

**MINNETONKA PLANNING COMMISSION
MINUTES**

SEPTEMBER 16, 2010

1. CALL TO ORDER

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

2. ROLL CALL

Commissioners Daeges, Lehman, Magney, Sjeklocha, A. Thomas, and Adams were present. Cheleen was absent.

Staff members present: Community Development Director Julie Wischnack, City Planner Loren Gordon, Principal Planner Susan Thomas, Planner Jeff Thomson, Planning Technician Stephanie Scott-Sims, and City Attorney Desyl Peterson.

- 3. APPROVAL OF AGENDA:** The agenda was approved as submitted with a modification to item 8C, expansion permit for an addition to the house at 4740 Dominick Drive (10024.10b), and additional comments provided in the change memo dated September 16, 2010.

- 4. APPROVAL OF MINUTES:** August 19, 2010

A. Thomas moved, second by Lehman, to approve the August 19, 2010 meeting minutes as submitted with a modification to page 14 to reflect that Lehman was absent and did not vote.

Daeges, Lehman, Magney, Sjeklocha, A. Thomas, and Adams voted yes. Cheleen was absent. Motion carried.

5. REPORT FROM STAFF

Gordon briefed the commission on land use applications considered by the city council at its meeting of September 13, 2010:

- Adopted the ordinance amending the master development plan for United Health Group at 9703 Data Park.
- Adopted the resolution vacating and relocating the sanitary sewer and easement at 3318 Groveland School Road and 17408 Minnetonka Boulevard.
- Adopted a resolution approving the rerouting of the storm sewer for the Minnetonka Animal Clinic.

Gordon announced that planners and Lehman will be attending the state planning conference next week in Mankato. The next planning commission meeting will be October 7, 2010.

Lehman noted that the arboretum is holding a seminar regarding water management in regard to land use situations. Gordon said that staff attended the Clean Water Summit last year. It provided good information regarding resources and the educational aspect for public officials, staff, and residents.

6. REPORT FROM PLANNING COMMISSION MEMBERS: None

7. PUBLIC HEARINGS: CONSENT AGENDA: None

8. PUBLIC HEARINGS

A. Expansion Permit to construct a dormer addition to the home at 3323 Shores Boulevard. (03063.10a)

Acting Chair Adams introduced the proposal and called for the staff report.

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

Lehman asked if the dormer meets ordinance requirements. Scott-Sims responded affirmatively. If the property had conforming setbacks, there would be no need for a variance or expansion permit. The dormer would have been approved during the building permit process.

Lehman noted that the setbacks would not be altered. Scott-Sims agreed. The dormer addition would maintain the existing nonconforming setback of the residence.

Jennifer Ditto, 3323 Shores Boulevard, applicant, appreciated Lehman's point that the proposal would not have been an issue if not for the lot being in nonconformance. It has been frustrating to have to wait so long for the permit when she is trying to improve her property and increase the tax value for the city.

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

Acting Chair Adams felt the proposal was straight forward.

Sjeklocha moved, second by Daeges, to adopt the resolution on pages A9–A11 of the staff report, which approves an expansion permit for a dormer addition at 3323 Shores Boulevard. Approval is based on the following findings:

- 1) The applicant has met the burden of proof outlined in City Code §300.29 Subd. 7(c):
 - a. REASONABLE EXPANSION: The proposed dormer addition to provide additional bedroom space in the existing, small, bungalow-style home is a reasonable expansion.
 - b. UNIQUE CIRCUMSTANCE: The existing house was built in 1920, prior to the adoption of the city's zoning regulations and does not meet the current zoning front yard setback requirement. The house has a legal, non-conforming front-yard setback.
 - c. NEIGHBORHOOD CHARACTER: The proposed dormer addition is consistent with the character of the surrounding residential 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.
- 2) This expansion permit approval will end on December 31, 2011, unless the city has issued a building permit for the project covered by this resolution or approved a time extension.

Daeges, Lehman, Magney, Sjeklocha, A. Thomas, and Adams voted yes. Cheleen was absent. Motion carried.

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

B. Expansion Permit for additions to the existing home at 16509 Elm Circle. (10031.10a)

Acting Chair Adams introduced the proposal and called for the staff report.

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

Lehman found the property interesting to visit. He asked if the house is located on a cul-de-sac or round about. S. Thomas stated that it is a cul-de-sac with a center island.

