

**SHOREVIEW PLANNING COMMISSION  
MEETING MINUTES  
May 26, 2015**

**CALL TO ORDER**

Chair Solomonson called the May 26, 2015 Shoreview Planning Commission meeting to order at 7:00 p.m.

**ROLL CALL**

The following Commissioners were present: Chair Solomonson; Commissioners, Doan, Ferrington, McCool, Peterson, Schumer, and Thompson.

**APPROVAL OF AGENDA**

MOTION: by Commissioner Schumer, seconded by Commissioner Thompson to approve the May 26, 2015 Planning Commission meeting agenda as presented.

VOTE: Ayes - 7 Nays - 0

**APPROVAL OF MINUTES**

Chair Solomonson noted that the adjournment vote on page 13 should be should be 7 to 0, not 6 to 0.

MOTION: by Commissioner Schumer, seconded by Commissioner McCool to approve the April 28, 2015 Planning Commission meeting minutes, as amended.

VOTE: Ayes - 7 Nays - 0

**REPORT ON CITY COUNCIL ACTIONS**

**Presentation by City Planner Kathleen Castle**

The following items were approved by the City Council as recommended by the Planning Commission:

- Comprehensive Sign Plan, M T Holdings, 1027 Tomlyn Avenue
- Text Amendment to Section 212 of the City Code to be consistent with State Building Code

## **OLD BUSINESS**

### **PUBLIC HEARING – VARIANCE / MAJOR SUBDIVISION**

**FILE NO: 2568-15-11**  
**APPLICANT: DONALD F. ZIBELL**  
**LOCATION: 3422 CHANDLER ROAD**

#### **Presentation by Senior Planner Rob Warwick**

The Planning Commission reviewed the applications for a preliminary plat and variance for this major subdivision application at its April 28th meeting. The public hearing was continued and the review period extended to 120 days in order to provide the applicant opportunity to make revisions and apply for needed variances.

In 2014, the City approved a minor subdivision that adjusted the north property line to the current property configuration with development of Lot 4. The subdivision agreement requires removal of the existing tennis court and adjacent detached accessory structure later this year. There is also a stable building that will be removed.

The current proposal is to subdivide 3.6 acres of upland into 8 lots, 2 riparian and 6 non-riparian, for detached single-family development. Land use for this property is designated Low Density Residential (RL) in the Comprehensive Plan, which is 0 to 4 units per acre. Density for this proposal, including the right-of-way, is 2.2 units per acre. The existing home, garage and swimming pool will remain on Lot 5. Access to the lots will be provided by a new public road extending east from Chandler. Storm water will be managed with a bio-filtration system on Lot 4.

The applicant has revised the utility plan to address the concern regarding infrastructure on Lot 4. The existing driveway has been altered on Lot 5 to conform to the required 5-foot side setback. The grading plan has been revised to show location of landmark trees. The variance requests submitted are: 1) to increase the Ordinary High Water (OHW) setback for the future house on Lot 4; 2) to reduce the lot depths for Lots 6, 7, and 8, which are key lots and require an added 15 feet of depth per Code; 3) reduce lot frontage on a cul-de-sac for Lot 4 to 72 feet; and 4) to allow an increased setback for the house pad from the Ordinary High Water (OHW) on Lot 4. The variance for the house pad setback is due to the drainage and utility easement and filtration basin. The west side of the easement is at approximately 85 feet from the OHW. It may be possible for a new home to comply with setback regulations, but the distance between the maximum front setback and the maximum OHW will be between 80 and 100 feet. Existing drainage flows to the lake and off-site to the south. The storm water management plan complies with the standards of the City and Ramsey Washington Metro Watershed District to address storm water quality and quantity with best management practices for construction and erosion control.

The proposed public street extends east from Chandler approximately 325 feet to end in a cul-de-sac. It is consistent with City design standards and will be constructed by the developer. It will become part of the public street system in the City.

Approximately 70 landmark trees have been identified on the property. It is estimated that about half will be removed. Code requires replacement with 6 new trees for every landmark tree removed for the street, grading and house construction.

The applicant states that the key lots comply with all City requirements, including the increased rear setback of 40 feet. Further, the 72-foot wide frontage on the cul-de-sac is over twice what is required (30 feet) for non-riparian lots. Staff believes it may be possible to construct a house on Lot 4 that complies with the OHW setback. Staff has recommended withdrawal of the application for this variance in order for the builder to design the home and apply for variances as needed.

Staff believes that the existing 304 foot width of the existing parcel creates practical difficulty. With a 50-foot street width requirement, the remaining 254 feet divided evenly gives a lot depth of 127 feet. The lot pattern proposed continues the existing pattern of lots along the south side of Lake Wabasso Court and so will not alter the character of the neighborhood. The developer will not be building homes but will sell the lots. The proposed lots comply with minimum standards of the R1 District. Lots 4 and 5 are the two riparian lots. The OHW for Lake Wabasso is 886.9 feet. A width of 100 feet is required at the shoreline, at the building setback and at the front lot line. The minimum area required is 15,000 square feet above the OHW. Lot 4 has 29,000 square feet of area. City regulations for riparian lots do not have a provision allowing reduced frontage similar to regulations for non-riparian lots. Staff believes that the large lot area and consistent width of 100 feet meet the intent of the Code.

