

**MINNETONKA PLANNING COMMISSION  
MINUTES**

**JUNE 29, 2006**

**1. CALL TO ORDER**

Chair Hart called the meeting to order at 6:30 p.m.

**2. ROLL CALL**

Commissioners Britain, Cheleen, Frisque, Adams, Brandt, and Hart were present. Dahl was absent.

Staff members present: Planning Director Geoff Olson, Principal Planner Cary Teague, Planner Susan Thomas, Natural Resource Manager Jo Colleran, Planning Technician Jeff Thomson, and City Attorney Desyl Peterson.

**3. APPROVAL OF AGENDA:** The agenda was approved as submitted with modifications provided in the change memo dated June 29, 2006.

**4. APPROVAL OF MINUTES:** June 15, 2006

*Brandt moved, second by Adams, to approve the June 15, 2006, meeting minutes as submitted.*

*Britain, Cheleen, Frisque, Adams, Brandt, and Hart voted yes. Dahl was absent. Motion carried.*

**5. REPORT FROM STAFF**

Olson briefed the commission on land use applications considered by the city council at its meeting of June 26, 2006:

- Adopted a resolution approving a conditional use permit for transient sales at 17507 Minnetonka Boulevard and 14730 Excelsior Boulevard for Sever and Sharon Peterson.
- Adopted a resolution approving items concerning a six-lot subdivision at 2400 Bantas Point Road for Locust Hills Development, LLC.
- Adopted a resolution approving a preliminary plat, with variances, for a four-lot subdivision at 5342/5356 Picha Road for Steve Lipe.

**6. REPORT FROM PLANNING COMMISSION MEMBERS:** None

7. **PUBLIC HEARINGS: CONSENT AGENDA:** None

8. **PUBLIC HEARINGS**

**A. Preliminary plat for a three-lot subdivision at 2727 Ashbourne Road for Peter Knaeble. (99065.06a)**

Chair Hart introduced the proposal and called for the staff report.

Teague reported. He recommended approval of the application based on the findings and subject to the conditions listed in the staff report.

Frisque asked why some of the neighborhood comments mentioned a pool. Teague stated that a building permit has not been received for a pool, but an inquiry regarding pool setback requirements for the site was received.

Cheleen questioned why a neighborhood comment referred to a covenant that restricted tree removal. Teague was not aware of existing covenants. The homeowner's association, not the city, would enforce the development's covenants.

Chair Hart confirmed with Teague that the lots would meet R-1 ordinance requirements without variances. Teague explained that the ordinance allows tree removal within the footprint of a building pad, within 20 feet of the building pad, within the location of the driveway, and within 10 feet of the driveway.

Brandt asked Teague to elaborate on the use of conservation easements. Teague explained that the conservation easement would be made larger. The city attorney would review the easement and it would be filed with the county. Peterson explained that as long as all parties agree, changes can be made to the conservation easement. The city, as owner of the easement, would have to agree to a change.

Adams asked how many trees would be removed. Colleran stated that 12 trees would be removed from the north site.

Peter Knaeble, applicant, felt Teague explained the project well. He was present to answer questions. He requested that the shed be allowed to remain on Lot 1. The shed is in good shape, 12 feet by 14 feet in size, with a concrete floor. It would fit in the backyard of Lot 1. He understood the concern of creating a vacant lot with an old garage, but it would not be a primary structure. The applicant has made modifications to conform to lot location and setback recommendations, and

it has made for a better plat. He agreed with staff's recommendations except for the shed removal requirement. The shed is located outside of the proposed, revised, conservation easement.

Adams asked Knaeble to describe the difference between a walk-out basement and a look-out basement. Knaeble explained that a look-out basement would have above-grade windows instead of patio doors. He expected the residences to be 40 feet by 60 feet in size. Each would be custom designed. The intent would be to match the residences with the ones in the neighborhood. A 40-foot by 40-foot box was illustrated on the grading plan.

Chair Hart asked why the shed needs to be removed. Teague explained that a shed is not allowed to stand alone in an R-1 zoning district. It could be moved onto Lot 2 where there is an existing house, or removed before Lot 1 would be created. Peterson suggested that a condition require the shed be removed if no building permit for a principal structure is applied for within one year after the final plat is approved. Teague suggested a cash escrow or letter of credit be required to provide enforcement of the condition. Knaeble agreed with the conditions.

