

**MINNETONKA PLANNING COMMISSION
MINUTES**

DECEMBER 2, 2010

1. CALL TO ORDER

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

2. ROLL CALL

Commissioners Magney, Sjeklocha, A. Thomas, Adams, Daeges, Lehman, and Cheleen were present.

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 with additional comments and changes provided in the change memo dated December 2, 2010.

- 4. APPROVAL OF MINUTES:** November 4, 2010

Adams moved, second by Sjeklocha, to approve the November 4, 2010 meeting minutes as submitted with the following modification:

- Page 12, add: "Mr. Duffy stated that funding is difficult to secure for an apartment located over a commercial use."

Magney, Sjeklocha, A. Thomas, Adams, Daeges, 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 November 8, 2010 and November 22, 2010:

- Approved an amendment to the existing operations management plan for ICA at 12990 St. David's Road to allow an additional hour of operation during weekdays and add an hour to the Saturday operating and deliver time.
- Adopted the resolution amending the conditional use permit regarding the audio system plan for Minnetonka High School located at 18301 Highway 7.

- Adopted the resolution approving a conditional use permit to operate a daycare on the property at 1712 Hopkins Crossroad.
- Adopted the resolution approving items concerning a restaurant located at 12977 Ridgedale Drive.
- Discussed a concept plan review for Duffy Development at 12708 and 12720 Wayzata Boulevard.
- Adopted a resolution approving a request for a 12-month extension for the Fetterly View final plat located at 11519 Fetterly Road West.

Gordon announced a study session will be held with commissioners and city councilmembers regarding follow up of the village-center process and to discuss results from the second public workshop December 13, 2010.

Gordon congratulated S. Thomas on passing the certified planner examination.

6. REPORT FROM PLANNING COMMISSION MEMBERS: None

7. PUBLIC HEARINGS: CONSENT AGENDA: None

8. PUBLIC HEARINGS

A. Expansion Permit to remodel the existing non-conforming accessory building at 3108 Beverly Place. (99033.10a)

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

S. Thomas reported. She recommended denial of the application based on the findings listed in the staff report.

Lehman understood staff's three points for denial. He asked what staff felt would be the appropriate vehicle to handle the request. S. Thomas responded that what is allowed by state law would be appropriate. Minnesota law allows physical enhancement such as painting or changing of materials or the building to be torn down and rebuilt in the same footprint. There are various buildings in the Greys Bay area that have been aesthetically improved with minor architectural enhancements.

Lehman repeated that the design structure could be altered or changed as long as it did not expand the nonconformance. S. Thomas answered that the building could be torn down and rebuilt to the same volume, footprint, and height that currently exists.

Paul Johansen, 3108 Beverly Place, applicant, stated that:

- A pitched roof would be a more reasonable and maintainable structure in this climate. The flat roof rotted. He is looking to avoid that issue in the future.
- It would be 40 percent more cost effective to construct a pitched roof than replace a flat roof.
- Two contractors recommend a pitched roof for reasons of cost, maintenance, and property value. Buyers shy away from a flat roof.
- Adequate parking is currently available and would not be impacted.
- The proposal would provide a net positive effect. There would be no additional dust generated. Many neighbors have commented on the odor of the rotting roof.
- The proposal would blend in with the appearance of the neighborhood.
- Future plans for the residence would align with the architecture and design of the accessory structure. He provided a photo of the proposed accessory structure.
- The application complied with the circumstances being unique to the property and not being caused by the land owner.
- The expansion would not alter the essential character of the neighborhood.
- He was not trying to disagree with staff. Scott-Sims has been incredibly helpful and he appreciated that.
- He agreed that the existing structure has a number of nonconforming aspects. Denial of an expansion permit does not fix them. He is free under state law to make aesthetic improvements. The expansion permit would not have an impact one way or the other.
- The intrusion of the proposed structure would be reduced by 18 inches. Right now there is a 3.5-foot overhang. The proposal would decrease that by 18 inches. The proposal would extend 2 feet.
- The roof does not extend its full height across the whole building. There is a 10-foot section where the roof slopes back. That would make it look less imposing.
- The increase in mass would be mitigated as much as possible.
- The overall volume would increase to 17,800 cubic feet which would be an 8 percent increase.
- He did not completely agree that the proposal would detract from the neighborhood character.
- The proposal would not change the intended use.

