

**MINNETONKA PLANNING COMMISSION
MINUTES**

OCTOBER 16, 2008

1. CALL TO ORDER

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

2. ROLL CALL

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

Staff members present: City Planner Loren Gordon, Planner Josh Metzger, Planning Technician Jeff Thomson, and Natural Resource Manager Jo Colleran.

3. APPROVAL OF AGENDA: The agenda was approved as submitted with a change memorandum that provided additional comments from residents.

4. APPROVAL OF MINUTES: October 2, 2008

Lehman moved, second by Adams, to approve the October 2, 2008 meeting minutes as submitted with the following change:

Page 9: ~~Lehman-Walker~~ did not see much of a difference . . .

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

5. REPORT FROM STAFF

Gordon briefed the commission on land use applications considered by the city council at its meeting of October 13, 2008:

- Adopted a resolution requesting additional time within which to complete comprehensive plan decennial review obligations.
- Adopted a resolution approving a conditional use permit and setback variance for Dragon Jade, 14406 Excelsior Boulevard.

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.

Sjeklocha asked if there are requirements for American Indian burial mounds in Minnetonka. Gordon explained that burial mounds are regulated by the state. The sites are protected. The Minnesota Historical Society and Minnesota Archeologist manage the sites. It is against the law to dig or disrupt a burial mound. There are no setbacks regulated by the city for a burial mound.

Sjeklocha asked if the city maintains a map that illustrates various historical locations. Gordon answered that the city and state maintain the information.

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

A. Front yard setback variance for a detached garage at 16710 Edgewood Avenue. (08048.08a)

Adopt the resolution on pages A12–A14 of the staff report, which approves a front yard setback variance from 35 feet to 27 feet for a detached garage at 16710 Edgewood Avenue. Approval is based on the following findings:

- 1) The proposal is reasonable and would meet the required standards for a variance.
 - a. Practical difficulty and unique circumstance. A standard-sized garage could not be built on this site which would meet required setbacks and also preserve the natural features of the property. This presents a both a practical difficulty and a unique circumstance inherent to this property.
 - b. Neighborhood character. The proposed garage would not negatively impact neighborhood character.
 - (1) The proposed garage would result in removal of an existing, non-conforming and dilapidated structure.
 - (2) Given the configuration of the existing boulevard area, the garage would be set back nearly 44 feet from the paved surface of Edgewood Avenue.

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 erosion control, and tree protection fencing as required by natural resources staff for inspection and approval. These items must be maintained throughout the course of construction.
 - c. Install temporary fencing around the perimeter of the archeological area. This fencing 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.

B. Front yard setback variance for an addition to the house at 4038 Williston Road. (89026.08a)

Chair Cheleen pointed out that the condition requiring that the variance will end on December 31, 2000 should be December 31, 2009. Thomson agreed.

Adopt the resolution on pages A15–A19 of the staff report, which approves the proposed front yard setback variance from 50 feet to 47 feet for an addition to the house at 4038 Williston Road. 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:** There is an undue hardship in constructing the addition due to the location of the existing house. The house was constructed in 1923, prior to the adoption of the current zoning ordinance, and has a nonconforming front yard setback of 39 feet.
 - b. **UNIQUE CIRCUMSTANCE:** The nonconforming front yard setback is a circumstance not common to every similarly situated property.
 - c. **INTENT OF THE ORDINANCE:** The addition would provide a reasonable use of the property.

- d. NEIGHBORHOOD CHARACTER: The addition would not negatively impact the character of the neighborhood. Several of the surrounding properties have nonconforming front yard setbacks, including the house to the south, and the homes directly across the street. The addition would maintain the building line along Williston Road.

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. A driveway permit is required from the engineering department. The property must comply with the city's access requirements.
- 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.

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

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

8. PUBLIC HEARINGS

A. Conditional use permit for a wireless telecommunications tower at 12201 Minnetonka Blvd. (00007.08c)

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

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

Adams asked if the applicant had been informed of the monopole preference. Gordon responded that staff's findings had been submitted to the applicant. He had not heard back from the applicant.

Sjeklocha saw that Minnetonka Mills was referred to as a historic area in the staff report. She asked what defined a historical area in Minnetonka. She asked why the color winter sky blue would be less obtrusive in a historical context. Gordon explained the designation of a historic area. Gordon stated that a dark brown monopole detracts from the aesthetic quality of the area more than one painted sky blue.