Kevin Shinler, 16509 Elm Circle, appreciated the commission's consideration. He is proposing a change in the roof line to improve its appearance by adding a couple of gable ends and increasing the size of the garage to provide off-street parking.

Acting Chair Adams asked if the proposal had to do with the boat in the driveway. Mr. Shiner responded affirmatively.

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

Daeges moved, second by Magney, to adopt the resolution on pages A6–A9 of the staff report, which approves an expansion permit for additions to the existing home at 16509 Elm Circle. Approval is based on the following findings:

- 1) The applicant has met the burden of proof outlined in City Code §300.29 Subd. 7(c):
 - a. REASONABLENESS: The proposed expansion is reasonable for several reasons.
 1. It is functionally appropriate to locate a garage and mud room additions adjacent to the existing garage space.
 2. The proposal would provide for additional, enclosed off-street parking.
 3. The proposal would aesthetically enhance the property.
 - b. UNIQUE CIRCUMSTANCE: When a building permit was issued in 1963, the home met front yard setback requirements. However, zoning ordinance changes over the following 40 years have resulted in a now non-conforming front yard setback. This is a circumstance not common to every similarly zoned property and not caused by the current property owner.
 - c. NEIGHBORHOOD CHARACTER: The proposed expansion would maintain the home's existing front yard setback and would aesthetically enhance the property. It would not adversely affect or alter the essential 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.
- 2) This expansion permit approval will end on December 31, 2011, unless the city has issued a building permit for the project covered by this resolution or approved a time extension.

Daeges, Lehman, Magney, Sjeklocha, A. Thomas, and Adams voted yes. Cheleen was absent. Motion carried.

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

C. Expansion Permit for an addition to the house at 4740 Dominick Drive. (10024.10b)

Acting Chair Adams introduced the proposal and called for the staff report.

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

Acting Chair Adams asked staff to review the limit of fill allowed by city ordinance. Thomson explained that the amount of fill would be reviewed at the time the building permit is reviewed. Engineering and natural resources staff look at the proposed grading plan to ensure that drainage patterns that exist today would be maintained and no additional runoff would travel onto adjacent properties. The addition would be 28 feet from the side property line. There would be ample room to route drainage to the rear of the property. Erosion control and tree protection measures would be required during construction.

Chris Tyler, 4740 Dominick Drive, applicant, has lived there for six years. He lives close to work and his son lives close to school. He hopes to make the house meet his family's needs rather than having to find a new location. The proposal would improve the property and improve the tax value for the city. There have been two new houses built since he moved in. There is a good mix of housing types in his neighborhood. The proposal is a good opportunity to improve his home and the neighborhood.

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

Thomson explained the additional condition provided in the change memo dated September 16, 2010.

Thomas moved, second by Lehman, to adopt the resolution on pages A10-A13 of the staff report with the condition provided in the change memo dated September 16, 2010, which approves an expansion permit for an addition to the house at 4740 Dominick Drive. Approval is based on the following findings:

- 1) The applicant has met the burden of proof outlined in City Code §300.29 Subd. 7(c):
 - a. REASONABLE EXPANSION: The proposed expansion is a reasonable use of the property. The expansion would maintain the existing front building line, which provides for a functional floor plan for the house. The exterior elevations also provide for architectural consistency between the addition and the existing house.
 - b. CIRCUMSTANCE UNIQUE TO THE PROPERTY: The nonconforming front yard setback is a circumstance not common to every single-family residential property. This is not caused by the property owner, is not solely based on the convenience of the property owner, and it is not based on economic considerations.
 - c. NEIGHBORHOOD CHARACTER: The expansion would not adversely affect or alter the essential character of the neighborhood. The addition would be architecturally integrated with the existing house, the addition would maintain the building line along Dominick Drive, and would meet all other zoning ordinance standards.

Approval is subject to the following conditions:

- 1) The site must be developed and maintained in substantial compliance with the plans date-stamped September 3, 2010.
- 2) 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. The applicant must obtain a driveway permit if they are moving or altering the driveway access from Dominick Drive.
- 3) The minimum low floor elevation of the addition must be 951.9.
 - 4) This expansion permit approval will end on December 31, 2011, unless the city has issued a building permit for the project covered by this resolution or approved a time extension.

Daeges, Lehman, Magney, Sjeklocha, A. Thomas, and Adams voted yes. Cheleen was absent. Motion carried.

