

**MINNETONKA PLANNING COMMISSION
MINUTES**

APRIL 2, 2009

1. CALL TO ORDER

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

2. ROLL CALL

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

Staff members present: City Planner Loren Gordon, Principal Planner Susan Thomas, Planner Jeff Thomson, Planning Technician Stephanie Scott-Sims, Natural Resources Manager Jo Colleran, and Project Engineer Will Manchester.

- 3. APPROVAL OF AGENDA:** The agenda was approved as submitted with an additional comment and modification provided in the change memo dated April 2, 2009.

- 4. APPROVAL OF MINUTES:** March 19, 2009

Sjeklocha moved, second by Adams, to approve the March 19, 2009, meeting minutes as submitted.

Sjeklocha, A. Thomas, Walker, Adams, Blatz, Lehman, 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 March 23, 2009:

- Approved a twelve-month extension of final plat approval for Encore Park at 11501 K-Tel Drive.
- Approved a twelve-month time extension for the Gagners 2nd Addition preliminary plat.
- Adopted a resolution amending the redevelopment contract for the entire project area for the Glen Haven Shopping Center for the St. Therese project. The liquor license for the Gold Nugget was also approved. The land use approvals for the St. Therese project are on hold pending finalization of financing.

- Adopted a resolution approving the Landschute application for a bank with a drive through at the corner of Highway 7 and County Road 101. Additional landscaping to block headlights was a condition of approval.
- Took no action on the Thompson plat on Excelsior Boulevard because the applicant removed its review from the agenda.

Gordon reported that the Economic Development Authority (EDA) met March 30, 2009 and discussed results provided by the Opportunity City Pilot Program. Detailed, demographic information was collected for 5 cities in the metropolitan area from 2004 to 2007. The whole report is available on eminnetonka.com in the EDA area.

Gordon invited commissioners to attend a training session entitled *Participating in Effective Public Meetings and Managing Difficult Discussions in Public*.

Gordon noted that the first meeting regarding the Minnetonka Mills area will be April 14, 2009 at the ICA food shelf from 6 p.m. to 8 p.m. More information is available on eminnetonka.com under "projects."

The next planning commission meeting will be held April 23, 2009.

6. REPORT FROM PLANNING COMMISSION MEMBERS: None

7. PUBLIC HEARINGS: CONSENT AGENDA: None

8. PUBLIC HEARINGS

A. Items concerning the existing Dairy Queen site at 5445 Eden Prairie Road (97095.08a)

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

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

Adams recalled that the design previously approved included a menu board with a speaker. S. Thomas agreed. The drive through was then located on the north side of the building.

Blatz asked what would trigger requiring implementation of the alternative plan if, indeed, a problem with stacking occurred. S. Thomas explained that if the city

received complaints, staff would visit the property and if stacking was occurring, staff would meet with the owners and discuss reworking the site plan. Generally, 30 days would be a reasonable time frame to make changes to the site. If a safety issue was occurring, the drive through may have to be closed until the site is modified. Staff is able to enforce the condition of approval without the planning commission or city council having to review a modified site plan. Blatz wanted action to be able to be taken to address the problem as quickly as possible.

A. Thomas understood the need for outdoor seating, but he has seen customers sitting on the retaining wall by the gas station. He asked if there are push-button menu boards available and, if not, he wanted to patent the idea. S. Thomas recalled the Wendy's drive through had a phone a customer would speak into, but she has not seen a push-button speaker system in Minnetonka. A. Thomas felt an alternative to a speaker would be preferable. A. Thomas had concerns with stacking. It is a busy location, especially after baseball games.

Walker asked if a condition of approval could limit the volume of the speaker. S. Thomas stated that is possible. Gordon added that the Minnesota Pollution Control Agency publishes volume level standards. The city would enforce the standards.

Sjeklocha questioned what would trigger the city to require a change in the decibel level. S. Thomas responded that a noise violation would be investigated and enforced on a complaint basis.

