

**MINNETONKA PLANNING COMMISSION
MINUTES**

MARCH 20, 2008

1. CALL TO ORDER

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

2. ROLL CALL

Commissioners Schmitz, Sjeklocha, Blatz, Lehman, and Cheleen were present. Walker and Adams were absent.

Staff members present: City Planner Julie Wischnack, Principal Planner Susan Thomas, Planner Josh Metzger, and Planning Technician Jeff Thomson.

- 3. APPROVAL OF AGENDA:** The agenda was approved as submitted with late comments and modifications provided in the change memo dated March 20, 2008.

- 4. APPROVAL OF MINUTES:** March 6, 2008

Sjeklocha moved, second by Blatz, to approve the March 6, 2008 meeting minutes as submitted.

Schmitz, Sjeklocha, Blatz, Lehman, and Cheleen voted yes. Walker and Adams were absent. Motion carried.

5. REPORT FROM STAFF

Wischnack briefed the commission on a study session held by the city council. The Glen Lake streetscaping plan was reviewed and will be presented to the public for comments. City council also discussed the use and replenishment of development funds.

The comprehensive guide plan committee will meet Wednesday, March 26, 2008, and April 1, 2008. A joint work session will be held with the planning commission, economic development authority, and city council in April, but the date has not yet been set.

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

- 7. PUBLIC HEARINGS: CONSENT AGENDA:**

No items were removed from the consent agenda for discussion or separate action.

In response to Schmitz' request, Thomson explained that a condition of approval would require the removal of the sign in the right-of-way at the intersection of Blue Circle Drive and Data Park Drive.

Lehman moved, second by Blatz, to approve the items listed on the consent agenda as recommended in the respective staff reports as follows:

A. Conditional use permit to lease restaurant space at Ridgedale Center at 12401 Wayzata Blvd for Chipotle Mexican Grill. (03046.08a)

Recommend that the city council adopt the resolution on pages A8-A11 of the staff report. This resolution approves 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.

B. Sign plan review with variances for a campus sign at 9701 Data Park Drive and 9900 Bren Road East for UnitedHealth Group. (06060.08a)

Approve the sign plan for United Health Group at 9900 Bren Road East and 9701 Data Park Drive. Approval is based on the following findings:

- 1) The proposal would meet all ordinances and standards for sign plan review.
- 2) The proposal would meet the required standards for a variance, because:
 - a. Undue hardship: There is an undue hardship for the visibility of the wall signs due to the height of the building and the distance from the surrounding roadways.
 - b. Unique circumstance: The height of the building and the distance from the roads are circumstances not common to every office building.
 - c. Intent of the ordinance: The signs would provide reasonable identification and way-finding for the office campus.
 - d. Neighborhood character: The signs would not alter the character of the neighborhood because they are proportional to the scale, and architecturally compatible with the surroundings.

Approval of the sign plans is subject to the following conditions:

- 1) Subject to staff approval, the site must be developed and maintained in substantial conformance with the site and sign plans date-stamped February 13, 2008, unless modified by the conditions below:
 - a. The site plan must be revised to reflect:
 - (1) The directional signs must be set back a minimum of 10 feet from all property lines. Specifically the signs along Blue Circle Drive must be located behind the edge of the sidewalk.

- (2) The directional sign located within the right-of-way of Blue Circle Drive must be removed.
- b. The sign plans must be revised to reflect:
 - (1) The letters on the existing and new monument signs must be a minimum of seven inches tall
 - 2) Sign permits are required for the wall signs and monument signs.
 - 3) Any changes to the sign plans require an amendment to this approval.
 - 4) The signs must be installed prior to December 31, 2009, unless the planning commission grants a time extension.

Schmitz, Sjeklocha, Blatz, Lehman, and Cheleen voted yes. Walker and Adams were absent. Motion carried and the items on the consent agenda were approved as submitted.

