

**MINNETONKA PLANNING COMMISSION
MINUTES**

JUNE 5, 2008

1. CALL TO ORDER

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

2. ROLL CALL

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

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

3. APPROVAL OF AGENDA: The agenda was approved as submitted with modifications provided in the change memo dated June 5, 2008.

4. APPROVAL OF MINUTES: June 5, 2008

Sjeklocha moved, second by Adams, to approve the June 5, 2008 meeting minutes as submitted with the following changes from the change memo dated June 5, 2008:

Page 15: Colleran confirmed for Cheleen that an acre lot with a woodland preservation area could be subdivided if no more than 25 percent of ~~the trees would be removed from the~~ woodland preservation area would be removed.

Page 21: Colleran stated that ~~Eden Prairie's~~ Eagan's tree ordinance applied its tree ~~mitigation~~ removal requirements evenly to all properties except when it comes to mitigation.

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

5. REPORT FROM STAFF

Gordon announced future meeting dates:

- A joint city council, park commission, economic development authority (EDA), and planning commission regarding the

comprehensive plan meeting will be held June 16, 2008 at 6:30 p.m.

- The planning commission will have a public hearing regarding the comprehensive plan July 22, 2008 at 6:30 p.m.

6. REPORT FROM PLANNING COMMISSION MEMBERS:

Adams reported that he stopped by the rental property located in the Glen Lake redevelopment area. He met with the rental manager and learned that the units are being leased at a rapid rate. Residents ranged in age from 25 years to 86 years. Most of the residents grew up in the area. The addition will be a great addition to the housing mix for the area. Chair Cheleen agreed.

7. PUBLIC HEARINGS: CONSENT AGENDA:

No item was removed from the consent agenda for discussion or separate action.

Adams moved, second by Schmitz, to approve the item listed on the consent agenda as recommended in the respective staff report as follows:

A. Front Yard Setback Variance for an addition to the home at 2713 Stone Circle for Stephen and Stacey Schmitt.

Adopt the resolution on pages A8–A10 of the staff report, which approves the proposed front yard setback variance from 35 feet to 25 feet at 2713 Stone Circle. Approval is based on the following findings:

- 1) The proposal is reasonable and would meet the required standards for a variance, because:
 - a. **UNDUE HARDSHIP:** Though the subject property is quite deep, the applicant's existing home has a non-conforming front yard setback. Any addition corresponding to the footprint of the existing building would require a front yard setback variance
 - b. **UNIQUE CIRCUMSTANCE:** When constructed in 1969: (1) the existing home did not meet minimum setback requirements of the time; and (2) no variance was granted for the lesser setback. This is a unique situation not common to every residentially-zoned property.
 - c. **NEIGHBORHOOD CHARACTER:**

- (1) The proposed additions would meet minimum side and rear yard setbacks. Likewise, the additions would meet setback requirements from area wetland and associated 100-year floodplain elevations.
- (2) The proposed additions would maintain the front yard setback of the existing structure.
- (3) As the property is located at the end of the cul-de-sac, the addition would not affect the established building lines along the roadway.

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. 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.

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

8. PUBLIC HEARINGS

A. Amendment of an existing sign plan for the Petters/Welsh properties at 4350 and 4400 Baker Road.

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.

Adams asked how the signs would be lit. Thomson explained that the wall signs would be internally illuminated. The monument signs may have a ground mounted light. The applicant could provide further information.

Blatz asked if there was a maximum size restriction for lettering on signs. Thomson answered in the affirmative. The dynamic sign ordinance includes a provision that is based on the visibility of a driver. A sign with letters that are too small to read would cause driver distraction. It is based on the speed of the adjacent roadway. A maximum is not set for the letter height, only for the total sign area.

Chris Kennelly, Welsh Companies, representing the owner of the site, was happy to say that Welsh corporate headquarters had been moved into the site. It is operating very well. He stated that:

- It does not make sense to have a sign facing the neighborhood. The north side would have better visibility and would be further away from the neighborhood.
- The current freeway sign is not attractive. The new freeway sign would match the front entry monument sign.
- Petters Group Worldwide favors using its logo. He requested that the "Petters Group Worldwide" be considered a logo that could max out its height at 15 inches.
- The Baker Road sign was changed because it looked too modern and space age compared to the brick materials. Both buildings have a strong arc. That feature would be matched by the signs to create a campus theme.
- Baker Road is currently an issue. A traffic study would be done in the future. There is a benefit to having a taller sign in that location. It is at a crest of a hill. It would be beneficial to see the turn earlier. He would be okay with the size of the sign that staff recommended.
- He would like an increase in the copy area and copy size. "Welsh" would be easy to fit on the sign, but not a longer name. He could work with a 65-square-foot copy area and removal of the letter height requirement.

Michael Garden, 1718 Clinton Avenue, South Minneapolis, EDI Sign Systems, applicant, stated that:

- A sign plan was created that met the 159-square-foot requirement.

- The letters are 10 inches high for “Welsh Group.” It is tougher to fit the logo for Petters.
- If the whole black panel is used as the copy area, then it would not work. The sign would have to change in height. He provided a new design and reviewed different options.
- Future tenants may have a longer logo than Welsh.

Walker asked for the design of the monument sign. Mr. Garden said that there would be no lights inside the monument sign. It would be ground lit. The light would be in a flower bed.

Adams asked for the size of the copy and graphic area that Mr. Garden could work with. Mr. Garden responded 60 square feet.

Adams noted that the monument area was originally approved at 159 square feet. Mr. Garden stated that the total monument area currently proposed would be just less than 159 square feet. The height would be 12 feet.

Blatz asked if the minimum-sized letter would have to be reduced to fit on a copy graphic area 60 square feet in size. Mr. Garden stated that the letters themselves would comply, but the panels and look that is trying to be achieved would not allow the minimum-sized letters. Petters Group and future tenants would probably be a lot more complex. It would be difficult to accommodate 9 inches in height for the letters.

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

Adams asked for the purpose of the minimum letter size. Thomson explained that a monument sign provides identification of the building for motorists. The minimum letter size was developed for public safety. A sign with letters that are too small to read would cause driver distraction. The minimum size is based on the speed of the adjacent roadway and is based on the standards prepared by the United States Sign Council.

Adams recognized the hardship for Petters Group Worldwide. It would not be reasonable to restrict the name to six letters. Thomson and the city attorney agreed that the city cannot regulate the contents of a sign. All tenant identification must occur within the copy and graphic area. Staff’s intent is to allow whatever reasonable tenant identification can occur based on the minimum font heights listed in the ordinance.