Sjeklocha asked who the property owner is and if the property owner agreed to the resolution. Gordon answered that the property owner is Gary Capone and he would have to sign the application agreeing to adhere to the conditions for the project to move forward.

Sjeklocha asked if an access agreement needs to be acknowledged in the conditional use permit. Gordon stated that the existing agreement is adequate.

Blatz asked if antennae would be added at 2000 Plymouth Road. Gordon stated that the city has not received an application. He invited the applicant to respond.

Kelly Swenseth of FMHC Corporation, applicant, stated that:

- Her company is in the planning stages of installing antennae on the roof of the Ridgehill Professional building.
- Gary Capone is the property owner.
- The applicant has a lease that covers the area where the equipment would be located, has access to replace the pole, and has an access easement for Mr. Capone's property.
- T-Mobile is aware of staff's recommendation of enclosing the antennae in a canister. This would cause the whole pole to be 36 inches to 37 inches in diameter from top to bottom rather than being tapered. The tapered pole would be 30 inches at the base and taper toward the top where the antennae would be flush mounted. The same amount of area would be covered, but the ability to put radio transmitters at the top would be restricted so not as many calls would be able to be handled. There would be more of an opportunity for the system to jam. S. Thomas had explained to her that staff's recommendation would be a canister mount, but that

it is up to commissioners to decide if they are willing to allow T-Mobile to use a flush mount.

- The site is located outside of a historic district and at least a half mile from the closest historical district restriction area.
- Cities usually request Cor Ten coating which turns into a cinnamon brown color over time. T-Mobile does not have a problem with staff's recommended paint color.

Walker asked for the duration of the lease. Ms. Swenseth believed it lasts 30 years.

Chair Cheleen asked if T-Mobile has entered into an agreement with Mr. Capone agreeing that he is responsible for removing the antennae at the end of the pole's life span. Ms. Swenseth answered affirmatively.

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

Walker asked what the 2030 comprehensive guide plan guided for the area. Gordon recalled that the area is guided for mixed use.

Adams noted that the proposed antennae would be located directly across wildlife, trails, and a ball field. It would be more visible than other poles. He argued in favor of the canister because it would be as unobtrusive as possible. He concurred with staff's recommendation for a canister mount instead of external.

A. Thomas agreed with Adams. Since the majority of the towers in the city are canisters he supported the canister style. He understood the dropped calls issue, but that is not the concern of the planning commission. He supported staff's recommendation.

Chair Cheleen concurred with Adams and A. Thomas. He agreed that light blue would make the tower less noticeable than brown.

Adams moved, second by Blatz, to recommend that the city council adopt the resolution on pages A34–A40 of the staff report, which incorporates these design modifications. The resolution approves a conditional use permit for a wireless telecommunications tower and associated equipment to be installed at 12201 Minnetonka Boulevard.

Approval is based on the followings:

- 1) The city code recognizes telecommunications facilities as valuable public resources.
- 2) With design modifications included as conditions of approval, the proposed telecommunications tower meets the conditional use permit standards as outlined in city code.

Approval is subject to the following conditions:

- 1) The following must be completed prior to issuance of building or electrical permits:
 - a) Revised plans must be submitted for review of planning staff, as well as the city's building and electrical officials. These plans must include:
 1. The tower must be a monopole structure; all antennas must be internal.
 2. The tower may not exceed 75-feet in height and 30-inches in diameter.
 - b) This resolution must be recorded with the county and a copy of the recorded resolution must be returned to the city.
 - c) The applicant must agree, in writing, to the conditions of this conditional use permit.
 - d) The property owner must agree, in writing, to the conditions of this conditional use permit. This includes agreeing to removal of the telecommunication facilities when they are unused, obsolete, or become hazardous, and agreeing to the city's right to assess removal costs as outlined in city code.
- 2) The tower and accessory equipment must be installed in substantial conformance with the site plan and elevations date-stamped August 26, 2008.
- 3) The tower must be painted "Winter Sky" or a substantially similar color subject to staff approval.

- 4) No advertising message or identification sign larger than two square-feet may be affixed to the tower.
- 5) The tower may not be artificially illuminated unless required by law or by a governmental agency to protect the public's health and safety.
- 6) On-site, permanent employees associated with the tower are not allowed.
- 7) If rendered obsolete, the tower must be removed in accordance with City Code 300.34.5
- 8) The city council may reasonably add or revise conditions to address any future unforeseen problems.
- 9) Any change to the approved use that results in a significant increase in traffic or a significant change in character requires a revision of this conditional use permit.
- 10) Violation of any condition of this conditional use permit or city code requirement renders this permit null and void.

