

**MINNETONKA PLANNING COMMISSION  
MINUTES**

**OCTOBER 20, 2011**

**1. CALL TO ORDER**

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

**2. ROLL CALL**

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

Staff members present: City Planner Loren Gordon, Principal Planner Susan Thomas, Planning Technician Stephanie Scott-Sims, Natural Resource Manager Jo Colleran, and Water Resource Engineer Liz Stout.

**3. APPROVAL OF AGENDA:** The agenda was approved as submitted with modifications provided in the change memo dated October 20, 2011.

**4. APPROVAL OF MINUTES:** October 6, 2011

*Lehman moved, second by Adams, to approve the October 6, 2011, meeting minutes as submitted.*

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

**5. REPORT FROM STAFF**

Gordon noted that the next planning commission meeting will be November 3, 2011.

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

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

**8. PUBLIC HEARINGS**

**A. Expansion permit for a garage addition at 13107 Inverness Road (09031.11a)**

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 noted the change memo should reflect an aggregate side yard setback of 29 feet. Scott-Sims agreed.

Ashley Mitlyng, of Kuhl Design Build, applicant, was available for questions.

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

Adams liked the current design better than the one approved two years ago. It would be less intrusive in the front yard and more in character with the neighborhood. He supported staff's recommendation.

Magney visited the site and spoke with the builder. He questioned when work would begin if approved. Scott-Sims said that once the proposal is approved, the building permit application could be submitted by the applicant. Staff would be able to sign off fairly quickly as long as building code requirements were met. She suggested the building permit application be submitted as soon as possible.

***Adams moved, second by Magney, to adopt the resolution on pages A18–A21 of the staff report and modifications provided in the corrected change memo dated October 20, 2011, which approves the proposed expansion permit for a garage addition at 13107 Inverness Road. Approval is based on the following findings:***

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 expansion permit will end on December 31, 2012, unless the city has issued a building permit for the project covered by this expansion permit or approved a time extension.

***Adams, Daeges, Lehman, Magney, A. Thomas, and Cheleen voted yes. Sjeklocha was 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 variances for a wall sign at 10400 Yellow Circle Drive. (11033.11a)**

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.

Traci Tomas, with Continental Property Group, owner of the building, applicant, said that S. Thomas gave a great description of what the application hopes to gain and why it is being requested. She was available for questions.

Adams asked what type of business it would be. Travis Tjersted, of M Space, explained that M Space is a commercial audio/visual contractor. The business does corporate and government video conferencing out of presentation rooms. Adams asked if the site would be used for office space. Mr. Tjersted answered affirmatively. The office would be occupied by engineers, technical staff, and help desk providers. There would be a small storage space in the basement. There would be no manufacturing.

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

***Daeges moved, second by Adams, to adopt the resolution on pages A8–A11 of the staff report, which approves wall sign variances at 10400 Yellow Circle Drive. These variances include:***

- Variance to maximum letter height from 18 inches to 42 inches.
- Variance to wall sign location from primary building entrance to building façade.

Approval is based on the following findings:

- 1) The requested variances meet the practical difficulties standard outlined in state statute and city code:

- a. REASONABLENESS: The requested variances are reasonable, as they would result in a sign smaller than one already existing on the same building and significantly smaller than wall signs on the nearly identical building to the west.
  - b. UNIQUE CIRCUMSTANCE: The subject property is occupied by a five-story office building. However, is it subject to the zoning restrictions generally applied to properties occupied by one-story, manufacturing or warehousing buildings. This is a unique circumstance.
  - c. CHARACTER OF LOCALITY: The requested variances would not negatively impact the character of the surrounding area. Rather, they would allow for a sign consistent with others already existing on the same building and on surrounding office buildings.
- 2) The proposal is in harmony with the general purposes and intent of the sign ordinance, which is to provide for reasonable identification while maintaining a high aesthetic standard throughout the community.
- a. Given the size of the existing office building, the proposed sign provides for reasonable identification. At 63 square feet, the sign would occupy just 1.5 percent of the southeast façade of the building. A sign of 12 square feet, which is allowed by city code, would occupy just 0.3 percent of the wall building façade. This is not reasonable.
- 3) The requested variances are consistent with the comprehensive plan as it pertains to the business community. The 2030 Comprehensive Plan specifically acknowledges that: (1) the city values both existing and new businesses; and (2) the city embraces a policy of supporting those businesses. Variances which allow for reasonable business identification are consistent with these values and goals.