Lehman viewed the intent of a monument sign to identify the site. It would not be reasonable to list 20 tenants on a monument sign. Individual tenants could be listed in the lobby area. Thomson agreed. He added that when the original sign plan was approved, there were two sign panels on the sign for the two major tenants. The applicant now wants to add additional tenant panels to the sign.

Blatz was curious about a traffic study and noticed a comment that stated that a sign would be located in the boulevard. Thomson explained that the monument sign would not be located in the right of way and would comply with the 10-foot setback requirement. Wischnack explained the history of the site. The city council directed that a traffic study be done when the buildings became occupied.

Adams asked the applicant if the signs would be illuminated continuously. Mr. Kennelly was open to shutting off the lights for part of the night. Adams had received comments from residents concerned with light pollution.

Walker asked if the building has surface-mounted light fixtures. Mr. Kennelly answered affirmatively. The lights are located near the third and fourth floors and point directly down. Walker felt a neighborly thing to do would be to shut them off at some point during the night.

Walker asked if using a wider but shorter monument sign was considered to accommodate long names. Mr. Kennelly stated that those were not as aesthetically pleasing. The height was preferred for motorists to see the sign as soon as possible on top of the hill.

Chair Cheleen felt the 9-inch tall letter requirement made sense because it would provide for easy visibility and prevent a safety hazard. The applicant has modified the original plan to get closer to ordinance requirements. As long as the building is identified, the sign would serve its way-finding purpose.

Mr. Kennelly stated it would be easier to have a decrease in the copy area than the letter size. He and the tenants want to maximize the letter size to allow them to be read. There is another group called "Petters" something, so Petters Group Worldwide feels it is important to include the "Worldwide." He could see similar issues for other tenants.

Walker asked if the lease documents require the owner to provide a sign for the tenant. Mr. Kennelly stated that provisions for a sign are not included in the signed lease agreement. It would be possible to write "Petters Group" and "Welsh" on the panels.

Lehman believed that the monument sign ought to serve as a way-finding sign instead of a tenant-identifying sign. It would be expected that a monument sign would say "Market Square" to identify the site. He could live with staff's recommendation, but his inclination was to be more compliant with the sign ordinance.

Sjeklocha asked if he would feel the same regarding the sign facing Interstate 494. Lehman would adhere to the sign ordinance, although following staff's recommendation would not upset him.

Mr. Garden stated that strip malls provide signs listing each tenant. On this project, there would be no sign that would list the tenants of the building. The large, Interstate 494 sign would only have 2 tenants.

Walker questioned why all the tenants would be listed on the monument sign. He perceives the building as the Welsh and Petters Group building. He did support compliance with ordinance requirements. His other concern was that the top of the hill is very dangerous. He requested that site lines be clearly checked out.

Mr. Kennelly stated that the site lines had been check out. There would be a turn lane for going left or straight and a right turn lane. He had worked with the city regarding the location of the access. The base for the monument sign was poured initially when the other sign was approved.

Walker cautioned planting shrubs that would stick out past the east side of the base. Mr. Kennelly would follow up with that concern.

Chair Cheleen agreed with Lehman's thought and understood the applicant's position. He did not feel that the minimum letter height of 9 inches should change because of the safety issue. He liked the idea of lowering the height of the sign one foot. He could live with the change from 42 square feet to 60 square feet for the copy and graphic area.

Adams moved, second by Blatz, to approve the sign plan amendment for Welsh Companies at 4350 and 4400 Baker Road with a change of 60 square feet instead of 77 square feet and height of 12 feet instead of 13 feet and require the Baker Road sign and parking lot lights be turned off at 10 p.m. 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 due to the substantial site area and distance of the buildings from the roadway.
 - b. **UNIQUE CIRCUMSTANCE:** The distance of the buildings from the roadway and the double-frontage along Baker Road and Interstate 494 are circumstances not common to every office development.
 - c. **INTENT OF THE ORDINANCE:** The signs would provide appropriate and reasonable site identification and way-finding.
 - d. **NEIGHBORHOOD CHARACTER:** The signs would not alter the character of the neighborhood, as they are proportional to the scale, and architecturally compatible with the office buildings.

Approval of the sign plan amendment is subject to the following conditions:

- 1) 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 May 5, 2008
 - Sign plans date-stamped May 5, 2008
 - Building elevations date-stamped May 5, 2008
 - a. The sign plan must be revised to reflect:
 - (1) The monument sign along Baker Road must be reduced in size to a maximum of 42 square feet of copy and graphic area and 159 square feet of total monument area.
 - (2) Each letter of copy on the monument sign along Baker Road must be a minimum of 9 inches.
 - (3) Each letter of copy on the monument sign along Interstate 494 must be a minimum of 15 inches.
- 2) Sign permits are required for the wall and monument signs.
- 3) Any changes to the sign plans require an amendment to this approval.

- 4) Sign permits must be issued prior to December 31, 2009, unless the planning commission grants a time extension.
- 5) The Baker Road sign and parking lot lights must be extinguished by 10 p.m.

Schmitz, Sjeklocha, Adams, Blatz, and Cheleen voted yes. Lehman and Walker voted no. 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.

B. Items concerning construction of a new home at 2827 McKenzie Point Road.

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

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

Lehman asked if the amount of floodplain fill could have been reduced and potentially eliminated if consideration had not been to save the cottonwood tree. Metzer stated that the floodplain fill would be reduced, but not eliminated. Mitigation of the floodplain fill would be provided.

In response to Lehman's question, Metzer stated that staff's recommendation would have been the same if a house existed on the site and the application included demolition of the existing house. The current proposal is reasonable. Lehman was interested in ordinance changes from then compared to now. Metzer stated that staff's recommendation would be the same.

Sjeklocha asked staff to comment on a drainage study. Metzer stated that the site currently has standing-water issues along the road. The engineering department has been working on a remedy for the situation.

Sjeklocha asked if the proposal would impact the concern. Metzer stated that the proposal would not negatively impact the flooding potential on McKenzie Point given that five cubic yards of floodplain capacity would be added. The proposed grades and drainage pattern would be reviewed during the building permit process.

