

**MINNETONKA PLANNING COMMISSION
MINUTES**

APRIL 3, 2008

1. CALL TO ORDER

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

2. ROLL CALL

Commissioners Sjeklocha, Walker, Adams, Blatz, Lehman, Schmitz, and Cheleen were present.

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

3. APPROVAL OF AGENDA: The agenda was approved as submitted with additional comments provided in the change memo dated April 3, 2008.

4. APPROVAL OF MINUTES: March 20, 2008

Sjeklocha moved, second by Blatz, to approve the March 20, 2008 meeting minutes as submitted.

Sjeklocha, Walker, Adams, Blatz, Lehman, Schmitz, and Cheleen 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 March 24, 2008:

- Introduced an ordinance regarding the Wesley Addition and referred it to the planning commission for review.
- Adopted a resolution approving K-Tel Drive subdivision in accordance with the planning commission's recommendation.
- Finalized all portions of the shoreland ordinance. The Department of Natural Resources approved the final draft. The ordinance does not include the buffer requirement. The updated ordinances are posted on the city's website. Approved the removal of an easement requiring a buffer from 12 properties.
- Denied a request for an easement encroachment to continue a retaining wall in the right-of-way for Emerald Ridge.

Wischnack reminded those present that the joint meeting of the city council, economic development authority, parks commission, and planning commission to discuss the comprehensive guide plan will be held April 16, 2008 at 6:30 p.m. at city hall.

Wischnack clarified for Adams that staff will not recommend shoreland buffers in the future. An applicant may voluntarily agree to maintain a buffer.

Lehman asked if the 12 properties had created the buffer area. Wischnack responded that some had. The city released the properties from the recorded easements.

6. REPORT FROM PLANNING COMMISSION MEMBERS: None

7. PUBLIC HEARINGS: CONSENT AGENDA: None

8. PUBLIC HEARINGS

A. Floodplain variances for a house addition at 4124 Skyview Road for John Malotky and Diann Crane. (08011.08a)

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

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

Adams asked what the history of flooding has been for the area. Metzer understood that there have not been too many problems with the accumulation of water in the area. Metzer pointed out the elevations.

Adams questioned the number of inlets that drain into the pond. Metzer explained that the watershed area is approximately 60 acres in size. All of the water from the 60 acres flows into the floodplain. It would outlet at the lowest point into the wetland located west of the site.

Sjeklocha noted that staff would consider the proposal reasonable if the 20-foot horizontal setback could be met. Metzer agreed that as long as the 20-foot horizontal setback could be met and the floor was at an elevation of 959 staff would consider the request as reasonable.

Sjeklocha asked how much area was available on the north and east sides. Metzger explained that the north side would have approximately 25 feet and the east side would have approximately 10 feet for the addition.

Schmitz confirmed with Metzger that the green area represented the basement. The deck and part of the screen porch would not have a lower level. Metzger added that the purple area would be cantilevered and the grey area, representing the deck, would be on posts. The north and east sides would have no foundation and no posts. The screen porch and deck would be on post footings.

In response to Walker's question, Metzger stated that there are no constructed man-made outlets in the floodplain. There are inlets, but no outlet. If a man-made outlet would be constructed, it would be proposed at the 958 elevation. That would equal the 100-year flood plain elevation.

Diann Crane, 1424 Skyview Road, applicant, thanked commissioners for the opportunity to provide input. Her husband, John Malotky, was also present. She thanked staff for their help and expertise. Ms. Crane stated that:

- Using the existing foundation would keep the project economically feasible. The east, north, and south side walls would be maintained. Cantilevers would be used to gain area on the east side of the property.
- She does not want the front to stick out any further.
- There is considerable usable room on the north side, but she does not want to locate the addition close to the neighbors.
- There is a 7-foot rise from the bottom of the driveway and 30 feet to the top of the driveway. If it would be moved further, it would eliminate the solid-footing area.
- There would be a 90-degree turn to get out of the driveway.
- The proposal would save 4 fairly mature pine trees.
- When she and her husband submitted the plan, they were unaware of the floodplain. They felt the proposal would be reasonable, fit the site, and meet their objectives.

