

**MINNETONKA PLANNING COMMISSION
MINUTES**

OCTOBER 1, 2009

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: Community Development Director Julie Wischnack, City Planner Loren Gordon, Principal Planner Susan Thomas, and Planning Technician Stephanie Scott-Sims.

3. APPROVAL OF AGENDA: The agenda was approved as submitted.

4. APPROVAL OF MINUTES: September 17, 2009

Lehman moved, second by Adams, to approve the September 17, 2009, meeting minutes as submitted.

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

5. REPORT FROM STAFF

Gordon and Wischnack briefed the commission on upcoming meetings:

- City-wide open house at city hall on October 6, 2009 from 5 p.m. to 8 p.m.
- Randall Arendt will be speaking at the city hall community center on October 15, 2009 from 7 p.m. to 9 p.m. It is sponsored by 1,000 Friends of Minnetonka. Reservations are requested.
- United Health Group will have an open house for Phase II of its approved concept plan, a second tower located on the campus, October 13, 2009 at 6:30 at the United Health Group building.
- Hennepin County Rail Authority will hold a public hearing from 4 p.m. to 7 p.m. on October 20, 2009. The final alignment of the Southwest Rail Line will be determined.
- The next planning commission meeting will be October 15, 2009 at 6:30 p.m.

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

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

8. **PUBLIC HEARINGS**

A. Conditional use permit, with variance, to locate a pediatric mental rehab center at 10273 Yellow Circle Drive. (09023.09a)

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 asked whether the existing roadway system is designed specifically for industrial zoning of adjacent properties and if a non-industrial use would impact the surrounding infrastructure. S. Thomas responded that the OPUS II road system is designed to handle mixed uses. The proposal would create less vehicle trips than an office use. Staff is comfortable that the existing infrastructure would accommodate the proposed use.

In response to Sjeklocha's question, S. Thomas explained that the parking area condition is in the recommendation because the parking calculation is based on the area of the building minus the indoor play area. If the indoor play area size would decrease and the medical clinic area increase, then the parking requirement would need to be recalculated. Staff may be able to approve an application for an increase in parking area administratively if there is room on the site to accommodate it. If the parking would need to be located off site, then the application would go through the formal review process.

Sjeklocha asked S. Thomas if she recalled another situation where a use did not fit into one zoning category. S. Thomas did not recall a conditional use situation. She did run across a similar situation for a variance request. A five-story office building was built on property in the Opus Park that is zoned for industrial use. The owner of the office building has submitted an application for a sign which would require a variance in an area zoned for industrial use.

Sjeklocha asked if the one-way road system would be a concern for emergency vehicles accessing the site. S. Thomas answered in the negative. S. Thomas stated that during the Holland Center's six years in Excelsior, emergency personnel were called to the site three times. Staff does not anticipate that the

Holland Center would have any more emergency calls than an office use. A condition of approval does require an emergency response plan be submitted to the police department for review and approval.

Adams noted that the Holland Center's existing location has the appearance of a daycare center. He asked if standards would be different if the use would be classified as a daycare center. S. Thomas stated that a daycare center would have slightly different standards; however, a conditional use permit would still be necessary. Adams was comfortable with staff's recommendation.

Blatz recalled that the previous proposal included outdoor recreation space and asked if the current plan included an outdoor recreation area. S. Thomas understood that the applicant intends to have an outdoor recreation area, but it was not designated on the plan. She directed the question to the applicant.

Walker asked if signage is included in the proposal. S. Thomas indicated that no signage is currently proposed.

Jennifer and David Larson, Tonka Bay, applicants, were present to answer questions. Ms. Larson stated that the location of the outdoor play area has not been finalized. The current facility has a Rainbow play set primarily for the kids to get fresh air. There would be something, but it would not be extensive or unattractive.

Mr. Larson stated that he worked with the City of Excelsior staff who required a chain-link fence be installed. The applicants were willing to work with staff. The fence could be moved to a new location. Ms. Larson said there is no plan to have a sign. The facility does not need to advertise. The business operates by referral. In time, the applicants may apply to put a sign on the building, but not at this time.

Chair Cheleen recalled that the children receive one on one supervision at all times, including when outside. The fence may not be necessary in reality, but the effect is probably a wise idea.