Adams asked how far above the floodplain the house would be constructed. Metzger responded that the exterior grade of the residence would be approximately 933.5, 2 feet above the floodplain, which meets ordinance requirements. The exterior grade would vary from 932 to 933. Staff was not aware of property damage caused by flooding of neighboring residences. Most of the surrounding basements do have sump pumps that run quite often. The current issue relates to standing water in the yards.

Schmitz asked if the residence would have a basement. Metzger answered in the negative.

Chair Cheleen asked how deep and what the rain garden area would look like. Metzger stated that the rain garden would be roughly 1.3 feet lower than the current elevation. It would be landscaped any way the property owner desires as long as it was pervious materials.

Chair Cheleen noted that the existing drive could not be used as a construction entrance. Metzger explained that the root zone of the cottonwood tree would be located under the drive. The condition would protect the cottonwood tree's root zone.

Kyle Smith, representing the applicant, stated that:

- A rain garden is not meant to hold water. It is meant to reintroduce plant life that would be more indigenous to the lake and wetland friendly.
- The residence would be designed to reduce impact to the environment. It would be a "green" residence with a cement base and a geothermal system. It would be one of the first homes that would be certified in accordance with the new "green" standards.

Adams asked if the residence would be built on pilings. Mr. Smith answered in the affirmative. He acknowledged the site's proximity to the lake and the wet soil.

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

Blatz moved, second by Sjeklocha, to adopt the resolution on pages A13–A19 of the staff report, which approves the construction of a new home at 2827 McKenzie Point Road with the addition provided in the change memo dated June 5, 2008. This resolution includes the following:

- ***Conditional Use Permit for construction of a home located on fill within the floodplain.***
- ***Floodplain Alteration Permit for fill and mitigation of floodplain.***
- ***Floodplain Setback Variance from 20 feet to 8 feet.***
- ***Driveway elevation above floodplain elevation Variance from 1 foot above to 0 feet above.***

Approval is based on the following findings:

- 1) The proposal meets the general and specific conditional use permit standards as outlined in the "Supporting Information" section of the staff report.
- 2) The proposal is reasonable and would meet the required standards for a variance, because:
 - a. Given the presence of floodplain on the property it would be difficult to place a home on the property without the need for a floodplain setback variance. This is a unique circumstance for an R-1 zoned property, which constitutes an undue hardship.
 - b. The applicant's proposal is to fill enough floodplain to place the home at an 8-foot setback from the floodplain. Staff finds that a floodplain setback variance meets the intent of the ordinance, as the creation of a greater setback would result in more volume of floodplain being filled.
 - c. The subject property was previously used for residential purposes. The applicant's proposal would renew the residential use; therefore, the proposal would not alter the essential character of the neighborhood.
 - d. Because the existing roadway of McKenzie Point Road is not located at least 1 foot above the floodplain elevation, it would not be possible to require the applicant's driveway to meet ordinance requirements. Therefore, staff finds that a variance for the proposed driveway elevation is reasonable.

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. 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.
 - c. Submit a construction management plan; this plan must outline parking and construction access and stockpile and material storage.
 - d. The property owner must submit an emergency evacuation route from the structure directly to land above the designated 100-year flood elevation, subject to staff approval.
- 2) The low floor elevation of the home must be no lower than 933.5 (2 feet above the floodplain elevation of 931.5).
- 3) The low floor elevation of the attached patio must be no lower than 933.0 (1.5 feet above the floodplain elevation of 931.5).
- 4) The floodplain mitigation area may not be located within 20 feet of the proposed home.
- 5) The existing detached garage must be permanently removed from the property prior to issuance of a building permit.
- 6) Prior to building permit application, the applicants must indicate trees to be removed and trees to be preserved during construction.
- 7) Tree Protection:
 - a. The 42-inch cottonwood tree located at the southwest edge of the property, near the front yard setback boundary, is required to be preserved. No grading, utilities, pavement, equipment access, fill, material storage, or other impact will be permitted during

construction within 15 feet directly northeast of the trunk of the tree or north of the of the redline illustrated on page A4 of this report.

- b. A 4-foot tall chain-link must be installed at the grading and construction limits around the tree to prevent impacts during construction. This fencing must be installed prior to removal of the existing garage.
 - c. Proposed grading must not negatively impact the critical root zone of the trees on the subject property or adjacent property.
 - d. The contractor must arrange a pre-construction meeting with city staff prior to issuance of the building permit to discuss required tree protection, utility locations, removal of the existing driveway, and actions required to prevent disturbance to, and enhance the survival of, the tree.
- 8) The existing drive may not be used as a construction entrance as indicated on the plans.
 - 9) The survey must be revised to show all drainage and utility easement on the subject property to ensure proposed grading would not impact existing utilities. These existing sewer and water lines must be staked in the field. No earthen material may be removed from above these lines.
 - 10) Final grading plans are subject to approval by engineering and natural resources staff prior to building permit approval to ensure proper floodplain alteration and to limit impact to trees to be preserved.
 - 11) Permits may be required from other outside agencies, including but not limited to the United States Army Corps of Engineers, Minnesota Department of Natural Resources, Minnehaha Creek Watershed District, and the Lake Minnetonka Conservation District. It is the applicant's and/or property owner's responsibility to obtain any necessary permits.

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.

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

C. Items concerning a 5-lot subdivision at 2714 Oakland Road.

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

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

Lehman clarified with Thomas that an application in compliance with ordinance requirements would not be reviewed by the planning commission. Lehman asked how the tree ordinance would come into play in regard to a compliant application. Thomas explained that the most recent draft of the tree ordinance said that a subdivision within a woodland preservation area could happen in three situations: traditional zoning, so long as no more than 25 percent of the woodland preservation area would be removed; a subdivision with no more than 1 unit per acre and no more than 25 percent of the woodland preservation area being removed; or a planned unit development option. The proposed project would have more than 25 percent of the woodland preservation removed. Lehman reviewed that even though the application would be a compliant R-1 proposal, the tree ordinance requirements for the woodland preservation area would still apply. Thomas agreed that would be true in accordance with the draft ordinance. It has not yet been approved by the commission or the city council.

Lehman asked how the conservation easement would impact a future homeowner. Thomas explained that a conservation easement would limit the area in which construction activity could occur. The second way is specific to the project. The conservation easement that is outlined in the change memo is in regard to the wetland area only. The applicant's conditions of approval, as presented in the staff recommendation, refer to a tree mitigation plan that requires replacement of trees that would be removed from outside the allowed tree removal area. There are no conservation easements outside the wetland area.