Approval is subject to the following conditions:

- 1) Prior to issuance of a sign permit:
  - a. A copy of this resolution must be recorded with the County and a copy of the recorded document returned to the city.

- 2) The sign erected on the site must be in substantial conformance with the sign diagram dated September 30, 2011.
- 3) This variance will end on December 31, 2012, unless the city has issued a building permit for the project covered by this variance or approved a time extension.

***Adams, Daeges, Lehman, Magney, A. Thomas, and Cheleen voted yes. Sjeklocha was 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.

**C. Items regarding Redeemer Bible Church at 16205 State Hwy 7  
(Project No. 11031.11a)**

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.

Magney asked if the right-out onto State Highway Number 7 was removed from the plan. S. Thomas answered affirmatively.

In response to Lehman's question, S. Thomas explained that there is a significant grade change from Temple Road to the lower level of the church. A retaining wall would be needed to create the proper slope for driving. If the retaining wall would be made very narrow, then the parking area could be shifted back and the 20-foot setback would be met. Pushing the parking lot toward Temple Road would get the grade to work, get the retaining wall in, and allow some landscaping in front of the retaining wall. That is what creates the 8-foot shift and requested variance.

Lehman noted that if the variance would not be approved, then the "future parking area" would need to be developed for parking now. S. Thomas agreed that the site would have space to relocate parking stalls a significant distance away from the church.

Lehman pointed out on the aerial that the parking lot is currently paved right to the road. Paving is not being added. It already exists.

Adams asked if the site drains to the southwest. Stout answered affirmatively. The site drains to the south and west for the most part. It travels into a wetland on the other side of the townhomes on the west side of Temple Road. It ultimately drains to the west into Purgatory Creek.

Adams asked if runoff currently travels across Temple Road. Stout responded positively.

Adams asked if the drainage would be redirected into the infiltration pond. Stout explained that most of the runoff would be directed from the site, captured, and directed into the infiltration basin. What was originally sheet flow off of the existing parking lot directly onto Temple Road and townhomes would be directed into a pretreatment basin on the site, into an infiltration basin, and then captured in a pipe and directed into a wetland on the west side of the townhomes. The proposal would significantly decrease the amount of storm water impact to Temple Road than currently occurs.

Adams asked if the proposal would meet setback requirements on the north side. S. Thomas answered affirmatively. She pointed out the property line and required setback. The setback would be 70 feet back from the paved surface of State Highway 7. No MNDOT approval would be needed.

Ann Kuntz, Station 19 Architects, representing the applicant, stated that the existing grades and floors limit the possibilities. The proposal tries to stay on the east and north as much as possible to respect the neighborhood and it would be the best option for the church as well. Ms. Kuntz noted that the area labeled as "future" parking on the east side is actually quite needed by the church. She feels it would be needed fairly shortly, so she would like to maintain that parking in addition with the parking shown on the west lot line. The retaining wall and landscaping would soften the view for the neighbors. There are plateaus of land that are flatter on the bottom and a little higher up on the second tier to the east. The landscape buffer is essential for the project's aesthetic appeal. Without the variance, the site would have less safe conditions for pedestrians. The project is about making the building safer, handicap accessible, and fire code compliant.