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

Blatz moved, second by Sjeklocha, to recommend that the city council adopt the resolution on pages A11–14 of the staff report. This resolution approves a conditional use permit for a pediatric rehabilitation center

within the existing building at 10273 Yellow Circle Drive. Approval is based on the following findings:

- 1) Aside from the location of the rehabilitation center on a local street, the proposal meets the required conditional use permit standards as outlined in City Code 300.21 Subd. 2, City Code 300.21 Subd. 6(e) and City Code 300.21 Subd. 3(h):
 - 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 use is in compliance with the performance site and building plan standards specified in section 300.27 of this ordinance.
 - h. The use is not adjacent to low density residential areas.
 - i. Emergency vehicle access is not adjacent to or located across a street from any residential use.

- 2) A variance from the required access to collector or arterial street standard is reasonable, as the proposal meets the intent of the standard. Unlike a traditional medical clinic which may experience a high number of vehicle trips daily, The Holland Center, as a rehabilitation center does not. It is anticipated that trips to the site would be less than those to any industrial or office use of the building.

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 use permit 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) Any delinquent taxes and utility bills must be paid by October 31, 2009 or this approval will be rendered null and void.
- 4) The city council may reasonably add or revise conditions to address any future unforeseen problems.
- 5) The applicant must agree to the above conditions in writing.

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

Chair Cheleen stated that the item will be reviewed by the city council October 5, 2009.

B. Multiple variances to permit the installation of a monument sign containing a digital dynamic display located at 3500 Williston Road. (99020.09a)

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

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

Lehman asked how many variances are included in the proposal. Scott-Sims stated that the proposal requires four variances for approval.

Lehman noted the land use principle that if numerous variances are needed to accommodate a use then, instead of variances, the changes should be addressed by changing the ordinance. He asked if the sign ordinance is in need of review. Scott-Sims stated that has been under discussion. Gordon explained that the sign ordinance will be reviewed this winter for a number of revisions. A number of issues have been considered since the advent of the dynamic sign ordinance update a couple of years ago. Wischnack added that when the dynamic sign ordinance was updated, 35 percent and 50 percent were debated. The intention was to make the ordinance 35 percent and revisit the possibility of changing the ordinance to 50 percent in the future.

Lehman asked if the requested variances would be allowed in a potential updated ordinance. Gordon could not speculate on a number. He said that there have been situations where the particulars of the request and the name of the organization on the sign were having a tough time complying with font types and area because the name was really long. The font height and area of the dynamic sign are in play during the sign ordinance revisions to make them better adapt to situations where there is a need to take a different regulatory approach because of logos and branding that would be expected in a manner for it to be legible. This proposal would be a case study in determining a number.

Lehman asked Gordon if the proposal's font size, area of the sign, and proportions would not be drastically out of line with a potential future change in the ordinance. Gordon did not think the number would drastically change. Some modifications will be made to make it a little more lenient to the applicant.

Adams had the same reaction as Lehman. Commissioners deal with numerous sign variances. He asked how many sign plans have been approved that did not require a variance since the ordinance passed. Gordon and staff thought of one at a clinic located in Ridgehaven Square.

Dale Williams, Minnetonka Christian Academy, applicant, stated that it has been a pleasure to work with Scott-Sims and staff. They have been very helpful guiding him through the process. He was anxious, after a couple years of not having a good sign, to bring the sign up to professional standards. The mission and vision would be presented in a more professional light. He appreciated the recommendation. He was available for questions.

The public hearing was opened.

Vincent Troy, 14852 Timberhill Road, asked if the sign would be located on Minnetonka Boulevard or Williston Road. Scott-Sims responded that it would be located on Williston Road. It would be setback 10 feet from the property line. Mr. Troy was concerned that the sign would be located on Minnetonka Boulevard. He did not object to it being located in the proposed spot. Mr. Troy clarified that Williston Road's posted speed limit is 20 miles per hour in front of the school. Scott-Sims stated that the street is posted 30 miles per hour, but the curve is posted at 20 miles per hour.

Mr. Troy noted that traffic needs to be slowed in areas of flashing lights so that drivers will not be distracted and read the sign. He asked if the sign's message would rotate. Scott-Sims explained that the sign ordinance would allow the message to change every twenty minutes.

