

**MINNETONKA PLANNING COMMISSION
MINUTES**

JUNE 18, 2009

1. CALL TO ORDER

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

2. ROLL CALL

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

Staff members present: City Planner Loren Gordon, Principal Planner Susan Thomas, Planner Jeff Thomson, Planning Technician Stephanie Scott-Sims, Natural Resource Manager Jo Colleran, and Project Engineer Will Manchester.

- 3. APPROVAL OF AGENDA:** The agenda was approved as submitted with removal of Item 8A, multiple variances to permit the installation of a monument sign containing a digital dynamic display located at 15915 Excelsior Boulevard (88061.09a). The applicant requested the item be removed.

- 4. APPROVAL OF MINUTES:** June 4, 2009

Adams moved, second by Blatz, to approve the June 4, 2009, meeting minutes as submitted.

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

5. REPORT FROM STAFF

Gordon briefed the commission on the Minnetonka Mills neighborhood meeting. There was a large turnout. Participants created a report that addresses development principles for the area if it were developed in the future. It will be presented to the city council August 3, 2009 and posted on the "Projects" page of eminnetonka.com.

Gordon announced that the next planning commission meeting will be held July 16, 2009. The agenda includes an application submitted by the Minnetonka High School requesting an expansion of a parking lot and a concept plan for a townhouse project located in the Glen Lake area.

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

7. PUBLIC HEARINGS: CONSENT AGENDA

No items were removed from the consent agenda for discussion or separate action.

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

A. A side yard setback variance for a garage addition to the existing home at 3427 Moorland Road. (09010.09a)

Adopt the resolution on pages A14–A16 of the staff report, which approves the proposed side yard variance from 8 to 6.8 feet at 3427 Moorland Road. Approval is based on the following findings:

- 1) The proposal is reasonable and would meet the required standards for a variance, because:
 - a. **UNDUE HARDSHIP AND UNIQUE CIRCUMSTANCE:** The subject property has legal, non-conforming lot width of just 80 feet and a legal, non-conforming side yard setback of just 6.8 feet. These are unique circumstances not common to every residential property in the city. These circumstances create an undue hardship.
 - b. **NEIGHBORHOOD CHARACTER:** The requested side yard setback variance would allow the remodeled structure to maintain existing setbacks. As the resulting garage is residential in nature and would maintain the setbacks of the existing structure, the requested yard variance would not negatively impact the single-family residential character of the surrounding neighborhood.

Approval is subject to the following conditions:

- 1) Prior to issuance of a building permit:
 - a. A copy of this resolution must be recorded with the County and a copy of the recorded document returned to the city.
 - b. Install a temporary rock driveway, erosion control, tree protection and wetland protection fencing as required by natural resources

staff for inspection and approval. These items must be maintained throughout the course of construction.

- c. Provide natural resources staff with a construction management plan identifying potential tree loss on the subject property as well as on the neighboring property to the south.
- 2) This variance will end on December 31, 2010, unless the city has issued a building permit for the project covered by this variance or approved a time extension.

B. Multiple variances to construct two additions to the house located at 2136 Sheridan Hills Road. (09012.09a)

Adopt the resolution on pages A12-A14 of the staff report, which approves the following variances at 2136 Sheridan Hills Road:

- Front yard setback variance from 35 feet to 31 feet for the living space addition.
- Front yard setback variance from 30 feet to 28 feet for the front porch.
- Front yard setback variance from 35 feet to 30 feet for the garage addition.

Approval is based on the following findings:

- 1) The proposal is reasonable and would meet the required standards for a variance, because:
 - a. **UNDUE HARDSHIP & UNIQUE CIRCUMSTANCE:** There is an undue hardship due to the location of the house on the property. Given the nonconforming front yard setback, an addition could not be constructed to match the existing front building line without the need for a variance. This is not common to every single-family property.
 - b. **INTENT OF THE ORDINANCE:** The variance would meet the intent of the ordinance to provide reasonable use of the property.
 - c. **NEIGHBORHOOD CHARACTER:** The additions would not adversely impact the character of the surrounding neighborhood. Several of the properties in the area have nonconforming front yard

setback similar to the subject property. The additions would not extend closer to the street than the surrounding homes, and they would maintain the existing building line along Sheridan Hills Road.

Approval is subject to the following conditions:

- 1) Prior to issuance of a building permit:
 - a. A copy of this resolution must be recorded with the County and a copy of the recorded document returned to the city.
 - b. Install a temporary rock driveway, erosion control, tree protection and wetland protection fencing as required by natural resources staff for inspection and approval. These items must be maintained throughout the course of construction.
- 2) This variance will end on December 31, 2010, unless the city has issued a building permit for the project covered by this variance or approved a time extension.