Notice of the public hearing was again published in the City's legal newspaper and mailed to property owners within 350 feet of the subject property. Concerns expressed regard loss of green space, environmental impacts on nearby lakes and wildlife, increased traffic and construction noise. The Fire Marshall has reviewed the plans and had no comment. The project is subject to a watershed district permit.

It is recommended the public hearing be reopened to take testimony. Staff has made affirmative findings for the variance requests. Approval is recommended for the variances and a recommendation of approval for the Preliminary Plat be sent to the City Council.

Commissioner McCool noted that the applicant is willing to work with adjoining landowners for screening for Lots 6, 7 and 8 and asked if that would be included in approval conditions. Mr. Warwick explained that Code does not require screening to separate residential uses from residential uses.

Commissioner Doan asked for the rationale as to which landmark trees would be removed and which would remain. Mr. Warwick stated that the impact of grading and construction were the determining factors. Trees generally do not survive grading changes. Commissioner Doan commended the applicant for saving as many landmark trees as possible and further encouraged

use of any construction methods available that would preserve more of them, especially the one close to Chandler on Lot 8 and another on Lot 7.

Commissioner Ferrington asked if it would be possible for the six lots on the road to have a closer setback to the street to create more open space and distance between neighboring houses to these key lots. The applicant has suggested this possibility. Mr. Warwick stated that the house pads are shown 30 feet from the street. Setbacks are dictated by Code and a very good reason would be needed to require an increased setback from what is stipulated in Code.

City Attorney Joe Kelly added that such a stipulation could be considered arbitrary. Good grounds would be needed to alter what is required by Code. Further, he stated that he has reviewed the affidavits for the public hearing, and proper re-notice has been given.

Chair Solomonson re-opened the public hearing.

**Mr. Jerry Kleffman**, 3400 Chandler Road, suggested a compromise that Lots 1, 2, 3 and 4 be developed as planned. He also suggested that the 50-foot road be moved south 50 feet to increase the buffer between the existing house at 3410 Chandler from 100 feet to 300 feet. Lot 5 could still be developed, but there should be no key lots that are dimensionally challenged. It will be difficult to construct homes without variances. The widths of Lot Nos. 6, and 7 do not satisfy the needed width for a key lot and asked if another variance would be needed. The neighborhood deserves the larger buffer zone. **Mr. Kleffman** stated that according to the tree ordinance, approximately 200 trees will be needed for replacement of landmark trees. There will not be room on the site and then the City will determine where the replacement trees will be planted. This downgrades the neighborhood with loss of trees. He recommended the application be denied.

**Mr. John Kjarum**, 3410 Chandler Road, expressed concern about the number of key lots that will abut neighboring residential properties. He asked if there is any City precedence regarding the number of key lots created for new development.

MOTION: by Commissioner Schumer, seconded by Commissioner McCool to close the public hearing at 8:00 p.m.

VOTE: Ayes - 7 Nays - 0

In answer to questions, Mr. Warwick explained that the Code reads that 15 feet will be added to width or depth for key lots. The intent is to insure sufficient area for the building pad because of the increased required setbacks. The additional rear yard setback for Lot Nos. 6, 7 and 8 meets Code. He further stated that the regulations for key lots were adopted in 2008. Prior to 2008, there was no definition of key lots. Since adoption of the regulations, the City has had 17 subdivision applications. The highest number was a plat on Turtle Lake Road which had four key lots. There have been 13 minor subdivisions since those regulations were adopted. Half had key lots; two requested variances to depth and/or width.

Commissioner Peterson stated that the variances are reasonable. While the character of the neighborhood is changing, it is not because of those variances. He would like to see a strong buffer and tree replacement plan.

Commissioner McCool stated that the property is zoned correctly for a subdivision. The layout and variance requests are reasonable. Even though the lots are smaller, the increased setbacks required by Code will be kept. The character of the neighborhood will change, but it is because of an accepted opportunity for this property owner to develop a large parcel. He does not favor the variance setback from the OHW on Lot 4.

Commissioner Thompson expressed her concern about crowding three key lots into this development. The impact would be significantly reduced if there were only two key lots.

Chair Solomonson noted that prior to 2008, these lots were treated like any other lot. He supports the application and the increased rear setback required. He agreed that the OHW variance needs to be withdrawn. City Planner Castle clarified that the Code requires a rear setback of 40 feet for key lots; the Commission could increase that requirement.

Commissioner Ferrington noted that there is a steep hill between the neighborhood and the new homes. It will be a challenge to put in new trees. She would support a 45-foot rear setback with a 25-foot front setback.

Commissioner Thompson agreed with the increased rear setback to 45 feet.

**Mr. Don Zibell**, 3224 Chandler Road, Applicant, agreed to withdraw the variance application for the OHW on Lot 4. He stated he does not intend to build on the lake lot in the near future. Further, most trees on Lot Nos. 7 and 8 are cottonwood trees which are very messy. There will be grading and fill in that area. He does not plan to replace the trees with cottonwoods.

Mr. Warwick suggested modifying condition No. 8 to the motion for the Landscape Plan to include planting conifers along the rear lot lines of Lot Nos. 6, 7 and 8 for buffering purposes.