Lehman questioned if someone in the future could remove trees on Lot 3 and Lot 2. Thomas stated that, according to the draft tree ordinance, the owner of Lot 3 would be allowed to remove trees after 3 years of owning the property. The owner of Lot 2 would be allowed to remove only trees located outside of the conservation easement area after 3 years of owning the property. Only a conservation easement would secure the long-term preservation of trees.

In response to Chair Cheleen's request, Thomas pointed out the location of the conservation easement. She also noted that a steep slope area is located on the site and protected.

Chair Cheleen asked if the land had to be lowered in the cul-de-sac. Thomas explained that some grading would be required. The residence would sit just off of the existing cul-de-sac.

Chair Cheleen asked if the tree removal illustration for Lots 4 and 5 showed the worst-case scenario. Thomas answered affirmatively. Grading would significantly impact the critical root zone. The tree may ultimately decline and die over time. Staff always shows ultimate tree loss.

Paul Otto, of Otto and Associates, represented the owners, Charlie and Kathy LaFever. He stated that:

- Staff presented the project very well. He was on the same page with the conditions of approval.
- The big issue is the trees.
- He explained the history of the project. The planned unit development process is difficult because his goal is to complete a project. The process has taken over a year.
- A lot of work has been done to protect the trees. The draft tree ordinance is a moving target. It is still being modified.
- Woodland preservation is important to the city. In designing the plat, it was taken into account.
- Staff agrees that the road was located in the most logical place. The area already cleared would be utilized. The trade off for lot sizes and frontages would be preservation of trees.
- The plan would be reasonable. He reviewed his planned unit development plan. His proposal was not the worst-case scenario. Reality would equal some place in between staff's worst-case scenario plan and his plan.
- His current plan would require the removal of 70 trees. The plan would meet ordinance requirements with the removal of 83 trees.
- It is a challenging site.
- The goal was to keep the perimeter of the property.
- The residences on Lots 4 and 5 have a nice stand of oak trees his plan worked to preserve. The proposal was a big improvement over a standard R-1 plat.
- The proposal would be sensitive to trees and have minimal grading.
- The pond would be in the open area to meet the requirements. He discussed the proposed contours from right of way to right of way.

Charlie LaFever, applicant, stated that the proposed subdivision would save 122 significant trees. Lot 5 represents a third of the buildable area. The proposal would have an 80-foot wide wooded buffer on the east and west sides. The plan would have an average of 46 significant trees per acre and an average of 24 significant trees per lot.

Mr. LaFever felt staff was pushing too far to require the removal of the fifth lot. The conforming R-1 plat would be a pretty routine subdivision. There is no wetland or bluff impact and the road is where it would have to be located. The removal of Lot 5 would not be justified. Outside of the road area, the development would allow 75 percent of the significant trees to be saved. Each lot would have a good amount of buildable area. Minnetonka is a great city and has developed high standards. The proposed subdivision is a development of very high standards.

Lehman asked if the applicant lost his opportunity to share development costs with the north property owner. Mr. LaFever was unsure. He wanted to get the project far enough along to get a developer interested in the property as a whole. The developer would put in the improvements.

Schmitz asked if the property north of the site contained a woodland preservation area and how would that impact the current project. Thomas answered that the property north of the site does contain a woodland preservation area. An evaluation would not be done until an application has been submitted.

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

Schmitz commented that if Lot 5 would not be allowed, waiving the park dedication fee should be considered.

Lehman commended staff and the developer for creating a very-well laid out proposal for a difficult site with the added frustration of dealing with an ordinance still being created. The project has achieved a lot of positive aspects. He was glad staff left the option to keep Lot 5.

Sjeklocha leaned toward the 5-lot option. She lives approximately 5 blocks from the site. The 5-lot option would be in character with the neighborhood, address the city's tree preservation needs, and the needs of the property owner. The planned unit development addressed the need for tree preservation. There is common ground with the 5-lot option.

Walker concurred. Staff and the applicant have done due diligence to the project. It would provide another home in Minnetonka which is a goal we all have. He supported the 5-lot option.

Chair Cheleen felt the number of trees left along Oakland Road and Stone Road would be considerable. Sliding the house pads onto the lots with custom grading minimizes tree loss. The proposal tries to accommodate property rights as well as control loss of trees. A 5-lot subdivision makes sense.

Adams recognized the property was a community treasure. There was wildlife running rampant when he visited the site. He felt it would be a good addition to Meadow Park. The tree loss concerned him. He could go either way with 4 lots or 5 lots. He favored the 4-lot subdivision. Maintaining the barrier to Oakland Road is important.

Blatz would like to see 4 residences, but 5 lots would be allowed with R-1 zoning without the tree ordinance. Thomas explained that the tree ordinance would require preservation of 25 percent of the woodland preservation area. The tree ordinance in its current form would not allow 5 lots on the site. Blatz agreed with Adams.

Schmitz struggled with the choice. She understood that locating the road through the woodland preservation area used up the 25 percent allowed to be removed. She was more willing to consider allowing Lot 5 because of the location of the road. The proposal did a fairly good job to preserve trees. Her concern with the tree ordinance was that a property owner could remove all of the trees after 3 years of ownership. Right now, the tree ordinance would not address that issue. She would be willing to consider the 5-lot subdivision.

Lehman said that since the intent was not to place a conservation easement on the woodland preservation area, then the city would not be able to prevent a property owner from removing the trees after 3 years of ownership. Incentives should not be created to cut down trees to allow subdivision in the future. Being reasonable with the property owner now is important.

Lehman moved, second by Schmitz, to recommend that the city council approve the following items concerning a 5-lot subdivision at 2714 Oakland Road with the changes provided in the June 5, 2008 change memo:

REZONING

- 1) *Recommend that the city council adopt the ordinance on pages A32–A34 of the staff report, which approves the proposed rezoning. This ordinance is based on the following findings:*
 - a. The rezoning would be consistent with the city’s guide plan; and
 - b. The rezoning would be consistent with the public health, safety, and welfare.

PRELIMINARY PLAT

- 2) *Recommend the city council either:*
 - a. Approve the COYOTE SONG subdivision date-stamped April 14, 2008 as proposed by the applicant; or

Approval is based on the following findings:

- a. The proposal meets the required standards and ordinances for a preliminary plat.
- b. The proposal attempts to minimize tree loss.