Adams asked what the composition of the retaining wall would be. Ms. Kuntz stated that the only retaining wall would be between the two parking lot areas. The area of land next to the neighbor on the southeast property line has a berm. Half of the berm would remain and face the neighbor's property. There would be no retaining wall on that side of the property. It would be done all with grading. She would be working with the owner to look at landscaping. Landscaping could be increased to help out that neighbor. It would be difficult to move the parking lot

from that side because the parking would be needed on the east side eventually. A substantial amount more of land would be disturbed if the area further to the east would be used for parking first. The owner is thinking that the parking lot would be added if not in this phase, shortly thereafter. The site is hemmed in on the south side due to it being extremely steep. There is no option over there.

Lehman walks the area often. He noted that the south side had challenging piles of snow last winter. He asked how snow removal would be handled. Ms. Kuntz stated that a snow removal plan has not been created yet. It would be located on the farthest parking areas and south side. This winter it might be necessary to remove snow, but a plan has not been created yet.

The public hearing was opened.

John Tyree, 4638 Linnea Lane, stated that:

- The proposal would eliminate places to put snow. That is a huge disaster waiting to happen.
- Green space would be eliminated and replaced with pavement. Rain runoff and all that goes with that would happen. The runoff is not contained now. The catch basin pipe partially freezes over in the spring. He did not like it.
- The grade that comes off the back of his property down to the church makes it possible to ski. There is enough of a grade that one must be careful walking.
- It is an odd-shaped piece of land. Putting a parking lot over what appears to be two thirds of it; he shook his head at. He did not see how it could be done. Unless the parking lot would be at an angle, it would be hard for people to walk. There would have to be a retaining wall.
- Visually, he was not looking forward to seeing a huge church going up with a huge steeple. The church size would be quadrupled or at least doubled with plans for future expansion.
- He saw lots of questions on the execution of the proposal and with having to live with it once it would be done.

Jerry Westrum, 16030 Woodland Curve, stated that:

- The expansion, specifically the parking lot, would have the most negative impact on his property and its value.
- Today, there is a nice berm along his property with many trees. Those trees would be lost as well as an open space of grass. He

understood it is the church's property, but right now there is 200 feet of grass and the proposal would create a retaining wall that would be 17 feet from his property and 30 feet from his house. It would be unreasonably close and take away his privacy.

- The change in elevation is dramatic. It has to be 20 feet. Without a retaining wall, it would have to be a really huge, sloping parking lot.
- The expansion in the other direction would be a better place for the neighbors and save more trees.
- He felt there are unanswered questions.

Lisa Thies, 16010 Woodland Curve, envisioned a mega parking lot and mega church, but saw no way for the vehicles to get to the parking lot. State Highway 7 is a one-way street. There are 8 children under the age of 12 and new families who live on one block. The bus stop is on the corner of Temple Road and Woodland Curve. Even though activity happens on Sunday, it happens every night of the week for different occasions. Her 12-year old son was present. He had a near miss because "no one drives worse than someone who is late for church." She has lived there 18 years. Woodland Curve is not adequate for the amount of traffic that would fit into the proposed parking lot.

No additional testimony was submitted and the hearing was closed.

Adams asked S. Thomas to restate what the commission's options are for an application that meets ordinance requirements. S. Thomas explained that if a property owner submits an application that meets the minimum city standards, the city cannot legally deny it. In this case, staff finds that except for the setback variance from the Temple Road property line, which the city does have discretion on, the application meets all of the city's minimum standards in terms of setbacks, height, surface coverage, storm water plan, and grading.

A. Thomas asked if the city engineer looked at the parking lot which would cut into the berm and determined that a retaining wall would not be needed. S. Thomas answered affirmatively. Water Resource Engineer Liz Stout examined the drainage and storm water aspects of the plan and Project Engineer Nate Stanley reviewed the proposed grading and utility portion of the proposal. Stanley went over the proposal with S. Thomas today so she could address retaining wall questions. The hill would be cut and regraded to create a slope. She reviewed the grading plan. Grading would occur to "match" existing slopes.

