

DEEPHAVEN PLANNING COMMISSION

TUESDAY DECEMBER 19, 2006

7:00 P.M.

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**CALL TO ORDER:** Chairman Dyb called the meeting to order at 7:00 p.m.

**PRESENT:** Chairman Dan Dyb, Commissioners Joan Budd, Jeff McKinney, Warren Nelson (7:55) and Josh Sparber

**ABSENT:** Commissioners Walter Linder and Bob Werneiwski

**OTHERS PRESENT:** Councilmember Kim Crockett (7:11), Zoning Coordinator Gus Karpas and Special Counsel Kim Kozar.

Chairman Dyb called the meeting to order and declared a quorum.

**MINUTES OF November 21, 2006**

Motion by Commissioner Dyb, second by Commissioner Sparber, to approve the minutes of November 21, 2006 as presented. Motion carried 4-0.

**PUBLIC HEARINGS**

**PRELIMINARY PLAT/VARIANCE – McNulty Construction Company, Manor Road,** (R-2, 40,000) A preliminary plat request to subdivide an existing outlot located in the city of Deephaven into two lots and a variance request to waive the requirements of Section 1210.10(4)(g) of the subdivision ordinance which prohibits the development of slopes in excess of 30%.

Roger Anderson, Anderson Engineering, presented the request on behalf of McNulty Construction Company. He said the request is to subdivide an existing outlot into an outlot and an additional lot. He said a variance is required since the proposed access and buildable area in the proposed lot have slopes in excess of 30%, which are defined as prone to severe erosion and unbuildable under the city's ordinances.

He said the request is a reasonable use of the property and he views the property as a good site for development. Mr. Anderson displayed an aerial photo of the land and discussed the proposed layout. He said the property is characterized by a large wetland located in the center. He noted the proposed lot to be developed has frontage on Manor Road with access across Lot 1, McNulty Manor. He informed the Commission that neighbor acknowledgement forms had been sent to the two adjacent neighbors and returned to the city.

Mr. Anderson said there have historically been a couple of issues with the property. The biggest issue being access. He noted the reviews done by the Fire Inspector and Police Chief. He said that the issues all revolve around grade, access and a turnaround. He said their points of concern can be addressed and their requirements met. He explained to the Commission that any structure constructed would be protected with a fire suppression system.

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Mr. Anderson said another issue with the property has been the wetland area. He said rules have changed over the years requiring additional protection of wetland areas. He noted that the proposal can comply with the setback requirements of both the City of Deephaven and the Minnehaha Creek Watershed District (MCWD).

He said since the request was last before the city, ordinances on access have been clarified with specific definitions and requirements. In addition, changes have been made in erosion control policies by the Minnesota Pollution Control Agency (MPCA). He said all issues in these areas can be taken care of.

He said the request boils down to the ability to have a reasonable use of the property. City restrictions on the development of steep slopes create an undue hardship in the development of this property. He referenced his scaled model of the property and commented that a thirty percent slope isn't as steep as it sounds, noting that most typical walkouts exceed that percentage of slope.

Mr. Anderson noted there is no structure footprint on the proposed lot. He said this is due to the fact that McNulty is a custom home builder and doesn't know what would be placed on the property until a client has been found. He said regardless of the specific home to be placed on the lot, the issues raised by the Fire Inspector can be addressed during the site plan review process. He said again that the request comes down to the reasonable use of the property.

Chairman Dyb opened the public hearing. Hearing no public comment, the hearing was closed.

Chairman Dyb asked about the development of Lot 1, McNulty Manor and how the driveway access will affect its development. Mr. Anderson said that the property is still owned by Mr. McNulty who wants to hold the property until this issue is settled. It gives him the ability to control any easement adjustments during the process.

Commissioner McKinney questioned the buildability of Lot 1, McNulty Manor due to setbacks from the proposed street. He asked if the proposed access would be a shared access between Lot 1, McNulty Manor and Lot 1, McNulty Manor 2<sup>nd</sup> Addition. Mr. Anderson said it hasn't been determined yet, but that alternatives can be developed if necessary to comply with city requirements.

Chairman Dyb also questioned the setbacks on Lot 1, McNulty Manor, saying he's trying to figure out how a house can fit on that property and comply with the required setbacks. Mr. Anderson said they have no intentions of developing the property in such a way that Lot 1, McNulty Manor becomes unbuildable.