Chair Cheleen asked if clients would be going to the building. Mr. Johansen answered affirmatively. He did not anticipate more than 5 clients per week. The business is currently run out of the house. There would be no change to the traffic pattern.

Chair Cheleen asked if the vehicle-size garage door was removed and replaced with a single, individual door. Mr. Johansen pointed out the existing garage door. He said he plans to frame in the garage door and replace it with a window.

Chair Cheleen asked staff if the site would require a conditional use permit to operate a commercial use. S. Thomas agreed that if the property would be used only for a commercial use, then a conditional use permit would be required. A home occupation would be allowed if ordinance requirements would be met. Based on the description provided by the applicant, the site's home occupation meets ordinance requirements.

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

Adams reflected on the site's history. He did not support perpetuating the nonconformity by approving the application. He supported staff's recommendation to deny the proposal.

Lehman stated that the nonconforming use could remain forever and action taken by the planning commission now would not change that. As much as it might improve the aesthetics and odor of the building those issues do not justify an expansion of a nonconforming situation. He supported staff's recommendation to deny the application.

A. Thomas concurred. He supports denying expansion of a nonconformance. He supported denial of the application.

Chair Cheleen noted that the building would look immensely better with a new roof; however, he agreed that it would be perpetuating a nonconforming use. There are other alternatives.

Daeges moved, second by Adams, to adopt the resolution on pages A29–A34 of the staff report with changes provided in the change memo dated December 2, 2010, denying an expansion permit to remodel the existing, non-conforming accessory building at 3108 Beverly Place. Denial is based on the following findings:

- 1) The non-conforming use ordinance allows the city to grant expansion permits when they city finds that they are reasonable. However, the ordinance does not mandate that the city grant such permits.
- 2) The proposed expansion is not reasonable for the following reasons:
 - The existing structure has a number of non-conforming aspects. Approving an expansion permit perpetuates these multiple non-conformities.
 - The height and massing of the proposed accessory building intrudes into the front yard setback. The increase in height and mass of the structure detracts from the neighborhood character and is not reasonable.
 - This proposed use of this building is not inherently residential.

Magney, Sjeklocha, A. Thomas, Adams, Daeges, Lehman, 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 director within 10 days.

B. Minor amendment to the existing Circuit City Plaza master development plan. (93024.10a)

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 trees would be planted. S. Thomas pointed out open areas south of the existing parking lot and north service drive. Colleran agreed.

Sjeklocha asked for the difference between a minor amendment and a major amendment. S. Thomas stated that ordinance defines a major amendment as one that changes the height, footprint of the building or parking lot, or overall amount of open space. All properties that have master development plans associated with them have to have any change reviewed by the planning commission.

Sjeklocha asked if, hypothetically, the project would be approved and the right-out access would be constructed, then could the right-out access be removed in the future if the use changed. S. Thomas stated that the city could reevaluate any issue. The city's traffic-safety consultant finds the plan acceptable. Gordon explained one reason for the right-out on Plymouth Road is due to the signal nearing its capacity and this would relieve some of the pressure on that signal.

Sjeklocha asked if a right-out was in the original proposal. S. Thomas answered affirmatively. At that time, Hennepin County was comfortable with a right-out access. Neighboring property owners on the north were understandably concerned with redevelopment of the site and relocation of trees. At that time, the developer removed the right-out access from the plans.

A. Thomas asked if staff has informed the applicant of the city's nuisance ordinance regarding hours of noise restriction. S. Thomas answered affirmatively.

Lehman noted a concern from a resident regarding using one of the lanes on Plymouth Road as a right-only lane. He asked if an analysis was done to determine the number of trips. S. Thomas answered affirmatively. She went over the directional trip disposition included in the packet. The city's consultant looks at the number of trips and the percentage of trips that would utilize each road. Fifteen percent of the trips generated by the proposed use would travel on Plymouth Road. Gordon noted that the intersection would not function differently. An east leg would be added. Lehman envisioned some of the trips that might have gone down the frontage road and turned right to go north on Plymouth Road would go through the parking lot.