A. Thomas questioned what vegetation would buffer the site and prevent erosion. S. Thomas noted that the proposal's slope would be similar to the current slope. It would be pushed back and regraded. The city requires a project reinvest a

certain percent of the project's cost in landscaping. The planning commission, city council, or staff could direct landscaping to be focused on a certain area. The final landscape plan has not been submitted. Preliminary landscape plans are reviewed by the planning commission and city council. Then staff works with the applicant to finalize the plan. The church is amenable to focusing some landscaping on those areas closest to neighboring property owners.

A. Thomas asked if a condition would be necessary to request landscaping be focused in that area. S. Thomas said a statement could be added to require landscaping between the southeast parking lot and the neighboring property. She noted that natural resources staff are aggressive in making sure that slopes are stabilized. A slope requires stabilization through other erosion control mechanisms until vegetation is established and fully stabilizes the slope.

Lehman asked where requiring a snow removal plan would be appropriate. S. Thomas stated that it would be required prior to the issuance of a building permit. Snow removal plans usually designate an area circled on a map of the property for snow storage. In a case where there is no green space on a site, the city has required snow to be removed from the site.

Lehman confirmed that the intent is to make the parking lot relatively flat. S. Thomas explained that the parking lot would continue to have a slope upwards. The proposal would have a slope upwards less than 30 feet; whereas now it has a 50-foot slope.

Magney said it appeared that the change in grade on the east side of the building and the parking lot would be about six feet from the sidewalk by the church up to the curb. There would be a tremendous amount of grading and earth work going on and the addition of storm-water piping. It would be a great improvement to the site considering the current situation with all of the runoff going into the street. The storm water piping and storm water basin would definitely help.

Adams is not a fan of impervious surface, but he is unable to deny the proposal. He has concerns with the slope of the parking lot. If engineering staff have looked at it and are comfortable with it, then he is not the guy to second guess their opinion. In general, the building would be an improvement. It has not changed since 1960. It is in need of an upgrade. The proposal is attractive. He was willing to trade the negatives for an improved setback to Temple Road. He reluctantly supports staff's recommendation.

Lehman prefers keeping green space. The trees and green space make the site attractive. He sympathized with the neighbors, but landowners have rights and all

of the conditions have been met. The variance would improve the proposal and decrease the amount of parking at least for the short term. The proposal would be an improvement over what is there now.

A. Thomas concurred with commissioners. He looked for green space as much as possible; but, in this case, one neighbor commented that the proposal would make the site not look like a warehouse. The proposal would make the site more attractive. He would support the recommendation if it includes a condition regarding snow removal and buffering the site from adjacent residences.

Chair Cheleen noted that the way the site is set up now, motorists drive in and out of the large parking lot almost anywhere on Temple Road. If the traffic is channeled into two specific places, then a traffic pattern would be established and it would improve the safety of the site. There may be an increase in the number of vehicles because the church is growing, but the church is going to grow anyway.

Chair Cheleen asked staff to comment. S. Thomas explained that churches are conditionally permitted uses in residential districts. The zoning ordinance sees that the use is compatible with a residential neighborhood. The city does not generally require that a traffic study be done when there is an addition to a church. Based on the fact that, though the building size may be increasing, it does not necessarily follow that there would be more people visiting the site. Conversely, more people may visit the site without increasing the size of the building. She could get traffic counts for Woodland Curve and Temple Road prior to the city council review of the proposal. The peak-trip-generating times for a church are on the weekends, which is opposite of a residential district.

Chair Cheleen suggested striping of the road and adding a pedestrian-safety sign. S. Thomas recalled that the city has required a property owner to install stop signs and pedestrian notices on its property. The police department does not enforce stop signs on private property, but it works. Chair Cheleen suggested the applicant and Ms. Kuntz look into that.

Adams walks the area quite frequently. He agreed that Woodland Curve is a curve and he was nearly hit by a vehicle. The near miss was not done during church service time, but by a person rushing home from work. There are lots of different roads in the city that are not suitable for residences and businesses that are connected to each other, but that is the nature of an integrated city.