Adams, Blatz, Lehman, Sjeklocha, A. Thomas, Walker, and Cheleen voted yes. Motion carried and the items on the consent agenda were approved as submitted.

Chair Cheleen stated that an appeal of the planning commission's decision must be made in writing to the planning division within 10 days.

8. PUBLIC HEARINGS

- A. Multiple variances to permit the installation of a monument sign containing a digital dynamic display located at 15915 Excelsior Blvd. (88061.09a)**

This item was removed from the agenda and tentatively scheduled to be reviewed at the July 16, 2009 planning commission meeting.

- B. Items concerning a 2-lot subdivision of existing properties at 12910 and 12918 Rutledge Circle, and a parcel with an unassigned address. (04005.09a)**

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

S. Thomas reported. She recommended denial of the application based on the findings listed in the staff report.

Lehman asked S. Thomas to define the phrase "held in common." S. Thomas explained that it means that the properties are owned by the same person or entity. S. Thomas noted that the two easterly properties have been taxed as unbuildable lots for 20 years.

Lehman asked how many lots would be possible if the properties would be combined into one. S. Thomas explained that the lots could be combined into one property. Creation of more than the current number of lots would not be allowed. Lehman questioned if the properties were combined, then what options would the property owner have. S. Thomas responded that the property would be treated as an R-1 lot.

Adams noted that the 100-year floodplain elevation was established in 1988 and updated in 1999. S. Thomas stated that the proposal's floodplain elevation did not change in 1999. Adams asked when the culverts were installed. S. Thomas referred questions regarding the culverts to the applicant's engineer. She indicated the location of the culverts on Plymouth Road.

Sjeklocha asked if gardens and baseball fields are allowed on unbuildable lots. S. Thomas responded affirmatively. Passive recreational uses are allowed. Sjeklocha asked how many unbuildable lots are located in the city. S. Thomas did not have the total. She explained that during the first half of the 20th century many lots were platted into the middle of wetlands. This can be seen in areas around Minnehaha Creek. Platting the land preceded the ordinance regulating wetlands.

Sjeklocha asked how the engineering department determined the sequence for the next six years. Manchester responded that engineering staff studies the entire city to identify the worst areas. The most serious situations are scheduled to be completed first. The budget determines how soon projects may be done.

Curt Fretham, 15400 Minnetonka Boulevard, applicant, stated that:

- He was present when the previous owner of the property requested it be subdivided. The subdivision was denied. He purchased the property. The 100-year flood elevation was discovered.
- The lot has an interesting configuration.
- He looked at the modeling report of the area.
- There are two culverts, one more than what the Barr engineering

report reflects. It would let the water out faster. The culverts are 2.3 feet lower than the Barr engineering report stated. Incorrect information was used to set the elevation at 921.

- Based on the floodplain elevation determined by his engineer, his application was made without variances because the information provided in the Barr engineering report is inaccurate. Barr would not provide him with a copy of the report. He suspected Barr engineering did not want him to find the report's errors.
- City ordinance allows filling in a 100-year flood plain for a garden or baseball field.
- He requested 18 yards of fill, a minimal amount.
- Last week, an application was approved to fill 39 yards so one would not have to back out of a driveway.
- This is a unique situation.
- Staff admits that Barr's report is flawed.
- The lots are unbuildable as configured, but reconfiguration could be done and lots created that would not need variances.
- Being unbuildable has had no bearing on how the properties have been taxed.
- All criteria have been met for a subdivision except for the elevation set at 921. The application did not call for a floodplain alteration permit. He is willing to mitigate the 18 yards. The proposal is non-impactful. The drainage pattern would not be changed.
- The application is straight forward.

Adams asked if the applicant's 100-year floodplain is the same as staff's. Mr. Fretham responded that the staff's 100-year elevation is incorrect due to the culverts. His plan shows 18 yards of fill below the staff-determined 100 year elevation. No fill would be placed below the elevation determined by his engineer.

Dave Nash, project engineer for applicant, referred to Page A16 of staff's report that shows how he calculated the 100-year flood elevation. He stated that staff's numbers are based on one 48" culvert at an elevation 2.3 feet higher than it actually is. His calculations include 2 culverts 2.3 feet lower than the Barr engineering report indicates.

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

A. Thomas asked what staff's recommendation would be if the 100-year flood elevation equaled 918.7. S. Thomas responded that if all zoning ordinances would be met then staff would recommend approval.

A. Thomas saw the problem to be determining if the elevation is 921 or 918.7. A year from now, the model might change. S. Thomas acknowledged that the existing model has some inaccuracies, but discovery of an additional culvert alone does not determine the new elevation. A study will be done that will incorporate the 1500 acres and the size and number of existing culverts within that area. Staff's recommendation is based on the available information and reflects the 921 elevation.

