

**City of Cottage Grove
Planning Commission
November 22, 2004**

Pursuant to due call and notice thereof, a regular meeting of the Planning Commission was duly held at City Hall, 7516 – 80th Street South, Cottage Grove, Minnesota on the 22nd day of November 2004 in the Council Chambers and telecast on local Government Cable Channel 16.

Call to Order

Chairperson Bailey called the meeting to order at 7:00 p.m.

Roll Call

Members Present: Myron Bailey, Tim Booth, Ken Brittain, Rod Hale, Shannon Nitsch, Chris Reese, Alberto Ricart, Bob Severson

Members Absent: Robert Hudnut

Staff Present: Howard Blin, Community Development Director
John McCool, Senior Planner

Approval of Agenda

Motion by Severson, seconded by Nitsch to approve the agenda. Motion approved unanimously.

Open Forum

Chairperson Bailey asked if anyone wished to address the Planning Commission on any non-agenda item. No one appeared to address the Commission.

Chair's Explanation of the Public Hearing Process

Chairperson Bailey explained the purpose of the Planning Commission, which serves in an advisory capacity to the City Council, and the City Council makes all final decisions. In addition, he explained the process of conducting a public hearing and requested that any person wishing to speak should come to the microphone and state their full name and address for the public record.

Public Hearings

6.1 CASE V04-055

Thomas Ebert, 9167 Jareau Avenue South, has applied for a variance to Title 11-9F-5A, Development Standards in the R-5 Zoning District, to allow a porch addition to be set-back 31 feet from the rear property line when 35 feet is required.

McCool summarized the staff report and recommended approval based on the findings of fact and subject to the conditions listed in the staff report.

Bailey opened the public hearing. No one spoke. Bailey closed the public hearing.

Severson made a motion to recommend approval of the application based on the findings of fact and subject to the conditions listed below. Booth seconded.

- 1. Erosion control measures must be utilized during construction.***
- 2. The exterior materials and color for the 14-foot by 14-foot three-season porch addition must be similar to the principal structure.***
- 3. The property owner obtains a building permit from the City of Cottage Grove.***

Motion passed unanimously.

6.2 CASE RS04-051 (continued from 10/25/04 meeting)

Rodney and Mary Hale have applied for a rural subdivision to subdivide an 18-acre parcel located on Lower Grey Cloud Island into two parcels.

Blin summarized the staff report and recommended denial based on the findings of fact listed in the staff report.

Rod Hale, 11701 Grey Cloud Trail South, stated that he was recusing himself from voting on this application. He explained that the critical area extends for 75 miles from Dayton to Hastings. He noted that the City of St. Paul is allowing a development within the critical area with a much greater density than what he is proposing. He stated that his request is for one home to be located on seven acres of land separated from non-navigable waters by a privately-owned island. The house will be setback from the waters edge more than 200 feet. He believes that the only variance from development standards being requested for this particular lot is the septic system setback. He has documentation from a septic system engineer who has tested the property and believes an on-site system is adequate for this parcel. The other variances are variances from the critical area standards. He then referenced the road frontage variance, noting that it is for his parcel, not the one being created.

Brittain asked if the variances would be required if the property was not located in the critical area corridor. Blin responded that if the property was in the urban critical area zones, it would not require the setback variance or the septic variance because urban areas are typically sewered. Brittain asked if the 1.5 acres is standard for lots needed septic systems. Blin stated that the ordinance requirement of a minimum of 1.5 acres is designed to accommodate the house, the septic system, and a secondary system.

Nitsch asked if Hale lived in the area before the critical area regulations were adopted. Hale stated that the interim critical area regulations started in 1976 and he bought the parcel in 1980. The critical area ordinance was adopted in 1982.

Bailey opened the public hearing.

Eugenia Kulvich, 11523 Grey Cloud Trail South, stated that she would not object to the application if only one or two variances were needed but more than four are a problem. She understands that several other properties may want to divide their property in the future. She also stated that she was planning to apply for a variance to allow construction of a pole building on her property. She then displayed a picture of her view of the non-navigable water taken from her property.

