

**MINUTES  
MINNETONKA CITY COUNCIL  
REGULAR MEETING, MONDAY, APRIL 7, 2008**

**1. CALL TO ORDER.**

Mayor Callison called the meeting to order at 6:30 p.m.

**2. PLEDGE OF ALLEGIANCE.**

All joined in the Pledge of Allegiance.

**3. ROLL CALL.**

Councilmembers Dick Allendorf, Brad Wiersum, James Hiller, Terry Schneider, Bob Ellingson, Tony Wagner, and Jan Callison were present.

**4. APPROVAL OF AGENDA.**

City Manager John Gunyou noted addenda to items 10D and 14A.

Schneider moved, Wiersum seconded a motion to accept the agenda with the addenda. All voted "yes." Motion carried.

**5. APPROVAL OF MINUTES: March 3, 2008 regular meeting.**

Wiersum moved, Schneider seconded a motion to approve the minutes of the March 3, 2008 Minnetonka City Council regular meeting. Wiersum, Hiller, Schneider, Ellingson, Wagner, and Callison voted "yes." Allendorf abstained. Motion carried.

**6. SPECIAL MATTERS: None.**

**7. REPORTS FROM CITY MANAGER & COUNCIL MEMBERS.**

Gunyou reported on the schedule for upcoming council meetings.

**8. CITIZENS WISHING TO DISCUSS MATTERS NOT ON THE AGENDA.**

No one appeared.

**9. BIDS AND PURCHASES:**

**A. Consideration of bids for the 2008 Street Rehabilitation Program Project No. 08401.**

Gunyou gave the staff report.

Wiersum said recent bids have been lower than the engineer's estimate. He asked if there is an opportunity for the city to buy more given the good bidding environment. Gunyou said staff does look for opportunities. Since it is difficult to do another entire neighborhood given the costs, staff looks to see if a street can be added to a neighborhood already being done. He said since asphalt costs are up, the savings on this project are largely offset by the city's additional thin overlay costs for 2008.

Allendorf asked if the engineering costs of over \$108,000 were going to be the same as if the project came in at what the engineer estimated. Gustafson responded yes.

Schneider moved, Wiersum seconded a motion to award the bid for the 2008 Pavement Rehabilitation Program, Stodola Road Area, Project No. 08401 to Northwest Asphalt, Inc. in the amount of \$542,678.77. All voted "yes." Motion carried.

**10. CONSENT AGENDA (Items Requiring a Majority Vote):**

**A. Ordinance authorizing sale of certain land on County Road 73 and I-394.**

Allendorf moved, Wagner seconded a motion to adopt Ordinance No. 2008-13 authorizing sale of certain land on County Road 73 and I-394. Allendorf, Hiller, Schneider, Ellingson, Wagner and Callison voted "yes." Wiersum abstained. Motion carried.

**B. Joint powers agreement for breathing apparatus.**

Allendorf moved, Wagner seconded a motion to approve participation in the attached joint powers agreement. All voted "yes." Motion carried.

**C. Conditional use permit for a Chipotle restaurant in Ridgedale Center.**

Allendorf moved, Wagner seconded a motion to adopt Resolution No. 2008-034 approving a conditional use permit for a fast-food restaurant with outdoor patio at 12401 Wayzata Blvd. Approval is based on the finding that the proposal meets the required conditional use permit standards and is subject to the following conditions:

- 1) Prior to issuance of a building permit, record this resolution with the county. A copy of the recorded resolution must be returned to the city.

- 2) A separate sign permit is required for the sign indicated on the exterior of the building.
- 3) The outdoor patio must be equipped with refuse containers and periodically patrolled for litter pick-up.
- 4) The outdoor patio must not have speakers or audio equipment that is audible from surrounding parcels.
- 5) The gate for the fence enclosure around the patio must be self-closing and self-latching.
- 6) Obtain all required liquor, food and beverage licenses from the city.
- 7) The city council may reasonably add or revise conditions to address any future unforeseen problems.
- 8) Any change to the approved use that results in a significant increase in traffic or a significant change in character would require a revised conditional use permit.
- 9) The applicant must agree to the above conditions in writing.

All voted "yes." Motion carried.

**D. Items concerning location of the Sharei Chesed Congregation in an existing office building at 1712 Hopkins Crossroad.**

Hiller asked that the item be pulled from the consent agenda. He said in listening to the planning commission's discussion he was still unclear how the number of parking stalls was arrived at. Wischnack said typically the city does not see synagogue use of an office space. In analyzing the exact use of the building, there are around 10 people during the day attending services and 20-35 on Saturdays. In analyzing the use and demand as well as estimating the remaining leasable space it was determined there is a 48 stall parking demand. She said it is difficult to estimate actual usage but staff feels comfortable with the analysis.