Approval is subject to the following conditions:

- a. Prior to final plat approval, complete the following:
 - (1) Submit revised plans and calculations, acceptable to the city engineer. Surface stormwater treatment facilities must meet the city’s minimum design criteria.
 - (2) Show the following on the final plat:
 - (a) Dedication of right-of-way for Oakland Road and the new cul-de-sac.
 - (b) The following drainage and utility easements:
 - (i) A 10-foot wide drainage and utility easements adjacent to the public right-of-way(s) and minimum 7-foot wide drainage and utility easements along all other lot lines.

- (ii) A 12-foot wide easement utility easement adjacent to the Oakland Road right-of-way. This easement is required to cover existing sanitary sewer within Oakland Road.
 - (iii) Drainage and utility easements over the wetland, 100-year elevation, and all infiltration basin areas as required by the city engineer.
 - (iv) A 20-foot wide easement over the existing power line in the southeast corner of proposed Lot 5. The easement must be a minimum of 10-feet wide on each side of the line.
 - (2) Pay a park dedication fee of \$5,000 per newly created lot.
 - (3) If the developer is petitioning the city to construct the public improvements, the city council must order the improvements.
- b. The following items must be submitted to the city before the city releases the final plat:
 - (1) An administration and engineering fee.
 - (2) An electronic CAD file of the final plat in microstation or DXF.
 - (3) The following documents must be prepared by an attorney knowledgeable in the area of real estate and must be submitted for the city attorney's approval:
 - (a) Title evidence that is current within thirty days before release of the final plat.
 - (b) Drainage and utility easements and associated maintenance agreements over all private stormwater treatment facilities.
 - (c) 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.

- (d) A conservation easement over the area 25-upland from the delineated wetland edge and a drawing of the easement. The easement may allow removal of hazard, diseased, or invasive species. The easements and drawings must be recorded with the final plat.

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

- (4) Any other requirements included with final plat approval.
- c. A grading permit is required. Unless authorized by appropriate staff, no site work may begin until a complete grading permit applicant has been submitted, reviewed by staff, and approved.
- (1) The following must be submitted for the grading permit to be considered complete.
- (a) Final street, utility, grading and drainage, and site plans as required by the city engineer must be submitted for staff review and approval.
- (i) The street plans must include:
- Revised "Typical Street Section Detail" which meets city standard street section.
 - Street alignment, profile, and cross-sections.
 - All street and trail patching must be sawcut and replaced perpendicular to the existing street and trail.
- (ii) The utility plan must include:

- Catch basins moved to the east to the radii points of the curb near Oakland Road.
 - Verification of watermain depth in the pond area and insulate depth less than 7.5 feet deep. A wet-pond is not allowed above the watermain.
 - Profile view for all public utilities.
 - Service locations, size and type of materials.
 - Fire hydrant locations as required by the fire marshal.
 - City standard details must be used as applicable.
- (iii) The grading plan must include:
- Proposed Lots 1 and 2 must employ either infiltration techniques or direct all roof runoff to the street to avoid erosion on the code-defined steep slope.
 - All lots must employ either infiltration techniques or direct all roof runoff to the street to avoid drainage onto adjacent properties to the south.
- (b) A Stormwater Pollution Prevention Plan must be submitted for staff review and approval.
- (c) Individual letters of credit or cash escrow for 125% of a bid cost or 150% of an estimated cost to comply with grading permit. The developer may submit one itemized letter of credit, if approved by staff. The city will not release or reduce the letters of credit or cash escrow until work has been completed according to the plans approved by the city.

- (d) If the developer is constructing any public improvements, the following must be submitted for staff review and approval:
 - (i) Final street and utility plans.
 - (ii) A signed agreement with the city. This agreement must guarantee that the developer will complete all public improvements and meet all city requirements.
 - (iii) A letter of credit or cash escrow in the amount of 125% of a bid cost or 150% of an estimated cost of the improvements.
 - (iv) The city will only reduce or release the letter of credit or cash escrow upon receipt of as-built drawings and a letter certifying that the streets and utilities have been completed according to the plans approved by the city.
- (e) A construction management plan. The plan must be in a city-approved format and must outline minimum site management practices and penalties for non-compliance.
- (f) A recorded copy of the conditional use permit.
- (2) Ponding and infiltration areas, public utilities, and associated grading and facilities must be located to maximize tree preservation. Staff may require adjustments in locations of these improvements in order to do so. Inch-for-inch mitigation is required for high-priority trees removed in conjunction with required ponding.
- (3) Prior to issuance of a grading permit:
 - (a) Submit an electronic PDF copy of certified plans and specifications.

- (b) Submit two full size and three 11x17 sets of construction drawings and three sets of project specifications.
 - (c) Submit a copy of approved MPCA NPDES permit.
 - (d) Install all measures in accordance with the SWPPP for staff inspection. These items must be maintained throughout the course of construction.
 - (e) The final plat must be released by the city and filed with Hennepin County for recording.
- (4) As required by the city engineer, the stormwater pond and/or infiltration areas must be constructed prior to commencement of grading work and any public improvements. Upon project completion, all accumulated sediment must be removed. A certified as-built of the pond contours is required for final acceptance.
- d. Prior to issuance of a building permit for any of the lots within the development:
- (1) Submit the following documents:
 - (a) A recorded copy of the rezoning ordinance.
 - (b) A recorded copy of the final plat, all required easements, and restrictive covenants.
 - (c) A letter from the surveyor stating that boundary and lot stakes have been installed as required by ordinance.
 - (d) A letter of credit or cash escrow in the amount of 150% of an estimated cost or 125% of a bid cost to complete required tree mitigation. Individual letters of credit are required for each lot.
 - (e) An electronic CAD file of certified as-built drawings in microstation or DXF and PDF format.

- (2) For each building permit, submit the following items for staff review and approval:
 - (a) A construction management plan. This plan must be in a city approved format and outline minimum site management practices and penalties for non-compliance.
 - (b) Final grading, drainage, and tree preservation plan for the lot. The plan must:
 - (i) Comply with the preliminary grading plan as depicted on the preliminary plat.
 - (ii) Preserve trees designated for preservation at the time of preliminary plat approval;
 - (iii) Show sewer and water services to minimize impact to any significant trees. No trees may be removed for installation of services. One set of new services must be installed.
 - (vi) Staff may require adjustments in the location of the proposed house, driveway, grading and utilities to maximize tree preservation.
 - (c) A tree mitigation plan. Mitigation must be provided for trees removed beyond a 20-foot perimeter to the proposed building footprint, and a 10-foot perimeter of the proposed driveway. Inch-for-inch mitigation is required for high-priority trees removed outside of these perimeters.
 - (d) Submit cash escrow in the amount to be determined by city staff. This escrow must be accompanied by a document prepared by the city attorney and signed by the builder and property owner. Through this document the builder and property owner will acknowledge: (1) the property will be brought into compliance within 48 hours of notification of a violation of the construction management plan, other conditions of approval, or city code standards; and (2)

if compliance is not achieved, the city will use any or all of the escrow dollars to correct any erosion and/or grading problems.