Blatz noted that the seating on the west side of the property might have to be relocated if the vacant space is leased. She asked what the likelihood of that happening would be. S. Thomas spoke to the owner who said that he has no intent to lease the office space at this time.

Gene Haugland, representing the owners, felt staff did a good job of summarizing the situation. He was available to answer questions.

A. Thomas asked why the owner would want to leave the building vacant. Mr. Haugland said it would be vacant right now, but, hopefully, maybe someday occupied. It is currently in bad shape and would cost a lot to fix. The site is very tight with too many things on it.

Blatz asked if there are stacking problems occurring now. Mr. Haugland answered that it currently takes too long for each order to be processed. The proposal would allow more time for the order to be filled while the vehicle advances. The proposal hopes to decrease stacking. The new, computerized

ordering system would allow orders to be filled quicker. Plan B would have sight-line issues due to a huge power pole. If stacking became too big of a problem, then Plan B would be implemented.

Chair Cheleen clarified the traffic pattern with Mr. Haugland and S. Thomas.

Chair Cheleen noted concerns from residents regarding the message board. Mr. Haugland described the menu board. The quality of the microphone would be much improved. The speaker would be directed north, toward the gas station. Those things and the structure of the sign would minimize the level of sound. If necessary, a wood structure or vegetation could be added to provide more of a sound barrier. Chair Cheleen suggested testing the system before using it. Mr. Haugland agreed and noted that the public would be the real test.

The public hearing was opened.

Robin Montague, 14477 Stewart Lane, stated that:

- She has supported the redevelopment of the Glen Lake area.
- The Dairy Queen is an important part of the neighborhood.
- She was concerned with the message board, the noise, and the stacking.
- There is already a stacking issue on Stewart Lane.
- The gas station's car wash is very loud. Its noise and traffic already impacts her.
- The message board would get in the way of her enjoyment of the outdoors.
- She would be grateful for the Dairy Queen expanding and improving service without impacting the neighbors.

Mike Roth, 14485 Stewart Lane, stated:

- He is a board member of the Lakewoods Townhome Association.
- He and association members are concerned with the speaker amplifying sound. He questioned how noise would be abated if it would be louder than the allowed sound level.
- The report related to how the proposal would improve things for customers to get in and out of the drive through faster. There is no mention of the potential impact on neighbors.
- He asked if a study had been done to model the speaker and test the sound level.

- His back deck faces the Dairy Queen. He hears the traffic and noise. So far, he has not heard one drive-through order. He does not want to start.

B.J. Novotny, 14319 Stewart Lane, stated:

- He has mixed emotions regarding the development.
- None of the other businesses in the area make outdoor noise.
- His chief concern is that all of the issues with the site should be settled before buying the property. It seems that the city becomes an advisory committee to the owner. He would not ask to have his building moved if it did not meet ordinance requirements.

Chair Cheleen noted that the Dairy Queen has been at the site longer than 25 years. The owner is trying to make the best of the situation.

No additional testimony was submitted and the hearing was closed.

Lehman explained how staff handles condition and ordinance violations on a complaint basis. In the extreme, the city has the authority to shut down the speaker system.

Sjeklocha asked if the volume range of the speaker system is known. S. Thomas answered that the city has not done any testing on the speaker system. The owner may be able to provide more information.

Sjeklocha asked if a customer yelling at the speaker, even though it would not be necessary, would count towards the business creating a noise violation. S. Thomas responded that that is a tricky question. Ordinances refer to the speaker system being audible from the property line. She was unsure if voices on the property, whether speaking into the menu board or to people sitting on the retaining wall, would be an ordinance violation.

A. Thomas noted that the menu board would be located near the street. He asked if a wood wall would help. Gordon stated that staff discussed that possibility. Staff's biggest concern with the proposal is vehicles stacking and the second concern is the potential of sound in violation of ordinance requirements. Gordon agreed there would be things that could be done to help shield neighbors from noise. A. Thomas confirmed with Gordon that a condition could include the requirement that if the speaker would be too loud, that staff could require construction of a wall to help provide a sound barrier.