**MOTION:** by Commissioner Ferrington, seconded by Commissioner Schumer to adopt Resolution 15-40 approving the variances to reduce the front lot line for Lot 4, and to reduce the lot depth for Lots 6, 7, and 8, and to recommend the City Council approve preliminary plat submitted by Donald Zibell to subdivide and develop the property at 3422 Chandler Road into lots for single-family detached homes. Said recommendation for approval is subject to the following conditions, with the change to condition No. 2 under that a minimum 45-foot South rear lot line is required for principal and accessory structures developed on Lots 6, 7 and 8. Further, condition No. 8 should include a provision in the Landscape Plan that conifers will be planted along the rear lot lines of Lot Nos. 6, 7 and 8 for screening and buffering.

## **VariANCES**

1. This approval is subject to approval of the Preliminary Plat application by the City Council.
2. A minimum setback of 45 feet from the South (rear) lot line is required for the principal and accessory structures developed on Lots 6, 7, and 8.
3. This approval will expire after one year if the subdivision has not been recorded with Ramsey County.
4. The approval is subject to a 5-day appeal period.

## **Preliminary Plat**

1. The approval permits the development of a detached residential subdivision providing 8 lots for single family residential development.
2. Final grading, drainage and erosion control plans are subject to the review and approval by the Public Works Director prior to approval of any permits or the Final Plat. Concerns identified by the City Engineer shall be addressed with the Final Plat submittal.
3. Final utility plans are subject to review and approval by the Public Works Director.
4. The final street design is subject to review and approval of the Public Works Director.
5. Comments identified in the memo dated May 20, 2015 from the City Engineer shall be addressed with the Final Plat submittal.
6. A Development Agreement, Erosion Control Agreement shall be executed and related securities submitted prior to any work commencing on the site. A Grading Permit is required prior to commencing work on the site.
7. A Public Recreation Use Dedication fee shall be submitted as required by ordinance prior to release of the Final Plat.
8. The landscape/tree-replanting plan shall be provided in accordance with the City's Tree Protection Ordinance. Trees on the property, which are to remain, shall be protected with construction fencing placed at the tree drip lines prior to grading and excavating. Conifers will be planted along the rear lot lines of Lot Nos. 6, 7 and 8 for screening and buffering. Said plan shall be submitted for review and approval by the City Planner prior to submittal of the final plat application.
9. The Final Plat shall include drainage and utility easements along all property lines. Drainage and utility easements along the roadways shall be 10 feet wide and 5 feet wide along the side and rear lot lines. Other drainage and utility easements shall be provided over the proposed bio-filtration area, future public infrastructure and as required by the Public Works Director.

10. The developer shall secure a permit from the Ramsey Washington Metro Watershed District prior to commencing any grading on the property.

This approval is based on the following findings:

1. The proposed development plan supports the policies stated in the Comprehensive Plan related to land use and housing.
2. The proposed development plan carries out the recommendations as set forth in the Housing Action Plan
3. The proposed development plan will not adversely impact the planned land use of the surrounding property.
4. The width of Lot 4 complies with the 100-foot required for a riparian lot measured between the side lot lines, throughout its depth.
5. The future structures on Lots 6, 7, and 8 will comply with the 40-foot structure setback required for Key Lots, and so provide the separation intended by City Code.
6. With approval of the variances to reduce the frontage for Lot 4, and the lot depths for Lots 6, 7, and 8, the preliminary plat complies with the subdivision and minimum lot standards of the Development Code.

**VOTE:**                      Ayes - 7                                      Nays - 0

Discussion:

Commissioner Doan noted that condition No. 5 under Findings of Fact should also be changed to a 45-foot setback.

City Attorney Kelly stated that a motion is needed to reconsider the motion with the correction to the Findings of Fact.

**MOTION:**     by Commissioner Doan, seconded by Commissioner Thompson to reconsider Resolution 15-40, adding an amendment to the Findings of Fact that future structures on Lot Nos. 6, 7, and 8 will comply with a 45-foot rear setback as required for key lots.

**VOTE:**                      Ayes - 7                                      Nays - 0

**NEW BUSINESS**

**PUBLIC HEARING - CONDITIONAL USE PERMIT/VARIANCE**

**FILE NO:**                      **2571-15-14**  
**APPLICANT:**                **RUSSELL WEAVER & PEGGY HUSTON-WEAVER**  
**LOCATION:**                    **4344 SNAIL LAKE BLVD.**

**Presentation by Economic Development and Planning Associate, Niki Hill**

This application is for a Conditional Use Permit (CUP) to construct a 192 square foot detached accessory structure. As the property is less than one acre, a CUP is needed for an accessory structure larger than 150 square feet. A variance is also requested, as the applicant plans to build the shed in the side yard adjacent to the side of the garage. A CUP requires that the shed be built in the rear yard. The same architecture features as the garage and the house will be used for the shed.

The property consists of 21,461 square feet. It is a standard lot with 105 feet of width on Snail Lake Blvd and a depth of 236 feet. There is an existing single-family home and detached 3-car garage.

To justify the variance, the applicant states that the detached accessory structure fits the purpose and intent of the City's Comprehensive Plan because it complements the house and garage and does not detract from the property. The variance is requested due to the topography of the property that has a steep slope east of the proposed building. Access to the new structure would be almost impossible if it were located in the rear yard. The shed will store outdoor equipment that is used in the front of the property.

Dimensions, setback and square footage for accessory structures all meet City standards. A new flower garden is planned in the 10 feet between the new structure and lot line to help with screening.