Bill Christopherson, 11971 Grey Cloud Trail, asked how many variances the city would allow for one application. He stated that the city needs a definition of how many parcels could be put on 40 acres.

Sandy Fecht, State of Minnesota, Department of Natural Resources, Mississippi River Critical Area Hydrologist, 500 Lafayette Road, St. Paul, submitted a letter to the Commission regarding the application. She stated that the critical area program would strongly oppose this subdivision particularly because of the number and type of variances involved. The critical area was designated as such because of the natural resources, one of which includes the protection of bluffs and slopes greater than 18 percent. It was not just designated for those views of and from the river, but rather preservation of other scenic, aesthetic, natural, and environmental values. She believes that finding a site for a structure that will meet the 100-foot bluff line setback and the 150-foot sewage treatment system setback from that bluff line is almost impossible. She then responded to Hale's comments regarding the St. Paul development noting that the Cottage Grove critical area corridor, which is designated Rural Open Space, is different from the City of St. Paul's, which is designated as an Urban Diversified District. She then stated that the critical area program does not want to see a pattern of variances where a setback was allowed equal to the height of a structure. She stated that would be a contradiction to the spirit and intent of the critical area act. She asked for the Commission's consideration of implementing the state critical area law, which is emphasizing that protection of the slopes greater than 18 percent and setbacks commensurate for the rural open space district.

John Tschida, Coldwell Banker Burnett, 7350 – 80th Street South, stated that he has worked with the Hales in selling their other parcel. He explained that the Hales are trying to create an opportunity for Cottage Grove to have another upper bracket home. He reiterated that the property surrounding the Hales is mostly water or mining. He then noted that there have been 11 requests to go over the 4 units per 40 acre requirement and all 11 requests have been approved by the city.

No one else spoke. Bailey closed the public hearing.

Brittain asked Fecht what the difference is between Inver Grove Heights, which is classified as an urban critical corridor, and the Cottage Grove side of the river. Fecht responded that the southern portion of Inver Grove Heights, which is across the river from Cottage Grove, is classified as rural open space district and the northern portion is classified as urban open space district. Brittain asked that the map of the four parcels that are slated potentially for this quarter-quarter section be displayed. He pointed out the location of the four home sites, the potential fifth site, and the corner where there is a large area of open shoreland. He asked how this amount of septic activity would affect the environment. Fecht stated that the sewage treatment system capability depends on the slopes that are present. She stated that

she is opposed to that northern portion mainly because of the slopes. She then stated that development of the LaChapelle property may be possible depending on the sewage treatment system and the amount of area available for that system outside of slopes, water table issues, flood plain issues, etc.

Severson asked who has jurisdiction over the recommendations the Planning Commission makes to the Council regarding the critical area, the City of Cottage Grove or the State of Minnesota Department of Resources. Blin stated that jurisdiction for reviewing and approving lot splits and the associated variances belongs to the City. Fecht agreed but stated that the State of Minnesota has oversight authority over the critical area program, which means they can bring judicial proceedings under authority of state statutes to compel administration of the critical area act. The State of Minnesota has a vested interest in ensuring oversight of the program and proper implementation. Severson asked if the State of Minnesota ever exercised that right. Fecht responded yes. Severson asked if they had exercised that right for anything from St. Paul Park south. Fecht responded not that she is aware of any. Severson stated that the act was drafted in 1976 and approved in 1982 and noted that lots of changes have occurred in the metropolitan area. He asked if there had ever been any re-thinking by the Minnesota DNR relative to how this should be applied going forward. Fecht responded that amendments to the critical area ordinance and plan may be submitted to her. Cottage Grove is one of the few communities that has not updated their critical area plan within the last five years. She stated that amendments are possible under the law and she would be happy to work with the city in updating the critical area plan and ordinance. Severson asked if there was any difference from being on the main channel side as opposed to the back channel. Fecht responded not in terms of slope issues.