Adams doubted that the sound would be as dramatic as some people are thinking. He was more concerned with the potential of stacking vehicles. It is a public safety issue. He saw nothing in the proposed resolution that would trigger a reconsideration of the site plan. S. Thomas explained that Section 4.01, Subsection 2, notes that the city council may reasonably add conditions to address any unforeseen problems and goes on to list specifically vehicle stacking on Stewart Lane being one of those problems. Adams was comfortable with that language.

Blatz favored approving the alternate plan. Vehicle stacking would be a public safety issue. Stewart Lane and Eden Prairie Road are busy streets. She believed that stacking would occur at the onset.

A. Thomas was more supportive of the alternate site plan than the proposed improvement plan. It is a tight site. Traffic would enter from both directions from Stewart Lane and Eden Prairie Road. It is a difficult site. The more vehicles that can fit on the site rather than Stewart Lane would be the best situation. He supported a condition giving staff the option, if needed, to require a sound wall between the menu board and Stewart Lane.

Walker concurred with the concern with stacking and supported going straight to the alternate plan. Putting landscape in the neighbors' yards to help buffer the sound could be considered. He supported including triggers in the condition as to what the city can do if stacking occurs.

Lehman agreed with the wisdom of preventing stacking as much as possible, but knew that the location would have stacking issues whether two or four vehicles would be accommodated on the site. The alternate would also have stacking issues. The site becomes overrun with baseball coaches and parents at certain times in the summer. He agreed with keeping as much stacking on the site and off the street as possible. He has difficulty hearing the customer in line in front of him order and the employees' response when using a modern menu board. He did not believe it would be too obtrusive or annoying, but he understood the concern for someone who lives across the street and wants to sit outside. He is comfortable that the city has enforcement capabilities through ordinance requirements. There are options available to deal with problems. The fix does not need to be determined now, but, as long as the remedy includes discontinuing the message system, the owner would find a way very quickly to decrease the sound. He supported recommending the alternate plan and letting the message board go forward with the understanding that if a problem persists that the city will enforce its ordinance.

Chair Cheleen agreed that the alternate plan made more sense. He questioned if the existing curb cut is wide enough to enter and exit through. S. Thomas explained that staff's intent would be to allow the two-way motion. The diagram does not represent the exact width.

Chair Cheleen noted that there would be no picnic tables on the east side. By moving the entrance to the east, there would be vehicles closer to the open, grass area.

Mr. Haugland explained that the alternate plan would eliminate five parking stalls. There are nine stalls on the east side of the proposed site plan. The power pole creates a block in vision for motorists pulling out. Trees on the adjacent property also create a visual issue. It would be blind from both directions when exiting. The decrease from nine stalls to four stalls should be a consideration.

Chair Cheleen asked if the alternate plan would meet parking stall requirements. S. Thomas stated that the site currently meets parking requirements. The alternate plan would not have enough parking to meet ordinance requirements. Gordon discussed options to increase the number of parking stalls by decreasing green space. Staff's first concern is the stacking potential.

Walker counted 26 stalls in the alternate plan and 28 in the proposed plan.

Lehman moved, second by Adams, to recommend that the city council adopt a resolution approving the alternate site plan as opposed to the proposed site plan concerning the existing Dairy Queen site at 5445 Eden Prairie Road (97095.08a).

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

B. A conditional use permit for a pediatric rehabilitation center at 5900 Rowland Road (92012.09a)

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

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

Lehman noticed a steep drop off on one side of the parking lot. It was blocked by a curb, but he asked if any other provision would be made. S. Thomas explained that since the conditional use permit relates to the use of the structure and there

would be no changes to the site or building there would be no trigger to require improvement of the site.

Lehman observed that there is a natural and significant barrier between the drop off and pick up area and the neighbors with the exception of the northeast corner. He could see the head of a biker from the parking lot. He asked if steps would be taken to provide a sound barrier or limit disturbance to residents. S. Thomas explained that staff focused on the conditional use permit standards. If commissioners felt additional landscaping would be beneficial, then a condition could be added. Staff found that the use would be sufficiently screened from neighbors.