Chairman Dyb commented that requests for this property have been before the city numerous times over the last twelve years and noted that a lot of work has been put in on both sides to reasonably develop the property. He asked what has changed on this request when compared to previous requests. Mr. Anderson said the comfort level with the proposed access has changed.

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He said recent changes in the city's ordinance clarify what is required to address fire safety issues. In addition, wetland regulations have also been clarified. He said even the slope issues have been clarified since the last submittal. He believes the plat can comply with the regulations and in terms of the variance request, it comes down to the reasonable use of the land. Mr. Anderson said that the recent changes and clarifications in the ordinance helped facilitate the recent approval of the Bowman Plat.

Zoning Coordinator Karpas summarized the request saying the request is to create a plat with an outlot and an additional lot. Though the proposed lot comply with the dimensional requirements of the ordinance, a variance is required since the proposed access and buildable area of Lot 1, McNulty Manor 2<sup>nd</sup> Addition would need to disturb greater than 30%, defined as Slope Prone to Severe Erosion. He said both the Comprehensive Plan and Subdivision Ordinance require that these slopes remain undeveloped and kept in a natural state.

In addition, Karpas explained that the city's Subdivision Ordinance requires that all lots be connected to a public street by means of a public or private street. It also requires specific turn around standards for any public or private street that terminates. The proposed private street is not in compliance with the ordinance since the applicant doesn't show the required turn around for a terminal streets.

Chairman Dyb asked about the turnaround shown on the model presented by Mr. Anderson. Mr. Anderson said it was put on to be representative only and shows a fire code compliant turnaround. He said there are a great variety of turnarounds permitted by the fire code.

Attorney Kim Kozar asked if there was a proposed turnaround on the submitted plat. Mr. Anderson said no. Ms. Kozar asked if the proposed turnaround was shown on the proposed Lot 1, McNulty Manor 2<sup>nd</sup> Addition. Mr. Anderson said it was. Ms. Kozar asked if the turnaround shown on the model disturbed slopes greater than thirty percent. Mr. Anderson said it would.

Chairman Dyb noted the turnaround shown on the model is close the garage and asked, if a similar turnaround was proposed for the actual development, what would keep people from parking on the turnaround. Mr. Anderson said the Fire Inspector advised that no parking signs be placed along the length of the driveway and the turnaround area. He said this is a typical fire code requirement. He said the turnaround shown on the model is only a representation and that other options exist that would pull it away from a garage.

Commissioner Budd agreed with Dyb that the property has a long history with the city and again asked for clarification on what has changed from previous requests having not been on the Commission during the previous requests. Chairman Dyb said that specific regulation on emergency access were not clear. In addition, the specific slope regulations have been codified into the Subdivision Ordinance, where previously, they were only addressed in the Comprehensive Plan. Budd asked if the slope regulations included driveway accesses. Dyb said yes.

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Mr. Anderson presented a color rendering of the property showing the Steep Slopes (12%-30%) and Steep Slopes Prone to Severe Erosion (greater than 30%). Commissioner Budd asked Mr. Anderson to show her where a proposed hammerhead turnaround would be located and asked if it would require the disturbance of Steep Slopes Prone to Severe Erosion. Mr. Anderson indicated that the proposed turnaround would disturb Steep Slopes Prone to Severe Erosion.

Zoning Coordinator Karpas noted that the rendering indicated only the two types of slopes defined by the city and said that within that area of slopes greater than thirty percent, there could be slopes of much greater percentage than the minimum percentage that qualifies the slope as a Steep Slope Prone to Severe Erosion. Mr. Anderson said that was correct and that the rendering was not implying that thirty percent was the greatest slope. Karpas asked Mr. Anderson if he could get a copy of the color rendering and the earlier aerial photo for the city's file. Mr. Anderson said he would provide a copy of each.

Commissioner McKinney asked what future development plans were there for the remaining outlot. Mr. Anderson said there were no plans at this time and commented that there was only a small narrow area of land on the southeast portion of the property outside the wetland area. Zoning Coordinator Karpas informed the Commission that past requests on this property indicated that portion as a separate lot for development.

Commissioner McKinney asked how much fill would need to be brought onto the property to develop the access. Mr. Anderson said there's no specific number at this time. McKinney feels the applicant is building up the land to make it more suitable for development.

Chairman Dyb asked about snow removal on the private street and if the city had specific requirements. Zoning Coordinator said the city requires that all private street and fire access streets be cleared within twenty-four hours of any snowfall greater than two inches.