8. PUBLIC HEARINGS

A. Items concerning a parking variance for expansion of restaurant space and a conditional use permit for a dental office at the Exchange building at 14403 Excelsior Boulevard (05091.08a)

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

Wischnack provided background information. Site A refers to the shopping center area, Site B refers to the Exchange Building, and Site C refers to Kinsel Point Condominiums. She summarized improvements being considered to benefit pedestrian traffic and the road analysis.

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

In response to Lehman's question, Thomas stated that there would still be an opportunity for the shared parking arrangement after development of the condominiums.

Sjeklocha asked what would happen if the mixed use changed and the need for parking area increased in the future. Thomas explained that staff reviews building permit applications for all tenant spaces. If a different type of use would be

proposed in the future, then the current parking requirement would need to be met or a parking variance would need to be approved.

Blatz asked if resident parking would be decreased. Thomas explained that the number of resident parking stalls would remain the same. The traffic study indicated that the number of parking stalls would exceed the need. The city's ordinance requires two parking spaces for every unit. The west parking lot would be designated for residents.

Schmitz asked if parking is allowed on Stewart Lane. Thomas confirmed with the city engineer that Stewart Lane is a "no parking" street except for seven bump-out spaces.

Blatz asked what minimum standards are needed to warrant installing a signal at an intersection. Tony Hempelman, of WSB and Associates, was contracted by the city to do the parking study for the project. He stated that items considered to warrant a traffic signal include the volume of traffic on Excelsior Boulevard and the cross-street. It boils down to the amount of delay that occurs for the cross-street traffic. The latest count of vehicles on Excelsior Boulevard indicated about 10,000 vehicles a day. The north approach on Woodhill Road would require approximately 3,000 vehicle trips, but is much less than that right now. The volume would have to double on Woodhill Road in order to meet the traffic signal warrants.

Lehman asked if the center exit would be a right turn only that would create a u-turn status at the intersection. He asked if that would warrant a traffic control device at the intersection. Mr. Hempelman agreed that the west access would be a full access. The east access would be right in and right out. The traffic study allowed for some motorists making a u-turn, but it would be expected that west-bound traffic would use the west access. The u-turn would not really change the warrant analysis for a signal.

Blatz asked if pedestrian traffic is considered. Mr. Hempelman stated that pedestrian traffic is a consideration in the warrant analysis. There is a special warrant for a pedestrian signal. The current pedestrian volume would not be close to meeting any type of warrant.

Chair Cheleen asked if a pedestrian overpass was being considered. Wischnack clarified that the crosswalk would be at grade. She discussed ways to make it more substantial than paint on pavement with the city engineer. It would be considered a "mid-block crosswalk" by Hennepin County.

Mr. Hempelman clarified that the rates used for the parking study are average and vary quite a bit. A highly successful restaurant could generate the need for the number of parking stalls required in Minnetonka's ordinances. Additional parking would be across the street, but pedestrians would need to cross a fairly busy street.

Tom Wartman, 14400 Excelsior Boulevard, applicant, complimented staff's report. He stressed the benefit of a crosswalk at Woodhill Road and Excelsior Boulevard. It would be an important element. He hoped that staff would be able to reach an agreement with the county to sign or highlight the crosswalk. He explained the mixed uses and the peak use times. Most of the leases are 5 years to 10 years. The businesses are mainly service-related.

Blatz asked Mr. Wartman to describe the streetscaping plans. Mr. Wartman stated lighting would continue on Excelsior Boulevard west of Williston and east of Kinsel Park. The sidewalks would be redone and moved away from the curb. General curb and street improvements would also be done. The city is in the process of obtaining public input. Wischnack reiterated that the streetscaping plans are a concept at this point. Once public comments have been received, the proposal will be formally reviewed by the city council.

Mr. Wartman added that discussion is taking place in hope that the substation chain-link fence would be replaced with cedar boards.

Chair Cheleen asked if it would be feasible to have blinking yellow lights strung above the road. Wischnack stated that all options are feasible. What the county will approve has not yet been determined. Chair Cheleen noted the location of the ball field.