In response to Lehman's request, S. Thomas explained the calculation used to determine the amount of required parking. It is directly linked to the amount of space utilized by type of use.

Sjeklocha asked if outside areas could be developed because of the type of clinic it is or if a variance would be needed. S. Thomas responded that if an actual expansion of the useable space of the building would be requested, then the conditional use permit would have to be reviewed again. If there would be construction of a storage shed, then the conditional use permit would not need to be reviewed again. It would be treated as an accessory structure.

Adams asked if a play area would require a variance. S. Thomas had considered that possibility and determined that it would be considered an accessory use. As long as it met all setback and other ordinance requirements, an application for a play structure would be reviewed administratively.

Chad Anbery, 19675 Mierfield Circle, and Troy Fry, 2484 Cloverfield Drive, Chaska, represented the applicant. Mr. Fry felt staff covered everything. They were available for questions.

Walker asked for a description of a child with autism. Mr. Fry is the clinical director and has worked at the current center since December of 2004. Many of the children the Holland Center provides services to are not vocal. They utilize sign language. The children range in age from 3 years to 8 years. The children's disabilities range from social, language, and a variety of other impairments. Treatment is based on the science of behavior analysis. A majority of a child's day would be spent in one-on-one, intensive treatment sessions within the structure itself. The play area is approximately 2,100 square feet in size. Approximately 85 percent of a child's therapy is done in the building. Outside use

occurs in intervals by a strict schedule. Each child is staffed one-on-one at all times.

Walker asked if there would be programs outside of the building. Mr. Fry stated that some occupational therapy could occur outside. It might involve bike riding, working on ball skills, or a variety of other physical exercise outside.

Walker questioned if the school intended to increase its number of students. Mr. Fry stated that they hoped to increase their ability to serve more children. Each child is not full time; only 5 kids are there 30 hours a week. The intent is to grow the ability to serve additional kids by filling in available hours of current staff. The structural setting would not allow for 25 children. They currently have no more than 11 children at a time.

Walker asked if the building and parking area are accessible. Mr. Fry answered positively. Walker disclosed that he looked into purchasing the building and knew the site well. It is the most secluded building one could find ever. It would be a great environment for children. He has a son who has Aspergers, a form of Autism, and his son is high functioning. The children would appear no different than other children. Mr. Fry agreed.

Blatz asked if the center is adding a facility or relocating. Mr. Fry said relocating and stated that the current site is 5,000 square feet in size. A hyperbolic chamber would be able to be added to the new site.

Adams asked in what geographic area the patients reside. Mr. Fry stated that the facility serves the entire metro area. The majority of children come from the west metro area.

Chair Cheleen asked if bike riding would be done in the parking lot. Mr. Fry answered affirmatively. There would a small area to allow for some games. The activities would be very structured with an occupational therapist in addition to the staff member. The current indoor play space is only 700 square feet. The proposal would allow that area to be tripled. The kids eat and go outdoors in shifts so there would be no more than 5 children outside at a time and each would have an instructor.

The public hearing was opened.

Phil Matsco, neighbor east of the site, was concerned that the children would have proper security to prevent the children from getting into the adjacent wooded area that is almost 40 acres in size. There is a lot of bicycle traffic in the

area. He did not know if this is the best site for this use. His questions have been answered. He asked who funds the center. He questioned if a child would be over 15 years old and/or if a child would have a condition other than Autism.

Michelle Swadley, 5817 Rowland Road, said that many of her questions have been answered. Her main concern was the sharp curve in the road. Vehicles have run over her mailbox and into a tree in her yard. The entrance to the building would be 20 feet from the curve. She was concerned with the increase in traffic. There is heavy bike traffic. It would be a safety issue. She was concerned with a decrease in her property value. She was concerned with the impact to the wildlife.