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

D. Matters involving the expansion of a non-conforming detached garage at 17622 Ridgewood Road. (08016.10a)

Acting Chair Adams introduced the proposal and called for the staff report.

Gordon reported. He recommended denial of the variance application due to the property having reasonable use and approval of an expansion permit based on the findings and subject to the conditions listed in the staff report.

Peterson discussed the letter to the planning commission from the neighbor's attorney. She stated that the commission's role is not to determine what is legal and what is not legal. The commission's role is to determine if the proposal meets the standards of the ordinance requirements. She is comfortable that staff's recommendation is consistent with the Minnesota Supreme Court's decision to send the proposal back to the city. The city was not doing anything wrong. The standard that has been used for 20 years was followed. The court gave a different interpretation of the standard. She recommended a denial of the variance due to the court's standard.

Peterson explained that the state statute gives the city the authority to allow expansions of legal non-conforming uses and that was decided by the supreme court in the same decision. The city has created a new process instead of a

variance to review non-conforming uses. Standards are provided to limit unfettered discretion. The city is allowed to apply the new law that is in effect at the time the matter is returned to the city. The commission is applying the new law that is in effect. She anticipated that the applicant's attorney will represent his client and make his record before the commission, but commissioners do not need to debate any legal issue.

Lehman made it clear that he is not an attorney. He asked if the property is nonconforming. Peterson answered affirmatively.

Lehman reviewed how the neighbor appealed approval of the variance. Lehman saw the application as still a nonconforming property with a variance request. Peterson said that it is not a typical variance request because at the time the application was received, it was for an expansion of a nonconforming use. The process that the city had in place at that time was to require a variance. Peterson stated that Lehman is correct in that the proposal is still a nonconforming use and the commission is still addressing the issue of the expansion of the nonconforming use.

Lehman saw the task of commissioners is to apply the current interpretation. Peterson agreed. Staff's recommendation follows the decision of the Minnesota Supreme Court. Lehman stated that the property is nonconforming and the proposal would not change that.

Sjeklocha asked if the court included an injunction or order to prohibit building the proposal. Peterson answered in the negative.

Sjeklocha asked what happened at the public hearing regarding implementing an expansion permit. Peterson explained that the city council does not hold a public hearing for an ordinance amendment.

Sjeklocha asked if a photograph of a detached garage in the area that was mentioned by Gordon was available. Gordon provided an aerial photograph which illustrated the garage located on Ridgewood Road. It has similar character elements and setback to the proposal.

Sjeklocha asked if postcards were sent to surrounding properties for notification of the request. Gordon answered positively. Sjeklocha asked for the response from residents. Gordon received one phone call not related to the application.

Lehman asked how commissioners should view, interpret, or ignore the situation when the proposed expansion permit is for an action that has already taken

place. Peterson explained that the court provided guidance in looking at after-the-fact applications. The Minnesota Supreme Court stated that a city should be sensitive to the equities of the situation. The factors to be considered are listed in the staff report. These include whether the applicant acted in good faith and did so relying on reasonable facts that were before the applicant and that the applicant did not willfully violate a city ordinance. That does apply here because the applicant did act in good faith, received the permits, and relied on district court and court of appeals decisions. She did not intentionally violate any local ordinance because she received all of the approvals needed. The applicant is deserving of an after-the-fact approval of the expansion permit.

Lehman commented that the city's ordinances or expansion permit do not place any adverse weight on a situation where the applicant acts in good faith. Peterson clarified that the city's ordinances do not address an after-the-fact permit situation.

A. Thomas asked what would happen if the variance and expansion permit would both be denied. Peterson responded that the building would have to be returned to its former size and appearance.

A. Thomas confirmed with Gordon that the driveway is shared with the neighbor.

Peterson clarified that if a building would be required to return to its previous appearance, it would not have to return to the same deteriorated appearance. Nonconforming-use property owners are allowed to improve a structure as long as the size of the nonconformance is not increased.

Sjeklocha confirmed with Peterson that a planning commission decision could be appealed to the city council if provided in writing to the planning division within 10 days.