Joanna Troy, 14582 Timberhill Road, questioned the purpose of the sign if it is located on Williston Road. An additional moving sign would be moving in the direction opposite of what people are trying to get away from. She questioned if the sign would be turned off at night. After a certain hour, there is not a lot of traffic. She questioned if it would be legible and not flashing. She questioned who it would be intended to give information to; if it would be turned off at night when there is less traffic; and if it needs to be that large. The current sign is prominent.

Mr. Williams explained that the sign is intended for multiple audiences including the church members and general public. The facility holds community-based events related to healthy living and school-related events as well.

Chair Cheleen noted that the sign would be aimed towards the southeast, away from residences. Mr. Williams stated that the sign would be designed to stay on. He was unaware of an ordinance that would prohibit it being on continuously. Scott-Sims agreed. The city hall sign is on 24 hours a day.

Wischnack provided that the city's ordinance requires the intensity of a sign to be adjustable. Chair Cheleen did not see the illumination lighting up the street. It would only be visible. Scott-Sims agreed.

Scott-Sims explained that the size of the sign would be reasonable because it represents two institutions on the same property. If the properties were separate, each parcel would be allowed a sign with 75-square-foot monument area, which would be larger than the proposed sign. Mr. Williams explained that the original drawing met the font requirement, but it was not legible. The proposal kept a

balance between keeping good letter size and keeping the sign as small as possible given those requirements.

Chair Cheleen felt those were good answers.

No additional testimony was submitted and the hearing was closed.

A. Thomas was swayed by the fact that if each separate entity had a sign, there would be two signs larger than the one proposed. He counted that the proposal diverts from five portions of the ordinance. The ordinance allows 75 square feet in size and the proposal requests 112 square feet; 30 square feet is allowed for copy and the proposal requests 56 square feet; and 35 percent of the display is allowed to be dynamic and the proposal call for 39 percent. He is pretty protective of the sign ordinance. He supports the proposal because he would rather have 1 sign than the 2 signs that could go there. He wanted to discuss considering a long name an "undue hardship." There are probably a lot of institutions out there with long names, but that is not the city's problem. The company picked its name.

Lehman agreed with A. Thomas that he could support the recommendation despite challenging other applications to conform to the sign ordinance since there are two businesses on one space. He is also protective of enforcement of the sign ordinance.

Adams testified to the fact that there does need to be a way-finding sign for the organization. A woman stopped him in the city hall parking lot about a year ago and asked him where the high school is located. He told her where Minnetonka High School and Hopkins High School are located. She said it was on Williston Road and he was finally able to tell her. It clearly needs to be marked better than it is right now. He questioned the size of the sign. It would be very large and somewhat out of scale with the city hall signs. He did not think it would be necessary to be that large when motorists would be driving 30 miles per hour. He questioned the need for the large font. He felt it would be larger than it would need to be in this situation. He was not happy with all of the variances either. There is a problem with the ordinance that needs to be corrected soon because there will be similar applications in the near future. He reluctantly supported staff's recommendation.

The public hearing was reopened.

Mr. Troy felt allowing the variances because there are two businesses on the property could be a detriment when other properties come up with the same

argument. He felt it would be wise to wait and allow the sign ordinance changes to occur and then see if the application would fit the revised ordinance before approving it.

The public hearing was closed.

Chair Cheleen asked if the sign ordinance changes have a set time table. Gordon explained that a draft of changes to the sign ordinance has been prepared. Staff will be adding other elements regarding the area of the dynamic-sign issue. It should be presented for review winter of 2009. It will be a number of months before anything happens.

A. Thomas said that there is no use speculating on what the future sign ordinance will be. Commissioners must act on what is in front of them. What will happen in the future cannot be anticipated. That is irrelevant to the discussion.

Blatz noted that the current sign ordinance restricts an office building with multiple tenants to one sign. Scott-Sims agreed. A general business area is also allowed one monument or pylon sign. The proposed site has two facilities, but one owner.

Sjeklocha concurred with A. Thomas' comments regarding the future, but she questioned how staff determines priorities for when things get done. Wischnack explained that the order of which ordinances will be amended is based on direction from the city council and city manager. Staff hears feedback regularly. Another item on the city council's wish list is to amend parking requirements. That schedule will be developed and shared as time becomes available.