Chair Cheleen asked if it would be feasible for employees of the clinic or restaurant to park in the Glen Haven Shopping Center. Mr. Wartman stated that would be feasible if the need became apparent.

The public hearing was opened.

Mark Mathison, 14017 Branberry Walk, supported the variance. He noted that his family supports the development. The developer has done an excellent job so far. The staff, commissions, and city council have managed issues with the project. The location of businesses and residential areas are very appropriate and commendable. He is very excited about the development. He welcomed the return of the Gold Nugget. The variance seems reasonable. He requested commissioners approve the variance.

Dave Larson, 15733 Randall Lane, loves the Glen Lake area. He supports the variance. He suggested a speed bump be located near the pedestrian crosswalk. He agreed that the skate park, ball field, and businesses in the area will create a great deal of pedestrian traffic.

Terry Egge, 14429 Stewart Lane, supported the project. She lives in Lakewood Townhomes and the project has already positively impacted those residents. She and the residents who reside in the 12 units of Lakewood Townhomes support the variance. She agreed that something was needed to produce more safety for pedestrians. She saw nothing unusual. The good mix of tenants will be a benefit for everyone.

No additional testimony was submitted and the hearing was closed.

Blatz asked if the easement would stay with the property. Thomas answered affirmatively.

Schmitz moved, second by Sjeklocha, to recommend that the city council adopt a resolution approving items concerning a parking variance for expansion of restaurant space and a conditional use permit for a dental office at the Exchange building at 14403 Excelsior Boulevard

Conditional Use Permit

- 1) *Recommend that the city council adopt the resolution on pages A49–A55 of the staff report. This resolution approves 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.
 - c. The city council may reasonably add or revise conditions to address any future unforeseen problems.
 - d. 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.

- e. The applicant must agree to the above conditions in writing.

Parking Variance

- 2) *Recommend that the city council adopt the resolution on pages A56–A62 of the staff report. This resolution approves 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.

- 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.

Schmitz, Sjeklocha, Blatz, Lehman, and Cheleen voted yes. Walker and Adams were absent. Motion carried.

The city council is tentatively scheduled to review this item at its April 6, 2008 meeting.

B. Variance from minimum lot size to build a new home on the property at 5301 Lorence Road for Thomas and Valerie Kanitz. (08008.08a)

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

Metzer reported. He recommended approval of the application with staff-suggested changes based on the findings and subject to the conditions listed in the staff report.

Lehman clarified with Metzer that the right-of-way easement was mistakenly included in the lot size in 1989 when a lot size variance was approved at that time. If it had been correctly calculated, then the property would not need the current variance and it would be in compliance with the mcmansion policy.

In response to Lehman's question, Metzer stated that the exterior elevations would have indicated some sort of potential use of more than one floor. Lehman asked if having windows impacts the floor area ratio calculation. Metzer explained that if a residence has a look-out or walk-out basement, then 50 percent of the basement is included in the full area of the residence. Given the minimal amount of exposure proposed, only 25 percent of the proposal's basement was included in the floor area ratio calculation. Wischnack defined a look-out basement as having a window 4 feet above the floor. An egress window would not be considered a look out because the view would be of the window well, not above grade.

Lehman asked if the grade could be changed to make the look-out window into an egress window. Wischnack stated that a full basement would be an option

and the 25 percent of the proposed basement would be subtracted from the floor area ratio.

Schmitz asked how the floor area ratio would be impacted if the right-of-way was not subtracted from the lot. Metzger explained that a 5,002 square-foot residence could be constructed on the lot and meet mcmansion policy requirements if the strip of right-of-way easement had not been dedicated in 1989. The bonus room, however, would put the floor area ratio at .24, above the .23 allowed by the mcmansion policy.