Fran Stanke, 5832 Rowland Road, was concerned with the noise and traffic. The road has so much traffic right now she can barely get in and out. The street is used as a cut off during rush hour. There are a lot of bike riders on the trails and large dogs are walked. It is not a good site. The area is not safe due to the traffic. Her yard has been driven into. Clearwater Drive has vacant buildings that would be better.

No additional testimony was submitted and the hearing was closed.

Mr. Fry stated that the center is funded by the parents of the children. Insurance sometimes covers treatment. The children range in age from 3 years to 15 years of age. There may be 7 to 11 kids on the site at one time.

Chair Cheleen noted that 15 staff would be on site. Mr. Fry agreed. All of the staff are full-time and work from 7:30 a.m. to 4:30 p.m. Parents mainly drop off and pick up. The drop off and pick up times are staggered based on the child's needs and the schedule. Chair Cheleen said that the proposal would have less traffic than the previous use. Mr. Fry stated that it would be quite a bit less. The building is 13,000 square feet in size. A typical office user would use 65 parking stalls with trips 3 times to 4 times a day: on arrival, over lunch, and when leaving. The proposal's use and impact on the site would be a third of what the building would be used for at its maximum office capacity.

Sjeklocha asked for the applicant to comment on supervision of the children. Mr. Fry stated that each child has constant one-on-one supervision and at least two therapists if outside for their safety and the safety of staff.

Adams visited the current Holland Center. If the use was not characterized as a medical facility, no review would be necessary. It is more similar to a well organized day care. There would be no increase in noise outside. There is a

sound barrier between the center and neighbors. Staff provide important services for children with special needs. He found the noise level inside similar to a typical daycare. The proposal would provide indoor play space. He urged residents to contact the city engineer regarding traffic safety concerns on Rowland Road. There is a concern for visibility of on-coming traffic. It would not be impacted by the presence of a day care or treatment center at the proposed site. He supported the proposal.

Blatz agreed with Adams. She asked if a day care center would be allowed without a conditional use permit for the site. S. Thomas explained that the site is zoned B-1, office use, so a day care, school, or medical clinic would need to obtain a conditional use permit. An office use could occupy the building without any review and would not need to obtain a conditional use permit.

A. Thomas acknowledged the street, traffic, and speeding issues can be referred to the engineering and police departments. Engineering can look at the sight lines and enforcement action can be taken for speeding. He did not see security for children who would attend The Holland Center as a problem. The children would have constant one-on-one supervision. The site would be a good place for the use. It would definitely have less of an impact to the area than an office building. An office building would create a great deal more traffic. Except for this year, due to the economy, no matter what has been built in a residential neighborhood, Minnetonka property values have never been negatively impacted. Feel free to check any property with the city assessor. Funding is not part of the city's consideration. The use is being considered. He supported the proposal.

Sjeklocha supported the proposal. She noted that the current facility has had less than three calls to the police department over the past several years. Another reason she supports the proposal is because the comprehensive guide plan supports inclusiveness.

A. Thomas moved, second by Lehman, to recommend that the city council adopt the resolution on pages A12–A15 of the staff report. This resolution approves a conditional use permit for a pediatric rehabilitation center within the existing building at 5900 Rowland Road. Approval is based on the following findings:

- 1) Aside from the location of emergency vehicle access to the site, the proposal meets the required conditional use permit standards as outlined in city code:

- a. The use is consistent with the intent of this ordinance.
 - b. The use is consistent with the goals, policies and objectives of the comprehensive plan.
 - c. The use does not have an undue adverse impact on governmental facilities, utilities, services or existing or proposed improvements.
 - d. The use is consistent with the city's water resources management plan;
 - e. The use is in compliance with the performance standards specified in section 300.28 of this ordinance.
 - f. The use does not have an undue adverse impact on the public health, safety or welfare.
 - g. The clinic would not be adjacent to low density residential areas.
 - h. The site has direct access to collector or arterial street as defined in the comprehensive plan; and
 - i. Emergency vehicle access to the site shall not be adjacent to or located across a street from any residential use.
- 2) A variance from the emergency vehicle access standard is reasonable, as the proposal meets the intent of the standard. Unlike a traditional medical clinic which may experience regular trips by emergency vehicles, The Holland Center, as a rehabilitation center does not. Emergency trips to the site would be typical of any non-medical use of the building. In the five years the center has operated in the City of Excelsior, the South Lake Police Department has received only three emergency calls to the site.