Sjeklocha commented that she could share her thoughts with councilmembers. Wischnack agreed.

Chair Cheleen viewed the proposal as a win. Instead of two signs, there would be one. Instead of 150-square-feet of signage, there would be 112 square feet. It did not appear to be too big for the corner to him. He leaned toward agreeing with what A. Thomas said. Commissioners cannot predict the future and must act on what is in front of them. He supported staff's recommendation.

Adams moved, second by A. Thomas, to adopt the resolution on pages A7–A11 of the staff report, which approves the proposed monument area, copy and graphic area, dynamic display area, and font height variances at 3500 Williston Road. Approval is based on the following findings:

- 1) The monument area and copy and graphic variances are reasonable and would meet the required standards for a variance, because:
 - a. **UNDUE HARDSHIP and UNIQUE CIRCUMSTANCE:** There are two separate, but jointly-owned institutions located on one property, which is a unique situation. Both have advertising needs; however, by ordinance, the site is only allowed one sign. The applicant has no choice but to combine their signage needs onto one sign, requiring a larger sign than required by ordinance. Additionally, there is a practical difficulty in constructing a sign to meet the size requirements while providing the appropriate amount of information on the sign, given the two separate institutions displaying information.
 - b. **INTENT OF THE ORDINANCE:** The variance would meet the intent of the ordinance to maintain the way-finding purpose of the sign. The proposed variances would provide an equal balance between way-finding, site identification and advertising with changeable messages.
 - c. **NEIGHBORHOOD CHARACTER:** The proposed sign would not adversely impact the character of the neighborhood, and the sign fits the institutional context of the area.

- 2) The dynamic display area variance is reasonable and would meet the required standards for a variance, because:
 - a. **UNDUE HARDSHIP and UNIQUE CIRCUMSTANCE:** The competing requirements of maximum size and minimum font height restrict the dynamic display to a maximum message length of 6-10 characters. This presents a practical difficulty in adding a dynamic display which could provide usable messages for the church.
 - b. **INTENT OF THE ORDINANCE:** The variance would meet the intent of the ordinance to maintain the way-finding purpose of the sign. The proposed variance would provide an equal balance between way-finding, site identification and advertising with changeable messages.
 - c. **NEIGHBORHOOD CHARACTER:** The proposed sign would not adversely impact the character of the neighborhood, and the sign fits the institutional context of the area.

- 4) The font height variance is reasonable and would meet the required standards for a variance, because:
 - a. **UNDUE HARDSHIP and UNIQUE CIRCUMSTANCE:** There is both an undue hardship and unique circumstance in that one sign is being used to advertise the names of two institutions. Both institutions have long names. Furthermore, the varying font sizes used in the Seventh-day Adventist Church portion of the sign is representative of the church's officially approved logo in order to align with the church's branding requirements.
 - b. **INTENT OF THE ORDINANCE:** The intent of the font height requirement is to protect public safety by prohibiting messages that are too small to be easily read by the motorists traveling on the adjacent roadway. In this instance, decreasing the font height on the proposed sign would not affect the readability of the sign from Williston Road. Because traffic is forced to slow down in this area, either by the built-in traffic calming measures or, in order to find their destination, a sign with smaller font could be easily and safely read by motorists, meeting the intent of the ordinance.
 - c. **NEIGHBORHOOD CHARACTER:** The proposed sign would not adversely impact the character of the neighborhood, and the sign fits the institutional context of the area.

Approval is subject to the following conditions:

- 1) Prior to issuance of a building permit:
 - a. A copy of this resolution must be recorded with the County and a copy of the recorded document returned to the city.
 - b. Install a temporary rock driveway, erosion control, tree protection and wetland protection fencing as required by natural resources staff for inspection and approval. These items must be maintained throughout the course of construction.
- 2) Approval from Xcel Energy is required to install the sign in the public utility easement.

- 3) This variance will end on December 31, 2010, 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.

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

9. ADJOURNMENT

Blatz moved, second by Adams, to adjourn the meeting at 7:30 p.m. Motion carried unanimously.

By: _____
Lois T. Mason
Planning Secretary