- (3) For each building permit, the following items must be completed:
 - (a) Schedule and hold a preconstruction meeting with engineering, planning, and natural resources staff.
 - (b) Proof of subdivision registration and transfer of NPDES permit.
 - (c) Install a temporary rock driveway, erosion control, tree protection and wetland protection fencing for each lot. These items must be maintained throughout the course of construction.
 - (d) Pay a hookup fee for sanitary sewer and water.
 - (e) A maintenance agreement for private infiltration areas. Individual property owners must be responsible for maintaining infiltration areas. Maintenance will include, but not be limited to, the periodic removal of sedimentation within these areas, keeping a vegetative cover within the areas removing any blockage that may impede the drainage of the site and yearly reporting to the city.

e. Notwithstanding the requirements outlined above, all lots and structures within the development are subject to the following:

- (1) Minimum setbacks for principal structures:

	MINIMUM SETBACK
FRONT	25-feet adjacent to cul-de-sac right-of-way
	50-feet adjacent to Oakland Road right-of-way
SIDE	10-feet interior to PUD
	15 feet exterior to PUD

REAR	20% of lot depth or 40 feet, whichever is less
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- (2) Minimum lowest floor elevation is 2-feet above the established 100-year floodplain elevation.
- (3) All portions of first-story walls as measured by an approved route around the exterior of the house must be within 150 feet of the street. If access requirements cannot be met, the house must be protected with 13D automatic fire sprinklers.
- f. During construction, the streets must be kept free of debris and sediment.
- g. 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.

Lehman, Schmitz, Sjeklocha, Walker, and Cheleen voted yes. Adams and Blatz voted no. Motion carried.

The city council is tentatively scheduled to review the item during its meeting June 30, 2008.

D. Items concerning redevelopment of the existing Dairy Queen property at 5445 Eden Prairie Road.

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

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

Sjeklocha asked Thomas to walk through the requirements regarding light, noise, and trash. Thomas obliged.

In response to Sjeklocha's question, Thomas explained how the setbacks are measured.

Sjeklocha asked what site lines would be improved. Thomas explained how moving the building north would clear the area and provide a better site line to the north from Stewart Lane.

Thomas agreed with Sjeklocha's correction that the variance referenced on page 2 should be 5 feet instead of 7 feet.

Adams asked if the 2 trees on the lot would be removed. Thomas answered affirmatively.

Blatz asked if the number of parking stalls requirement relates to the drive through. Thomas responded in the negative. The drive through is not required to provide its own parking. The drive through is required to have space for 6 vehicles to stack. The number of parking stalls requirement is based on the size of the building only. Blatz asked how many seats would be provided inside the building. Mr. Hogan responded 24 seats.

Blatz felt a bike rack would be beneficial.

Walker asked who owns the property east of the site. Thomas responded that the property is owned by Xcel Energy.

In response to Adams' question, Thomas stated that the exit drive would need to be removed due to its proximity to an intersection. The site would then gain parking stalls.

Walker asked if there is a requirement regarding distance between curb cuts. Wischnack stated that since the site is on a county road, a Hennepin County access permit would need to be obtained. Thomas explained that the city engineer and county engineer have been reviewing the site plan. Hennepin County is considering creating a concrete median on Eden Prairie Road.

Tom Hogan, representing the applicant, felt staff's report was comprehensive. He stated that internal seating would accommodate 24 patrons. A bike rack would be provided. The franchise owner was also present for questions.

Lehman asked if there would be picnic tables on a patio. Mr. Hogan answered in the affirmative.

Sjeklocha asked if parking lot clean up could be extended into the boulevard. Spencer Boats, co-owner of the site, stated that he cleans the parking area and boulevard all the way to Xcel. It is a priority.

Adams commended Mr. Boats on the clean up. He checked during his visit to the site at noon one day and saw no trash.

Adams asked if elimination of one of the exits concerned Mr. Boats. Mr. Boats answered in the negative. The biggest improvement is the exit only to Eden Prairie Road from the drive through.

Walker asked if there was discussion regarding extending the drive through road onto Eden Prairie Road and looping it back around into the parking lot to remove the curb cut and exit onto Stewart Lane. Mr. Boats responded that too much area would have to be used on the west side and result in not having enough parking stalls. It would be fairly costly to locate the trash inside the building. The only change to the Dairy Queen prototype was to decrease the seating count inside. The Orange Julius portion of the building would not be a part of the plan. A color scheme has not been agreed upon.

The public hearing was opened.

Ann Malm Hossfeld, 14616 Glendale Street, stated that:

- She was concerned with the right-hand turn.
- The Dairy Queen is an asset to the neighborhood.
- There is heavy pedestrian traffic in the neighborhood.
- The new plan provides convenience for drivers.
- The drive through exit accessing Eden Prairie Road would be the only exit for the drive through.
- There will be a traffic conflict between the curb cuts.
- The change in the traffic flow of the site would cause conflicts.
- She saw people in wheelchairs and on bikes crossing the street to get to the Dairy Queen.
- A crosswalk should be included in the plan.
- She requested a formal traffic study be done.
- She cannot figure out how to make the traffic situation better.
- There is not enough information to say the plan would be good.
- She requested staff address the traffic issues and commissioners to discuss the issue.
- Locating the drive through lane further south would be an option.

Mike Roth, 14485 Stewart Lane, goes to the Dairy Queen once and a while. He questioned how orders would be placed. A speaker at the drive through would project the sound to surrounding neighbors and bother him immensely.

Dave Maxwell, business and homeowner in Minnetonka, supported the proposal whole-heartedly. He knows the homeowner and franchise operator and was

happy for them. He was concerned with the traffic issue. He encouraged commissioners and the city council review the safety hazard for pedestrians. A pedestrian takes his or her life in his or her hands when crossing some of these intersections. Dairy Queen does get very busy. An effective traffic plan is needed to take the options away from the drivers to make them go the correct direction to protect pedestrians.