Hiller asked if there is any way to expand the parking should it ever be needed. Wischnack said it is a constrained site. There is a wetland to the west of the site and the topography changes to the north. She said there is an opportunity for additional parking at the park and ride ramp. Schneider said when looking at a conditional use permit he looks for the potential impacts if it is not done. In this situation people looking for parking don't have any options given the location. They cannot park on the street or in the wetland.

Wagner moved, Allendorf seconded a motion to:

- 1) Adopt Resolution No. 2008-035 approving a conditional use permit for a religious facility and institution at 1712 Hopkins

Crossroad with a variance from the minimum number of required parking stalls.

Approval is based on the following findings:

- a. The proposal meets the required conditional use permit standards.
- b. The proposal meets the required standards for a variance, because:
  - (1) UNDUE HARDSHIP: The zoning ordinance requires excess parking based on the proposed configuration and size of the synagogue.
  - (2) UNIQUE CIRCUMSTANCE: The differing uses which demand parking at different times is a unique circumstance not common to every religious facility or office building.
  - (3) INTENT OF THE ORDINANCE: The proposal would provide An adequate number of parking stalls to accommodate the proposed uses.
  - (4) NEIGHBORHOOD CHARACTER: The parking variance would not alter the character of the surrounding neighborhood because a sufficient number of parking stalls are provided.

Approval is subject to the following conditions:

- a. Prior to issuance of a building permit, record this resolution with the county. A copy of the recorded resolution must be returned to the city.
- b. The leased office space on the first level can be occupied only by an office use permitted in the zoning district. Any additional meeting space or other use which would require additional parking is not permitted.
- c. Snow may not be stored within the paved surface of the existing parking lot.
- d. Any intensification of the synagogue use which results in additional parking requirements or observable parking problems would require city review of the conditional use permit.
- e. The city council may reasonably add or revise conditions to address any future unforeseen problems.
- f. Any change to the approved use that results in a significant increase in traffic or a significant change in character (additional membership or building occupancy) would require an amendment to the conditional use permit.
- g. The applicant must agree to these conditions in writing.

- 2) Approve the site and building plans for the Sharei Chesed Congregation at 1712 Hopkins Crossroad. Approval is based on the finding that the proposal would meet all ordinances and standards for a site and building plan approval. Approval of the site and building plans is subject to the following conditions:
- a. Subject to staff approval, the site must be developed and maintained in substantial conformance with the following plans, unless modified by the conditions below:
    - Site plan date-stamped March 5, 2008
  - b. Prior to issuance of a building permit submit the following items:
    - (1) A recorded copy of the conditional use permit resolution.
    - (2) A roadway easement generally extending 24 feet from the northeast corner to the southeast corner of the lot. The easement must be prepared by an attorney knowledgeable in the area of real estate and must be submitted for the review and approval of the city attorney and city engineer.
  - c. Comply with the state building code for the appropriate occupancy classification.
  - d. The building must be retrofitted with an NFPA 13 fire sprinkler system.
  - e. Obtain any required food and beverage licenses from the city.
  - f. A building permit must be issued prior to December 31, 2009, unless the planning commission grants a time extension.

All voted "yes." Motion carried.

**E. Request for a twelve-month time extension of items concerning the General Mills Federal Credit Union.**

Allendorf moved, Wagner seconded a motion to approve the one-year time extension. All voted "yes." Motion carried.

**F. Request for a twelve-month time extension of a preliminary plat, with variance at 13800 Spring Lake Road.**

Allendorf moved, Wagner seconded a motion to approve the one-year time extension. All voted "yes." Motion carried.

**G. Resolution ordering the abatement of nuisance conditions at 4024 County Rd 101.**

Allendorf moved, Wagner seconded a motion to adopt Resolution No. 2008-036 ordering the abatement of nuisance conditions at 4024 County Rd 101. All voted "yes." Motion carried.

**11. Items requiring Five Votes:** None.

**12. INTRODUCTION OF ORDINANCES:** None.

**13. PUBLIC HEARINGS:** None.

**14. OTHER BUSINESS:**

**A. Items concerning The Exchange Building at 14403 Excelsior Boulevard in Glen Lake.**

Gunyou noted a typo in the agenda. The item requires five votes rather than four votes for approval.