Mr. Malotky added that it would be quite limiting to build off the west, back side of the residence due to the 20-foot setback. Architecturally, it would not be feasible and would not provide usable space within the residence.

Ms. Crane continued:

- The property owners did not create the 100-year flood plain situation. Other properties in the area that are similarly zoned have not been subjected to building restrictions.
- The variance would not alter the essential character of the neighborhood. In fact, the modernization of the home would increase property values, property tax revenue, make the house more energy efficient, and increase the resale value.
- The applicants want to make the 1-stall garage into a 2-stall garage and keep it as a tuck under. The minimum standard for a garage in Minnetonka is a 2-car garage.

Walker asked if the applicant had checked with her insurance agent. Ms. Crane responded in the negative. The plan was not set in stone, but she needed to know the realistic parameters before any more money would be invested in an architect. Walker asked if she would be willing to look at different design options. Ms. Crane answered affirmatively. Her only criteria would be to maintain the footings.

Walker asked if there are two-story homes in the area. Ms. Crane stated that her neighbor's house is the exact same. There are others that are built higher.

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

Schmitz stated that the deck and the screen porch would be on pylons. She asked if staff would support a point intrusion or a certain number of feet of the basement being located in the floodplain. Metzger explained that there is no standard for floodplain encroachment. In this situation, staff determined that a variance for the low floor separation would be reasonable given the opportunity on the west, north, and east sides of the residence to construct an addition that would meet the floodplain, front, and side yard setbacks.

Schmitz confirmed with Metzger that a 10-foot setback would be required for a deck.

Blatz understood that staff recommends that the applicant build the addition on the north side as opposed to having a variance on the west side. Metzger clarified that the applicants would be able to construct on the west side as long as the 20-foot setback would be met.

Adams recalled that the planning commission never approved a floodplain variance except for one exception of a post for a deck. He had real concerns with

the proposal. Every residence in the area has the same issue. The houses are almost in a straight line because of the floodplain. Obviously, the builder knew back in 1961 that it was not wise to build further than that. The proposal would not surprise him to see that area flooded at some point in time. He hated to impose deterioration in property value by approving the variance. It would also set precedence for houses in the area. The design would be beautiful, but, unfortunately, would not work on the lot. It would make more sense to expand the residence on the east side, towards the street, or potentially on the north side. He could not agree to the substantial variance.

Lehman echoed Adams' comments. Lehman owns shoreland property. He would be benefited by an exception similar to the applicants' request. He was arguing against his own self interest, but it would be the right answer to the question. He could not vote in favor of the proposal. He appreciated the applicants wanting the most economical addition to the property, but commissioners had to consider the precedent for the next applicant and the ramifications for the next owner of the property. He did not support the variance that would allow construction within the floodplain setback.

Walker agreed with Adams and Lehman that the variance would be too large. It would not be in the best interest of the community or the property owner given the wetland issues. He suggested the architect consider going vertical and to the east and save the foundation. A single-story appearance could be maintained. He asked if the applicant would want to table the item to allow time to submit a different plan.

Wischnack explained that the applicant could sign a waiver nullifying the 60-day rule and allow the applicant more time to regenerate a plan. She requested direction if the commission would be open for any type of a variance.

Schmitz agreed with commissioners. She was not comfortable with the size of the variance. She would consider a point intrusion or a post in the floodplain. She understood that the curvature of the setback made it difficult to construct an addition. She would prefer to see the foundation stay pretty close within the required setback. She did not have as much of a concern with the vertical setback. Her main concern is the horizontal setback.

Blatz concurred with not having an issue with the vertical setback. Wischnack explained that the yellow line indicated the possibility of a point intrusion, but generally keeping the 20-foot setback along the house. The 10-foot setback would be for the deck setback. An enclosed screen porch would require a 20-foot setback even if it would be on posts. Blatz supported staff's drawing.

