted and the hearing was closed.

Dahl asked if the buffers would be a necessity. Colleran referred to studies that indicated that buffers surrounding water bodies provide a benefit. The benefit has not been quantifiably measured. Decisions are being made based on research already done. Dahl has a cabin on a lake where buffers were created at the request of the Department of Natural Resources. Water quality would be greatly improved due to the buffer. He understood the speakers' concerns regarding visibility of children in the water. He was unsure if the city should be driving the necessity of a buffer. The rest of the ordinance is fine. He did struggle with the buffers.

Schmitz lived near Purgatory Creek. Wetland variance applications were often required to provide a buffer. It is not a new tool for the planning commission. Creeks and wetlands are not used for recreational purposes and tend to have larger lots. Lake frontages on substandard lots would be impacted the most. The shoreland buffer would help the quality of the water, but understood why residents who live on small, substandard lots would be concerned. A resident's ability to tear down a house and build a new house similar to new houses next door would be a concern. The phase-in period may be beneficial for a total tear down. It could apply to residents with substandard lots.

Adams grew up on Lake Minnetonka in Shorewood. For a time, most backyards looked like native vegetation. Most lots surrounding his parents' lot were replaced with rip rap. His parents' lot provided access to the lake much easier than the rip rap. A child never drowned, a coyote never ate a pet, and it was a safe environment. It did not affect the resale value when his parents sold the residence. He guaranteed everyone in the room that, no matter what happens, the property values on Lake Minnetonka will continue to improve.

Adams did have a problem supporting the buffer requirement of the ordinance because no other community on the lake requires a buffer at this time. It would be a good thing, but it would not be fair. He preferred Minnetonka work with surrounding communities to develop some sort of buffer requirement. For that reason, he did not support the proposal with a buffer requirement. A buffer may be considered on a case-by-case basis as has been done.

Brandt fully supported the buffer. He worked for Hennepin County for 32 years in the department of environmental services. He worked with a lot of land owners and was involved with Lake Minnetonka for many years. The other cities with property on Lake Minnetonka need to realize the negative impact being done. Harrison's Bay has a very poor water quality rating. Gray's Bay has an "A" rating because the water flows out of the big part of the lake. What the City of Minnetonka does would not impact Gray's Bay to a large extent, but it does make

a difference in Minnehaha Creek, the Mississippi River, and all of the water channels from there to the south. Minnesota has a terrible record for polluting the Mississippi River Watershed District. The City of Minnetonka is not doing it, but he personally believed that cleaning up the water quality needed to start somewhere; hopefully, Minnetonka can be a leader and hope it spreads to the other cities. Minnetrista creeks are shameful; the way the bay looks like right now. You do not want to swim in that part of the lake. Something should be done. Everything approved on Gray's Bay, since his service began on the commission two years ago, has been required to have a buffer. Even if the proposal did not pass, a buffer would be required. Staff could have found more attractive buffer pictures. Kentucky Bluegrass grows 6 inches to 8 inches tall and would be an acceptable buffer. He understood some people would have to give up their yard, but if it was spread across the entire lake would be a really good benefit.

Brandt and Colleran reviewed water quality of Minnetonka lakes. The Department of Natural Resources restricts construction of a residence within 100 feet of a lake. The first 30 feet cannot be touched. He supported the buffer and the entire ordinance as proposed by staff.

Chair Hart supported the ordinance. She felt that the buffer could be reduced to 10 feet or 15 feet. Wetlands are different than recreation lakes. In response to Chair Hart's question, Colleran provided low-growing examples of vegetation appropriate for a buffer. Chair Hart stated that Minnetonka has been a leader in many ways. It may be unpopular with many people, but it seems like the right thing to do. Minnetonka is trying to lead other communities to follow suit.

Dahl asked if the recommendation could remove the buffer requirement. Wischnack suggested the commission recommend approval with the removal of the buffer, with an amendment to the buffer portion, or with further consideration being taken regarding the buffer.

Brandt believed that the city council would discuss the buffer regardless of the recommendation. Chair Hart reviewed the options. Wischnack requested direction regarding if the buffer is acceptable, if a reduction in the size would create an acceptable buffer, or if no buffer would be acceptable.

Adams moved, second by Schmitz, to recommend approval of the proposed shoreland ordinance and associated natural resources ordinances with the elimination of the shoreland buffer requirement. Approval is based on the following findings:

- 1) The ordinances protect, promote, and enhance the quality of the city's lakes and creeks.
- 2) The shoreland ordinance is required by the Department of Natural Resources and would meet standards negotiated by Department of Natural Resources representatives and city staff.
- 3) The amendments to associated ordinance would ensure consistency with the shoreland ordinance.

Schmitz, Adams, Dahl, and Hart voted yes. Brandt voted no. Lehman recused himself. Cheleen was absent. Motion carried.

Adams wanted one other city to join with Minnetonka in requiring the shoreland buffer.

Schmitz generally favored the buffer. They improve water quality. Maintaining the environment is one of the best features of the city, but she understood the hardship for small lots. She did not want to eliminate the buffer, but wanted the city council to consider what can be done for small lots.

Dahl concurred. A coalition of other cities and the Department of Natural Resources forming a conservation district would be beneficial. It may take a month, six months, or a year to come to a solution that would be beneficial for everyone. Maybe a smaller buffer should be considered. He questioned if the city had enough employees to provide shoreland inspections. Residents may be given some faith that they will do what is right. He suggested the *Ten Tips for Keeping Your Waters Clean and Healthy* be distributed to residents. Buffering is just one tip. The ordinance needed to be fine-tuned before acting on it.

Chair Hart recommended a 15-foot buffer or 35 percent of the distance between the house and the lake as a compromise. That would help the small lots and be a start. The city survey found the residents' number one concern was for the preservation of the environment. The proposed ordinance is a strong attempt to address that concern. She supported the ordinance. With some fine-tuning, it may be improved.

Colleran asked for direction regarding how the 11 other lakes and creeks fit into needing agreement from another city. Chair Hart acknowledged that the comments have been exclusively from Gray's Bay and Libb's Lake residents, with one from Green Lake resident.

Adams felt additional education and positive examples would help.

Brandt stated that a good grass base would keep earth from eroding. He described an eight-inch grass on a golf course. Colleran explained that that is a type of turf grass appropriate for a flat area. Brandt suggested the city council be provided with examples of short vegetation for the buffer. He did not think visibility would be an issue with short vegetation.

Chair Hart stated that the city council is tentatively scheduled to review the item at its September 10, 2007 meeting. Wischnack stated that the staff report for the shoreland ordinance will be available noon September 7, 2007 on the city's website.

9. ADJOURNMENT

Brandt moved, second by Dahl, to adjourn the meeting at 11p.m. Motion carried unanimously.

By: _____
Lois T. Mason
Planning Secretary