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

The item is tentatively scheduled to be reviewed by the city council at its October 27, 2008 meeting.

B. Conditional use permit for wireless telecommunications antennas at 4400 Baker Road. (06076.08b)

Lehman recused himself from discussion and action of this item.

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

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

Jake Soper, representing Verizon Wireless, applicant, was present to answer questions. He felt Gordon did a good job of laying out the basic information.

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

Chair Cheleen felt the location was appropriate.

Blatz moved, second by Walker, to recommend that the city council adopt the resolution on pages A15–A21 of the staff report. This resolution approves a conditional use permit for wireless telecommunications antennas to be located on an existing transmission tower at 4400 Baker Road. Approval is based on the following findings:

- 1) The city code recognizes telecommunications facilities as valuable public resources.
- 2) The proposed telecommunications antennas meet the conditional use permit standards as outlined in city code.

Approval is subject to the following conditions:

- 1) The following must be submitted prior to issuance of building or electrical permits:
 - a) This resolution must be recorded with the county and a copy of the recorded resolution must be returned to the city.
 - b) The applicant must agree, in writing, to the conditions of this conditional use permit.
 - c) The property owner must agree, in writing, to the conditions of this conditional use permit. This includes agreeing to removal of the telecommunication facilities when they are unused, obsolete, or become hazardous, and agreeing to the city's right to assess removal costs as outlined in city code.
- 2) The antennas and accessory equipment must be installed in substantial conformance with the site plan and elevations date-stamped September 17, 2008.
- 3) The antennas must be a color similar to the existing transmission tower.
- 4) No advertising message or identification sign larger than two square-feet may be affixed to the transmission towers or antennas.

- 5) The antennas may not be artificially illuminated unless required by law or by a governmental agency to protect the public's health and safety.
- 6) On-site, permanent employees associated with the telecommunications facilities are not allowed.
- 7) If rendered obsolete, the antennas must be removed in accordance with City Code 300.34.5.
- 8) The city council may reasonably add or revise conditions to address any future unforeseen problems.
- 9) Any change to the approved use that results in a significant increase in traffic or a significant change in character requires a revision of this conditional use permit.
- 10) Violation of any condition of this conditional use permit or city code requirement renders this permit null and void.

Adams, Blatz, Sjeklocha, A. Thomas, Walker, and Cheleen voted yes. Lehman recused. Motion carried.

This item is tentatively scheduled to be reviewed by the city council at its October 27, 2008 meeting.

C. Sign Plan for a new automobile dealership at 15802 and 15810 Wayzata Boulevard. (98034.08c)

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

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

Adams noticed the Sears BMW pylon sign with three panels. He asked if that sign conforms to the current ordinance. Gordon was not familiar with the sign.

Sjeklocha confirmed with Gordon that page two of the report should refer to the south and west façade.

Sjeklocha asked if there is a height and setback restriction on flags and, specifically, the United States flag. Thomson explained that flag content does not

make a difference. One flag is allowed without restrictions. Height and size restrictions apply to three or more flags.

Walker asked for the difference between a pylon sign and a monument sign. Gordon stated that a pylon sign would have a single support pole. A monument sign would have a grounded structure that would extend from the sign to the ground and its width would be at least 50 percent of the sign's width.

Chair Cheleen confirmed with Gordon that if one sign would be removed, then the proposal would be in compliance with the total square foot sign requirement.

Peter Coyle of Larkin Hoffman Law Firm on behalf of Twin City Automotive Group, applicant, appreciated staff's thorough report. He appreciated the recommendation of the wall sign package and requested it be approved. The signs help break up some of the building's mass. The sign would be tasteful and appropriate in size for the wall space. He wanted to work with staff regarding the options for the free standing sign. He asked commissioners to consider if the pylon option is kept, and an assurance is provided that the middle panel would remain vacant, then the 50-foot panels would be able to be retained. If the panels would remain blank, then the 100-square-foot maximum would be met and stay consistent with the monument square footage allocation which is 150 square feet. It would be a bit of a compromise. He appreciated it would be a judgment call for commissioners to make. He worked well with staff, but respectfully disagreed with the recommendation and requested indulgence in this area. The total area of the signage is consistent between the monument and the pylon.

