

**City of Cottage Grove
Planning Commission
December 22, 2003**

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 December 2003 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, Robert Hudnut, David Lassen, Chris Reese, and Chris Willhite

Members Absent: Rod Hale and Bob Severson

Staff Present: John McCool, Senior Planner

Approval of Agenda

Hudnut made a motion to approve the agenda. Booth seconded. Motion carried unanimously.

Open Forum

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

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 V03-050

Jay and Suelin Werner, 7641 – 113th Street South, have applied for a variance to City Code Title 11-15-8C(1), Structure Setback from Bluff Line, to allow the construction of a house less than 100 feet from the Mississippi River bluff line. The City Council approved

a variance to density requirements at their meeting on November 19, 2003, but referred the setback variance back to the Planning Commission for further review and public hearing.

McCool summarized the staff report. He displayed a contour map of Werner's property and an aerial map of the surrounding area. McCool reported that the Planning Division does not support the applicant's proposed 18-foot setback from the bluff line but does recommend approval of a minimum setback that is equivalent to its height, subject to the conditions stipulated in the staff report.

Hudnut stated that he did not see in the staff report any rationale for the eight variances the City had granted to other properties in previous years. McCool responded that there were no stipulations or findings provided in those staff reports, only conditions of approval.

Willhite asked if the reports distinguish whether the Planning Commission recommended approval of those variances. McCool responded that all applications would have been reviewed by the Planning Commission but he did not check to see how the Planning Commissions voted; the reported action by the city is the City Council's final decision. Willhite asked whether the properties that received variances were built prior to the overlay district. McCool responded that the nine properties listed in Exhibit J were all created after the adoption of the critical overlay district, and the other homes that are less than 100 feet from the bluff line were apparently built before 1978.

Jay Werner, 7641 – 113th Street South, stated that the house shown in the diagram is his existing house. He explained that they are back before the Planning Commission because the City Council wanted more feedback. He stated that his preference would be to locate the house wherever he wants to on his property, so he could have a view of the river. Werner then displayed a survey showing the center line of channel for navigation and explained that the distance from that point to his property is over three-quarters of a mile. The view of his home from the navigable channel would be the east side of the house. Werner said the side slope of the bluff is wooded and there are no trees in the area where the new home would be constructed. He stated that his interpretation of the City Code would allow for a zero-foot setback if all the other homes in the area are along the bluff line. He read from the ordinance "In no case shall a dwelling be placed closer to the bluff line or normal high water mark than the average setback of the structures on the adjacent lots." He then pointed out other dwellings in the area that were built at the bluff line. He stated that his request is to build the house with an 18-foot setback from the bluff line. He reiterated that the house would unlikely be visible from the main channel. He stated that he would not remove any trees, only brush.

Hudnut asked where the 18-foot setback came from. Werner replied that the drawings show the house 18 feet from the bluff line, which is the logical place to put the house. He asked the Commission to approve the variance for a zero-foot setback so he would put the house where it is most pleasing to him but not be an eyesore to anybody else. McCool displayed a scaled drawing that Werner had provided staff showing the proposed location of the home. This drawing showed the distance between the 784 bluff line elevation and the closest part of the structure to be approximately 18 feet. McCool then commented on Werner's statement regarding averaging rear yard setbacks, which is a requirement in the city's zoning ordinance but not in

the critical overlay district ordinance; the overlay district has more stringent requirements than other areas of the community.

Werner stated that the area from Ideal Avenue and 110th Street to the west is not viewable from the river until you get down past the north end of the island.

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

Willhite made a motion to deny the application based on the findings of fact listed in the Planning staff report. Booth seconded.

Lassen stated that Exhibit J lists those variances that have been granted by the City in the past and asked if any had been denied. McCool responded that he did not find any variance applications that had been denied by the City Council. Willhite clarified that Exhibit J does not identify the action taken by the Planning Commission, but is the final action taken by the City Council.

Booth said he is sympathetic to the applicant's situation and understands his desire to place his new home on the bluff line, but as a Planning Commissioner, he cannot support this variance because there are no hardships and it does not meet ordinance requirements for a variance. He stated that the Planning Commission needs to make their recommendations based on fact and noted that the city needs to uphold the zoning ordinance.

Hudnut stated that there is a difference on this application, which is that there are many other structures already built on the bluff line.

Booth stated that makes those structures non-conforming. He compared this situation to what has been occurring on Lake Minnetonka, where homes that were built before their ordinances were adopted are being replaced by new homes, which must now meet setback requirements.

Willhite stated that the mission of the Planning Commission is to uphold the zoning ordinance. She stated that variances can only be granted due to hardship, and there is a reason this area was designated as a critical area. She stated that she would not support any variance to the bluff line setback requirement for this property.

Lassen stated does not disagree with Booth or Willhite's comments about having to uphold the ordinance; however, the Commission reviews and/or creates ordinances to make improvements and corrections. He then stated that he does not believe there are any hardships in this case, but also feels the ordinance has not been applied in a fair and equitable manner due to other variances that have been granted in this area.

Bailey stated that the last time this application came before the Commission, he voted to approve a 20-foot setback, but he cannot support anything less. He does agree with staff's recommendation for a 31-foot setback. He will vote no on the motion for denial. He believes that staff came up with good findings of fact for the hardship that would make this specific situation unique and that it would keep the house far enough from the bluff line but allow the property owners some view of the river.