Brandt asked if a shed is allowed in a conservation easement. Teague explained that a shed could be located in a conservation easement in certain situations. The intent of the proposed conservation easement is to preserve the steep slope. If it would not impact the slope, it would be possible to keep it.

The public hearing was opened.

Martin Lipshutz, 2715 Ashbourne Road, and Linda Siegel, 2710 Ashbourne Road, spoke on behalf of their neighbors. They have concerns. Mr. Lipshutz stated that:

- The trees are a significant part of the neighborhood.
- Ms. Siegel's backyard is wet 90 percent of the time. It floods during heavy rains.
- The average size home is 3,500 square feet and larger. The proposal's small houses would not be in character with the neighborhood.
- The proposed location of the driveway on McGinty Road would be dangerous. It is on a curve and motorists travel at a high rate of speed. It would create a traffic hazard.
- The trees provide the only sound barrier from the Interstate 494 traffic.
- The project should be in character with the neighborhood.

Chair Hart explained the tree removal ordinance. Teague stated that engineering staff found the application adequate. Engineering staff would also review individual building permits and determine if each would have a negative impact on surrounding properties. A detailed grading plan would be provided once a proposal was developed for each lot.

Chair Hart recalled that a turnaround would be required for the driveway located on McGinty Road. Teague had suggested the applicant share a driveway with the middle lot. Hennepin County would prefer that as well. The applicant prefers access to McGinty Road, so a permit from the county would need to be granted and a turnaround would be required to prevent vehicles from backing out.

Chair Hart requested Mr. Knaeble provide the expected square footage of the proposed houses. Mr. Knaeble expected a two-story style residence to be approximately 3,000 square feet to 3,500 square feet. A rambler would probably equal 2,500 square feet to 3,000 square feet. He expected the sizes to be comparable to the neighboring residences.

Mr. Knaeble explained the drainage pattern. The proposal would improve the current situation.

Ms. Siegel stated that her residence is one of the smallest and is 3,700 square feet. Smaller houses would not be to her advantage.

No additional testimony was submitted and the hearing was closed.

Chair Hart reviewed the primary issue.

Peterson commented that if an application meets all ordinance requirements, the city has no choice. It is authorized. The basic question of whether the lot is allowed has already been decided because it was decided when the ordinance provisions were adopted.

Britain appreciated Peterson's comments. He appreciated the neighbors' concerns with the loss of the trees.

***Britain moved, second by Brandt, to recommend that the city council give preliminary approval to the Robin Ridge plat, date stamped May 26, 2006, with a change to allow the shed on Lot 1 to remain if a building permit for a principal structure is applied for within one year of final plat approval.***

***Approval is based on the finding that the plat meets the required standards and ordinances. Approval is subject to the following conditions:***

- 1) Complete the following before final plat approval:
  - a. Show the following on the final plat:
    - (1) At least ten-foot-wide drainage and utility easements next to any existing or proposed public street rights-of-way and at least seven-foot-wide drainage and utility easements along all other lot lines.
    - (2) Drainage and utility easements over wetlands, floodplains, and public storm water ponds, as determined by the city engineer.
  - b. Pay the city a park dedication fee of \$4,750.00.
- 2) The following items must be submitted to the city before the city releases the final plat:
  - a. An electronic CAD file of the final plat in microstation or DXF on a CD disk.
  - b. The following documents for the city attorney's approval:
    - (1) Title evidence that is current within thirty days before release of the final plat.
    - (2) Conservation easements over the wetland buffer area, steep slopes, and mature trees. Final location is subject to staff approval. The easements and drawings must be recorded with the final plat.
    - (3) Provide restrictive covenants to be recorded against the individual lots with the plat. The covenants must include the conditions that have not been met as of the release of the plat. These covenants must first be submitted for the city attorney's approval.

These documents must be recorded with the final plat, and a drawing of any easement must be attached to the easement deed.