Hale stated that the critical area standards in Cottage Grove were developed a long time ago. He had also owned property on the other side of the main channel during the time these standards were developed and although he did not work on the plan itself with the committee, he did participate in open public discussions and it always came down to the question of who issues the building permit. The City Council at that time said that the city issues the building permits and would decide whether variances were in the public interest. There have been 11 applications for property in the critical area and each of those variances have been granted by the Cottage Grove City Council. He maintains that the critical area standards are not going to be denigrated in any way by this property. He does not believe that the DNR or anybody else can convince any reasonable citizen that providing a lot for a home in any way interferes with public access, public use, public view, or degrades the land in any way in terms of slopes. He stated that the city has issued building permits for properties with greater slopes than those. He then stated that his property is accessible to the Friends of the Mississippi and the Sierra Club for canoeing and they find no objection to what is there.

Bailey asked if the 11 variances that have been approved relate to bluff line issues. McCool responded that there were a variety applications that dealt with densities, setbacks, accessory structures in front of the home, and building heights.

Reese asked if each city submits their own plan on how they will administer the critical area. Blin stated that there are two documents, a critical area plan, which is a policy statement adopted by the city, and a critical area zoning overlay, which is the zoning code. He explained that those zoning requirements follow very carefully, if not exactly, what the critical area act requires.

Ricart asked who determines the density, the city or the DNR. Blin responded that the requirement comes from the critical area act but administration of that is the city's. In this case, if the city finds that a variance is warranted, it can grant one. Ricart stated that as long as all the setbacks are met according to DNR requirements, the density is up to the city. Blin stated that density and setbacks are separate issues.

Nitsch made a motion to deny the application based on the findings of fact listed below. Booth seconded.

- 1. The deviation from Title 11-9A-5A, which requires a minimum public frontage of 180 feet, impacts on the future subdivision layout options of the parcel if less restrictive zoning standards are applied.***
- 2. The deviation from Title 11-9A-5B(1), to reduce the required 1.5 acres for on-site sanitary sewage disposal systems to 1.07 creates minimal opportunities for alternative drainfield design options should system failure occur.***
- 3. The Structure Setbacks from Bluff lines established in Title 11-15-8C(1) protect the sensitive slopes in the Critical Area from erosion and other negative impacts from development.***
- 4. The four units per quarter/quarter section lot density minimum established in Title 11-15-8B prohibits the proliferation of housing in the sensitive areas of the Critical Area.***
- 5. The bluff line setback standards established in Title 11-15-8F for the On-Site Sewage Disposal Systems in the "Critical Area" protects the bluff line areas of the Critical Area.***

Severson stated that these decisions need to be made by the City. He knows there are several variances required, but if it weren't for other circumstances, there would only be one or two needed. He stated that he cannot support the denial. He believes this an area that needs to be looked at by the city so that we don't continue to run into the obstacles we are facing this evening.

Nitsch stated that if there weren't four or five variances, he would not have a problem approving the application, but five variances have been requested. He stated that the city needs to either review and modify the current plan or work with what we have now. He stated that the DNR is telling us that this application does not meet the requirements of the critical area plan. He stated that if the applications are denied, Hale can always come back in the future if we change the ordinance.

Severson stated that the city has already issued a lot variances and it is the responsibility of the city to make the decision.

Ricart stated that he is uncomfortable with how to determine what the maximum capacity of that corridor is and how is it going to be subdivided. In granting one, we may have to deny

others in the future. He does not have a problem with putting houses there, but he wants to ensure that it is done fairly and not approving one so another has to be denied later.

Booth stated that we have approved variances in the past but in many of those cases it was one variance, maybe a setback or a density variance, but the problem he has is the five variances. He agrees that the city needs to look at the whole issue because it is going to keep arising.

Bailey stated that the only issue he has with the applications is the large number of variances requested. He stated that he is most concerned with the variance request regarding the on-site sanitary sewer.

Severson stated that he believes the last three variance requests are not significant and he only looks at the proposal in the context of the first two variances.

Motion to deny passed on a 5-to-2 vote (Reese, Severson to approve, Hale abstained).

6.3 CASES SP04-056 and CUP04-057

McDonald's Corporation has applied for an amendment to their conditional use permit to allow an additional drive-through lane and order board at 7355 East Point Douglas Road.