Staff agrees that practical difficulty exists due to the topography. Locating a shed on the side of the garage is a reasonable use of the property. The proposed 30-foot setback from the front lot line is also reasonable because it is behind the setback of the existing garage and behind the 25-foot setback of the property to the north.

The property has unique circumstances with the steep slope from west to east leaving 14 feet from the front of the garage to the rear of the house. The slope continues to lose 6 feet for 30 feet behind the house before leveling off. A shed in the rear yard would not allow any functional use. As the shed will be further back than the setback of the garage, it will not impact the character of the neighborhood. The neighborhood is a mix of riparian and non-riparian properties that vary in size, setbacks and overall look.

Notices were sent to property owners within 350 feet. Two written comments were received in support of the proposal. Staff is recommending approval of the variance subject to the conditions in the staff report and a recommendation to the City Council to approve the CUP.

City Attorney Joe Kelly stated that he has reviewed the affidavit and finds that proper notice was given for the public hearing.

Chair Solomonson opened the public hearing.

**Mr. Russ Weaver**, Applicant, stated that he would answer any questions.

Commissioner Ferrington noted that there is water at the bottom of the slope in this yard.

MOTION: by Commissioner Schumer, seconded by Commissioner Thompson to close the public hearing at 8:34 p.m.

VOTE: Ayes - 7 Nays - 0

MOTION: by Commissioner Schumer, seconded by Commissioner Thompson to approve the variance request submitted by Russell Weaver for their property at 4344 Snail Lake Blvd, allowing the permitted structure to be located in the sideyard, setback 30 feet from the front lot line; and adopt Resolution No. 15-36, subject to the following conditions:

1. The project must be completed in accordance with the plans submitted as part of the Variance application. Any significant changes to these plans, as determined by the City Planner, will require review and approval by the Planning Commission.
2. This approval will expire after one year if a building permit has not been issued and work has not begun on the project.
3. The structure shall be used for the personal storage of household and lawn equipment.
4. The structure shall not be used in any way for commercial purposes.
5. This approval is subject to a 5-day appeal period. Once the appeal period expires, a building permit may be issued for the proposed project. A building permit must be obtained before any construction activity begins.
6. The approval is contingent upon approval of the Conditional Use Permit.

This motion is based on the fact that Practical Difficulty is present as identified in the findings in Resolution 15-36.

MOTION: by Commissioner Schumer, seconded by Commissioner Thompson to recommend the City Council approve the Conditional Use Permit for a 192 square foot detached accessory structure at 4344 Snail Lake Blvd, subject to the following:

1. The project must be completed in accordance with the plans submitted with the applications. Any significant changes to these plans, as determined by the City Planner, will require review and approval by the Planning Commission.
2. The exterior design of the shed shall be consistent with the plans submitted and complement the home on the property.
3. The applicant shall obtain a building permit for the structure. The structure shall comply with the Building Code standards.
4. The accessory structure shall be screened from view of adjacent properties and public streets through the use of landscaping, berming, fencing or a combination thereof.
5. The structure shall not be used in any way for commercial purposes.
6. Said structure may be located in the sideyard, setback 30 feet from the front lot line per Resolution 15-36, approving the Variance.

VOTE: Ayes - 7 Nays - 0

## **VARIANCE**

**FILE NO:** 2574-15-17  
**APPLICANT:** JENNIFER & BRUCE ANDERSON  
**LOCATION:** 5855 DANIEL COURT

### **Presentation by City Planner Kathleen Castle**

The applicants seek to reduce the minimum 25-foot front setback to 22.5 feet on Daniel Court in order to put a porch addition onto the front of their home. The setback of the existing home is 31 feet. The porch would measure 8.5 feet by 26 feet. The property consists of 14,200 square feet with lot width of 88 feet. The lot depth is 140 feet. The existing home is two-story with an attached garage and other improvements on the property. The porch is part of planned further improvements, which include new siding and stone work on the front. The property is zoned R1, Detached Residential. The minimum front setback is 25 feet, Landings are a permitted encroachment as long as they do not exceed 5 feet by 7 feet.

The applicant states that the porch will replace a 4-foot overhang, which will improve the appearance of the home. It will also provide a covered entry. A unique circumstance of this property is that the home is not parallel to the road.

Staff finds that the proposal is consistent with City land use and housing policies. Practical difficulty is present. The unique circumstance of the orientation of the home and curve of the front property line results in a varied front setback. The southeast corner of the proposed porch will encroach into the front setback. There is no impact to the character of the neighborhood. The visual impact on established setbacks will not be apparent because the property is on a cul-de-sac.

Property owners within 150 feet were notified of the application. Two comments were received in support of the proposal. Staff agrees that practical difficulty is present and recommends approval of the variance with the conditions listed in the motion.

Chair Solomonson clarified that no steps or railing are needed. He noted that if a landing were put in, which is permitted, it would encroach 5 feet into the front setback, not 2.5 feet.

**MOTION:** by Commissioner Schumer, seconded by Commissioner Thompson to adopt Resolution 15-38 approving the requested variance submitted by Bruce and Jenny Anderson, 5855 Daniel Court, to reduce the required 25-foot structure setback from a front property line to 22.5' for a front porch addition. Said approval is subject to the following:

1. The project must be completed in accordance with the plans submitted as part of the Variance application.
2. The covered porch shall not exceed one-story in height and shall not be enclosed.