Walker understood that the applicant is requesting a one-foot height variance. Gordon agreed. Walker asked why the one-foot variance would be needed. Mr. Coyle stated that the site is adjacent to a freeway and it would provide better elevation and visibility.

In response to Walker's question, David Phelps, architect for the project, explained that the sign is a standard manufactured BMW sign. He could ask that the 15-foot mound at the bottom be reduced, but BMW would not allow three panels to become one. Walker suggested that the width of the darker element extend down to the base which would turn it into a monument sign. Mr. Phelps stated that approval would need to be received from BMW. The base could be buried, but BMW would not remanufacture the sign. It is a requirement BMW places on the dealers. BMW will not grant a license for the sign to be manufactured. BMW has a perpetual lease on the sign and can take it back at any time.

Walker asked for the intent of the white panel in the center. Mr. Phelps stated that it is part of BMW's graphic design. He has had this problem in a lot of cities because the manufacturer pays a lot of money to design a logo and technical difficulties are created trying to meet sign regulations.

In response to Walker's question, Gordon explained that the area of the base would have to be 50 percent of the width of the sign to be considered a monument sign. It would also have to be 21 feet in height. The height would need to be lowered 3 feet.

Blatz asked why the west side needs a sign more than the east side. Mr. Phelps stated that the west side would provide a bigger face and the east side would not be visible due to the elevations.

Adams asked if the pylon sign at the Sears dealership is the same dimension as the proposal. Mr. Phelps and Mr. Coyle were unfamiliar with that sign. Adams felt the Sears' BMW sign was smaller.

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

In response to Blatz's question, Gordon confirmed that the proposal includes 390 total square feet of signs on the building, roundels, entry feature, and directional signs for the service bays. The 150-square-foot-ylon sign would be in addition. Even if a roundel would be removed, the pylon would be a separate issue.

Blatz respected the goal of breaking up the mass of the structure; however, the sign ordinance is really for identification. People would know that the building is the BMW building. Removal of the west roundel would bring the proposal into compliance with the 300 square feet and would give the application 36 extra feet to add for direction or entry sign.

A. Thomas agreed. The west logo sign could be eliminated. Staff's three options for the pylon sign are reasonable. He did not support the proposal as is. The sign ordinance is stringent. He hoped the applicant would have selected option one, two, or three. He did not support the pylon as it is proposed by the applicant.

Lehman recognized the aesthetic benefit of breaking up the structure's mass. He asked if the sign ordinance deals with accenting the color pattern on that side of the building, without being a sign, by painting a different color in an attempt to break up the mass. Thomson stated that would be an option and it would depend on the architectural compatibility with the principal structure.

Adams agreed that the sign on the west side should be eliminated. He understood the concern of having consistency with the signs for all of the dealers, but felt option number one would be the closest to their current dealer signage.

Walker felt the design of the proposed sign is very nice, but it would not be in accordance with the sign ordinance. Scaling it down would provide the same architectural effect. He supported adhering to ordinance requirements.

Lehman supported leaving all three options available for the applicant to decide.

Chair Cheleen felt two roundel signs seem more than necessary. The directional signs are necessary, are a good size for the building, and look appropriate. The second roundel sign on the west puts the total square feet over 300, but is unobtrusive. He was not sure it made sense to remove it just to get to 300 square feet. He agreed with the comments regarding the pylon sign. The Sears building on Interstate 394 is not a BMW facility. It does not follow BMW's design and does not have to comply with BMW restrictions. Because there are options that can be done and make it a useful sign, he supported staff's three options. He struggled more with allowing the variance from the square footage total because the sign on the west is a nice sign and all the signs complete the building. The proposed pylon sign would not be logical because BMW would not change the size.

Mr. Coyle stated that the applicant will work with staff in regard to the three options if the commission approves staff's recommendation. He understood the concern with the roundels. Chair Cheleen's approach is a reasonable one. He understood the limitations of the free-standing sign.

Walker moved, second by Adams, to approve the proposed sign plan for the new BMW dealership at 15802 and 15810 Wayzata Boulevard. Approval is based on the following findings:

- 1) With any one of the three options for design modification of the proposed pylon sign, the proposed sign plan would provide an appropriate level of visibility and identification for the new dealership property.
- 2) With any one of the three options for design modification of the proposed pylon sign, the proposed sign plan would meet all ordinances and standards for sign plan review.