Metzger clarified that if the basement would become a full basement and eliminated from the floor area ratio, the room above the garage would be included, and the 8.5 feet of dedicated right-of-way would be excluded from the lot size, then the floor area ratio would equal .25.

Chair Cheleen noted a drainage pond across the street and a pink house on the corner that the city purchased and plans to demolish. Colleran knew that the plan was to leave the area as open, green space. Chair Cheleen noted that all other homes are a distance away from the applicant's property.

Valorie Kanitz was present with her husband, Thomas, 5301 Lorence Road, applicants. Ms. Kanitz thanked Metzger for his report and all the help he provided to get to this point. She walked through a presentation that introduced her family and provided multiple views of the lot and area. She pointed out a residence that has a floor area ratio of .23. The proposal was designed to preserve as many trees as possible. The residence would be nestled in the trees. Her lot is remote, even in the winter time. Trees line the streets on both sides. The basement has egress window wells. The view from the windows is boulder window wells.

Mr. Kanitz explained the intent was to have a full-depth basement. Locating windows in the front and west sides of the home fit with the natural grade. A person would have to be over seven feet tall in order to see over grade level.

Ms. Kanitz stated that the setbacks would be generous, 26 feet and 53 feet side yard setbacks, 44 feet from the back, and 55 feet from the front. The residence is isolated from the neighborhood with mature trees and a pond across the street. The floor area ratio may be waived where the proposed home is relatively isolated from the rest of the neighborhood by slopes, trees, wetlands, or other physical features. She requests that the floor area ratio requirement be waived.

Ms. Kanitz provided pictures of residences in the area. The proposal would be valued similarly to residences in the area. One residence in the area has nine

garage stalls. The proposed home would be architecturally similar to residences in the area.

Mr. Kanitz explained the history of the project. A two-story residence would save more trees than another style. A 4,998 square-foot home would meet the applicants' needs. The architect designed the home and he purchased the lot in July of 2007. In September of 2007, plans were submitted to the city. The plans included egress windows in the basement. Staff informed the applicants that the maximum allowed square footage would be 4,679 square feet. The plan exceeded that amount by 253 square feet. In December, drawings were given to neighbors. Tim Lane, neighbor north of the site, had no concerns. John Goodman, property owner south of the site, provided an e-mail that supported the proposal. The neighbor to the east was excited about the proposal. He would support a larger home to increase the property value. Ms. Kanitz stated that the plans shown the neighbors included the bonus room.

Ms. Kanitz met with planning staff February 5, 2008. If the basement had any windows, it would be considered a partial look out. Staff informed her that if the plan fell below 4,679 square feet it would meet the mcmansion policy requirements. The only option at that time would be to close off the bonus room.

Ms. Kanitz requested that the mcmansion policy be waived due to the remoteness of the property, the trees on the sides, and the pond across the street. She did not agree with the condition requiring the removal of the storage space above the garage. She agreed with the grading and three white pines condition.

Mr. Kanitz stated that the architect designed the residence to fit with surrounding residences. The architect did not want his name associated with the project if the bonus room windows would be eliminated and the ceiling lowered 10 feet. He indicated that communities are often pushing architects to design a home with a steeper roof because it looks better. The roof above the garage adds continuity to the home and the dormers on the windows carries on the look from the rest of the house. The proposed changes would not be visually appealing. The recommendation of staff is subjective and goes beyond the intent of the mcmansion policy, which is not to suggest architectural changes from an appearance stand point.

Mr. Kanitz requested the floor area ratio requirement be waived due to meeting the isolated lot definition. The bonus room should be a future option. He requested removal of the condition requiring design changes to the attic above the garage.

The public hearing was opened.

Marat Kogan, 5327 Lorence Road, supported the application. The proposal would benefit the entire area.

No additional testimony was submitted and the hearing was closed.