3. This approval will expire after one year if a building permit has not been issued and construction commenced.
4. This approval is subject to a 5-day appeal period.

This approval is based on the following findings of fact:

1. The proposed improvement is consistent with the policies of the Comprehensive Plan, including the Land Use and Housing Chapters.
2. Practical difficulty is present as stated in Resolution 15-38

Chair Solomonson stated that the unique circumstance of this application is the curvature of the cul-de-sac in front of the home, which allows him to support the request.

VOTE:                      Ayes - 7                      Nays - 0

Chair Solomonson called a 10-minute break and then reconvened the meeting.

**VARIANCE**

**FILE NO:                      2573-15-16**  
**APPLICANT:                 LOUIS CECIL METZ**  
**LOCATION:                     3435 MILTON STREET NORTH**

**Presentation by Economic Development and Planning Associate, Niki Hill**

This variance application seeks permission to build a 60 square foot detached accessory structure within 2 feet of the east side property line, in the exact same location as an existing shed. Because the setback is less than 10 feet, a variance is required.

The property is a sub-standard lot with a width of 125 feet on Milton Street. The lot depth is 105 feet. It is developed with a single-family home and attached 2-car garage.

The applicant states that justification for the variance is in the shallow lot depth and placement of the house on the lot. A shed placed at the required 10 feet would place it too close to the deck and would significantly reduce the usefulness of the back yard. Other areas in the rear yard have trees, planting beds and/or a sloping terrain. The replacement shed is almost the same size as the existing shed that has been in its current location for 35 years. The replacement shed would cause minimal alteration of the character of the neighborhood.

Staff finds that practical difficulty is present. The request to replace the the old shed is a reasonable use of the property. The City supports and encourages reinvestment in property. The unique circumstance of less than 125 feet in depth reduces the size of the rear yard. Moving the proposed shed to comply with required setbacks would impact existing plantings, landscaping and topography, as grading would be needed for site preparation. Since the existing shed has been in the proposed location for 35 years, there will be no change to the character of the

neighborhood. Also, there is a fence between the structure and the rear yard, which provides screening.

Notices were sent to property owners within 150 feet of the subject property. Two written comments were received supporting the project. Staff is recommending approval with the conditions listed in the motion.

Commissioner Schumer asked the reason for the variance. Ms. Hill explained that although the existing shed has been in that location for 35 years, no building permit was issued for it. It is considered an illegal non-conforming structure. The variance is needed to maintain the existing setback.

Chair Solomonson asked if the existing building is illegal or non-conforming. City Attorney Kelly explained that the difference is between legal or illegal non-conforming. It is not a traditional non-conforming use because no building permit was ever issued.

Commissioner Doan asked if consideration was given to placing the new shed in a different location. Ms. Hill responded that other locations were discussed, but due to existing landscaping, landmark trees and the topography which would require grading, staff believes the current location is the best one.

Commissioner Doan asked the location of the fence. The applicant stated that the fence is at the rear property line. It belongs to the neighbor and is on the neighbor's side of the property line.

Commissioner Ferrington asked if a building permit would have been required for this shed 35 years ago. City Planner Castle stated that the Code did address accessory structures, but she is not sure if a permit would have been required.

Chair Solomonson asked if the shed could be located in the southwest corner with a 10-foot setback that would be in compliance.

**Mr. Louis Metz**, Applicant stated that there is a large tree in the southwest corner, and the topography slopes upward toward the neighbor's house. He added that he was the owner 35 years ago and was unaware that any permit was needed.

Chair Solomonson asked how the status of the structure would change if a building permit were not required 35 years ago. City Attorney Kelly stated that the shed would then be considered a legal non-conforming use. Permits were issued for detached accessory structures at that time, even though the Code requirement was unknown.

**MOTION:** by Commissioner Schumer, seconded by Commissioner Thompson to approve the variance request submitted by Louis Cecil Metz for their property at 3435 Milton St. N., reducing the minimum 10 foot structure setback from a rear property line to 2 feet and adopt Resolution No. 15-37, subject to the following conditions:.

1. The project must be completed in accordance with the plans submitted as part of the Variance application. Any significant changes to these plans, as determined by the City Planner, will require review and approval by the Planning Commission.
2. This approval will expire after one year if a building permit has not been issued and work has not begun on the project.
3. The structure shall be used for the personal storage of household and lawn equipment.
4. The structure shall not be used in any way for commercial purposes.
5. This approval is subject to a 5-day appeal period. Once the appeal period expires, a building permit may be issued for the proposed project. A building permit must be obtained before any construction activity begins.

This motion is based on the fact that Practical Difficulty is present as identified in the findings in Resolution 15-37.

Discussion:

Commissioner McCool stated that a setback of 2 feet is difficult for him to support, and he believes there may be an alternate location available. The only reason he can support it is because the existing shed has been in this location 35 years.

Chair Solomonson noted the orientation of the house at 3422 would be impacted more if the shed were moved further south.