- 3) The proposed wall signs within the sign plans would meet the required standards for a variance, because:
 - a. Practical Difficulty: The general goal of the sign ordinance is to allow for adequate identification, while maintaining a high aesthetic standard. In this specific case, adequate identification requires not only identification of the dealership itself, but also identification of the various entries to the sales building and the vehicle servicing entrances. This presents a practical difficulty.
 - b. Unique Circumstance: The proposed sign plan would result in wall signs which occupy less than 2 percent of any one façade and less than 0.7 percent the overall square footage of building façade. This is a unique circumstance.
 - c. Neighborhood Character: The proposed wall signs would not negatively impact the character of the surrounding neighborhood. The proposed signs are proportionate to the scale of the building, and are reasonably-sized to provide appropriate visibility and identification

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

- 1) Subject to staff approval, all signs on the site must be developed and maintained in substantial conformance with the following plans, unless modified by the conditions below:
 - Sign plans with a "zoning submittal" date of August 22, 2008
 - Building elevations with a "zoning submittal" date of August 22, 2008
 - a. The sign plan must be revised as follows:
 - (1) The freestanding sign must modified and constructed to reflect one of the three options outlined in written staff report associated with this project, dated October 16, 2008.
 - (2) Each letter of copy on the freestanding sign must be a minimum of 9 inches.
- 2) The freestanding sign must maintain a minimum 10-foot setback from all property lines.

- 3) Sign permits are required for all wall signs and the freestanding sign.
- 4) Display of any flags is limited to three and must be in conformance with City Code 300.30.9(j).
- 5) Any change to this approved sign plan must be reviewed and approved by the planning commission.
- 6) Sign permits must be issued prior to December 31, 2009, unless the planning commission grants a time extension.

Adams, Lehman, Sjeklocha, Walker, and Cheleen voted yes. Blatz and A. A. Thomas 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.

D. Items concerning a proposal to demolish the existing vacant building at 10600 Wayzata Boulevard and to construct a new one-story building for restaurant use. (08017.08a)

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 for the rationale behind expecting 90 additional trips. Metzer explained that the proposal includes more square footage and seating than the previous restaurant.

Lehman asked Metzer to explain why 10 trees would be removed. Metzer responded due to the grading for the building and location of curb cuts.

Adams asked if parking regulations and trip calculations would be influenced if the business would be open for lunch. Metzer reviewed a grid that illustrated expected parking from noon to evening. The grid assumed full capacity of adjacent office buildings and the restaurant.

A. Thomas read that the traffic report found no impact would be caused by the proposal at the intersection of the frontage road and Hopkins Crossroad. It also stated that there would be no impact on the adjacent intersections. He asked if

the hours of operation of the restaurant would change its impact on traffic. Metzger stated that trip generation estimates found that there would not be a negative impact beyond what has already been approved by the city.

A. Thomas asked if staff has discussed exterior options with the applicant. Metzger had discussed it with the applicant and knew that the applicant would be addressing the issue.

Metzger confirmed for A. Thomas that staff's recommendation would require five handicap stalls on the site.

Sjeklocha asked why stucco would not be a preferred material. Metzger explained the architectural standards for the visible corridor. Stucco also has long-term maintenance issues and the aesthetic quality of stucco is not as high as others.

A. Thomas asked if there is a drainage issue on the northwest corner of the site as one resident indicated. He was unable to locate it when he visited the site. Metzger answered that staff is unaware of a drainage problem in the northwest corner, but engineering staff would review the permit for drainage issues prior to issuance of a building permit.

Chair Cheleen noted the concern with heavy equipment damaging the shared driveway. Metzger spoke with the applicant and learned that construction traffic would enter the site from the exclusive entrance to the applicant's property.

Walker asked if the parking agreement with the east property owner would stay with the property or with the owner if the property would be sold. Metzger said that the contract would run with the property. Any change or revision would take a signed agreement from all five property owners. If density would be increased, then a site and building plan review would be required.

Rich Busfield of Design Collaborative and Peter Grown of Cambridge Commercial, both representing the applicant, were present. Mr. Busfield explained the design and look of the restaurant. Mr. Grown stated that a fair amount of the exterior of the building would be glass. Eddie Merlot restaurants are made as much alike as possible for branding and name awareness. Mr. Busfield stated that the feel would be like cultured-stone base. Clay tile would not be used for the roof. Light-weight-concrete tile would be used because most of the restaurants are in the midwest and the material sustains the freezing weather.