Lehman admitted that his residence has a bonus room over the garage. It was originally designed to not have access to the house. He felt that if the variances had been properly figured in 1989, then the proposal would meet mcmansion policy requirements. He was surprised that those corrections were not made before the lot could be sold. He understood there was no fault by current staff or commissioners. The fact that the look-out windows could be turned into egress windows without too much trouble and the error calculating the lot size in 1989 led him to support approving the variances without any removal of the bonus room. Lehman would support not closing off the bonus room.

Schmitz agreed to waive the mcmansion policy on the last application due to special circumstances. She understood the mcmansion policy was intended for a neighborhood with small houses. She was fine with not walling off the bonus room and fine with leaving the basement windows as proposed. She agreed that the error in calculating the lot size in 1989 was also a factor.

Sjeklocha had her mcmansion policy in front of her. She requested information regarding how it applied to the proposal. Wischnack felt this was a challenging application. The city council and planning commission treat the mcmansion policy as a policy, but reasoning is requested so that staff has future direction regarding how to apply the policy. Since its inception, the commission has had three requests to deviate from the mcmansion policy. The planning commission approved one deviation, but it was denied by the city council. In this case, a commissioner may feel that a .26 floor area ratio would be reasonable for the neighborhood.

Blatz asked what the floor area ratio would equal if the basement was treated as a full basement, the bonus room was included, and the right-of-way was not part of the lot size. Metzger responded .24.

Chair Cheleen did not want to stray from the mcmansion policy. He appreciated Metzger's work. He visited the site and felt it is unique. He appreciated the site lines of surrounding houses. The proposal would not look out of place considering the neighborhood and the distance from other residences. The

basement with a .25 calculation was subjective and generous of staff. He asked if the driveway easement was located on the applicant's property. Metzger responded in the negative. It was partially located on the lot behind the site. Cheleen stated that if he was doing the design, then he would be right up to the mcmansion policy's requirements also considering what lots cost these days. He concurred with other commissioners due to the size of houses in the neighborhood, the distance of the residence from other houses, the slight deviation of the mcmansion policy, and the situation with the right-of-way.

Lehman moved, second by Schmitz, to adopt the resolution on pages A16–A19 of the staff report, which approves the lot variances at 5301 Lorence Road with a modification to waive compliance with the mcmansion policy and allow the floor area ratio to not exceed .25 and the storage space above the garage may be constructed in accordance with the plans :

- Variance to lot area standard from 22,000 square feet to 20,344 square feet.
- Variance to lot depth standard from 125 feet to 123 feet.

Approval is based on the following findings:

- 1) The proposal, with staff recommended revisions, is reasonable and would meet the required standards for a variance, because:
 - a. Unique hardship: The subject property previously received variance approval for substandard lot area. However, the variance area calculation was inaccurate and did not include the substandard lot depth. Literal enforcement of the city code would cause an undue hardship.
 - b. Unique circumstance: The unique circumstances are the subject property's substandard lot area and lot depth.
 - c. Intent of the ordinance: Granting these variances would meet the intent of the ordinance by providing reasonable use of the property through the construction of a reasonably sized home.
 - d. Neighborhood character: The subject property was previously used as a single family property and will continue that use with construction of the proposed home. The proposed home will not

alter the character of the neighborhood if staff recommendations are followed.

- 2) The McMansion Policy is waived for the following reasons:
 - a. But for previous staff error in calculation of lot area and lot depth, the proposed house would not be subject to the McMansion Policy.
 - b. The proposed house would be similar in size to other houses in the immediate area. As such, the house would not alter the essential character of the neighborhood.
 - c. The proposed house would exceed all minimum setback requirements.
 - d. The subject property is uniquely positioned.
 1. The buildable area of the site is screened by existing trees.
 2. There is a large ponding area directly across the street from the subject property.

Approval is subject to the following conditions:

- 1) The survey submitted for building permit must show grading limits that will minimize tree loss. Particular attention should be given to the three white pines located to the south of the building pad.
- 2) Prior to issuance of a building permit:
 - a. A copy of this resolution must be recorded with the County and a copy of the recorded document returned to the city.
 - b. Install a temporary rock driveway, erosion control, tree protection and wetland protection fencing as required by natural resources staff for inspection and approval. These items must be maintained throughout the course of construction.
- 3) The storage space above the garage must be walled off from the living space of the home at primary build-out.