Wischnack gave the staff report.

Allendorf asked why the restaurant employees should not be required to park in the Glenhaven Square parking to the north. Wischnack said if parking becomes an issue, the lease would require employees to park across the street. Allendorf asked what would trigger the requirement for the employees to park across the street. Wischnack said if parking use warrants the need, employees of the restaurant will be required to park in the lower resident parking area or to the north where there is a shared parking easement. The tenant would determine if there is a parking issue.

Wiersum asked since there are multiple uses at the location and some will be open when the restaurant is in operation, if a certain number of parking spots will be allocated to the other businesses. Wischnack indicated that was not part of the staff recommendation. Often that type of arrangement is agreed upon by the tenant and the property owner. She said designating a certain parking area for specific uses can sometimes create more problems than it solves. Wiersum agreed the city should not get in the position of dictating the requirement.

Hiller said a policy statement was being made and that the ITE parking numbers make a significant change to what is in the city's ordinance. The numbers would then be valid for another applicant

to use in a future request. He suggested taking a step back to look at if the ordinance should be changed. Wischnack said last year staff began taking another look at parking requirements and using ITE as a base point. Staff is currently evaluating the proper approach to updating the parking code.

Schneider said the same type discussion about parking has been taking place during his entire term on the council and when he served on the planning commission. The council and staff have routinely looked at the practicality of the parking requirements. In most cases it was found the city's ordinance is too restrictive. With each deviation the council has discussed reducing the parking ratios but has decided against doing so because it would limit the council's choices.

Wagner asked for confirmation that the required cross parking easement would remain if the ownership of the two properties is split. Wischnack said that is true. Wagner asked given the city's experience with Jimmy's, if similar issues could arise with this project if the property owners change. City Attorney Desyl Peterson said the issue that came up with Jimmy's was that the cross parking easement given when the restaurants were first built was not adequate. Not creating a proper easement was an error on the property owners' part. She said the city will make sure this easement is specific.

Wiersum said the council often deals with parking variances for projects which indicates the ordinance may need to be changed. But he said he isn't sure the city is at a point of determining what needs to be changed in the ordinance. There needs to be enough parking but too much parking creates water quality issues related to hard surfaces. If the ordinance is changed the council still needs the flexibility to make sure there is enough parking while still addressing the hard surface related issues.

Allendorf said the last similar discussion was when Spasso restaurant was before the council. He asked Wischnack to recap how the parking issues were addressed for that property. Wischnack said that situation was even more complicated because the property has very different uses in a long building with individual parcel ownership. In the end a maximum amount of seating capacity was arrived at for Spasso. The 200 seat maximum for the 5,200 square foot restaurant was based on observations in the field of the existing parking lot and determining the maximum seating capacity generating a certain amount of parking spaces. Allendorf

noted the proposal in front of the council tonight has a 225 seat maximum for a 6,300 square foot restaurant.

Wagner asked what would happen to the conditional use permit should the building across Excelsior Boulevard ever redevelop and need the parking. Peterson said an easement takes parking away from the Glenhaven property and assigns it to this property. Should the Glenhaven property ever redevelop it would have to count fewer parking spaces than what they already have.

Hiller suggested given the city's experience with the Opus development that the city could go back to the developer and use the ITE numbers to lower the ramp. He said unlike the situation with the Lindsay Building where there were specific reasons stated for giving the variance and using the ITE numbers due to the higher density, in this case there is nothing special about the property. Therefore the council has an obligation to explain to residents why this case justifies a variance and why other projects don't.

Hiller said one of his concerns is the traffic analysis assumes using parking across the street. He asked for an update on what is being done to address safety issues. City Engineer Lee Gustafson said the city has formally submitted a request to Hennepin County for a crosswalk. He said staff is confident the request will be approved. The request includes putting the lime green pylon signs in the crosswalk area as well as standard advance warning signs. The crosswalk would go from north to south and be located on the west side of Woodhill Road.

Hiller said another issue is people potentially parking at the Glen Lake Activity Center. Parking at the center is limited. He said if the crosswalk is installed there is no question given the convenience people will park at the center. Wischnack said the area historically has experienced seasonal parking demands that are even more extreme than the proposed use. She said hopefully the city parking lot on the Woodhill side will alleviate some of the seasonal parking demand.

Wiersum asked if Hiller's concern could be addressed with appropriate parking signage at the Glen Lake Activity Center. Gunyou said parking is a market and use driven activity, making it difficult to figure out all the possibilities at the beginning. He said the city typically follows industry standards, and then addresses issues as they arise. Wiersum agreed this is the best approach.

