

**MINNETONKA PLANNING COMMISSION
MINUTES**

OCTOBER 15, 2009

1. CALL TO ORDER

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

2. ROLL CALL

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

Staff members present: Community Development Director Julie Wischnack, City Planner Loren Gordon, and Principal Planner Susan Thomas.

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

4. APPROVAL OF MINUTES: October 1, 2009

Sjeklocha moved, second by Adams, to approve the October 1, 2009, meeting minutes as submitted.

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

5. REPORT FROM STAFF

Gordon briefed the commission on land use applications considered by the city council at its meeting of October 5, 2007:

- Adopted a resolution approving the preliminary and final plats for Premier Place at 16229 Temple Drive South and 16103 and 16115 Temple Lane Premier Place.
- Adopted a resolution approving a conditional use permit, with variance, to locate a pediatric mental rehabilitation center at 10273 Yellow Circle Drive.
- Introduced the ordinance and referred to the planning commission items concerning Black Oaks Estates located at 16611 Black Oaks Lane.

Gordon noted that the concept plan for the second tower for United Health Group will be reviewed by the planning commission at its next meeting. Wischnack stated that there will be a neighborhood meeting regarding the proposed Opus

ordinance on October 29, 2009 at city hall at 5 p.m. The presentation will begin at 5:30 p.m.

Gordon invited those present to listen to Randall Arndt who will be speaking from 7 p.m. to 9 p.m. in the community center.

Wischnack reported that the policy advisory committee passed a recommendation to the Hennepin County Rail Authority to go with the 3A Alignment that would go through the Opus business park and the golden triangle area of Eden Prairie. The Hennepin County Rail Authority will hold a public hearing and discuss the recommendation Tuesday, October 20, 2009, from 4 p.m. to 7 p.m.

Gordon announced that the next planning commission meeting will be November 5, 2009 at 6:30 p.m. There are a number of upcoming complex projects.

6. REPORT FROM PLANNING COMMISSION MEMBERS: None

7. PUBLIC HEARINGS: CONSENT AGENDA

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

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

A. A side yard setback variance for a proposed deck addition at 2643 Cedar Green (09027.09a)

Adopt the resolution on pages A10–A12, which approves the proposed side-yard variance from 10 to 8 feet at 2643 Cedar Green. 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:** The shape of the subject property creates an undue hardship. Unlike other lots in the development, which are narrower at the street and gradually widen toward the sides and rear of the properties, the applicant's lot is wider at the street and gradually narrows toward the sides and rear of the property. Any expansion of the deck footprint toward the side-yard would require a variance.

- b. UNIQUE CIRCUMSTANCE: The original deck footprint did not meet the side yard setback requirement. The existing, non-conforming setback is a circumstance that is not common to every similarly zoned property.
- c. INTENT OF THE ORDINANCE: The proposed expansion would maintain the original lines of the existing deck; the deck would not encroach further into the setback than it already does.
- d. NEIGHBORHOOD CHARACTER: The proposed deck expansion will not alter the residential character of the surrounding neighborhood.

Approval is subject to the following conditions:

- 1) Prior to issuance of a building permit:
 - a. A copy of this resolution must be recorded with the County and a copy of the recorded document returned to the city.
 - b. Install a temporary rock driveway, erosion control, tree protection and wetland protection fencing as required by natural resources staff for inspection and approval. These items must be maintained throughout the course of construction.
- 2) This variance will end on December 31, 2010, unless the city has issued a building permit for the project covered by this variance or approved a time extension.

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

8. PUBLIC HEARINGS

A. Front yard setback variance for a garage addition located at 5733 Cedar Lane (09025.09a)

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.

Mark Studenski, 5733 Cedar Lane, applicant, stated that he bought the property nine years ago. The original garage is not big enough to put a modern vehicle inside because of the fuse box in front. He wants to create a shop/garage.

Chair Cheleen asked if the new garage would be accessed by the existing driveway. Mr. Studenski explained that the existing driveway would be removed and the new driveway would curve around a tree to preserve the tree. There proposal would decrease the amount of paved driveway.

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

Adams felt the proposal is reasonable. It would not alter the character of the neighborhood.