No additional testimony was submitted and the hearing was closed.

Lehman had historic personal knowledge of the traffic flow and pedestrian flow of the area. The current layout is not a very good layout from a pedestrian and traffic flow stand point. Kids would be exiting the door and running through the traffic that is entering and exiting, backing out of parking spaces, and going to the drive through. When the current drive through was put in, most users were aghast that a drive through was included on such a small site, but it did work. The proposal would be a significant improvement compared to what is there now. One important aspect is separating the walk-up customer from the motorist. He would be excited to see the proposal implemented.

Schmitz shared the concern for pedestrians and bicyclists trying to reach the site. A designated crosswalk area may provide guidance for where the street should be crossed. Her other concern was a motorist blocking the drive through when waiting to make a left turn. She almost favored a right-turn only. The proposal would be an improvement to the area. It would be a nice layout. She looked forward to seeing it.

Adams asked the applicants to address the speaker. Mr. Hogan stated that there would be a speaker located behind the trash enclosure, facing north. Technology today has improved so sound would not travel far.

Adams felt the current traffic situation is dangerous. Reducing the accesses to just drive through access would be a benefit. He was concerned with the patio. He suggested that a fence barrier be located between the patio and the drive through.

Mr. Hogan explained where a sidewalk would be located. He agreed that a fence or barrier would be a good idea. The fencing from the patio would be matched and continued toward the street to address the safety issue.

Walker noted that soon 100 pedestrians would be added in the area. He did not feel that the area would be pedestrian friendly. He did not agree with the curb cut

on Eden Prairie Road. He believed the building could be moved further east to eliminate the curb cut issue. The Eden Prairie Road exit is a deal breaker for him.

Blatz visited the site and it was difficult to enter and exit. The proposal would be an improvement. She welcomed more work on the project. She agreed with some of the concerns regarding the Eden Prairie Road exit. Dairy Queen is busy, but it would be great to see more outdoor seating and more green for the pedestrians. She was not sure if 25 parking stalls would be needed for 24 indoor seats.

Sjeklocha agreed that the proposal would be a great improvement. The neighborhood location prompted further review.

In response to Chair Cheleen's request, Thomas stated that the city needs to act on the application by August 12, 2008. Staff has met with the property owners and their architects as well as county staff numerous times over the last several months and believes that the proposal is the best site plan. Staff requests direction if the item is tabled as to what the commission would want done. Staff considered multiple scenarios. Staff shares Chair Cheleen's concern with the traffic and pedestrian issue. Wrapping the drive through around the building would enclose the building with a drive area and would make access to the building less pedestrian friendly. The proposal would allow more green space on the west side of the building adjacent to the sidewalk and adjacent to the proposed seating area. Thomas explained that generally when a new commercial development is proposed, the city does require a traffic study be conducted. The proposal would replace an existing restaurant with a smaller restaurant, so the traffic and trip generation would be equal to what is currently on sight. In addition, the city's Assistant Engineer Steve Lillehaug is a licensed and certified traffic engineer. He reviewed the site plan and agrees with staff's recommendation.

Adams confirmed with Thomas that ordinance requires the number of parking stalls. Proof of parking may be utilized in some instances. The city ordinance requires 24 parking stalls for the site. The proposal includes 26 stalls.

Sjeklocha asked if an open-ended condition promoting pedestrian friendly and safety features and a condition restricting the drive through exit to right turn only could be added to the approval. Thomas responded that extending the fence from the building to the sidewalk area and requiring a raised crosswalk could be added conditions. Making the access a right-turn only would ultimately be decided by Hennepin County. The planning commission could include that as a condition of approval contingent on the county's authorization.

Chair Cheleen appreciated Thomas addressing the traffic study issue. He knows the site well. The gas station property adjacent to the Dairy Queen is three feet higher than the Dairy Queen property. The stacking lane for the drive through would be a drop of two to three feet. He was concerned with a pedestrian falling that distance. Mr. Gordon explained fencing and or landscaping options available to prevent pedestrian traffic from the gas station to the Dairy Queen. Chair Cheleen felt a low fence and vegetation would also enhance the site's aesthetics.

Walker suggested checking on the gas station owner's responsibility to provide a fence for that size of a drop.

Chair Cheleen was looking for every improvement possible for the site.

Adams moved, second by Lehman, to recommend that the city council approve the following items concerning the redevelopment of the existing Dairy Queen property at 5445 Eden Prairie Road with the added condition that a fence be extended from the front of the building to the sidewalk and a crosswalk be provided:

Site and Building Plan

- 1) *Recommend that the city council approve the site and building plans for redevelopment of the existing Dairy Queen site at 5445 Eden Prairie Road. Approval includes the following variances:*

	REQUIRED	APPROVED
BUILDING SETBACKS		
From WEST property line	50 feet	18 feet
From NORTH property line	35 feet	18 feet
OUTDOOR PATIO SETBACKS		
From WEST property line	50 feet	10 feet
From NORTH property line	35 feet	18 feet
From RESIDENTIAL property	200 feet	170–180 feet
PARKING LOT SETBACKS		
From NORTH property line	10 feet	5 feet
From SOUTH property line	20 feet	3 feet
From EAST property line	10 feet	5 feet
From WEST property line	20 feet	10 feet

Approval is based on the following findings:

- a. The proposal would meet all ordinances and standards for a site and building plan approval
- b. The proposal would meet the required standards for a variance, because:
 - (1) UNDUE HARDSHIP:
 - (a) The buildable area of the subject property is just 20-foot wide and 2,600 square feet in total area. It would be virtually impossible to construct any viable commercial building without setback variances.
 - (b) Though the property has long been used for restaurant purposes, there is no location on the property that could accommodate outdoor seating without a setback variance.
 - (2) UNIQUE CIRCUMSTANCE:
 - (a) The proposal decreases existing non-conformities and increase visibility from the Eden Prairie Road/Stewart Lane intersection. The partial mitigation of existing conditions through redevelopment is unique.
 - (b) The proposed outdoor seating area would meet the intent of setback regulations from residential properties. The seating area would be separated from the properties by: (1) the restaurant building itself; (2) public roads; and (3) significant grade changes.
 - (3) NEIGHBORHOOD CHARACTER: The redevelopment of a longstanding restaurant use, and variance associated with that redevelopment, would not alter this unique character