- 4) 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.

Schmitz, Sjeklocha, Blatz, Lehman, and Cheleen voted yes. Walker and Adams were absent. Motion carried.

Chair Cheleen stated that an appeal of the planning commission's decision must be made in writing to the planning division within 10 days.

C. Variance to construct an addition to the house, and add a new detached garage to the property at 17306 Co Rd 101 for Reed Holiman and Paula Ramaley. (04013.08a)

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

Metzer reported. He recommended approval of the application, with staff-suggested changes, based on the findings and subject to the conditions listed in the staff report.

Blatz asked if the county owned property east of the site. Metzer answered in the affirmative. The applicant maintains the property. The proposed variance, as suggested by staff, would allow the applicants to remain on their property to maintain the garage.

Schmitz asked if Hennepin County commented on the proposal. Metzer answered in the negative.

Reed Holiman, 17306 County Road 101, and his wife, Paula Ramaley, applicants, thanked staff who had been very cooperative and helpful. He thanked commissioners for visiting the site on the weekend. He understood that variances were not granted lightly. He does maintain and utilize the adjacent county property. He added that his neighbors' steps are on his property. It is a highly cohabitive environment. He requested the original application be considered for practical reasons. The proposal would be safer for a 24-inch oak tree and 16 pines in the front. A turnaround is required because a vehicle cannot be backed onto County Road 101. The county has been wishy-washy in determining if more of his lot would be needed for future County Road 101 revisions. It would be beneficial to just remove the garage from the area now. The proposal would have the least amount of impact on the property and the site. Aesthetics are very important. The garage being located almost on the east property line would work aesthetically and would be the minimum amount of functionality when exiting the

garage. The alternative would be to locate the garage up front which would provide a functional garage. The county's easement will never be built on. It is an active drainage area. His family cleans up the debris. His family already "trespasses" on the property and he does not feel there is a lot of harm.

Ms. Ramaley stated that low maintenance materials would be used. She would be happy to work with staff to make sure that maintenance would be at best low and at worst small.

Mr. Holiman stated that the distance from the edge of the garage to the edge of the driveway shrinks to 21 feet. The standard parking stall is approximately 19 feet long. He respectfully requested that the variance be granted as originally proposed.

Mr. Holiman stated that the residence has 1,600 square feet of usable space. The neighbors have no problem with the side yard setback. The 4-foot difference is only a point intrusion. It would make a huge difference in the amount of usable space. Ms. Ramaley stated it would make the difference between being able to have a sofa in the room or not. It would allow the small, galley kitchen to have a dining area. The applicant requested the variances be granted for the garage and house addition setbacks.

Lehman asked if the applicants had tried purchasing the adjacent land from the county. Ms. Ramaley stated that her father tried when he owned the property, but the county declined.

In response to Lehman's question, Ms. Ramaley explained that the addition could not be added on the lake side of the house or the rear because of a hill. The only choices are to construct up or the proposal. The neighbors and applicants preferred the proposal to making the residence taller, but that would be an option.

Sjeklocha asked if the applicants agreed to the tree and fence requirement. Ms. Ramaley stated that the parties involved were already discussing what would be the best trees. Tall, skinny trees would be best for the site lines.

Chair Cheleen asked how far the lake is located from the house. Mr. Holiman explained that the deck was allowed because it was not hard surface coverage. He provided a survey. Metzger approximated the residence to be 62 feet from the lake. The setback is 50 feet.

Chair Cheleen clarified that the applicant requested a 2.5-foot setback. Mr. Holiman stated that a 3-foot setback would be workable.

Chair Cheleen noted that staff considers future neighbors and the common public's good. In this particular case, the applicant may not have a problem for years.