Sjeklocha concurred with support of the vertical separation variance, but not the proposed horizontal variance.

Chair Cheleen felt it would not be realistic to ask that the basement level be raised. The 3 ½-foot below the floodplain variance is a given because of the existing floor. A plan could be created to keep the 20-foot setback. That does seem to be the most logical solution to the problem. He agreed with Walker that there are good, creative designs that can minimize widening the footprint, extend up, and minimize the appearance of a second story in the front. He understood not wanting to lose the pine trees, but sometimes one thing has to give for another.

Chair Cheleen asked when the next deadline to take action would be if the applicants waived the 60-day rule. Wischnack stated that expiration of the 60 days occurs in May. The applicants' written waiver would need to be on record. It would take approximately a month from the time the revised plan would be submitted to be placed on an agenda.

Chair Cheleen explained the options to the applicants. Mr. Malotky stated that they would sign a waiver to waive the 60-day action requirement to allow time to resubmit plans.

Lehman moved, second by Adams, to table action until the applicant resubmits a revised proposal.

Sjeklocha, Walker, Adams, Blatz, Lehman, Schmitz, and Cheleen voted yes. Motion carried.

B. Items concerning the Wesley Addition, a two-lot subdivision, at 12029 James Road for John and Heidi Davis. (08010.08a)

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

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

In response to Walker's question, Thomas explained that a private easement would be reached between the two property owners. The city would play no role in negotiating the easement.

Chair Cheleen asked if there would be room for a utility easement east of the tennis court. Thomas explained that the minimum-size drainage and utility easement requires 7 feet. The court would be 15 feet from the property line.

In response to Adams' question, Thomas pointed out the buildable area of the site.

John Davis, 12029 James Road, applicant, was present to answer questions.

Chair Cheleen asked if James Road or Fairview Lane could be used for access. Thomas explained that property has the right to access any public right-of-way it is adjacent to as long as the driveway meets minimum engineering site line requirements.

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

Adams moved, second by Sjeklocha, to recommend that the city council approve items concerning the Wesley Addition, a two lot subdivision, at 12029 James Road for John and Heidi Davis.

Rezoning

- 1) *Recommend that the city council adopt the ordinance on pages A6–A7 of the staff report, which approves the proposed rezoning. This ordinance is based on the following findings:*
 - a. The rezoning would be consistent with the city's guide plan; and
 - b. The rezoning would be consistent with the public health, safety, and welfare.

Preliminary Plat with Variances

- 2) *Recommend that the city council give preliminary approval to the Wesley Addition, date stamped February 20, 2008. Approval includes the following variances:*
 - a. A rear yard setback variance for the existing home from 30 feet to 14.7 feet.

- b. A front yard setback variance for the existing tennis court from 35 feet to 13 feet.

Approval is based on the following findings:

- a. Except for the variances, the proposal meets the required standards and ordinance for preliminary and final plats.
- b. The proposal would meet the required standards for a variance, because:
 - (1) Undue hardship: The requested setback variances could be eliminated. However, this would require removal of both the existing house and tennis court. As preserving the existing structures on the property is reasonable, the location of those structures presents a practical difficulty.
 - (2) Unique circumstance: House. The location of the existing house relative to the south property line would not change as a result of the proposed subdivision. However, the setback requirement from this south line would. This is a unique circumstance not common to every R-1 property.
 - (3) Unique circumstance: Tennis Court. The 1972 Code of Ordinances did not include setback requirements for accessory structures. The existing tennis court was constructed prior to 1972. The legal non-conforming status of the tennis court is a unique circumstance not common to structures on every R-1 property.
 - (4) Intent of the ordinance: The intent of setback requirements is to: (1) ensure the safety of structures and the traveling public; and (2) to maintain consistent building lines within residential neighborhoods. As the requested setback variances pertain to existing structures, the setbacks would meet the intent of the ordinance requirement.
 - (5) Neighborhood character: The requested setback variances pertain to existing structures on the site. The variances themselves would not result in construction of anything new. As such, the variances would not alter the character of the neighborhood.