- c. The shed on Lot 1 must be removed if no building permit for a principal structure is applied for within one year of final plat approval. The property owner must provide a cash escrow or letter of credit to ensure removal of the shed if a building permit is not applied for within one year.
  - d. Any other requirements included with final plat approval.
- 3) The following must be completed before the city issues a building permit:
- a. City approval of a grading and tree preservation plan for each lot. The plans must be in substantial compliance with the building pads shown on the preliminary plat and must preserve trees designated for preservation at the time of preliminary plat approval. The city may require adjustments in the house pad location to maximize tree preservation. The sewer and water services must be shown to minimize impact to any significant trees.
  - b. City approval of the installation of a temporary rock driveway, erosion control, tree protection, and wetland protection fencing for each lot.
  - c. Submit a copy of the recorded plat and any easement or covenants required to be recorded.
  - d. Pay a hookup fee for sanitary sewer and water.
  - e. Submit a letter from the surveyor stating that boundary and lot stakes have been installed as required by ordinance. If the grading for proposed streets has not been completed, the city planner may approve a time extension to this requirement.
  - f. Submittal of proof of a Hennepin County access permit for Lot 3.
- 4) During construction, the streets must be kept free of debris and sediment, and the tree protection fencing and erosion control fencing must be maintained.
- 5) Trees must be planted to compensate for significant trees removed from each site that would be outside of the building pad and driveway area. The trees must be primarily species native to the area. They must be at least 2

½ inches in diameter for deciduous trees and 6 feet tall for coniferous trees. The property owner or original developer must replace the required trees if they die within one year after installation.

- 6) Provide a driveway turnaround for Lot 3 before the house is occupied.
- 7) The city must approve the final plat within one year of preliminary approval or receive a written application for a time extension or the preliminary approval will be void.

***Britain, Cheleen, Frisque, Adams, Brandt, and Hart voted yes. Dahl was absent. Motion carried.***

Chair Hart stated that the city council is tentatively scheduled to review the item at its July 10, 2006 meeting. Chair Hart appreciated staff's work on the proposal.

**B. Conditional use permit, with parking stall variance, for a restaurant at 17523 Minnetonka Boulevard for C & R Partners LLC. (93011.06a)**

Chair Hart introduced the proposal and called for the staff report.

Teague reported. He recommended approval of the application based on the findings and subject to the conditions listed in the staff report.

Chair Hart asked what would prevent the owner from adding 15 tables 6 months from now. Teague explained that if staff received a parking complaint, staff would count the number of seats. The bar area, entrance, and restaurant would be counted. Traditionally, additional parking has not been required for outdoor seating because it is seasonal.

Adams asked if off-sale alcohol would be sold. Teague believed that was the applicant's intent. Adams asked if there would be stools at the bar and if those seats would be included in the seating total. Teague answered in the affirmative.

Frisque asked if the 5,800 square feet inside included the restaurant, wine shop, and storage areas or just the seating area. Teague explained the floor plan. Additional storage space behind the wine shop was not included in the 5,800 square feet. The wine shop would be 2,265 square feet and the storage area would be 993 square feet.

Chair Hart confirmed with Teague that 10 parking stalls are required for the wine shop and storage and 106 parking stalls are required for the restaurant.

Chair Hart clarified that the current zoning is B-2, not B-3.

Chris Erickson, 1225 Orono Oaks Drive, applicant, stated that he is flexible with the seating. The application meets the one parking stall per two seats requirement, but it does not meet the square footage requirement.

The public hearing was opened.

Jerry Greene, 5409 Highland Road, wanted to be the first one to eat at the restaurant. He did not support the liquor store. There is already a liquor store in the area. Chair Hart noted that the planning commission was not reviewing any aspect of the proposal related to liquor sales. She invited him to address the city council. Mr. Greene listed the surrounding businesses. Traffic from a liquor store would conflict with the surrounding businesses and the proposed restaurant. The restaurant would be positive. He questioned where the curb cuts would be located. He wanted Tonka Bottle liquor store to get the business.

Chair Hart clarified with Teague that there would be no additional curb cuts. The curb cuts would be changed due to the current street improvement project.