Chair Cheleen asked if the addition would be feasible if it would be wider in the back and not rectangular. Ms. Ramaley explained how it would be feasible, but not usable. She explained the floor plan. It would encroach into the neighbors' privacy. The proposal was designed with the neighbors' privacy needs in mind. The south corner was minimized to 10 feet. A hill separates the rear of the property. The property line and tree line are different. Chair Cheleen noted that a rectangular addition would be preferred architecturally.

Chair Cheleen confirmed with the applicants that a 3-foot setback would be acceptable for the house addition. Chair Cheleen asked if the county would support construction of a rain garden. Ms. Ramaley stated that she planted natural lawn and uses pesticide-free improvements on the hillside. Collieran explained that the setback from the county property is necessary for potential future use of the land. Collieran discussed the benefit of pretreating the stormwater runoff from County Road 101 and installing a native shoreland buffer with a county representative, but learned that no determination of the outlots future use has been made at this time.

Lehman asked if a maintenance easement may be utilized between the adjacent property owners. Wischnack stated that a general easement would not be uncommon for fences, driveways, and stairs in some cases. The building code's fire separation issue becomes a problem when the setback is less than 3 feet. A general easement may be considered. Mr. Holiman did not see a benefit for the county to enter into an easement agreement. Ms. Ramaley would support an easement agreement. She recalled that a gas station previously existed on the property. A structure being built on the property is highly unlikely. Mr. Holiman did not want to delay construction to try to obtain an easement agreement with Hennepin County. A positive outcome does not seem likely. Locating the garage in the front of the property would be a possibility, but would not work best for site lines. Instead of viewing a planted area and trees from County Road 101, a garage would be located in the front. The proposal is the best solution for everyone involved.

Lehman was suggesting the easement agreement for the applicants and the Johnson property. Ms. Ramaley felt that was a very good suggestion.

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

Lehman did not take granting of setback variances lightly. He was concerned with property boundary relationships becoming strained at some point. The garage variance troubles him less because the adjacent property is vacant. He is sympathetic to the applicants and conflicted. The lot is narrow and is surrounded by a lake and a hill. Lehman asked staff for guidance. Thomas explained similar previous lake shore variances. Variances for properties located on lakeshore have been granted down to 3-foot setbacks. On Gray's Bay Boulevard east of the bridge, 4-foot setbacks have been granted. In many of those cases, homes are more adjacent to each other. There are residences with 3-foot and 4-foot setbacks in the area.

Schmitz concurred with Lehman regarding the garage setback variance. It seemed likely that County Road 101 could be reconstructed again. Since there is no garage on the property, granting a variance for a 2-stall garage would be reasonable. The abutting property is vacant county land. Schmitz felt the variance would be reasonable. She was conflicted with the house addition variance. The addition would only be a partial encroachment into the setback.

Blatz concurred with Lehman and Schmitz. The property is unique and the houses are not close to each other. The neighbor is separated by height. She supported both variances.

Schmitz moved, second by Lehman, to adopt the resolution on pages A14–A17 of the staff report, which approves the following staff recommended setback variances for a home addition and garage construction at 17306 County Road 101 with modifications provided in the change memo dated March 20, 2008:

- 1) An aggregate side yard setback variance from 30 feet to 10 feet for a house addition.
- 2) A side yard setback variance from 10 feet to 3 feet for a house addition.
- 3) A side yard setback variance from 10 feet to 0.5 feet for a detached garage.