Joanne Liebler, 17622 Ridgewood Road, explained the history of her property purchased in 2004. The detached garage's flat roof was built into the steep grade. It had a plastic tarp over it to keep water out. In 2008, she created a plan to improve the roof. She was told a variance was not needed due to the height of the proposal, but was needed because the structure was built in 1940 and was located too close to the street. She made sure that the plan stayed within the city's garage height ordinance requirement. The garage would not be expanded out; only vertically to pitch the roof. She did not intend to start a war with her neighbor or displease him in any way. A variance was approved by the city for her proposal. The building was nearly completed in September. In October, she learned that the Minnesota Supreme Court would hear the case. She still did not

quite understand what it all means except that now she is requesting a nonconforming use expansion permit. She is emotional from the long, rough road.

The public hearing was opened.

Paul Chamberlain, attorney for Beat Krummenacher who resides at 17634 Ridgewood, stated that:

- He was involved in the public hearing two years ago and the subsequent action up to the Minnesota Supreme Court ruling.
- The proposal is an after-the-fact permit. His client has no opposition to making the property nicer or better. His client opposed increasing the height of the structure for living space.
- The project could look almost identical as it does now without the building blocking the view out of his client's living room window.
- The expansion permit would re-label what the Supreme Court stated could not be done. That is to expand without getting a variance. A variance requires an undue hardship shown by the applicant.
- The finding is written in the English language. Commissioners are used to dealing with questions every time there is a meeting.
- There was no showing of a hardship in the case and the project still cannot be done.
- Setbacks protect neighbors from blockage of the view along the roadway. It was like that when Mr. Krummenacher bought it.
- The 2-car garage provides reasonable use.
- He requested the commission's consideration regarding whether there is a practical difference between an expansion permit and a variance. Even the statute itself says "permit as a variance." "You are talking about putting lipstick on a pig to do that." It is using two different labels that have the same meaning. If a variance cannot be used, then a permit cannot be used either.
- He requested commissioners use their own judgment and "rule against" the expansion permit.
- The applicant knew the case was still pending when the property owner applied for the building permit and began construction. It makes no equitable sense to start construction before the Supreme Court ruled it would not hear the case.
- Living quarters have been constructed above the garage. That is the part that is the problem for Mr. Krummenacher.

Sjeklocha asked for Mr. Chamberlain's perspective around taking the law into consideration and his thought process to why commissioners are receiving the September 15th letter and excerpts from the source documents, instead of all of the source documents, now. Mr. Chamberlain said that the letter summarizes the entire procedure of the property. There has been a long history. It was remanded by order of the supreme court. The file consists of the application from 2008, its trip up to the state supreme court, and back down to this spot here.

Sjeklocha understood the court process, but then there is also the city process. She tried to understand getting the information at this point in time instead of at the public hearing regarding the proposed expansion permit ordinance. Mr. Chamberlain understood that there was no public hearing. He was not invited to the city council's review of the proposed expansion permit ordinance. He wrote to Mr. Hoff, the attorney representing the city, and expressed that the city "could not do that" and that it would defy what the Minnesota Supreme Court said. State law prevails over a local law. The property has reasonable use.

Sjeklocha asked if it is common practice to provide excerpts from source documents. Mr. Chamberlain felt it is common practice because the types of source documents are a decision of the state supreme court which is public record and which the city is involved in so it received a copy as one of the litigants. Nothing about the citations is unique or hidden.

Sjeklocha asked if she could Google the court cases and find them. Mr. Chamberlain said that the site Findlaw.com would be better than Google and he is aware that Minnetonka has a very competent city attorney who could easily provide the cases as well.

Gordon clarified that the nonconforming use expansion permit ordinance did have a public hearing with the planning commission on August 5, 2010. Preceding that was the introduction of the ordinance which happened at the city council on June 28, 2010. The city council ultimately adopted the ordinance August 16, 2010. Legal notices were provided in the newspaper.

Mr. Chamberlain interjected that the ordinance in question is either legal or not. The determination would be made by the state supreme court ultimately to decide whether the ordinance complies with the state statute. A city cannot vary from what a state statute requires by city ordinance.

James Susag, attorney for Ms. Liebler, applicant, stated that there was no injunction requested or granted by any court to stay any part of any building

process when the proposal was constructed in 2009. There was no stay sought from the appellate court. The variance was expiring at the end of 2009 and the building season was ending. The Minnesota Supreme Court does not have to hear all of the appeals. The court of appeals does. To write in a letter that a case will be appealed to the supreme court does not mean, in any respect, that the state supreme court would take the case. Ms. Liebler proceeded, in all respects, in good faith.