Walker asked if the proposed exterior would be stucco or cement plaster. Mr. Busfield responded hard stucco. Walker said that cement plaster would have the same appearance as stucco, but be more durable. He was unsure how staff felt about cement plaster.

Mr. Busfield said that his company has used EFIS, exterior fabricated insulating system, in the past, but are switching to stucco. EFIS will have problems unless it is installed properly and the perception is that it has problems. His system would be drainable. Walker clarified that Mr. Busfield meant cement plaster instead of stucco. Mr. Busfield stated that the big difference between EFIS and stucco/cement plaster is that EFIS would have insulation. Cement plaster adheres to cement board and there is no insulation. EFIS holds moisture and creates mold.

Sjeklocha asked if stucco is both EFIS and cement plaster. Mr. Busfield explained that in Fort Wayne, Indiana, where he is from, stucco refers to cement plaster. The proposal is for cement plaster with a stucco-looking finish. Sjeklocha asked for Minnetonka's stucco definition. Mr. Grown described the difference between EFIS and stucco, also known as cement plaster. EFIS is made of styrofoam.

Sjeklocha confirmed with Mr. Grown that the proposal would utilize cement plaster. Gordon explained that Minnetonka's ordinances allows stucco to be utilized as an accent, but not as a primary cover that would cover more than a majority of the face.

Adams asked if concrete is plaster or stucco. Gordon stated that concrete is plaster, the same as stucco.

Adams asked how many Eddie Merlots exist currently. Mr. Busfield responded four. None of them serve lunch. Adams was concerned that the restaurant may find it not economically feasible to not serve lunch. That would have bearing on the parking and traffic. Mr. Busfield stated that the lounge and bar would open at 4 p.m. and the restaurant at 5 p.m.

Adams asked for the menu price range. Mr. Busfield stated from \$50 to \$100 per person.

Chair Cheleen asked if the restaurant could open for lunch without review of the conditional use permit. Metzger stated that a condition of approval limits the hours of operation from 4 p.m. to 2 a.m. A change in the hours would require a modification to the conditional use permit.

Lehman asked if an Eddie Merlot restaurant is located in a cold-weather state. Mr. Busfield stated that there are two in Indiana and two in Ohio. Lehman asked if exterior materials better for cold weather but similar in appearance to stucco/cement plaster had been considered. Mr. Busfield stated that EFIS had been used in the past and now stucco/cement plaster has been used. Cultured stone is also used. Increasing the amount of stone was done in Denver and could be considered to meet surface area requirements. The stone and glass are very close to 50 percent coverage right now.

In response to Sjeklocha's question, Mr. Busfield described Denver's requirements. The exterior was approximately 35 percent stone.

Walker asked if the owner would consider using more stone to meet the surface area requirements. Mr. Busfield was not sure. The owner is aware of staff's recommendation and ordinance requirements.

Walker asked if the stone is prefabricated panel stone or actual stone veneer. Mr. Busfield described the thin, stone veneer, which looks like a natural stone. He had sample boards of all the exterior materials.

A. Thomas asked if the contaminated soil would be cleaned. Metzger stated that the Minnesota Pollution Control Agency would monitor and regulate clean up of the site. The proposal would vent the methane out through the surface. There would be as little grading as possible. The property owner would be responsible for meeting MPCA requirements.

A. Thomas asked if the project would be required to pay a park dedication fee. Metzger answered in the negative since it is redevelopment rather than undeveloped property. A. Thomas suggested the park board consider charging park dedication fees for redevelopment of commercial property.

Chair Cheleen understood that it would be economically unfeasible to remove soil and it would not be as effective anyway because the methane is coming from a great distance underground. The proposed mitigation is what is recommended by the MPCA. It calls for as little disruption of soils as possible.

Chair Cheleen asked if five handicap stalls are necessary since there are seven extra stalls already. Gordon explained that the building code would review the location and number of handicap stalls during the building permit process.

Chair Cheleen confirmed with Gordon that the conservation easement and wetland buffer are acceptable.

Chair Cheleen confirmed with Metzger and the applicant that less than 50 percent of stucco would be agreeable.

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

Adams supported the proposal with the exterior material restrictions.