Approval is based on the following findings:

- 1) The proposal, with staff recommended revisions, is reasonable and would meet the required standards for a variance, because:
 - a. Undue hardship: The small lot area, substandard lot width, steep grades on the lot and the lack of a garage all present a hardship. Together, these factors make it virtually impossible to construct a home addition and detached garage without setback variances.
 - b. Unique circumstance:
 1. The subject property's substandard lot area and lot width and steep grades are unique circumstances not common to every R-1 property. The construction of a home addition and detached garage compatible with the surrounding neighborhood is greatly encumbered by these site features.
 2. The property does not contain a garage, whereas most modern homes contain at least a two-stall garage. By planning commission policy, a two-stall garage is considered reasonable use of a property.
 - c. Intent of the ordinance: Granting of these variances would meet the intent of the ordinance by providing reasonable use of the property through the construction of a reasonably sized home addition and detached two-stall garage.
 - d. Neighborhood character: The proposed home addition and detached garage will be screened by topography and vegetation and will not alter the character of the neighborhood.

Approval is subject to the following conditions:

- 1) Prior to issuance of a building permit:
 - a. A copy of this resolution must be recorded with the County and a copy of the recorded document returned to the city.
 - b. Submit revised plans in conformance with the following:

1. The home addition must maintain a side yard setback of 3 feet from the west property line and an aggregate side yard setback of 10 feet.
 2. The detached garage must maintain a side yard setback of 0.5 feet from the east property line.
 3. The site must be developed in substantial conformance to the plans date stamped "Received February 19, 2008".
- c. Install a temporary rock driveway, erosion control, tree protection and wetland protection fencing as required by natural resources staff for inspection and approval. These items must be maintained throughout the course of construction.
- 2) 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.

Schmitz, Sjeklocha, Blatz, Lehman, and Cheleen voted yes. Walker and Adams were absent. Motion carried.

Chair Cheleen stated that an appeal of the planning commission's decision must be made in writing to the planning division within 10 days.

D. Conditional Use Permit for religious assembly at 1712 Hopkins Crossroad for Sharei Chesed Congregation. (08009.08a)

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

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

Lehman asked if parking stalls could be gained by removing interior islands in the parking lot. Thomson explained that replacing landscaping with impervious surface was a concern so that option was not considered for additional parking space.

Lehman visited the site and saw snow utilizing parking spaces. He asked if a condition could require removal of snow from the site. Thomson stated that could be added as a condition of approval. There is adequate snow storage area around the perimeter of the lot to prevent impact of parking stalls.

Myrna Ornstien, representing the Sharei Chesed congregation, the applicant, stated that the congregation numbered approximately 100. She provided photographs of a gathering where approximately 15 people participated in a cooking class. A typical service includes 15 people on a weekday afternoon. The congregation is small. She looked forward to the opportunity to have the site as the congregation's future home.

Chair Cheleen felt the pictures were helpful. There were never more than 25 people at a gathering. The parking should be more than adequate for usual events. He suggested the applicant meet with an adjacent parking lot owner to discuss shared parking if it is needed. Ms. Ornstien said that even on a high-holiday, there would be no more than 100 people. For a combined event with another church, a different facility would be rented.

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

Sjeklocha asked if the review of a site and building plan included review of Americans with Disability Act requirements. Thomson explained that the state building code would require the accessibility standards. Staff did discuss elevator access and a fire sprinkling system with the applicant. A building permit would need to be applied for and would ensure compliance with those standards.

Blatz moved, second by Lehman, to recommend that the city council adopt a resolution approving the conditional use permit for religious assembly at 1712 Hopkins Crossroad for Sharei Chesed Congregation with the added condition that snow be removed from parking areas to prevent decreased parking areas:

CONDITIONAL USE PERMIT, WITH VARIANCE

- 1) *Recommend that the city council adopt the resolution on pages A13-A17 of the staff report, which approves 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 would require a revised conditional use permit.
- g. The applicant must agree to these conditions in writing.

SITE AND BUILDING PLAN REVIEW

- 2) *Recommend that the city council 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.

Schmitz, Sjeklocha, Blatz, Lehman, and Cheleen voted yes. Walker and Adams were absent. Motion carried.

9. ADJOURNMENT

Schmitz moved, second by Lehman, to adjourn the meeting at 9:35 p.m. Motion carried unanimously.

By: 

Lois T. Mason
Planning Secretary