Lehman asked if the analysis looked at the possibility of problems that would be created by a driver who takes the right turn exit and then decides to go left so the driver would have to turn around at some point. S. Thomas explained that Hennepin County would require medians to prevent a driver from turning around illegally between intersections. Lehman stated that the occurrence of a driver making an illegal u-turn in the middle of Plymouth Road is not a problem, but he has seen situations where a land owner posts a sign that says "no turn around."

Lehman asked if the other business on the site had been consulted and, if so, its owner's reaction. S. Thomas stated that the other property owner is aware of the proposed changes and discussed those with Wischnack.

Lehman referred to a letter written by a resident who had concerns that were not part of the planning commission's jurisdiction. S. Thomas agreed. Staff forwarded the comments on to Whole Foods representatives to address the concerns.

In response to Adams' question, Colleran explained how the two rows of shrubs would grow to 10 feet to 12 feet after relocation.

Chair Cheleen asked if there would be a catch basin or rain garden in the triangular space. Colleran said that the final landscape plan has not been completed. She reviewed the possibilities.

Ken Hank, Pastor Enterprises, applicant, was present with Howard Haster, president of the company, Tony Gleical, legal counsel, Vern Swing, engineering and traffic consultant, and Dan Blackburn, representing Whole Foods. Mr. Hank was excited to be at the meeting. The group is close to closing on the purchase of the site later this month. Circuit City closed almost two years ago. What was a dark store will be vibrant again. He stated that:

- Pastor Enterprises has been in business more than 60 years. It is based in St. Paul and is run by a third generation of Pastors. The company prides itself on its commitment to its properties, tenants, and communities. It is not a merchant builder. Its portfolio includes one million square feet of 12 properties located in the Twin Cities.
- Staff made a great presentation. He agreed fully with all of the recommendations.
- The entrance canopy would be made of stone to match the stone base.
- Windows would be added to increase natural light.
- The interior would be gutted and electrical configured for a grocery use.
- The same aesthetic treatment would be located on the large sign façade over the entrance.
- The right-out only lane would be important. Fifteen percent of the traffic would travel north bound on Plymouth Road. The condition would make the intersection safer.
- There would be no change to the building footprint size, parking configuration, sidewalks, or curb lines. Parking requirements would be met.
- The allowable number of trips would meet standards.
- Whole Foods is a quality, national grocery operator.
- Plans are currently underway. A building permit application would be submitted in February to allow construction to begin March of 2011. Estimated date to open would be November 2011.

Dan Blackburn, Whole Foods representative, applicant, appreciated the opportunity to speak to the commission. He described the natural, organic provider's products. Eighty percent of Whole Foods' employees are full-time with benefits. Employees are trained well and there is a lot of promotion from within. It is a green company. It has a fairly aggressive food-bank program. He was available for questions.

The public hearing was opened.

Paul Severson, Chief Financial Officer of the Minneapolis Jewish Federation which owns and occupies the building at 13100 Wayzata Boulevard, expressed the federation's strong support of the project.

Scott Takenoff, 2621 Crescent Ridge Road, owns and manages a commercial redevelopment company in Minneapolis. He stated that the applicant consists of a good group of people. He has seen their shopping centers and the quality is there. He has no concerns regarding their ability to deliver what they say they are going to do. His neighbors are excited for the store. This proposal would raise everyone's tax value and take away a dark, blighted corner. This is an ideal use to replace the large-box retailer. He is excited as a consumer to have another option and competition. There are a lot of challenging corners and knuckle-headed drivers, but the proposal makes sense. The improved design and green approach is exactly what he would want as a neighbor and redeveloper. The city should grab it and support the proposal.

No additional testimony was submitted and the hearing was closed.

Adams supports the reuse and the opportunity to increase the vibrancy of the neighborhood and commercial aspects of the city. He supports the right-out turn lane onto Plymouth Road.

Lehman moved, second by A. Thomas, to adopt the resolution on pages A30–A34 of the staff report, with changes provided in the change memo dated December 2, 2010, which amends the existing Circuit City Plaza master development plan and approves final site and building plans as they pertain to the property at 1001 Plymouth Road.

Approval is based on the following findings:

- 1) The proposal would meet all ordinances and standards for a site and building plan approval.

- 2) The proposal would not result in building or site design changes substantially inconsistent with the previously approved master development plan.
- 3) The proposed access/egress reconfiguration would improve vehicle queuing issues that may impact the site in the area of the existing frontage road access.
- 4) With installation of appropriate medians on Plymouth Road, the proposed access/egress reconfiguration would not negatively impact the function of the roadway.