McCool summarized the staff report and recommended approval subject to the conditions stipulated in the staff report.

Jim Hileman, Project Manager for McDonald's Corporation, 1650 West 82nd Street, Bloomington, stated that more of McDonald's business is done by drive-through and in an effort to serve those customers faster, they are adding side-by-side drive-through systems in all their new stores and renovating older stores that have the capability to handle that ordering system. He explained in response to concerns about vehicle stacking that at the half a dozen restaurants with this system in the metro area, they have found that customers follow one lane until they get to the split point where they divide to place their orders and then converge back to one lane. Operationally, the staging of the order is done mostly by visual contact, either through a security camera or a window in the cash booth. He stated that another staff concern was the turning radius for fire trucks. He displayed a turning radius template for a standard 50-foot semi going clockwise around their driveway area. Hileman stated the franchisee agreed to work with the city to provide screening for the cardboard dumpster that is currently in public view. He stated that they are also fine with the condition to curb the island and provide a landscape plan for that island. Hileman expressed opposition to the imposition of the assessment for stormwater management. He stated that the project is very minor and the \$12,500 contribution is twice what the project will cost. He stated that all their drainage exits directly into the right-of-way for Highway 61. He did state that if they re-build the restaurant, they would be amenable to paying those costs at that time.

Severson asked if exit rates from the site had been looked. He expressed concern that currently during peak times, it is difficult to exit the site and the proposed improvements could make it worse. Hileman stated that proposed design does not significantly alter pedestrian traffic and provides additional stacking on their lot. He stated that their goal is to get customers in and out faster and feel that they are providing a plan that does not compromise safety.

He stated that ultimately they would like to put another McDonald's in Cottage Grove to take some of the burden off this location.

Bailey asked how much business McDonald's does through the drive-through. Hileman stated that generally McDonald's does between 55 to 60 percent of their business through the drive-through, but that percentage is starting to creep up.

Booth expressed concern about traffic making two lanes for the drive-through rather than waiting in single line until they get to the split. Hileman stated that they have not found that to be a problem at their existing locations. Booth asked if they had this specific configuration. Hileman responded yes. He explained that the lane width is not much more than what they typically provide for a stacking lane and 60 degree parking. They have not found that customers form two lanes until the split point. He further explained that they have striping in the parking lot and directional signage at the split.

Hale asked what additional signage they are proposing. Hileman responded a directional sign on the split point and another menu board. Hale asked why condition #7 is asking for a comprehensive sign package. McCool responded that staff wants an inventory of the signage on the property. He stated that McDonald's probably exceeds the maximum amount of signage allowed by current ordinance, which means that if they cannot put the McDonald's name or logo on the new menu board.

Hale stated that he shares the applicant's concern for retroactively assessing for stormwater management. He believes that is a policy the Council should pass so it is uniformly applied to all businesses established prior to the City requiring this payment.

Brittain stated that he was under the assumption that the reason for the assessment was because of the improvement and when other businesses made improvements, they would be assessed at that time. McCool responded that any improvements that require city review and approval would trigger an assessment for stormwater management.

Hale expressed concern that this may be a deterrent for other businesses in like situations from making improvements on their property and believes it is poor public policy.

Hileman asked if the menu board is considered signage. McCool stated that the staff wants to review the menu board to determine if there is signage on that. He reiterated that the McDonald's logo or name would be considered signage.

Bailey asked if the fence that used to be between McDonald's and the cemetery would be replaced. McCool responded that the city would not require that.

Bailey opened the public hearing. No one spoke. Bailey closed the public hearing.

Motion by Hale, seconded by Nitsch, to recommend approval of the applications subject to the conditions listed below.

- 1. All applicable permits (i.e., building, electrical, grading, mechanical) and a commercial plan review packet shall be completed, submitted, and approved by the City***

prior to the commencement of any construction activities. Detailed construction plans shall be reviewed and approved by the Building Official and Fire Marshal.