Sjeklocha concurred. She was comfortable with the vehicle trip calculations, conservation easement, parking issues, and continuing the requirements of the building materials as recommended by staff. She noted that the comprehensive guide plan supports destination places.

Walker agreed. He suggested the owner be warned of the difficulty of making the business work without being open for lunch. He was concerned with the parking issue.

A. Thomas agreed with commissioners. If the building materials can be worked out with staff to comply with ordinance requirements, then he would be fine with the project. The city's ordinances identify Minnetonka and make it different from other communities. Staff welcomes redevelopment of the site, but the city must not lower its standards.

Chair Cheleen agreed. The building would be attractive. The Interstate 394 corridor is a show piece for Minnetonka and parts of it need upgrading. The site should be successful with a good product. He supported staff's recommendation.

Adams moved, second by A. Thomas, to approve the following items concerning a proposal to demolish the existing vacant building at 10600 Wayzata Boulevard and to construct a new one-story building for restaurant use (08017.08a):

MASTER DEVELOPMENT PLAN and SITE AND BUILDING PLAN REVIEW

- 1) *Adopt the ordinance on pages A27–A34 of the staff report, which approves a major amendment to the master development plan as it pertains to the subject property, and site and building plans for a new restaurant (Eddie Merlot's) at 10600 Wayzata Boulevard. Approval includes the following variance:*

- a. Required parking variance from 236 spaces to 120 spaces.

This ordinance is based on the following findings:

- a. The proposal would meet the required standards and ordinances for a site and building plan approval.
- b. The proposed required parking variance is reasonable because:
 - (1) With 120 parking spaces on site and 123 shared parking spaces on adjacent properties there will be a surplus of 7 parking spaces during the peak parking demand hour between 7:00 p.m. and 8:00 p.m.
 - (2) Eddie Merlot's offers full valet service which will reduce the need for restaurant patrons to search for parking.
 - (3) Eddie Merlot's will only operate during evening hours (4:00 p.m. to 2:00 a.m.) when the adjacent office properties are vacant, or near vacant.

Approval of the site and building plans is subject to the following conditions:

- a. This master development plan repeals and replaces that section of the existing master development plan as it pertains to 10600 Wayzata Blvd.
- b. Subject to staff approval, the site must be developed and maintained in substantial conformance with the following plans, unless modified by the conditions below:
 - Site plan date-stamped September 30, 2008.
 - Grading and Drainage plan date-stamped September 2, 2008.
 - Utility plan date-stamped September 30, 2008.
 - Landscaping plan date-stamped September 2, 2008.
 - Building elevations date-stamped September 2, 2008.
 - Floor plan date-stamped April 7, 2008.
 - Erosion and Sediment Control plans date-stamped September 2, 2008.

The above plans, as modified by the conditions below, are hereby adopted as the major amendment to master development plan and as final site and building plans for Eddie Merlot's.

- c. Building elevations must be revised to utilize alternative building materials that comply with city code section 300.31.7(a)(4) per city staff review.
- d. The proposed restaurant is required to have a minimum of 5 handicapped accessible parking spaces, one of which should be van accessible.
- e. Site and grading plans must be revised to include a 16.5-foot vegetative wetland buffer adjacent to the wetland at the western edge of the property. The buffer must be vegetated with native plantings.
- f. 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) Final site, grading, drainage, utility and erosion control plans must be submitted for staff approval. The city engineer will provide the developer with a formal memorandum outlining all items and details that must be provided on the submitted plans.
 - (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, 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.

- (d) 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. The management plan must be accompanied by a cash escrow, in the amount to be determined by city staff, and a waiver document prepared by the city attorney and signed by the developer. Through this document the developer 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.
- (e) One of the following:
 - (i) Escrow dollars, in amount to be determined by natural resources staff, to contract with an erosion control inspector to monitor the site throughout the course of construction; or
 - (ii) Evidence that an erosion control inspector has been hired to monitor the site through the course of construction. This inspector must provide weekly reports to natural resource staff in a format acceptable to the city.
- (2) Prior to issuance of a grading permit:
 - (a) Submit a conservation easement over the required 16.5-foot vegetated buffer adjacent to the existing wetland. The easement must be prepared by an attorney knowledgeable in the area of real estate and must be submitted for the city attorney's approval. Following city attorney approval, this easement and associated drawing must be recorded with Hennepin County.