Approval is subject to the following conditions:

- 1) Prior to issuance of a building permit:
 - a. Record this resolution with the county. A copy of the recorded resolution must be returned to the city.
 - b. Submit an emergency response plan for review and approval of the police department.

- 2) The following changes to the site or operation require review and/or amendment of the conditional by the city council.
 - a. Decrease in the square-footage of the indoor play/observation area.
 - b. Increase in enrollment to over 25 students.
 - c. Any other change to the approved use that results in a significant increase in traffic or a significant change in character.
- 3) The city council may reasonably add or revise conditions to address any future unforeseen problems.
- 4) The applicant must agree to the above conditions in writing.

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

The city council is tentatively scheduled to review the item at its April 20, 2009 meeting.

C. Conditional use permit for wireless telecommunications equipment at 4350 Baker Road (06076.09a)

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.

Chair Cheleen confirmed with Thomson that the appearance of the site would not change. Thomson agreed that it would not be very visible given the color and location of the walls.

James Reece, Buell Consulting, representing AT & T, added that there is an existing water tower where AT & T is currently located that the city has informed AT & T will have to be removed. The antennas must be removed by November 2009. The reason for the installation is to maintain the current coverage as well as improve the technology.

Sjeklocha asked what kind of information is used to determine if a new space is needed. Mr. Reece explained that radio frequency engineers specialize in

determining the necessary capacity to accommodate the coverage. Topography, trees, height of antennas, and number of users plays a role.

A. Thomas asked for a definition of "3G." Mr. Reece explained that "3G" describes the technology. Cellular is not accurate anymore. It relates to the frequencies being used, how much information is being transmitted, and the speed it is being transmitted. "G" does not stand for a specific word.

A. Thomas questioned why antennae conditional use permits are not on the consent agenda. Thomson explained that staff chose to include the item as a non-consent agenda item.

Adams asked if there are other cellular antennae located on the water tower. Thomson believed one more user has antennae on the water tower. Walker suggested contacting the other user to see if both companies could save money by utilizing the same shroud. S. Thomas explained that T-Mobile is that user and has already gained approval for relocation of the antennae.

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

Blatz moved, second by Walker, to recommend that the city council adopt the resolution on pages A10-A18 of the staff report. This resolution approves a conditional use permit for wireless telecommunications facilities to be located on the existing building at 4350 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 February 17, 2009.
 - 3) The antennas must not extend above the cornice line of the screening walls, and must not project out further than three feet from the face of the walls.
 - 4) The antennas must be a color similar to the existing screening walls.
 - 5) No advertising message or identification sign larger than two square-feet may be affixed to the antennas or associated equipment.
 - 6) The antennas may not be artificially illuminated, unless required by law or by a governmental agency to protect the public's health and safety.
 - 7) On-site, permanent employees associated with the telecommunications facilities are not allowed.
 - 8) If rendered obsolete, the antennas must be removed in accordance with City Code 300.34.5.
 - 9) The city council may reasonably add or revise conditions to address any future unforeseen problems.
 - 10) 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.
 - 11) Violation of any condition of this conditional use permit or city code requirement renders this permit null and void.

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

D. Site and building plan review for changes to the existing property at 5435 Feltl Road (86167.09a)

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

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

Adams asked if the trees near the property line would have to be removed. S. Thomas answered in the negative. Trees that are part of approval and included in a landscape plan are required to be replaced on the site.

A. Thomas asked if a sign would be added. S. Thomas stated that no sign has been proposed at this time. A sign permit must be applied for and would be approved administratively if it meets ordinance requirements. A variance would be reviewed by the planning commission.

Chair Cheleen asked if the rain garden would impact the woodland area. S. Thomas explained that the intent of the rain garden is to prevent impact to the woodland area.