- 2. The parking the areas designated as striped shall be curbed as Islands and landscaped.***
- 3. A revised landscaping plan shall be submitted to the city for review and approval prior to the issuance of a building permit.***
- 4. Prior to issuance of a building permit, a bona fide cost estimate of the landscaping improvements and a letter of credit in the amount of 150 percent of such estimate shall be submitted to and approved by the City. Upon completion of the landscaping requirements, the applicant shall in writing inform the City that said improvements have been completed. The City shall retain the financial guarantee for a period of one year from the date of notice to insure the survival of the plantings. No building permit shall be issued until the required financial guarantee has been received and accepted by the City.***
- 5. All outdoor lighting shall be directed downward and away from residential property and public streets.***
- 6. The trash containers on site shall be removed from public view in accordance with ordinance criteria.***
- 7. A comprehensive sign package for the site shall be submitted to the city for review and approval. The total signage on the site shall not be allowed above the current maximum signage square footage allowed on the site.***
- 8. A cash contribution sufficient to create stormwater management mitigation elsewhere shall be required. The mitigation shall be in the amount equal to the total estimated cost of the construction of an infiltration basin that would meet the standards of the National Urban Runoff Program plus land costs. Said contribution must be paid at the time of the building permit application.***
- 9. If traffic congestion adjacent to the two drive-through lanes becomes negatively problematic, the property owner shall be required to work with city staff in the re-arrangement of existing parking and drive aisles in such a manner as to sufficiently alleviate congestion problems.***

Reese stated that the city has in the past expressed concern about the safety of side-by-side drive-through lanes. He also noted that employee safety could be compromised when they exit the building for trash disposal if there were another traffic lane added. Ricart stated that there would be peak hours, so at some point the parking lot would not be busy.

Motion passed unanimously.

6.4 CASE CUP04-058

Kathy O'Brien has applied for a conditional use permit to allow a fitness center at 8700 East Point Douglas Road South.

Blin summarized the staff report and recommended approval.

Hale asked if it was a private club where people would be given keys or card access and they can enter anytime within a 24-hour period. Blin responded that it is a club with monthly membership dues and members are given a card key, and can use the facility at any time. Hale asked if there would be staffing. Blin responded that there would be staffing at times during the day but there will be long periods of time without staffing, which is common in these types of facilities. Hale expressed concern about the safety of the patrons.

Severson also has concerns about safety during the hours the center is not staffed. He asked if there is an alarm hook-up to the police department and if the cameras are monitored or just recording. Blin stated that the cameras are recording devices.

Bailey opened the public hearing. No one spoke. Bailey closed the public hearing.

Hale stated that because this is a conditional use permit, the Planning Commission could add a condition requiring that the facility be staffed.

Nitsch asked if there was a telephone available and how EMS be access the building if someone got hurt. Blin stated that there will be a phone.

Severson made a motion to table the application so the owner can answer questions from the Commission and provide background information on the operation. Hale seconded.

Nitsch asked why is this a conditional use permit. Blin stated that when the ordinance was written, fitness centers were typically much larger and there were also concerns that some of these facilities had unsavory reputations. In recent years, smaller workout centers have become more common, which was not envisioned when the zoning ordinance was written.

Reese asked if the other smaller fitness center have hours where they operate without staff present. Blin stated that he would check on that.

Motion passed unanimously.

Blin stated that after the franchisee leased the space and did the marketing, she found out a conditional use permit was required. He asked if the Commission would be willing to allow operation on an interim basis while this issue is tabled. Hale stated that he would agree with that providing that they have an employee on duty at all times.

Hale made a motion that the city allow the operator temporary use of the facility as long as there is an employee on site at all times. Severson seconded. Motion passed unanimously.

Applications and Requests

None.

Approval of the Planning Commission Minutes of October 25, 2004

Motion by Severson, seconded by Reese, to approve the minutes of the October 25, 2004, meeting. Motion passed unanimously.

Reports

9.1 Mississippi River Critical Area Regulations

Blin summarized the materials included in the Planning Commission packet regarding the critical area regulations.

Booth asked if other cities had requested to be allowed to go from rural to urban in certain areas.