The applicant, Tom Wartman of 14400 Excelsior Boulevard, said as a developer he tries to keep blacktop and asphalt to a minimum. He said the project is a true mixed use example of why shared parking can and does work. Most of the tenants have signed 10 year leases and have been in the Glen Lake area for over 20 years. The dental office, the optometrist, and the hair salon all close by 6 p.m. The businesses have staggered opening hours. In addition the dental office closes over the noon hour to allow employees to take a lunch break. Wartman said the major difference between the mixed use at Glen Lake and the businesses at Minnetonka Boulevard and Highway 101 are the mixed uses at the latter directly compete with the restaurant parking spaces. He said there are 130 spaces for the six tenants at the Minnetonka Boulevard and Highway 101 location. When the peak demand occurs at the Exchange Building, there will be a full 130 spaces for the restaurant.

Wartman says he does not have a specific layout for the design of the restaurant and thus he does not know exactly how many people the restaurant will seat. He said he is looking for the opportunity and latitude to have up to 260 seats. Taking the calculation of the 5,200 square footage of Spasso with 220 seats comes to 26 square feet per seat. Taking 26 square foot per seat for a 6,380 square foot restaurant results in 245 spaces or twenty more than the proposed limit for the Exchange Building. Wartman said figuring the 131 spaces out front and two seats per parking space, a 260 seat restaurant would not be unreasonable. He said as a landlord he wants his tenants to be happy and if a tenant raises parking concerns, he will work with the tenant to address the issues since he will be getting calls before the city does. Wartman said he encourages people to park in the Fresh Seasons parking lot from the center and the ball fields. He would rather have his parking lot full than not be a good part of the community. He said making the area safer will be good for his clientele and tenants.

Wagner said the layout of the restaurant is important in making decisions. The ratio of sit down tables versus the bar area may impact the amount of parking needed. Wartman said the prototype he is modeling the restaurant after has seating in the 220 to 240 range and the Exchange space is a little larger. There will be more sit down space than bar space.

Schneider asked Wartman for his thought process in relocating the Gold Nugget across the street from the grocery store. Wartman said working with those inquiring about the restaurant, he learned there was need for a bigger space than the 2,400 square feet where the restaurant was to be located. There were also requests

to find an opportunity to maintain a location for the Dragon Jade restaurant. Wartman said he is negotiating with the owners of the Dragon Jade to move the restaurant into the 2,400 square foot location. He said the bigger size for the Gold Nugget is predicated on the expense and cost that goes into a new restaurant. By the time the kitchen is outfitted and brought up to code, the costs and expenses are basically the same whether 100 or 200 people are served.

Ellingson said Wartman had noted that at 6 p.m. most of the other businesses would be closed so parking would be available for the restaurant. Since the restaurant may be open for breakfast, he asked Wartman to talk about the parking situation at different times during the day. Wartman said he has received requests to open the restaurant for breakfast so he is going to test the market by first opening over the weekend. If this is looked on favorably then the restaurant may open for breakfast. He said he does not foresee parking will be a problem in the morning. Ellingson asked if there is an operator for the restaurant. Wartman said he is in discussions with an operator.

Grace Sheely of 14325 Grenier Road said parking requirements in the city seems to be a moving target. She questioned the accuracy of the parking numbers in the staff report and said she went out and counted 130 spaces. She said residential parking numbers should be excluded because if they are included the residents will lose their property rights. The residents need to have spaces available for guests. Protecting the property rights of the apartments/residential mix to include all 90 spaces will leave 83 spaces. By code the city should require the restaurant/retail mix to have 194 spaces. The ITE would require 163 spaces. She said the city needs to hold the applicant to a standard. If there is not enough parking there will be increased safety issues. Sheely said there also is a snow removal issue. The lots will have to be plowed differently given layout and lack of any place to store snow on the lot. She said she is concerned with how the council's decision might impact the fairness with other applicants.

Callison asked the staff to comment on Sheely's concern about parking issues for the residents. Wischnack said the access to the underground parking will be on the west side of the building and will be accessible only through a key code or some similar mechanism. There are 90 spaces available including on street bump out parking spaces.