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 dated November 3, 2010
 - Grading plan dated November 3, 2010
 - Building elevations dated November 3, 2010
- 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 and grading plans and specifications and associated calculations for staff approval. The final plans must include installation of required medians on Plymouth Road and illustrate truck turning radii.
 - (2) Final drainage and utility plans, specifications, and associated calculations for staff approval.
 - (3) A final landscape plan for staff approval. The plan must provide for relocation of viburnum and replacement of trees lost to reconfiguration of the Plymouth Road access and egress. The landscape plan must meet minimum landscape and mitigation requirements as outlined in city code.

- (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 approved permit from Hennepin County for a right-out egress onto Plymouth Road.
 - (2) Submit an electronic PDF copy of the plans and specifications.
 - (3) Submit two full size and three 11x17 sets of construction drawings and three sets of project specifications.
 - (4) Submit all required administration and engineering fees.
 - (5) Submit a SWPPP.
 - (6) Submit 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 contractor 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.

- (7) Install a temporary rock driveway, erosion control, and tree protection fencing for staff inspection. These items must be maintained throughout the course of construction.
 - (8) Submit copies of the existing, executed cross access and cross parking agreements.
- c. Prior to tree removal, proposed grading limits must be staked in the field for staff inspection. Staff may determine that trees proposed to be removed, can be saved with careful trimming.
- 3) Prior to issuance of a building permit, any outstanding utility bills must be paid.
 - 4) Any compactor area on site must be surrounded by an enclosure, including walls and roofing, acceptable to city staff.
 - 5) Following construction, submit certified as-built drawings in microstation or DXF and PDF format.
 - 6) The property owner is responsible for replacing any required landscaping that dies.
 - 7) 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.
 - 8) Construction must begin by December 31, 2011, unless the planning commission grants a time extension.

Magney, Sjeklocha, A. Thomas, Adams, Daeges, Lehman, 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 director within 10 days.

C. Ordinance amending the city code regarding subdivision requirements (10048.10a).

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

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

Lehman confirmed with staff that the planning commission will be making a recommendation to the city council.

Lehman asked if staff had an idea of how many requests that would have been handled by variances before the court ruling have now been handled by other means. Gordon stated that there are two dozen items staff is evaluating to determine how to best handle them which include routine and unusual issues. Nothing specific has been identified yet.

Lehman asked if the next step would revitalize the redevelopment situation by putting mechanisms into place to allow homeowners to do so. Gordon chose not to speculate.

Adams trusts that planning staff and the city attorney know what they are doing. He identified corrections to be made to pages 5 and 9.

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

Sjeklocha moved, second by Adams, to recommend that the city council adopt the ordinance on pages A1–A17 of the staff report with corrections to pages 5 and 9.

Magney, Sjeklocha, A. Thomas, Adams, Daeges, Lehman, and Cheleen voted yes. Motion carried.

Chair Cheleen noted that the city council is tentatively scheduled to review the item at its December 20, 2010 meeting.

9. OTHER BUSINESS

A. Modification to TIF Plan

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

Wischnack reported. She recommended approval of the application based on the findings listed in the staff report.

Adams asked why it is necessary. Wischnack explained that it is being done to comply with Minnesota law.

Sjeklocha asked how jobs get created. Wischnack responded that if a city has excess tax increment and has no bond payment or other commitments, then the city may use that increment to create jobs. The job may be a construction or temporary job. The St. Therese project created 33 full-time jobs.

Sjeklocha confirmed with Wischnack that the jobs are not with the city, but with private companies.

Chair Cheleen noted that St. Therese provided construction jobs and full-time, permanent staff.

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

Adams moved, second by Lehman, to adopt the resolution on page A3 of the staff report finding the modification to the development program for development District Number 1 and the modification of the tax increment financing plan for redevelopment tax increment financing District Number 2 conform to the general plans for the development and redevelopment of the city.

Magney, Sjeklocha, A. Thomas, Adams, Daeges, Lehman, 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 director within 10 days.

10. ADJOURNMENT

Lehman moved, second by Adams, to adjourn the meeting at 8:15 p.m. Motion carried unanimously.

By: _____
Lois T. Mason
Planning Secretary