Fecht explained the procedure for amendments to the critical area plan. She responded to Booth's question by stating that at this point in time, only one community has inquired about that, but it was not formally proposed, so she has no definitive answer. She stated that the DNR has the right to approve amendments on individual ordinance provisions and other policies that relate to the executive order standards and guidelines. She stated that in most cases, the cities are wrestling with density and land uses. She reiterated that DNR believes that natural resource protection is an integral part of the critical area designation.

Brittain asked if there would be potential for considering the difference between a navigable and non-navigable channels. Fecht responded that the Executive Order does not distinguish between main channel and minor channel. The emphasis is on protection of the bluffs throughout the entire corridor.

Nitsch asked what the main concerns are regarding bluff lines. If it is erosion, could a property owner put in a retaining wall to protect the bluff line. Fecht responded that retaining walls would be the last resort as they are considered a structure. She explained there are multiple issues regarding bluff lines, including views, erosion, and stormwater management. The executive order is specific in saying that bluff lines shall remain in their natural state.

Hale stated that a property owner has the right to use their property to its highest and best use, but the critical area plan requires that the public's use also has to be considered.

Nitsch asked how often the city is required to review the plan. Hale stated that this plan should be revisited. Bailey also believes that the plan needs to be updated.

9.2 Committee Reports

East Ravine Citizens Advisory Committee

Hale reported that at the Citizens Advisory Committee meeting on October 27 an orientation on the East Ravine plan was presented. He stated that he gave to the consultant Hudnut's request about sharing design plans from new developments throughout the country. He stated that after the open house on November 15, the issue seems to be how the city maintains all the green space with the kind of density that is required and how is it paid for.

Blin gave a presentation on the current plans and what needs to be done over the next few months regarding zoning and design standards, including the possibility of a PUD overlay that allows some changes to the base zoning and standards.

Severson asked if the city is going to look at any economic model in terms of what the real cost is going to be for these areas as they develop, what the end result will be in a couple decades, and how other areas of the city will be impacted in concert with this changing environment. Blin responded that the city has to create ways to link the various areas of the city, whether they are developing or existing, and then be sure that the city works equally as hard on the existing neighborhoods on code enforcement, property maintenance, and rehabilitation efforts.

Ricart asked if there has been any feedback from the open house. Blin stated that about 130 people attended the open house and approximately 40 comments were submitted. These included comments about Military Road, transportation, utilities, and infrastructure. There were a few comments about leaving things as they are and that others appreciated this process. Blin stated that staff would send to the Planning Commission a recap of the comments.

9.2 Recap of November City Council Meetings

Blin reviewed the items discussed by the City Council at their meetings on November 3 and November 17.

9.4 Planning Commission Requests

Bailey asked if the Commission was in favor of canceling the December Planning Commission meeting. Blin stated that staff has received one application for an expansion to Cottage Grove Junior High.

Severson made a motion to cancel the December Planning Commission meeting. Hale seconded. Motion passed unanimously.

Bailey asked if any Commissioner was interested in being the Planning Commission's liaison to the Infrastructure Maintenance Task Force. Brittain stated that he was interested in serving.

Severson asked that the city look at the critical area plan and ordinance. Bailey agreed that this should be looked at. Brittain asked to see the affect that development has on these areas, possibly via a tour or a video. Blin stated that this review would be done and would probably take a year or two to finish.

9.5 Response to Planning Commission Inquiries

Blin reported that staff has begun an effort to make the public aware of the need for building permits. A cable television show has been taped with our Building Official talking about those issues. Staff will also continue publishing articles in the *Cottage Grove Reports* and other publications and will talk with the home improvement stores in Cottage Grove about having them as a dissemination point for some of this information.

Hale acknowledged that this is Bailey's last meeting on the Planning Commission. On behalf of the Planning Commission he thanked Bailey for his leadership and wished him well as a member of the Cottage Grove City Council.

Adjournment

Motion by Booth, seconded by Ricart, to adjourn. Motion carried unanimously. The meeting adjourned at 9:47 p.m.