In response to Walker's question, Gordon stated that a preliminary plan proposes to locate light rail between the proposal and the apartment buildings on the east.

A. Thomas asked if the woodland protection area would be protected. S. Thomas suggested that, if the commission would like to add such a condition, it be added to Section 5.01, Subsection 2(a), Condition D, to prohibit the grading plans from impacting the woodland preservation area; on Page A12 of the staff report. Colleran explained the tree ordinance. She supported adding a condition to protect the woodland preservation area.

Lehman asked if he understood correctly that the tree protection ordinance applies to subdivision of property. Colleran clarified that the tree protection ordinance discusses specific, allowable tree removal for parcels that have an existing structure. Trees may be removed, in this case, from the parking lot area and a ten-foot perimeter around that area. The tree ordinance has a little stronger language to protect remnant ecosystems/woodland preservation areas when it deals with subdivision of land.

Lehman asked what the added condition should include. Colleran heard commissioners favor keeping the applicant out of the woodland preservation area. The condition would prohibit grading in the woodland preservation area. The condition would be added as part of the motion. Colleran and S. Thomas spoke to the applicant who is agreeable with the condition.

Lehman asked if that would be consistent with the tree protection ordinance. Colleran explained that the condition would provide additional protection for the woodland preservation area than what the tree ordinance would provide.

S. Thomas suggested Lehman discuss the condition with the applicant. Lehman was not sure he was agreeable with the condition.

Lehman was comfortable with a condition requiring adherence to the tree protection ordinance, but he was troubled by adding different wording that may or may not be consistent with the tree protection ordinance. Colleran explained how the tree ordinance and condition would complement each other.

Gordon added that the proposed plan would not impact the woodland preservation area. If approved, it would not impact the woodland preservation area.

Nick Sperides, representing Emergency Physicians Group, applicant, stated that:

- The group runs 23 different emergency rooms in the metro area.
- They fell in love with the building because of the trees.
- The use and occupancy would not change.
- The moving of one partition inside the building makes the review necessary.
- The building currently meets parking requirements.
- The site was originally approved to expand the building and parking lot.
- The proposal would meet watershed and engineering regulations.
- A monument sign would identify the use.
- A walk under canopy from parking with a curved top with a stone chimney would be used. There would probably not be a carport.
- The proposal adheres to all ordinance requirements.

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

Sjeklocha confirmed with S. Thomas that there is a condition giving staff final review and approval of the grading plan.

Sjeklocha moved, second by Adams, to adopt the resolution on pages A11–A15 of the staff report, which approves final site plans for a parking lot expansion at 5435 Feltl Road. Approval is based on the following findings:

- 1) The proposal was anticipated during the original development of the site.
- 2) The proposal would not adversely impact existing natural topography or trees.
- 3) The proposal would meet all standards for a site and building plan approval as outlined in City Code 300.27 Subd 5. These standards are incorporated into this resolution by reference.

Approval of the site and building plans 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 March 18, 2009.
- 2) 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.
 - a. The following must be submitted for the grading permit to be considered complete.
 - (1) Final site, grading, drainage, utility, and erosion control plans must be submitted for staff approval. The final plans must:
 - a. Meet minimum standards as outlined and approved by the city engineer and natural resources staff.
 - b. Provide adequate stormwater runoff control measures to prevent impacts to adjacent steep slopes.

- c. Locate the proposed infiltration basin and associated grading to minimize tree removal and impacts on the site.
 - (2) A tree preservation plan illustrating trees to be removed and trees to be protected within the proposed construction/grading limits.
 - (3) A landscaping and tree mitigation plan must be submitted for review and approval of natural resources staff. The plan must meet minimum landscaping and mitigation requirements as outlined in ordinance.
 - (4) 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.
 - (5) 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.
- b. Prior to issuance of a grading permit:
 - (1) Submit an electronic PDF copy of the plans and specifications.
 - (2) Submit two full size and three 11"x17" sets of construction drawings and three sets of project specifications.
 - (3) Submit all required administration and engineering fees.
 - (4) Submit a SWPPP.
 - (5) Install a temporary rock driveway, erosion control, and tree protection fencing for staff inspection. These items must be maintained throughout the course of construction.