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 April 14, 2008.
 - Grading plan date-stamped April 14, 2008.
 - Landscaping plan date-stamped April 14, 2008.
 - Building elevations date-stamped April 14, 2008.
- b. A grading permit is required. Unless authorized by appropriate staff, no site work may begin until a complete grading permit application has been submitted, reviewed by staff, and approved.
- (1) The following must be submitted for the grading permit to be considered complete.
- (a) A drainage and utility easement and associated maintenance agreement over the stormwater treatment facility. This easement is subject to the review and approval of the city attorney.
- (b) Final site, grading, drainage, utility and erosion control plans must be submitted for staff approval.
- (i) Final site plan must:
- Eliminate the westerly drive access to Stewart Lane.
 - Eliminate the two northernmost stalls in the east parking area, as depicted on page A10 of this report.
- (ii) Final grading plan must:
- Depict removal and replacement of the sidewalk adjacent to Eden Prairie Road. Work should be done in conjunction with other streetscaping planned for the area.
 - Pedestrian curb ramps must be updated to ADA standard. The plans must include the city's standard "Pedestrian Curb Ramp" detail.
- (iii) Final drainage plan must

- Include drainage detail for water quality system outlet.
- Provide soil boring data to verify actual infiltration rate.
- Demonstrate that water quality standards are met.

(iv) Final utility plan must:

- Verify that the 1.5-inch water service is adequate for service needs and fire protection. This verification is subject to the review and approval of the fire marshal.
- Provide location of sanitary service connection to the proposed building. Invert elevations must be shown at the existing connection to the existing sewer and proposed building. Notes must include pipe size, length, grade, and type of material.

(b) Individual letters of credit or cash escrow for 125% of a bid cost or 150% of an estimated cost to comply with grading permit, landscaping requirements, and to restore the site. The developer may submit one itemized letter of credit, if approved by staff. The city will not release or reduce the letters of credit or cash escrow until work has been completed according to the plans approved by the city.

(c) A construction management plan. The plan must be in a city approved format and must outline minimum site management practices and penalties for non-compliance.

(2) Prior to issuance of a grading permit:

(a) Submit an electronic PDF copy of the plans and specifications.

- (b) Submit two full size and three 11x17 sets of construction drawings and three sets of project specifications.
 - (c) Submit all required administration and engineering fees.
 - (d) Submit a SWPPP.
 - (e) Install a temporary rock driveway, erosion control, tree and wetland protection fencing for staff inspection. These items must be maintained throughout the course of construction.
 - (f) Permits may be required from other outside agencies including, but not limited to Hennepin County, the Nine Mile Creek Watershed District, and the MPCA. It is the applicant's and/or property owner's responsibility to obtain any necessary permits. Copies of all required permits must be submitted to the city.
- c. Prior to issuance of a building permit:
- (1) Submit the following items for staff review and approval:
 - (a) A construction management plan. This plan must be in a city approved format and outline minimum site management practices and penalties for non-compliance. If the builder is the same entity doing grading work on the site, the construction management plan submitted at the time of grading permit may fulfill this requirement.
 - (b) A landscaping and tree mitigation plan. The plan must meet minimum landscaping and mitigation requirements as outlined in ordinance. However, at the sole discretion of natural resources staff, mitigation may be decreased based on any of the following: the health of trees removed; the ability to appropriately install trees and other shrubbery given existing vegetation and/or topography.

- (c) Cash escrow in an amount to be determined by city staff. This escrow must be accompanied by a document prepared by the city attorney and signed by the builder and property owner. Through this document the builder and property owner will acknowledge:
 - The property will be brought into compliance within 48 hours of notification of a violation of the construction management plan, other conditions of approval, or city code standards; and
 - If compliance is not achieved, the city will use any or all of the escrow dollars to correct any erosion and/or grading problems.
 - (d) An electronic CAD file or certified as-built drawings in microstation or DXF and PDF format.
 - (e) A letter of credit or cash escrow for 125% of a bid cost or 150% of an estimated cost of all required landscaping.
 - (f) An illumination plan for staff approval.
- (2) All required hook-up fees.
- d. The property owner is responsible for replacing any required landscaping that dies.
 - e. 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.
 - f. Approval does not include the signs shown on the drawings. Separate permits are required from staff. A pylon sign will not be permitted; a monument sign must be used.

- g. Construction must begin by December 31, 2009, unless the planning commission grants a time extension.

Conditional Use Permit

2) *Recommend that the city council adopt the resolution on pages A11–A15 of the staff report, which approves a conditional use permit, with setback variances, for an outdoor seating area at 5445 Eden Prairie Road. Approval is based on the following findings*

- a. The proposal would meet all ordinances and standards for a conditional use permit
- b. The proposal would meet the required standards for a variance, because:

(1) **UNDUE HARDSHIP:**

- (a) The buildable area of the subject property is just 20-foot wide and 2,600 square-feet in total area. It would be virtually impossible to construct any viable commercial building without setback variances.
- (b) Though the property has long been used for restaurant purposes, there is no location on the property that could accommodate outdoor seating without a setback variance.

(2) **UNIQUE CIRCUMSTANCE:** The proposed outdoor seating area would meet the intent of setback regulations from residential properties. The seating area would be separated from the properties by: (1) the restaurant building itself; (2) public roads; and (3) significant grade changes.

(3) **NEIGHBORHOOD CHARACTER:** The redevelopment of a longstanding restaurant use, and variance associated with that redevelopment, would not alter this unique character

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 outdoor patio must:
 - (1) Be constructed in substantial conformance with site plan date-stamped April 14, 2008.
 - (2) Be surrounded by a decorative fence subject to staff review and approval.
 - (3) Be equipped with refuse containers and regularly patrolled for litter pick-up.
- c. Speakers or audio equipment which are audible from adjacent parcels are prohibited.
- d. The city council may reasonably add or revise conditions to address any future unforeseen problems.
- e. 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.
- f. A sidewalk be installed and maintained from the front of the building extending to the sidewalk.
- g. A crosswalk must be provided if allowed by Hennepin County.
- h. The applicant must agree to the above conditions in writing.

Lehman, Schmitz, Sjeklocha, Adams, Blatz, and Cheleen voted yes. Walker voted no. Motion carried.

9. ADJOURNMENT

*Adams moved, second by Lehman, to adjourn the meeting at 9:45 p.m.
Motion carried unanimously.*

By: _____
Lois T. Mason
Planning Secretary