VOTE:                      Ayes - 7                      Nays - 0

**MINOR SUBDIVISION/VARIANCE**

**FILE NO:                      2575-15-18**  
**APPLICANT:                TODD SHARKEY LAND DEVELOPMENT**  
**LOCATION:                    4965 HANSON ROAD**

**Presentation by Asst. City Manager/Community Development Director Tom Simonson**

The minor subdivision proposal is to create two parcels including one new vacant lot. The application requires a variance because the new parcel would not have frontage on a public street. The proposal also establishes a minimum front setback for any future house that is built. There is an existing home on Parcel B, which would be removed and replaced. The variance is requested for the new Parcel A, which is west of Parcel B, and will access off a private 30-foot roadway easement. It has been established that the applicant has legal rights to access the easement. Within the easement is a 12-foot wide private drive that serves seven homes.

Sewer and water are available to the new Parcel A from Hanson Road across Parcel B. This would require a 10-foot dedication for a utility easement along the south lot line of Parcel B. The home on Parcel B has a 16-foot setback from the south property line. The City’s 10-foot utility easement will easily fit within that setback and cause no impact to the existing home.

Water is also available through a City easement. However, the City easement is under the private roadway, and there is a question as to whether the City would have access rights to the private easement. With utility access from Hanson Road, this is not an issue. Grading, drainage and tree preservation plans are not required at this time prior to the building permit process. The City Engineer has reviewed drainage in the area and does not anticipate any problems from grading for a new house.

Both parcels exceed the minimum requirements for area and width. The key lot depth requirement is 140 feet. New Parcel A will have a depth of 143.44 feet; Parcel B is 138.95 feet. Staff is recommending a slight modification to achieve a depth of 140 feet for Parcel B to be in compliance.

The buildable area for Parcel A is impacted by the house at 1000 Oakridge Avenue to the west. That house has a front setback of 89.29 feet, which exceeds the 40-foot minimum. Staff believes the greater front setback was allowed in 1993 for a possible future public cul-de-sac. The front setback for Parcel A is determined by the 89.29-foot setback at 1000 Oakridge, plus or minus 10 feet, the minimum being 79.29. As a key lot, Parcel A is required to maintain a 40-foot rear setback. With the front and rear setback requirements, a very restricted 24.15 feet is left as buildable area. Staff believes the front setback to be unreasonable and is recommending a front setback of 35 feet. The east side setback for a structure on Parcel A is a minimum 20 feet because it is a key lot. The west side minimum setback for Parcel A is 10 feet for a principle structure and 5 feet for a garage or accessory structure.

The proposal does meet the criteria necessary for a variance:

**Reasonable Use:**

The proposal is a reasonable use of the property. The property is guided and zoned for single-family development. The proposed parcels exceed lot area requirements and comply with dimension requirements for key lots with one slight modification to Parcel B. Parcel A would be served by access to a private roadway easement serving seven other homes and to which the applicant has a legal right to use. The private drive does provide adequate access for emergency vehicles and will not cause traffic or public safety concerns.

**Unique Circumstances:**

There are unique circumstances in that the property has frontage on both a public and private road. The property has legal access to the private roadway easement. A future public road is not likely because of the limited land for future subdivision. The house at 1000 Oakridge does restrict the buildable area for Parcel A. This circumstance was not caused by the applicant.

**Character of the Neighborhood:**

The proposed subdivision to build one additional single-family residential parcel will not alter the character of the neighborhood. Lot sizes vary with larger riparian property along portions of Hanson Road but also more traditional sized lots scattered in the area. A house on Parcel A will not visually impact properties immediately to the south or west.

The Fire Department has reviewed the subdivision and has no concerns as long as No Parking is maintained on the access easement and clear space is maintained.

Notices were sent to property owners within 350 feet of the subject property. Written comments have been made available to the Planning Commission for review.

Staff supports the proposal because the applicant has legal rights to the private roadway easement, which serves other homes. A new lot was approved for this private roadway in 1993. The restrictive front setback and limited buildable area for Parcel A is a hardship not created by the applicant, since the City allowed the larger front setback for 1000 Oakridge Avenue. Parcel A meets all Code requirements for single-family residential development. Staff recommends approval of the variance for Parcel A with access to the private roadway easement and establishing a front setback of 35 feet for a future house on Parcel A. Staff also recommends forwarding the minor subdivision to the City Council for approval. Approval is based on the conditions listed in the staff report. Mr. Simonson noted that condition No. 8 under the Minor Subdivision; the south side setback should be 10 feet not 15 feet.

Commissioner Peterson asked for some indication of the drainage pattern since there is no storm sewer. Mr. Simonson stated that most of the water flows along the edge of the private driveway to Hanson Road. The City Engineer believes a swale on Parcel A could drain along the north on Parcel B to Hanson Road. No increased water flow will leave the property.

Commissioner McCool asked the location of the new driveway. He noted a gap between the easement and the property itself. Mr. Simonson stated that there is a sliver of green space between the easement and the north line of the Sharkey property. He anticipates that the homeowner of Parcel A will maintain that piece. The house plan usually dictates the driveway location. Regardless of the location of the driveway, Parcel A has the right to access the private drive easement.

City Attorney Kelly agreed. He stated that the 30-foot private road easement directly abuts Parcel A to the north so there would be direct access.

Commissioner Doan questioned the 5-foot setback shown on the west side of the property and asked if it should be 10 feet. Mr. Simonson explained that the 5 feet shown assume the garage is on the west side. If the house is on the west side, the setback must be 10 feet.

Chair Solomonson opened the discussion to public comment.