- (b) Submit a seed mix proposal for the infiltration area and adjacent slopes. This mix must be of natural and native species and is subject to review and approval of natural resources staff.
 - (c) Install all measures in accordance with the SWPP for staff inspection. These items must be maintained throughout the course of construction.
 - (d) Permits may be required from other outside agencies including, but not limited to Hennepin County, the Bassett 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.
- g. Prior to issuance of a building permit:
- (1) Submit the following items for staff review and approval:
 - (a) A recorded copy of the ordinance.
 - (b) A recorded copy of the conditional use permit resolution.
 - (c) 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.
 - (d) A recorded copy of a 16.5-foot conservation easement over the wetland buffer.
 - (e) A revised landscaping and tree mitigation plan. The plan must show:

- (i) the planting of ten trees, four of which shall be ornamental trees planted along the Wayzata Blvd frontage.
- (ii) the planting of a bedding of native shrubs adjacent to the parking lot at the western and northwestern edges of the property to act as a vegetative wetland buffer.
- (iii) the planting of low-growing shrubs in the parking lot islands and entrance medians to complement existing trees at these locations.

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.

- (f) 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 (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.
 - (g) An electronic CAD file or certified as-built drawings in microstation or DXF and PDF format.
 - (h) An illumination plan for staff approval.
- (2) The following items must be completed:
- (a) Schedule and hold a preconstruction meeting with engineering, planning, and natural resources staff.

- (b) 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.
- (c) Pay all required hook-up fees.
- h. The property owner is responsible for replacing any required landscaping that dies.
- i. 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.
- j. Provide appropriate fire protection per National Fire Protection Association requirements.
- k. This ordinance does not approve any signs. A separate sign plan review and sign permits are required.
- l. Construction must begin by December 31, 2009, unless the planning commission grants a time extension.

CONDITIONAL USE PERMIT FOR FREESTANDING RESTAURANT

- 2) *Recommend that the city council approve the resolution on pages A35–A38 of the staff report. This resolution approves a conditional use permit for a freestanding restaurant on property designated for retail or service commercial use at 10600 Wayzata Boulevard. Approval is based on the following findings:*

- a. The proposal would meet the general and specific conditional use permit standards as outlined in city code.

Approval is subject to the following conditions:

- a. Hours of operation shall be limited to 4:00 pm to 2:00 am.

CONDITIONAL USE PERMIT for OUTDOOR SEATING AREA

3) *Recommend that the city council approve the resolution on pages A39–A42. This resolution approves a conditional use permit for an outdoor seating area at 10600 Wayzata Boulevard. Approval is based on the following findings:*

- a. The proposal would meet the general and specific conditional use permit standards as outlined in city code.

Approval is subject to the following conditions:

- a. Hours of operation shall be limited to 4:00 pm to 2:00 am.
- b. The outdoor seating area shall be a controlled area with at least one opening to an acceptable pedestrian walk. An enclosure is required and the enclosure shall not be interrupted; access shall be only through the principal structure.
- c. The outdoor seating area shall be equipped with refuse containers and patrolled daily for litter pick-up.
- d. The outdoor seating area shall not have speakers or audio equipment which is audible from adjacent parcels.
- e. The city council may reasonably add or revise conditions to address any future unforeseen problems, including but not limited to noise and parking issues.
- 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. Before the city issues a building permit, the applicant must agree to the above conditions in writing and record this resolution with the county.
- h. Violation of any of the above conditions will result in revocation of the permit.

APPEAL OF THE MAXIMUM TRIP GENERATION

- 4) *Recommend that the city council approve the applicant's appeal of the maximum trip generation for the proposed restaurant located at 10600 Wayzata Blvd. Approval is based on the findings of a traffic study conducted for the proposed development which concluded that:*
- a. These additional trips could be accommodated with the existing roadway infrastructure.

The daily impact of the proposed restaurant will be minimal and peak hour trip generation from the site will have a negligible impact on the adjacent intersections along CSAH 73 (Hopkins Crossroad).

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

This item is tentatively scheduled to be reviewed by the city council at its October 27, 2008 meeting.

Adams thanked Metzger for his service to the city and wished him the best of luck in his position with Evanston, Illinois.

9. ADJOURNMENT

Adams moved, second by A. Thomas, to adjourn the meeting at 8:50 p.m. Motion carried unanimously.

By: 

Lois T. Mason
Planning Secretary