Tim Bevins, 17616 Minnetonka Boulevard, provided a petition with twelve business owners' signatures that requested the application be denied. It stated:

- There is no hardship.
- The parking ordinance regarding square footage should be strictly enforced. Monitoring future seating is an almost impossible task.
- He counted 111 vehicles parked in Jimmy's restaurant parking lot at one time. Jimmy's has 190 seats and 4,400 square feet.
- The applicant has overstated the number of parking spaces.
- The proposal would create a parking shortage, cause patrons to park in Minnehaven Center, and create a safety hazard for people crossing County Road 101.
- It would set an unhealthy precedent.

Chair Hart asked why there was a discrepancy between 63 and 53 parking spaces. Teague stated that the consultant provided several versions of the parking plan. The latest version, with 63 parking stalls, is included in the staff report.

Mr. Bevins stated that 63 parking spaces cannot fit within the dimensions of the parking lot. Teague created the parking plan, based on the consultant's site plan.

In response to Chair Hart's question, Teague explained that the hardship was created by the existing conditions of the site. It already has a decreased number of stalls and the street improvement project will eliminate 13 additional stalls.

Mr. Erickson stated that there are 8 spaces behind the building for employee parking. Snuffy's has 2,800 square feet of space and seating for 93. The proposal has nearly 10,000 square feet. The applicant agreed to limit seating to whatever the city requires.

Teague confirmed for Chair Hart that the restaurant would have to be reduced to 2,300 square feet with a 5,000 square-foot liquor store to meet ordinance requirements. That would take into consideration the increase in retail space.

No additional testimony was submitted and the hearing was closed.

Frisque recognized the loss of parking caused by the street improvement project as a hardship that the applicant did not cause. She asked if the green area could be used as proof-of-parking. Teague stated that ten spaces could be added in the green area on the west side of the building. Olson explained that the green area was one of the assets negotiated into the construction. Limiting the number of seats would be the preferred method of handling a parking stall shortage.

Britain understood both arguments. He agreed with limiting the number of seats if there would be a problem in the future. He lives close to the site. He has never seen the lot full.

Cheleen asked what the legal arrangement would be between the business owners. Teague explained that the business owners may share parking amongst themselves.

Teague explained that the parking study that WSB completed included Lakewinds' storage space as retail space when it calculated the parking need. Lakewinds has an excess of 32 spaces.

Adams asked if Snuffy's is operating with a variance. Teague explained that Snuffy's is an existing, grandfathered use.

Adams asked if Snuffy's has a parking shortage. Teague answered in the negative.

Brandt asked if the city could require a shared parking agreement with Lakewinds. Teague stated that that could be an option if a problem develops.

***Britain moved, second by Brandt, to recommend that the city council adopt the resolution on pages A1–A4 of the staff report, which approves the proposed conditional use permit, with parking stall variance from 126 to 63 spaces. This resolution 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) There is a unique hardship to the property caused by the nature of the Minnetonka Boulevard/Highway 101 intersection, associated roadway improvements, and the limited area of existing parking on the site. The site will lose 13 parking stalls as a result of the roadway improvements.
  - (2) The variance would meet the intent of the ordinance because the restaurant would be limited to 106 seats, which would meet the zoning ordinance standard regarding number of seats.
  - (3) Calculating the required number of parking stalls based on seating capacity is a more appropriate way to determine required parking spaces than square footage of the restaurant.

Approval is subject to the following conditions:

- a. The city council may reasonably add or revise conditions to address any future unforeseen problems.
- b. Any change to the approved use that results in a significant increase in traffic or parking, or a significant change in character would require a revised conditional use permit.
- c. The restaurant, bar area, and lounge must be limited to 106 seats.
- d. The storage areas may not be converted into retail space.
- e. Before the city issues a building permit, the applicant must agree to the above conditions in writing and record this resolution with the county.

***Britain, Cheleen, Frisque, Adams, Brandt, and Hart voted yes. Dahl was absent. Motion carried.***

Chair Hart asked that the council study the parking ordinance to allow more flexibility and consider such factors as the site's use. The proposal is tentatively scheduled to be reviewed by the city council at its July 10, 2006 meeting.

**C. Items concerning the construction of two multi-tenant buildings at 6001 Shady Oak Road for True North Investments (06006.06a)**

Chair Hart introduced the proposal and called for the staff report.