**Mr. Todd Sharkey**, 4965 Hanson Road, Applicant, stated that he would be willing to answer any questions.

**Ms. Lynn Iwaszko**, 999 Oakridge, stated that her biggest concern is drainage. The City Engineer has indicated no problem, but she wants to be sure the water flows south. Currently, water on the private drive flows north across the riparian properties to the lake. Water gushes down the driveways. Residents have put in dry riverbeds to try to control the water. Because there is no storm sewer, she would like to see plans that show drainage from Parcel A across

Parcel B to Hanson Road. She owns the 5 or 6 feet of green space on the north part of the yard for Parcel A. The owner of Parcel A has an easement, but she is not willing to give 5 or 6 feet of her yard for that owner to take over and mow it. This proposal will change the character of the neighborhood. She noted the Anderson subdivision in 1998 was a 4-acre lot divided into 2 1.5+ acre lots. At that time, Mayor Martin stipulated that no further subdivision should occur in the private drive because of safety. Those stipulations sit today on large properties that cannot subdivide until there is a public road. She would like to see the same stipulations applied to the Sharkey property before this variance is approved.

**Mr. Dennis Jarnot**, 1000 Oakridge Drive, stated that when the Anderson subdivision occurred, his house was set back 89 feet to help drainage. The lots in the area are big with lots of green space. To allow a new home with a 35-foot setback would block his view. The lots to north are at a lower elevation. It is difficult to contain water flow. Ten years ago the City Council came to the consensus that it is bad policy to grant a variance for a lot split and then grant another variance for a house to be built on the new lot. It is his understanding that the Hanson property will always have access rights to the private easement, but former City Attorney Filla believed there would be a legal question as to whether the new parcel would have the same rights. Neighbors are overwhelmingly opposed to this subdivision.

**Mr. David Hill**, 4957 Hanson Road, expressed concern about water runoff. This is a very flat area. Water barely drains off his property. If building occurs, water will definitely increase on his property. This issue keeps coming up. This application has been denied once by the City Council and that decision should stand.

**Mr. Todd Sharkey**, 4965 Hanson Road, Applicant, responded to Ms. Iwaszko by stating that the soil is sand. It drains well and is good for building. The water issues on the Iwaszko property has to do with the number of buildings on that property--a barn, a chicken coop, large surface of driveway plus one other structure. The City Engineer has done an in-field study. There needs to be proof that shows the water issues commented on by neighbors. As for the 5 or 6 feet of yard that belongs to Ms. Iwaszko, that is on the other side of the road from the rest of her property and directly abuts Parcel A. He would expect the new owner to just mow it and take care of it. If she does not want a driveway through there, he would not want her to trespass on the private drive that crosses his property.

Further, Mr. Sharkey stated that Mr. Jarnot's house setback at 89 feet has no variance. An opinion from the City's current law firm states that it is a violation Data Practices Act per state statute to not have a variance on file. As to Mr. Jarnot's view, it is difficult to see his house from the middle of Parcel A because of the many trees to the north and east. It is not representative of the character of the neighborhood to say that one home on a small parcel will change it.

Mr. Sharkey stated that the private drive was built by Mr. Jarnot without a permit until post-construction. However, in the legal description of Mr. Jarnot's property, there is no mention of roadway rights to the easement. Any houses west of the Iwaszko property do not have legal rights to the easement. Former City Attorney Filla gave an opinion on access rights to the private easement identifying only the Sharkey property, the Merkel property, and the Iwaszko property. In 1993, Mr. Anderson applied for a subdivision with access to the private easement.

Previous to this application, Mr. Anderson had been trying to sell his house for a year. He was unable to sell because he did not have legal access to the easement. In researching the issue Mr. Sharkey found that there is a driveway through Mr. Jarnot's property to the Anderson property. He believes that when the City created the subdivision where the Jarnot property is located, the City used eminent domain to take private property for the benefit of other property owners to have access to the private easement.

The distance from the proposed house on Parcel A to Mr. Hill's property is substantial. The soil is sandy, and he does not see any problem with water. Mr. Hill has given no proof to support his position. Further, there are two drains from Mr. Jarnot's property flowing toward his property. There was no drainage plan submitted for Mr. Jarnot's home. He would contend that if Mr. Hill is worried about water, a significant amount is coming from Mr. Jarnot's property.

**Mr. Jarnot** stated that he did not put in the concrete driveway in. A licensed contractor was hired to do it. If there is no permit, it is the contractor's responsibility.

City Attorney Kelly stated that what is before the Commission is a subdivision and variance application. When an easement is granted, there is no obligation to maintain it, but access to the property through the easement cannot be blocked. The 30-foot easement is purely for driveway or roadway purposes.

Commissioner Ferrington referred to the question of whether Parcel A would have legal access to the road easement even though legal access has been granted to the Sharkey property. City Attorney Kelly explained that granting easement access is for the entire property, even if it is subdivided. The legal opinion on the easement itself is based on the documents submitted by the applicant. With review of statutes and plats and everything recorded, he notes that the Marketable Title Act could kick in, which means the easement has to be used unless there is something filed. The documents reviewed show access to the property, and there has been no abandonment of the easement.

Commissioner McCool stated that a drainage plan is necessary and will be reviewed before a building permit can be issued. This application is in regard to lot lines and easement areas. The design of the development is not part of this review. He believes the subdivision is reasonable. It will not change the character of the neighborhood.