Approval is subject to the following conditions:

- a. Submit a revised final plat document. The revised plat must include:
 - (1) Dedicated public right-of-way over the existing roadway easement (doc # 2785440).
 - (2) A minimum 10-foot wide drainage and utility easements adjacent to the public right-of-way(s) and minimum 7-foot wide drainage and utility easements along all other lot lines.
- b. The following items must be submitted to the city before the city releases the final plat:
 - (1) A park dedication fee of \$5,000.
 - (2) An electronic CAD file of the final plat in microstation or DXF.
 - (3) The following documents must be prepared by an attorney knowledgeable in the area of real estate and must be submitted for the city attorney's approval:
 - (a) Title evidence that is current within thirty days before release of the final plat.
 - (b) Restrictive covenants to be recorded against the individual lots with the plat. The covenants must include the conditions that have not been met as of the release of the plat.

These documents must be recorded with the final plat, and a drawing of any easement must be attached to the easement deed.
 - (4) Any other requirements included with final plat approval.
- c. Prior to issuance of a building permit for any of the lots within the development:
 - (1) Submit the following items for staff review and approval:

- (a) A construction management plan. This plan must be in a city approved format and outline minimum site management practices and penalties for non-compliance.
 - (b) Final grading and tree preservation plan for the lot. The plan must:
 - (i) preserve trees designated for preservation at the time of preliminary plat approval; and
 - (ii) show sewer and water services to minimize impact to any significant trees. No trees may be removed for installation of services. One set of new services must be installed.
 - (c) A tree mitigation plan. The plan must meet minimum mitigation requirements as outlined in the ordinance. However, at the discretion of natural resources staff, mitigation inches may be decreased based on: the health of trees removed; the ability to appropriately install trees on the steep slope; and/or installation of under-story shrubbery.
 - (d) Submit cash escrow in the amount to be determined by city staff. This escrow must be accompanied by a document prepared by the city attorney and signed by the builder and property owner. Through this document the builder and property owner will acknowledge: (1) the property will be brought into compliance within 48 hours of notification of a violation of the construction management plan, other conditions of approval, or city code standards; and (2) if compliance is not achieved, the city will use any or all of the escrow dollars to correct any erosion and/or grading problems.
- (2) Submit the following documents:
- (a) A recorded copy of the preliminary plat and restrictive covenants.

- (b) A letter from the surveyor stating that boundary and lot stakes have been installed as required by ordinance.
 - (c) A letter of credit or cash escrow in the amount of 150% of an estimated cost or 125% of a bid cost to complete required tree mitigation. Individual letters of credit are required for each lot.
- (3) Schedule and hold a preconstruction meeting with engineering, planning, and natural resources staff.
- (4) Install a temporary rock driveway, erosion control, tree protection and wetland protection fencing for each lot. These items must be maintained throughout the course of construction.
- (5) Pay a hookup fee for sanitary sewer and water.
- d. Notwithstanding the requirements outlined above, all lots and structures within the development are subject to all R-1 zoning standards. In addition:
 - (1) All portions of first-story walls as measured by an approved route around the exterior of the house must be within 150 feet of the street. If access requirements cannot be met, the house must be protected with 13D automatic fire sprinklers.
- e. During construction, the streets must be kept free of debris and sediment.
- f. The city must approve the final plat within one year of preliminary approval or receive a written application for a time extension or the preliminary approval will be void.

***Sjeklocha, Walker, Adams, Blatz, Lehman, Schmitz, and Cheleen voted yes.
Motion carried.***

9. ADJOURNMENT

*Sjeklocha moved, second by Walker, to adjourn the meeting at 7:32 p.m.
Motion carried unanimously.*

By: _____
Lois T. Mason
Planning Secretary