Anne Malm Hossfeld of 14616 Glendale Street questioned the need for the changes. She said she is concerned about the lack of information in the staff report about other possibilities other than expanding the restaurant. The negative impact of not granting the CUP and variance is not known. She said there likely are other viable restaurants that could go in the space without the need for a variance. She asked the council to challenge the developer to clarify what would happen if the variance was not granted. Another concern is the overflow parking at Glenhaven Square. This is the first time any part of the development is impinging on other sites. She questioned the moral hazard of the council approving a project that requires residents to walk across a four lane arterial road at rush hour or dusk because the potential for injuries is high. She said a crosswalk is not sufficient to address the safety issues.

Ivan Fox of 6008 Pinewood Lane appeared before the council. Callison said based on his previous comments to the council she wanted to give him some guidelines. She asked Fox to limit his remarks to the variance issue before the council, and not comment on the people involved. Fox said when the proposal for condominiums was changed to apartments the developer had a chance to say what the size of the restaurant should be, and that Wartman was now bloating the size of the restaurant to get more out of the city. He told the council to get a backbone and negotiate a smaller restaurant with Wartman.

Dave Larson of 15733 Randall Lane said he supported granting the variance. He attended the planning commission hearing and was involved with the EDA on the affordable housing part of the project. He said the project will enhance the community. He is glad that there will be a crosswalk and suggested putting in a speed bump.

Allendorf said he appreciated staff going back to the county to request the crosswalk. He asked Wischnack to clarify how staff came up with the maximum number of seats for the restaurant. Wischnack said there were several factors that went into the analysis. One was the comparison with Spasso. If there was direct comparison given the square footage, the restaurant would be allowed to have 243 seats but staff felt that was too much given the available parking and cross parking arrangement. The 225 seat number is close to the ITE numbers and the parking generation numbers found in the parking study. She said there is a balance between square footage calculations and seat count.

Allendorf asked if it is normal to tie a CUP with a needs statement. Peterson said a needs statement is not required with a CUP. She said a CUP is pretty much a right if all the conditions are met.

Wagner said he agreed snow removal on the site was a legitimate issue and would like to hear the council's thoughts on an offsite snow storage requirement. He said the Gold Nugget is a good addition to the community and is more properly aligned on the proposed side of the street because of the mixed use aspect. He supports the cross parking easement but would like to see an opt-in approach where the employees are required to park across the street from the start. Leeway could be granted if it is determined parking is not an issue. In response to Wartman's concern about the number of seats, Wagner said he would like to error on the side of caution. He said he works for a company that owns restaurants ranging in size from 6,500 to 8,000 square feet and seating 175 to 245 people. Moving 30 parking spots to Glenhaven is a reasonable risk to take given the other protections and the desire of residents to have the Gold Nugget.

Wiersum said he learned a few things from the discussion. He said he learned how the larger sized restaurant is needed given the economics. Although relocating the Dragon Jade is good news for the neighborhood, the Dragon Jade is also a restaurant that will require parking during the same hours as the Gold Nugget. He suggested taking a step back to determine what the overall parking requirements are going to be rather than approving the parking needs for the Gold Nugget now and having to revisit the issue for the Dragon Jade in the future. Gunyou noted the option of relating the amount of parking to the maximum number of seats, which will provide more flexibility. Because the current ordinance only looks at square footage, the nature of the use is not taken into account.

Schneider said the site will be tight. There will likely be times during the weekends where parking will be difficult. He said there was never a problem parking at the original restaurant during the week. He said the cross easement is an important requirement. He is inclined to give latitude to city staff to monitor the situation to determine if there are times where parking is an issue to require employees to park at Glenhaven Square. He said language should be added to the ordinance that includes doing an ITE analysis because it is accepted industry wide as an alternative to coming up with a fixed number. He said the ITE count is appropriate because the residential units will cater to single professionals and to retired widowers. Those individuals tend to have one car and drive less. He said he supported an offsite snow storage requirement

particularly on the east end of the lot. He also supports sticking with the 225 maximum seat number with the understanding that if in a few years it is determined there is not a parking issue the applicant could come back to the council for an adjustment to the number.

Allendorf suggested changing the provision in the city planner's change memo to incorporate Gunyou's suggestion of adding "as reasonably determined by city staff" to the condition that if parking use warrants the need, employees of the restaurant will be required to park in the lower resident parking area or to the north. Allendorf further suggested changing "employees of the restaurant" to "employees of the tenants." Gunyou said staff generally supported the condition, but suggested checking with the applicant because long term leases may have been signed with some of the existing tenants. Schneider said he was also concerned with including restrictions for the entire development while approving a conditional use permit for the restaurant. Allendorf said it was not unusual to amend existing leases, but agreed with Schneider's point.