Thomas reported and explained changes negotiated between the applicant and the Jennings family since the report was done. She recommended approval of the application based on the findings and subject to the conditions listed in the staff report and change memo.

In response to Chair Hart's question, Thomas provided the ordinance definition of a fast-food restaurant. Thomas stated that outdoor eating areas are still included in the proposal. The footprint of Building 1 has not changed. A drive-up window is still included on the south side of Building 2.

Adams asked why Building 2 was moved to the east. Thomas stated that the Jennings family was concerned about possible congestion blocking the main access to the site.

Peter Coyle, attorney for the applicant, was present and able to answer questions. He explained that the agreement designated specific dimensions for each building that would be allowed as restaurant uses. The goal is to allow flexibility to lease the buildings since the tenants are not yet known.

Brandt asked what would happen if the fast food restaurant failed in the south building. Mr. Coyle explained that the space could be used for a less intensive use. The agreement with the Jennings prohibits the sale of alcohol. A use not related to food would create less traffic.

Britain asked if both parties agreed with the physical layout. Mr. Coyle stated that the applicant, Chris Novak, agreed.

Gary Eidson, attorney for the Jennings, commended Thomas and Peterson for their patience in working with the parties to come to an agreement. The change memo accurately reflected his understanding of the agreement. There are

operational issues that were agreed on and not fully delineated in the change memo. They are not controversial. He agreed to the specific points of agreement.

Peterson explained that there are a number of private agreements that are not part of the city's review and approval. The conditions in the change memo have been agreed to by both parties.

The public hearing was opened. No testimony was submitted and the hearing was closed.

Chair Hart requested Thomas review the primary issues. Thomas obliged.

Britain was disappointed that the application had not been completely agreed on before the planning commission's review. Realizing that the city attorney was involved and that the building footprints have been agreed on, he supported the project. It was conceptually a good plan.

Cheleen concurred with Britain. Private agreements between the property owners will have to conform to the plan approved by the city council.

***Britain moved, second by Cheleen, to recommend that the city council approve the following items concerning the construction of two multi-tenant buildings at 6001 Shady Oak Road for True North Investments with the modifications provided in the change memo dated June 29, 2006:***

**ORDINANCE AMENDING AN EXISTING MASTER DEVELOPMENT PLAN**

- 1) *Recommend that the city council adopt the ordinance on pages A1–A8 of the staff report, which amends and replaces that section of the existing master development plan associated with 6001 Shady Oak Road and approves final site and building plans. Approval includes the following variances:*
  - Parking stall variance from 331 to 296;
  - Parking setback variance from 20 feet to 15 feet along the north property line;
  - Variance to allow an unscreened, outdoor seating area within 200 feet of a residential property; and

- Setback variance from 50 feet to 18 feet for an outdoor seating area.

This ordinance is based on the following findings:

- a. The proposal meets the required site and building plan standards.
- b. The proposal meets the required standards for a variance, because:

### **Parking**

- (1) A parking stall variance is reasonable. Though the amount of proposed parking on the two individual properties would not meet city code requirements, there would be sufficient parking spaces to meet project demand if parking is shared between the sites.
- (2) The parking setback variance from the north property lines reflects existing conditions. A 15-foot setback from the north line was approved as part of the original master development plan.

### **Outdoor Seating**

- (1) The location of the proposed seating area is reasonable, as it meets the intent of the ordinance:
  - (a) A four-lane road would separate the outdoor seating area from the nearest residential properties. It is likely the roadway itself would be more obtrusive to the residential sites than the outdoor seating areas.
  - (b) There are two residential properties within 200 feet of the outdoor seating area. One of the properties is an outlot of the Clarion Hills residential development, which is covered by a conservation easement. The other property is a vacant residential lot with a severe steep slope. The only buildable area on the site is on the north side of the property, over 200 feet from the closest outdoor seating area.

Approval is subject to the following conditions:

- a. This ordinance replaces that part of the existing master development plan associated with the 6001 Shady Oak Road property.