Mr. Susag whole-heartedly agreed with Peterson's analysis. The neighbor does not have a right for a particular view onto his client's property. That is a pretty easy point. Mr. Susag would much rather look at the improved structure than the unapproved structure shown in the photographs. In terms of trees and other features, there is no right to that improvement. Ms. Liebler has the right to build a wall or cut down trees. His other points were covered by Peterson.

No additional testimony was submitted and the hearing was closed.

Lehman appreciated Mr. Susag's comments. He agreed with Mr. Susag when he said that a neighbor does not have rights to the view of an adjoining property. He asked Peterson to confirm his understanding. Peterson agreed with what Mr. Susag said. There is no right to a particular view across someone else's property.

Lehman affirmed with Peterson that the applicant has the right to plant trees that would change the view.

Acting Chair Adams asked if there should be one motion or two motions to address the application for a variance and the expansion permit. Peterson responded that one motion could address both actions.

Lehman moved, second by Daeges, to adopt the resolution on pages A34-A38 of the staff report, which denies the variance and approves the expansion permit to allow an expansion of a non-conforming garage at 17622 Ridgewood Road. The action is based on the following findings:

- 1) A variance is not appropriate because the property has a reasonable use with the improvements that existed before expansion of the detached garage.
- 2) An expansion permit is appropriate because the proposal is reasonable and would meet the required standards for a permit, because:

- a. REASONABLENESS: It would be difficult to locate the detached garage at another location on the property due to the topography of the site, width of the lot, location of the existing home, location of the driveway and existing vegetation. The use itself is reasonable in that it meets all dimensional standards under the city code and is an improvement to what was an outdated building in disrepair. The pitched roof is a reasonable and practical solution to correct the flat roof design which was causing structural deterioration.
 - b. UNIQUE CIRCUMSTANCE: The non-conforming setback is a circumstance that is not common to every similarly zoned property. The property owner did not cause the situation because the garage already existed when she bought the property. The improvements are not solely for the owner's convenience because they would significantly improve the appearance of the building and the neighborhood. Economic considerations are not the sole factor because there is no other reasonable location for the structure on the property.
 - c. NEIGHBORHOOD CHARACTER: The garage improvements would not alter the character of the neighborhood. The improvements would visually enhance the exterior of the garage. There is also a detached garage on the property to the east that is set back 17 feet from Ridgewood Road.
- 3) The after-the-fact nature of the application for an expansion permit is excusable because the applicant constructed the improvements in good faith pursuant to city authorization, relied on two court decisions and the well-established legal standard in effect at the time, and did not willfully or intentionally violate the city's ordinance.

Approval is subject to the following condition:

- 1) The garage cannot be used for any commercial activities.

Daeges, Lehman, Magney, Sjeklocha, A. Thomas, and Adams voted yes. Cheleen was absent. Motion carried.

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

E. Expansion permit for construction of a new home at 16901 Grays Bay Boulevard. (10007.10b)

Acting Chair Adams introduced the proposal and called for the staff report.

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

A. Thomas discovered an outdated resolution included in the packet. Staff replaced it with the current resolution.

Lehman noted a comment received from a resident that requested the site maintain 35 percent hard surface coverage. Lehman understood that the site would have 29 percent hard surface coverage which is within the allowed 30 percent impervious surface coverage requirement. Thomson agreed that the proposal would meet the impervious surface coverage requirement. A condition related to future improvements would restrict the site to 30 percent of impervious surface coverage.

Lehman said that the nonconforming setbacks would be reduced as a result of the proposal, but the proposal would still require an expansion permit. He asked for confirmation. Thomson clarified that the front yard setback would still not meet the current ordinance standard.

Lehman recalled a difference in the right to rebuild an existing footprint between a conforming and a nonconforming property. He asked if he was correct. Peterson explained that if a variance was received, then there is no limitation on the amount of time allowed to replace or rebuild the structure. If the use is nonconforming without a variance, then there are limitations on the time in which it can be rebuilt. Six months or a year would be allowed depending on the circumstances.

Lehman confirmed with Peterson that this situation would have one year to rebuild and the one year window has not yet expired.

Acting Chair Adams asked if the one year time limit starts running when the structure is torn down. Peterson answered affirmatively.