Chair Solomonson stated that while he would like to see a public street, that is not the fault of the applicant. The lot is large enough to subdivide and he supports this application.

Commissioner Doan requested a discussion of setbacks. His concern is that documents presented will be used to show buildable area. He especially referred to the 10-foot setback on the south lot line of Parcel B, which he believes should be more than 10 feet. These are key lots and there is discretion to increase setbacks.

City Attorney Kelly stated that the documents only show potentially where a building might be placed. Mr. Simonson agreed and stated that the south line on Parcel B requires a 10-foot setback. There is also 10-foot utility easement requested. Parcel B is a key lot due to its

orientation from Parcel A, not from the property to the south. Staff believes the standard setback is adequate because there is no home to the south.

**MOTION:** by Commissioner McCool, seconded by Commissioner Ferrington to adopt Resolution No. 15-39 approving the variance to waive the public street frontage requirement for Parcel A and establishing a minimum front setback for a future house on Parcel A, and to recommend approval of the minor subdivision to the City Council, based on the following conclusions:

- a. It has been established that the applicant/property owners have legal access to the private roadway easement which currently serves other residential properties, including a new lot the City approved in 1993.
- b. The restrictive front setback and limited buildable area that would be required for Parcel A is a hardship not created by the applicant since the City allowed a much greater front setback through the issuance of a building permit for 1000 Oakridge Avenue.
- c. The proposed Parcel A meets or exceeds all lot dimension standards required by City development regulations for a single-family residential parcel.

and subject to the following conditions, with the change to Condition No. 8 under Minor Subdivision for the Side South setback to be 10 feet:

**Variance:**

1. This approval is subject to approval of the Minor Subdivision application by the City Council.
2. This approval will expire after one year if the subdivision has not been recorded with Ramsey County.
3. The approval is subject to a 5-day appeal period.

**Minor Subdivision**

1. Approval of the Minor Subdivision is contingent upon the approval of a variance permitting private road access for Parcel A.
2. The Minor Subdivision shall be in accordance with the plan submitted, however, the depth for Parcel B shall be increased to 140 feet and revised prior to recording.
3. The applicant shall pay a Public Recreation Use Dedication fee as required by Section 204.020 of the Development Regulations before the City will endorse deeds for recording. The fee will be 4% of the fair market value of the property, with credit given for the existing residence.
4. Public drainage and utility easements shall be dedicated to the City as required by the Public Works Director. The applicant shall be responsible for providing legal description for all required easements. Easements shall be conveyed before the City will endorse deeds for recording.
5. A 10-foot wide private easement shall be provided along the south boundary of Parcel B to provide municipal sanitary sewer service to Parcel A.
6. Municipal water and sanitary sewer service shall be provided to Parcel A.

7. For Parcel A, minimum structure setbacks from the property lines shall be as follows: Front - 35 feet, Side (East) - 20 feet, Rear - 40 feet, Side (West) 10 feet for the dwelling unit/5 feet for accessory structures.
8. For Parcel B, minimum structure setbacks from the property lines when redeveloped shall be as follows: Front - 10 feet, Side (South) - 10 feet, Rear - 40 Feet, Side (North - adjacent to private roadway) - 25 feet.
9. The applicants shall enter into a Development Agreement with the City. This agreement shall be executed prior to the City's release of the deeds for recording.
10. A Tree Protection and Replacement Plan shall be submitted for Parcels A and B with an application for a Building Permit for a new home on each parcel. Tree removal requires replacement trees per City Code. City requirements for the tree removal and protection plan shall be detailed in the Development Agreement.
11. A Grading and Drainage Plan shall be submitted for Parcels A and B with an application for a Building Permit for a new home on each parcel.
12. The items identified in the attached memo from the City Engineer shall be addressed prior to the issuance of a Building Permit for new homes on each parcel.
13. This approval shall expire after one year if the subdivision has not been recorded with Ramsey County.

This approval is based on the following findings:

**Variance:**

1. The proposed subdivision is consistent with the policies of the Comprehensive Plan, including the Land Use and Housing Chapters.
2. Access to Parcel A is provided by a private roadway and provides reasonable access for emergency vehicles.
3. Practical difficulty is present, as stated in Resolution No. 15-39

**Minor Subdivision:**

1. The subdivision is consistent with the policies of the Comprehensive Plan and with the spirit and intent of the Development Code.
2. The proposed lots conform to the other adopted City standards for the R-1 Detached Residential District.

**Discussion:**

Commissioner Doan requested that it be noted the slide showing buildable area, the areas in pink and green, is for illustrative purposes only and not specific dimensions to be used.

Commissioner McCool agreed and added that the dimensions are not accurate because the key lot modification to bring Parcel B into compliance is not shown.

VOTE:                      Ayes - 7                      Nays - 0

**MISCELLANEOUS**

**City Council Meetings:** Commissioners Schumer and Ferrington will respectively attend the June 1st and June 15th Council meetings.

**Workshop:** Chair Solomonson noted that the Commission held a workshop meeting immediately prior to this meeting.

**ADJOURNMENT**

**MOTION:** by Commissioner McCool, seconded by Commissioner Ferrington to adjourn the meeting at 10:34 p.m.

**VOTE:**                                      Ayes - 7                                      Nays - 0

**ATTEST:**

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Kathleen Castle  
City Planner