- b. 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 June 14, 2006.
  - Grading plan dated May 26, 2006.
  - Landscaping plan dated May 26, 2006.
  - Illumination plan dated May 26, 2006.
  - Building elevations dated May 26, 2006.
- c. A complete grading permit application must be submitted for staff approval before beginning any site work. The plumbing permit for the utility work may be issued before the building permit and done with the grading work. The following items must be submitted or completed to make a grading permit application complete:
- (1) Submit final grading, drainage, utility, and erosion control plans for staff approval. Final plans must include:
    - (a) Verification of the slope of the pedestrian path south of the property. The slope must meet ADA requirements.
    - (b) Piping associated with the tank must be reinforced concrete (RCP) or HDPE piping, as required by the city engineer.
    - (c) Tanks must be installed with a minimum of two percent slope.
    - (d) An emergency overflow system must be located and sized to convey the 100-year storm runoff.
    - (e) The existing 8-inch water service must be used and the proposed 8-inch service must be extended to the public manhole, as required by the city engineer and public works staff.
    - (f) The proposed parking lot must be bordered by raised concrete curb.
  - (2) Submit a final survey and site plan. Building 2 be reduced in size to 4,300 square feet and must be moved to the east to eliminate

parking stalls on east side. These parking stalls must be shown elsewhere on the site.

- (3) Submit a letter of credit or cash escrow for 150% of the estimated cost or 125% of a bid cost to comply with grading permit requirements and restore the site.
  - (4) Submit permanent cross-access and cross-parking easements and a temporary construction easement between the 6001 Shady Oak Road and 11000 Red Circle Drive properties for city attorney review and approval.
  - (5) Submit an illumination plan for staff approval
  - (6) Submit copies of the watershed district permit. The city may require revisions to the approved plans to meet the district's requirements.
  - (7) A temporary rock driveway, erosion control, and tree protection fencing must be installed for inspection and approval of the city's natural resources staff. These items must be maintained throughout the course of construction.
  - (8) Submit a construction management plan for staff approval. The construction management plan must be reviewed with the owners of Jimmy's for their input.
- d. The following must be submitted to the city before the city issues a building permit:
- (1) A final landscaping plan for review and approval of the city's natural resources staff. The plan must meet minimum landscape values as outlined in city code.
  - (2) A letter of credit or cash escrow for 150% of the estimated cost or 125% of a bid cost for all required landscaping.
  - (3) All required hook-up fees.
  - (4) Recorded copies of this resolution, all required conditional use permits, and all required easements.

- (5) Obsolete public utility easements must be vacated and obsolete driveway easements must be terminated.
- e. Record this ordinance with the county.
- f. The total square-footage of Buildings 1 and 2 is limited as follows:
- (1) Building 1
- Office Space: 15,550 square feet
  - Retail Space: 8,120 square feet
  - Fast food/Full Service Restaurant Space: 2,000 square feet
  - Total Area: 25,670 square feet
- (2) Building 2
- Fast Food Restaurant Space: 4,300 square feet
  - Total Area: 4,300 square feet
- g. Staff may administratively approve a change to the uses as described in the above condition if consistent with the findings of a traffic/parking study and if within the approved building footprint. This includes an increase in restaurant space.
- h. The restaurants in Building 2 must be fast food only.
- i. The main entrances to Building 2 must be on the west side.
- j. The 2000 square foot restaurant in Building 1 may be with liquor.
- k. No more than 1500 square feet of a restaurant with liquor is allowed on the easterly end of Building 1.
- l. At least 18 spaces of underground parking must be available after 6:00 p.m. for employees of the restaurant and retail uses.
- m. Install "stop" and "no right turn" signs at both driveway exits.
- n. The property owner is responsible for replacing any required landscaping that dies.

- o. All rooftop and ground-mounted mechanical equipment and exterior trash and recycling storage areas must be enclosed with materials compatible with the principal structure, subject to staff approval. Low profile, self-contained, mechanical units that blend in with the building architecture are exempt from the screening requirement.
- p. Approval does not include the signs shown on the drawings. A separate sign plan application must be submitted for review and approval by the planning commission.
- q. Construction must begin by December 31, 2007, unless the planning commission grants a time extension.