Adams moved, second by A. Thomas, to adopt the resolution on pages A10–A12 of the staff report, which approves the proposed front-yard setback variance from 35 feet to 27 feet at 5733 Cedar Lane. 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 and UNIQUE CIRCUMSTANCE: The odd shape of the subject property presents both an undue hardship and a unique circumstance.
 - (1) The applicant's existing garage has a non-conforming front yard setback of 33 feet. As such, any addition to the existing garage would require a setback variance.
 - (2) The property's shape is not common to most properties in the city.
 - b. INTENT OF THE ORDINANCE: The proposed garage addition would meet the intent of the residential ordinance requirements.
 - c. NEIGHBORHOOD CHARACTER: The proposed addition will not alter the essential residential character of the neighborhood. The

building inset, along with the 13 feet of right-of-way along the front property line, will provide the appearance of a greater building setback from the street for the proposed addition. In addition, a survey of the other homes in the neighborhood showed that the majority do not meet the front yard setback requirement.

Approval is subject to the following conditions:

- 1) Prior to issuance of a building permit:
 - a. A copy of this resolution must be recorded with the County and a copy of the recorded document returned to the city.
 - b. Install a temporary rock driveway, erosion control, tree protection and wetland protection fencing as required by natural resources staff for inspection and approval. These items must be maintained throughout the course of construction.
- 2) This variance will end on December 31, 2010, unless the city has issued a building permit for the project covered by this variance or approved a time extension.

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

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

B. Resolution approving multiple variances to install a new wall sign on the office building located at 10901 Red Circle Drive (01001.09a)

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 there are other nonconforming signs along Red Circle Drive. S. Thomas answered that the area has many office buildings located in industrial-zoned properties. She suspects that, for many properties in the Red Circle Drive and Yellow Circle Drive area, either the use is nonconforming and the sign is confirming or the sign is nonconforming and the use is conforming.

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

Chair Cheleen felt the proposal made sense given the convoluted way it became what it is. The size of the sign does make sense compared to the sign on the other side.

A. Thomas recognized the unique situation. The proposal would allow 2 signs. The ordinance would allow 1. The proposal would have 147 square feet. The ordinance would allow 50 square feet. The proposal would have a height of 10 feet, 6 inches. The maximum height allowed would be 24 inches. The door would be opened again to places that look at this for unique circumstances. A smaller sign would fit and it would be visible. He understood that the situation is unique, but the proposal is not close to the ordinance at all. He had a difficult time supporting the application. He believed that until something is worked out with the sign ordinance, the door would be opened for other unique circumstances to come up. He had a problem giving away the ship and disregarding the ordinance.

Lehman agreed with A. Thomas' concerns, but he has started to come to a conclusion that no matter what ordinance modification may be done, it would not insulate the planning commission from this type of variance request. The sign ordinance needs to be flexible to accommodate unique variations in both the nonconforming situations as well as the unique nature of how architects build buildings. He was softening his resistance to requests for sign variances because ultimately the sign ordinance might have to be one of which more judgment is needed than rigor. He favored going forward with the request.

Adams concurred with Lehman. He was unsure a 24-inch sign would be viewable from Crosstown. Given the way the building is designed, it appears to be 2 buildings. That gives him some rationale to allow 2 signs. Red Circle Drive is a difficult area for motorists to find their way if not familiar with the area. Some way-finding indicators are necessary, especially at night. The circumstances are unique and some tolerance and ability to grant variances is needed under these circumstances.

Lehman moved, second by Adams, to adopt the resolution on pages A10-A13 of the staff report which approves the following variances to install a new wall sign on the building at 10901 Red Circle Drive: variance to allow for two wall signs on the building; variance from maximum copy and graphic height from 24 inches to 10-feet, 6-inches; and variance from maximum copy and graphic area from 50 square feet to 147 square feet.

Lehman, Sjeklocha, Adams, and Cheleen voted yes. A. Thomas voted no. Blatz and Walker were absent. Motion failed.

A. Thomas moved, second by Adams, to deny the resolution on pages A10-A13 of the staff report which approves variances to install a new wall sign on the building at 10901 Red Circle Drive.

A. Thomas voted yes. Lehman, Sjeklocha, Adams, and Cheleen voted no. Blatz and Walker were absent. Motion failed.

Lehman moved, second by Adams, to rescind the previous actions and table action regarding adopting the resolution on pages A10-A13 of the staff report which approves variances to install a new wall sign on the building at 10901 Red Circle Drive, to the November 5, 2009 meeting to allow more planning commission members to be present.

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

9. ADJOURNMENT

Adams moved, second by Lehman, to adjourn the meeting at 7:25 p.m. Motion carried unanimously.

By: *Lois T. Mason*
Lois T. Mason
Planning Secretary