Commissioner Budd said she keeps looking at Sheet 2 of the submitted plat, showing the proposed building area and noted that it appears the entire buildable area is located in an area of greater than thirty percent slopes.

Commissioner Sparber said he had three questions. He noted that Mr. Anderson referenced the recent Preliminary Plat approval for the Bowman subdivision. He said that Preliminary Plat received conditional approval provided that a continuous driveway be installed to access all the proposed lots. He asked if such an access road could be put on this property. Mr. Anderson said the configuration of the property and available land prohibited the placement of a continuous road.

Commissioner Sparber said that Mr. Anderson referenced a hammerhead turnaround on the model presented to the Commission, but has not provided information on a specific turnaround on the proposed plat. He asked if there was any design for a turnaround available for the proposed plat that would not disrupt slopes greater than thirty percent. Mr. Anderson said he doesn't believe a turnaround can be developed that would not disrupt, at least some slopes

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greater than thirty percent. Sparber said that being the case, McNulty recognizes access cannot be achieved without the granting of a variance from the city.

Commissioner Sparber said his last question had to do with the specific building pad available to Lot 1, McNulty 2<sup>nd</sup> Addition. He asked Mr. Anderson to guess the approximate area within the building pad that contained slopes greater than thirty percent. Mr. Anderson said he would guess that about two thirds of the building pad area contained slopes greater than thirty percent.

Chairman Dyb said he's not supportive of the Preliminary Plat as presented. He said the city has looked at the development options for this property a number of times over the years. He said the regulations have become clearer. He doesn't see the property as developable from a building standpoint. The slopes are too severe. He said even those slopes under the thirty percent threshold, contain slopes ranging between 12 and 29.9%. He said he cannot support the request.

Commissioner Budd agreed with Dyb. She said, with the majority of the buildable area in slopes greater than thirty percent, she could not support the request.

Commissioner Sparber said he concurs. He said that not only does a majority of the building pad lie in slopes greater than thirty percent, so does the proposed emergency access. He's not supportive of the request.

**ACTION:** Motion by Commissioner Dyb to recommend that the City Council deny the preliminary plat and variance request to subdivide an existing property located in the City of Deephaven into two lots, as presented. The applicant has not demonstrated undue hardship in that there are no special circumstances or conditions depriving the applicant of a reasonable use of the land and that other reasonable uses exist. The granting of a variance would be detrimental to the neighboring properties and environment in that it would permit the development of slope areas protected by city ordinances. Commissioner McKinney seconded the motion. Motion carried 4-0.

**SPECIAL USE PERMIT – Amber Huttner, 18285 Minnetonka Boulevard,** (C-1, 10,000) special use request to operate a yoga studio in the C-1, Commercial District.

Zoning Coordinator Karpas informed the Commission that the applicant requested he present the request since they could not attend tonight's meeting. He said the request is to lease some space in Deephaven Court and operate a yoga studio. Section 1305.02(1)(94) permits physical culture and health services, reducing salons and masseurs as a special use in the C-1 District. There would be no change in the dimension of signage and parking would be achieved through the existing parking lot.

Chairman Dyb opened the public hearing. Hearing no comment the public hearing was closed.

Commissioner Sparber said he had no issues with the request and would defer to the recommendation of approval made by staff.

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Council Liaison Crockett asked why it was important to know the number of employees. Zoning Coordinator Karpas said in terms of parking. In this case parking won't be any issue, even with more employees.

**ACTION:** Motion by Commissioner Sparber to recommend that the City Council approve the special use request to operate a yoga studio in the C-1, Commercial District, as described, at 18285 Minnetonka Boulevard. The proposed use falls under the provisions of the city ordinance and is consistent with other uses in the district. Commissioner Dyb seconded the motion. Motion carried 5-0.

**LIAISON REPORT**

Zoning Coordinator Karpas informed the Planning Commission that the Council acted on the variance requests of Mike Ayers and Bill Melin. The Ayers request was approved unanimously. The Melin setback request approved unanimously, while his height request did not pass on a 2-2 vote.

The Kawell subdivision request was approved unanimously with a number of conditions including the installation of a fifteen foot wide paved fire easement.

The Council unanimously approved the ordinance amendment in regard to the Park Dedication Fee.

**ADJOURNMENT**

Motion by Commissioner Dyb to adjourn the meeting. Commissioner McKinney seconded. The motion carried 5-0. The meeting adjourned at 8:25 p.m.

Respectfully submitted,  
Gus Karpas  
Zoning Coordinator