Acting Chair Adams stated that the impervious surface is currently at 29.98 percent, but that there are several expected items not included in the plan that would increase the impervious surface. He asked if the additional items are included in the 29.98 percent. Thomson explained that there are items not on the

plans that one would expect to see such as the sidewalk to the front door. There are pervious options that could be done, but staff's goal is to put the property owner and any future property owner on notice that the property is at the maximum and those improvements would not be allowed to happen without removal of another impervious surface.

Acting Chair Adams said it looked like a driveway was not included in the impervious surface calculation. Thomson referred to the site plan in the overhead. It showed two garages. The driveway from Lakeshore Boulevard is included in the impervious surface calculation. The garage to Grays Bay Boulevard is not shown to have a driveway. There would be no impervious surface associated with it.

Acting Chair Adams asked what percent of imperviousness is associated with porous pavers. Thomson explained a percentage discount is given for the void space of 10 percent to 15 percent.

Sjeklocha asked if the one year time limit meant it needs to be finished within one year. Peterson responded in the negative. The proposal must have a substantial beginning within one year.

Sjeklocha asked if a property owner could ask for an extension. Peterson did not recall a provision in the state statute that would allow for an extension. She researched the statute and found that it did not provide for an extension.

Thomson provided that the final inspection of the demolition was completed May 26, 2010.

Paul Vogstrom, 4232 Highview Place, and David Olshansky, 16901 Grays Bay Boulevard, were present. Mr. Olshansky purchased the foreclosed property with the intent to demolish the existing house and build a new one. Neighbors welcomed him and have given him lots of compliments on the new house.

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

Acting Chair Adams commented that the site is at the limit for impervious surface coverage. He trusted that all the city ordinances regarding impervious surface would be followed.

Sjeklocha moved, second by Lehman, to Adopt the resolution on pages A19-A22 of the staff report, which approves an expansion permit for

construction of a new house at 16901 Grays Bay Boulevard. Approval is based on the following findings:

- 1) The applicant has met the burden of proof outlined in City Code §300.29 Subd. 7(c):
 - a. REASONABLENESS: The proposed expansion is a reasonable use of the property. The new house would increase the shoreland and front yard setbacks from the previous house. The setbacks of the new house would increase from 20 feet to 38 feet from the shoreland channel, and from 11 feet to 20 feet from Grays Bay Boulevard.
 - b. UNIQUE CIRCUMSTANCE: The circumstances justifying the expansion are unique to the property. The nonconforming rights of the property and the substandard buildable area are not common to every single-family property. These circumstances are not caused by the property owner, are not solely for the property owner's convenience, and are not based on economic factors.
 - c. NEIGHBORHOOD CHARACTER: The expansion would not adversely affect or alter the essential character of the neighborhood. The properties along Grays Bay Boulevard in the immediate area have varying front yard setbacks. Many of the homes along the street have nonconforming front yard setbacks today, ranging from 12 feet to 28 feet. (See page A15.) The proposed expansion would maintain the existing building line along Grays Bay Boulevard.

Approval is subject to the following conditions:

- 1) The site must be developed in substantial conformance with the following plans:
 - Survey and site plan date-stamped July 27, 2010
 - Floor plans date-stamped July 27, 2010
 - Building elevations date-stamped July 27, 2010
 - Stormwater plans date-stamped June 8, 2010
- 2) 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. Record a restrictive covenant against the property indicating that no additional impervious surfaces can be added to the site unless it meets the 30 percent maximum impervious surface requirement outlined in the shoreland ordinance.
 - d. Submit final stormwater plans meeting the standards outlined in Appendix A of the Water Resources Management Plan for review and approval by city staff.
 - e. The proposed house must meet fire access requirements as determined by the fire marshal.
 - f. A driveway permit must be obtained from the city for the new driveway access on Lake Shore Boulevard.
- 3) The house must have a minimum low floor elevation of 933.5.
 - 4) This expansion permit approval will end on December 31, 2011, unless the city has issued a building permit for the project covered by this resolution or approved a time extension.

Daeges, Lehman, Magney, Sjeklocha, A. Thomas, and Adams voted yes. Cheleen was absent. Motion carried.

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

9. ADJOURNMENT

A. Thomas moved, second by Magney, to adjourn the meeting at 8:30 p.m. Motion carried unanimously.

By: _____
Lois T. Mason
Planning Secretary