**RESOLUTION APPROVING A CONDITIONAL USE PERMIT:  
FAST FOOD OR FULL SERVICE RESTAURANT SPACE  
WITH INTOXICATING LIQUOR AND OUTDOOR SEATING (Building 1)**

- 2) *Recommend that the city council adopt the resolution on pages A9–A15 of the staff report. This resolution approves a conditional use permit for a fast food or full service restaurant with intoxicating liquor and outdoor seating, with a setback from property line variance from 50 feet to 18 feet, a setback from residential property from 200 feet to 150 feet, and a screening variance.*

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) The location of the proposed seating area is reasonable, as it meets the intent of the ordinance:
    - (a) A four-lane road would separate the outdoor seating area from the nearest residential properties. It is likely the roadway itself would be more obtrusive to the residential sites than the outdoor seating areas.
    - (b) There are two residential properties within 200 feet of the outdoor seating area. One of the properties is an outlot of the Clarion Hills residential development which is covered by a conservation easement. The other property is a vacant

residential lot with a severe steep slope. The only buildable area on the site is on the north side of the property, over 200 feet from the closest outdoor seating area.

Approval is subject to the following conditions:

- a. The outdoor seating area must be fully enclosed. Specific plans for this enclosure must be reviewed as part of the liquor license review. If no liquor license is requested, the area must be cordoned off in a way acceptable to city staff.
- b. Refuse containers must be located in the outdoor seating area and the area must be periodically patrolled for litter.
- c. Public address systems and any outdoor speaker or audio equipment cannot be audible from adjacent properties.
- d. Record this resolution with the county.
- 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 would require a revised conditional use permit.
- g. The applicant must agree to the above conditions in writing.
- h. No more than 1,500 square feet of a restaurant with liquor is allowed on the easterly end of Building 1.

***RESOLUTION APPROVING A CONDITIONAL USE PERMIT:  
FAST FOOD RESTAURANT WITH OUTDOOR SEATING (Building 2)***

- 3) *Recommend that the city council adopt the resolution on pages A16–A20 of the staff report. This resolution approves a conditional use permit for a fast food restaurant with outdoor seating. Approval is based on the finding that the proposal meets the required conditional use permit standards and is subject to the following conditions:*
  - a. The outdoor seating area must be fully enclosed. Specific plans for this enclosure must be reviewed as part of the liquor license review. If no

liquor license is requested, the area must be cordoned off in a way acceptable to city staff.

- b. Refuse containers must be located in the outdoor seating area and the area must be periodically patrolled for litter.
- c. Public address systems and any outdoor speaker and audio equipment cannot be audible from adjacent properties.
- d. Record this resolution with the county.
- 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 would require a revised conditional use permit.
- g. The applicant must agree to the above conditions in writing.

**RESOLUTION APPROVING A CONDITIONAL USE PERMIT:  
FAST FOOD RESTAURANT WITH DRIVE-UP  
AND OUTDOOR SEATING (Building 2)**

- 4) *Recommend that the city council adopt the resolution on pages A21–A26 of the staff report. This resolution approves a conditional use permit for a fast food restaurant with drive-up and outdoor seating. Approval is based on the finding that the proposal meets the required conditional use permit standards and is subject to the following conditions:*
  - a. Any outdoor seating must be located adjacent to the primary entrance of the restaurant.
  - b. Outdoor seating area must be cordoned off in a way acceptable to city staff.
  - c. Refuse containers must be located in the outdoor seating area and the area must be periodically patrolled for litter.
  - d. Public address systems and any outdoor audio equipment cannot be audible from adjacent properties.

- e. Record this resolution with the county.
- f. The city council may reasonably add or revise conditions to address any future unforeseen problems.
- g. 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.
- h. The applicant must agree to the above conditions in writing.

***Britain, Cheleen, Frisque, Adams, Brandt, and Hart voted yes. Dahl was absent. Motion carried.***

Chair Hart strongly urged that both parties conclude their agreements by the city council meeting.

**9. ADJOURNMENT**

***Brandt moved, second by Adams, to adjourn the meeting at 8:20p.m. Motion carried unanimously.***

By: \_\_\_\_\_  
Lois T. Mason  
Planning Secretary