Callison said there are no disagreements that the city needs to be consistent and gets into trouble when variances are often granted. She said this suggests the city should be looking at changing the ordinance while maintaining some flexibility. She said there are standards that have to be met in approving a variance. While the question whether this is the only viable use is a good question, legally that is not what was before the council. The council has an obligation to follow the legal process and to make a decision on the request. Looking at the goals for the area and the ability to provide extra parking with a guaranteed cross access easement makes this an appropriate request. She said she was a little torn on the snow storage issue because it felt like micromanaging. If customers of the business cannot park because of snow, the snow will be moved or the business will fail. If other businesses or residents are impacted, then the city may need to regulate the removal of snow.

Hiller said he questioned if the findings were appropriate because as of last December there was a viable plan. There is nothing in the staff report indicating something has changed or there is an inherent hardship in staying with the approved plan. He said this changes the issue from a variance issue to a policy change issue.

Wiersum said there is agreement that the parking ordinance needs to be looked at. He said the council does not need to make a developer's number work, but an original objective for the area was to preserve the Gold Nugget. He said he believes the developer has tested the market to determine the size and scope to make the

restaurant succeed. There is a tradeoff with the change in the size of the restaurant and the parking issues. He said the parking is not ideal especially with requiring people to cross Excelsior Boulevard. A month ago the city wasn't sure a crosswalk was possible. If the restaurant is reduced to a size that isn't viable, then the city loses the Gold Nugget.

Allendorf moved, Schneider seconded a motion to:

- 1) Adopt Resolution No. 2008-037 approving a conditional use permit for a dental clinic in The Exchange Building at 14403 Excelsior Boulevard. Approval is based on the finding that the proposal meets the required conditional use permit standards and is subject to the following conditions:
  - a. Prior to issuance of a certificate of occupancy, this resolution must be recorded with Hennepin County and a copy of the recorded resolution must be returned to the city.
  - b. The city council may reasonably add or revise conditions to address any future unforeseen problems.
  - c. Any change to the approved use that results in a significant increase in traffic or a significant change in character would require a revised conditional use permit.
  - d. The applicant must agree to the above conditions in writing.
- 2) Adopt Resolution No. 2008-038 approving a parking variance from 298 stalls to 214 stalls for The Exchange Building at 14403 Excelsior Boulevard. This resolution is based on the following findings:
  - a. UNDUE HARDSHIP:
    - (1) A restaurant and dental uses were intended as occupants of the Exchange Building from original concept phase of development. However, viable square footages for each use were only recently determined.
    - (2) City code parking requirements do not fully take into account the varied parking demand of a mixed use building.
    - (3) City code requires significantly more parking spaces than required by ITE. This ITE information is based on actual parking surveys.
  - b. UNIQUE CIRCUMSTANCE: A parking easement can be provided between the subject property and Glenhaven Shopping Center. The shopping center is

currently owned by the applicant and has parking in excess of parking demand.

- c. NEIGHBORHOOD CHARACTER: The construction of the Exchange Building and tenant occupants of it has visually altered the site once occupied by several smaller buildings. However, the parking variance itself would not alter neighborhood character.

Approval is subject to the following conditions:

- a. Prior to issuance of a building permit for the restaurant space:
- (1) A copy of this resolution must be recorded with the County and a copy of the recorded document returned to the city.
  - (2) A cross parking easement must be submitted. The easement must clearly define the location and amount of parking to be shared between the two properties. This easement must be drafted by an attorney knowledgeable in real estate and is subject to the review and approval of the city attorney. A copy of this recorded easement must be returned to the city.
  - (3) If parking use warrants the need, as reasonably determined by the city, employees of the restaurant will be required to park in the lower resident parking area or to the north where there is a shared parking easement.
  - (4) At staff discretion, snow shall be removed from the property to facilitate parking.
  - (5) There shall be a maximum of 225 seats for the restaurant use in the building.
- b. This variance will end on December 31, 2009, unless the city has issued a building permit for the project covered by this variance or approved a time extension.

Hiller asked what his options were if he could not support the findings for the variance. Peterson said if he felt the findings are not supported, then he could vote no.

Allendorf, Wiersum, Schneider, Ellingson, Wagner, Callison voted "yes." Hiller voted "no." Motion carried.

**15. APPOINTMENTS and REAPPOINTMENTS: None.**

**16. ADJOURNMENT.**

Wiersum moved, Wagner seconded a motion to adjourn the meeting at 8:30 p.m. All voted "yes." Motion carried.

Respectfully submitted,

David E. Maeda  
City Clerk