A. Thomas understood that staff looks at the big picture. He asked if the big picture would still be looked at if the elevation would be 918. S. Thomas stated that if the lot met all minimum standards for an R-1 District, staff would be legally obligated to recommend approval.

Gordon agreed with Mr. Fretham and Mr. Nash in regard to one culvert not being included in the current model. The model is almost 30 years old. Numerous changes including a large increase in the amount of hard cover and different watershed patterns need to be explored rather than just adding a culvert and decreasing its elevation to the current model. Staff does not want to approve a lower elevation and then have the residence flood. That is why staff is saying the application is premature. A. Thomas appreciated that the area was different 30 years ago.

Walker did not support the application given the disputed information. That needs to be resolved. He agreed that subdivision would be premature. He was not sure he would recommend any development for the area at this time.

Sjeklocha concurred with Walker. The elevation needs to be resolved. Even at the 918 elevation, numerous other factors need to be incorporated and looked at as a big picture.

Lehman agreed that 921 is the elevation on the current model and is the one commissioners should use, but acknowledged that sometimes an error occurs. He invited Manchester to comment. Manchester stated that the entire 1500-acre area and numerous factors need to be considered to gain an accurate representation. A great deal has changed since the 1980s model was established. Manchester agreed that the new study will provide a new elevation, but he could not put a number on it prior to completion of the study. The amount of hard surface for the area has changed dramatically. The original calculations

were done on a spreadsheet by hand. The crunching of numbers will now be done by a computer for a much more accurate reading. The information needs to be updated and started from scratch.

Lehman asked if a mathematical error occurred, if it could be corrected and the model corrected. Manchester recognized that the model is not accurate at this time, given developmental changes since it was done. An elevation of a neighboring property could be recognized, but without factoring in everything, he could not estimate what the number would be.

Lehman recognized that determining the elevation is not just a simple math error. Absent a full reevaluation of the 100-year floodplain elevation, he did not want to accept a new elevation.

Blatz agreed that the planning commission has to use the current model which sets the elevation at 921 and is the elevation the recommendation is based on.

Chair Cheleen stated that the commission is duty-bound to protect the public as much as possible. He commiserated with the applicant. The elevation could be 918.7, but commissioners cannot accept that from the applicant's engineer when it has not been officially accepted by city engineers. Whether or not a different configuration could be created and an agreement for the driveway traveling over another owner's property were issues to be considered once the study is completed. It is feasible that the lot split boundary, size and placement of the building pad, and driveway locations could change. All of that is precluded to finding out the official elevation.

Mr. Fretham stated that the residence could be slid five feet up the hill so the elevation would be at 923 and need 30 yards to 40 yards of fill instead of 18 yards. The driveway would be located off of Stanton Drive, but 5 additional trees would have to be removed. He has done a lot of small lot divisions and recalled a number that have similar driveway easement situations. It takes 3 minutes to 5 minutes longer to drive from Stanton Drive than Plymouth Road. For the past 30 years, inaccurate information has been relied on. Inaccurate information will be relied on for another year. He questioned how that made things right.

Adams moved, second by Walker, to recommend the city council adopt the resolution on pages A26–A28 of the staff report, denying requested floodplain alteration permit and preliminary plat, with buildable area variances. Denial is based on the following findings:

- 1) The requested floodplain alteration permit is not appropriate. As the alteration is requested for the creation of a new buildable lot, the proposed floodplain alteration is inconsistent with the city's historic policy of approving such alteration to accommodate improvement or construction of homes and drives on existing, developed lots of record.
- 2) The requested floodplain alteration permit is premature. Based on the city's six-year modeling schedule, the 1,500 acre drainage subdistricts impacting the subject site are scheduled to be modeled in 2010–2011. The results of that model may increase the buildable area on the subject site and minimize or eliminate the currently requested floodplain alteration.
- 3) The proposed plat does not meet minimum buildable area standards as outlined in City Code 300.10 Subdivision 6(e)1.
- 4) The proposed plat does not meet variance standards warranting buildable area variances.
 - a. There is no practical difficulty inherent to the subject properties preventing a reasonable use from occurring. The applicant owns three adjoining properties. Under existing conditions, only one of these three properties has buildable area and an existing home occupies that lot. This constitutes reasonable use.
 - b. The "unbuildable" condition of the properties was not recently created by city action. Rather, the condition of these properties has existed since wetland and floodplain ordinance were adopted in 1974, prior the applicant's acquisition of the site. This encumbrance of the subject properties is not a unique circumstance warranting buildable area variances.
 - c. The requested buildable area variance, and associated floodplain alteration permit, would result in construction of a house in a previously unbuildable location.

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

9. ADJOURNMENT

*A. Thomas moved, second by Adams, to adjourn the meeting at 7:37 p.m.
Motion carried unanimously.*

By: _____
Lois T. Mason
Planning Secretary