Lassen asked for clarification from Bailey on the setback. Bailey responded that he agrees with staff's recommendation for a 31-foot setback, but that is not the motion on the table.

Willhite stated that she would be willing to look at changing an ordinance before a variance application is brought before the Commission; however the Commission is not looking at whether this is not a good or bad ordinance, but whether to approve or deny a setback variance.

Lassen stated that the critical area ordinance may need to be reviewed in the future based on the issues that keep coming up. Willhite asked if the city has anything to do with the critical overlay district. McCool responded that it is a city ordinance. He explained that the city was required to adopt regulations in establishing the critical area overlay district and the standards are within that. Lassen asked if the city's ordinance is stricter than the state requirements. McCool believes that the city ordinance is based on the minimum requirements from the state. Lassen stated that if that is the case, then there is no reason to review the ordinance.

Motion to deny the setback variance passed on a 4-to-3 vote (Booth, Brittain, Lassen, Willhite).

Werner stated that the city code would allow the Planning Commission to approve a zero-foot setback. He reiterated that it was his interpretation that the 100-foot setback was not fixed, so the argument that the Commission was enforcing the code was wrong; the code itself says that a structure could be setback anywhere from zero to 100 feet. McCool stated that Werner is misinterpreting the ordinance requirement.

Applications and Requests

None.

Approval of Planning Commission Minutes of November 24, 2003

Hudnut made a motion to approve the minutes of the November 24, 2003, Planning Commission meeting. Lassen seconded. Motion passed unanimously.

Reports

9.1 Recap of December City Council Meetings

McCool reported that at the December 3, 2003, City Council meeting, Council approved the amendment to the comprehensive plan as it relates to the Capital Improvements Program (CIP). McCool also reported that three residents spoke at the open forum concerning the following matters:

- The abatement process at the property at 8724 – 95th Street;
- The city ordinance requirement prohibiting the property owner at 8096 Jergen Avenue from parking his semi-tractor in a residential area; and
- Building permit requirement for steps at 9921 – 78th Street.

Staff was directed to respond to the Council on these issues at the December 17, 2003, meeting.

McCool reported that the City Council on December 17, 2003 received information that the city will be initiating the abatement process on January 6 for the property at 8724 – 95th Street, which is a residential property that has an excessive number of boats and exterior storage issues. He said the cost of abating this declared public nuisance would be assessed to the property.

Council was also updated on the tree mitigation at the Oak Park Commons project, which allowed for the removal of the evergreen trees on the east side of the property. The City Council did not allow for any credit or variance to the tree mitigation requirements.

9.2 Committee Reports

None.

9.3 Planning Commission Requests

Willhite asked about the gas station at Almar Village. McCool responded that the developer had applied for the building permit this fall, but would not pick up the building permit until spring 2004.

Willhite then asked about any developments with the proposed commercial development on 70th Street and Hinton Avenue. McCool responded that the city has received the applications for the senior housing element of the project, which will be reviewed at the January Planning Commission meeting.

Bailey asked about the schedule for the proposed Ruby Tuesday's. McCool responded that the city anticipates the developer will submit their planning applications next month and might be on the February Planning Commission agenda.

Booth asked for an update on Barrel Reconditioning. McCool responded that the city will be sending them another notice that they are in violation and that the next step would be going back to the Council for possible revocation of their conditional use permit. He reported that they did remove some trailers from their site, but they advised the city that they needed to retain 15 trailers and that early next year they would have to increase the number trailers on the property due to an upcoming large project.

9.4 Response to Planning Commission Inquiries

Bailey asked if anyone had any questions on the responses provided regarding the Commission's requests from last month's meeting. Lassen asked if the discussion on the Kohl's access could be held next month when Severson could attend the meeting, because he asked for the information. The Commission agreed.

McCool stated that last month the Commission asked for information on the new signage at the BP Amoco sites. He explained that the size and heights of the new signs were in compli-

ance with the city's ordinance requirements at the time the building permits were issued. The Building Inspector inspected the signs and found that they were in compliance. Bailey asked if the sign permits were applied for after the sign ordinance was amended, would those same signs have been allowed. McCool responded that the building permits were issued before the new sign ordinance was adopted by the City and the new signage would not have complied with the new ordinance requirements. Brittain stated that he noted that they were doing additional work to the signage and asked if there would be more inspections. McCool stated that the city would look at what is being done.

McCool updated the Commission regarding the Cottage Square Mall redevelopment noting that an agreement was presented to the City Council on December 3, 2003. The developer is negotiating with the current owner of the Cottage Square Mall property. He stated that they hope to have all the agreements signed in January. The developer was hopeful that they would be able to submit planning applications in the next couple months so that the Planning Commission could review them in March or April. McCool reported that construction of this project would take about 16 months. Hudnut asked if anything comes off the tax rolls since this is a religious institution. McCool responded no, except for maybe an office building that Human Services, Inc. may occupy because of their non-profit status.

Bailey explained that the third response was to a question raised by Commissioner Severson regarding access to Kohl's.

McCool reported that over the next several meetings, the Commission will be working on a draft to the ordinances regarding currency exchange businesses and temporary fireworks sales structures.

Adjournment

Brittain made a motion to adjourn the meeting. Willhite seconded. Motion passed unanimously and the meeting adjourned at 7:47 p.m.