- (6) Permits may be required from other outside agencies including the Nine Mile Creek Watershed District. 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.
 - (7) 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.
 - (8) An illumination plan for staff approval.
- 3) Prior to release of submitted letters of credit or cash escrow, submit an electronic CAD file or certified as-built drawings of any required stormwater improvements in microstation or DXF and PDF format.
 - 4) 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.
 - 5) The property owner is responsible for replacing any required landscaping that dies.
 - 6) Construction must begin by December 31, 2010, unless the planning commission grants a time extension.

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

E. Items concerning parking lot reconfiguration at Christos Restaurant, 15600 State Highway 7 (88100.09a)

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

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

Adams asked where the power pole would be relocated and who would fund the move. S. Thomas responded that engineering staff would be working with the property owner to determine a new location for the power pole.

Blatz asked if the compact parking stalls would have signs. S. Thomas stated that could be added as a condition of approval. Blatz noted that the handicap stall is not very close to the door. S. Thomas said that the building official would review the location of the handicap stall.

Adams asked if any permits need to be issued by the city for the project. S. Thomas stated that there would be no permit issued for redesign of the parking lot. Adams was glad to hear there would not be an additional fee for the applicant.

Gus Parpas, owner of Christos, applicant, thanked staff for their work. Access has been a serious issue for the site. The road realignment will greatly improve access for all of the properties. He will be granting a permanent easement equal to eight percent of the property to make the road realignment possible. He supported the proposal.

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

Adams asked when the project would occur. Manchester stated that the Minnesota Department of Transportation is reviewing the application to approve the project right now. It would be reviewed by the city council near the end of April or beginning of May. The project would be advertised and construction started approximately in the beginning of June. The project should be completed in six weeks to eight weeks.

Adams moved, second by Walker, to adopt the resolution on pages A7–A10 of the staff report in accordance with the modification provided in the change memo dated April 2, 2009, which approves the following variances:

- 1) ***Variance for the use of compact stalls.***
- 2) ***Parking setback variance from 20 feet to 3 feet.***

Approval is based on the following findings:

- 1) The proposed variance for use of compact stalls is reasonable and would meet the required standards for a variance, because:
 - a. Undue Hardship: The subject site is losing required parking to a public improvement, which is intended to promote the public health, safety, and welfare. This creates an undue hardship.
 - b. Unique Circumstance: The restaurant has been operating with a variety of parking stall widths for several years. Given this, the addition of compact stalls would not be out of character with the existing conditions. This is a unique circumstance not common to every commercially-zoned property.
 - c. Neighborhood Character: The proposed compact parking stalls would have no impact on the essential character of the surrounding area.
- 2) The proposed setback variance is reasonable and would meet the required standards for a variance, because:
 - a. Undue Hardship: The existing parking area at the rear of the site has a non-conforming setback. Given this non-conformity, any addition to the rear parking area would require a variance. This is unique hardship based on the configuration of existing property improvements.
 - b. Unique Circumstance: The site's rear property line is oddly configured, resulting in substantially less property depth on the east side of the property than on the west. This is a unique circumstance not common to every commercially-zoned property.
 - c. Neighborhood Character. The new parking stalls would have little if any impact on the character of the neighborhood.

- (1) The three new parking stalls would have a setback of 4 feet. This amounts to just 3.5 percent of the total number of stalls on site.
- (2) The proposed parking would be over 100 feet from the closest residential structure. A significant stand of mature trees is located within this great distance, buffering the parking from the residential structure.


Approval is subject to the following conditions:

- 1) Prior to commencing any site work:
 - 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, 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.

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

9. ADJOURNMENT

Adams moved, second by A. Thomas, to adjourn the meeting at 9:14 p.m. Motion carried unanimously.

By: 
Lois T. Mason
Planning Secretary