***Lehman moved, second by Adams, to recommend that the city council adopt a resolution approving the following items regarding Redeemer Bible***

***Church at 16205 State Highway Number 7 with the following additions: the condition requiring a landscape plan require that landscaping be included between the southeast parking lot and adjacent properties; a snow removal plan be put in place prior to issuance of a building permit; future traffic concerns on Woodland Curve be addressed if needed; and modifications provided in the change memo dated October 20, 2011 be included in the resolution and staff report:***

#### **CONDITIONAL USE PERMIT**

- 1) *Recommend the city council adopt the resolution on pages A15–A17 of the staff report, which approves a conditional use permit for a religious institution at 16205 State Highway 7 and 16031 Woodland Curve. Approval is based on the finding that the existing religious use of the sites meets all minimum conditional use permit standards as outlined in City Code §300.16 Subd. 2 and City Code §300.16 Subd. 3. Approval is subject to the following conditions:*
  - a. Prior to issuance of a building permit, record this resolution with the county. A copy of the recorded resolution must be returned to the city.
  - b. The city council may reasonably add or revise conditions to address any future unforeseen problems.
  - c. Any change to the approved use that results in a significant increase in traffic or a significant change in character would require a revised conditional use permit.
  - d. The applicant must agree to the above conditions in writing.

#### **SITE AND BUILDING PLANS**

- 2) *Recommend that the city council adopt the resolution on pages A18–A25 of the staff report. This resolution approves final site and building plans, with parking setback variance from 20 feet to 12 feet, for improvements to the Redeemer Bible Church properties at 16205 State Highway 7 and 16031 Woodland Curve.*

Approval is based on the following findings:

- a. Aside from the requested parking setback variance, the proposal meets the site and building plan standards required under City Code §300.27 Subd. 5.
- b. The proposal meets the variance standard outlined in City Code §300.07
  - (1) The variance is consistent with the goals of the comprehensive plan. The variance would not negatively impact the character of the surrounding neighborhood. Rather, it would improve on an existing setback condition.
  - (2) The variance would meet the intent of the ordinance as it pertains to parking lot setback from public rights-of-way. The proposal would increase over existing conditions the separation between the traveling public and parked vehicles.
  - (3) The requested variance would meet the practical difficulties standard.
    - (a) Reasonableness. The requested setback variance is reasonable, as it improves upon an existing condition. Unlike most setback variances which result in a decrease in setback between parking lots and property lines, the requested variance allows for an increase in setback.
    - (b) Unique Circumstance. The requested setback variance is specifically related to topographic change on the property, general engineering standards for driveway grade, and the practical wish to provide a soft buffer between parked cars and a retaining wall. Taken together, these issues result in a unique circumstance not common to every residentially-zoned institutional property.
    - (c) Character of Locality. The requested variance would not negatively alter the character of the surrounding area. The setback between the new parking lot and property line would be increased over existing conditions.

Approval is subject to the following conditions:

- a. 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 September 7, 2011
  - Grading plan dated September 7, 2011
  - Landscaping plan dated September 7, 2011
  - Building elevations dated September 7, 2011
- b. A grading permit is required. Unless authorized by appropriate staff, no site work may begin until a complete grading permit application has been submitted, reviewed by staff, and approved.
  - (1) The following must be submitted for the grading permit to be considered complete.
    - (a) An electronic PDF copy of all required plans and specifications.
    - (b) Two full size and three 11x17 sets of construction drawings and three sets of project specifications.
    - (c) Final site, grading, drainage, utility, landscape, and tree mitigation plans, and a stormwater pollution prevention plan (SWPPP) for staff approval.
      - (i) Final landscaping and tree mitigation plans must meet minimum landscaping and mitigation requirements as outlined in ordinance. However, at the sole discretion of natural resources staff, mitigation may be adjusted based on site conditions. The plan should include landscaping between the southeast parking lot and adjacent property.
    - (d) Stormwater Condition
    - (e) 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.

- (f) 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.
- (2) Prior to issuance of a grading permit:
- (a) Submit a private stormwater easement between the properties at 16205 State Highway 7 and 16013 Woodland Curve. This easement document must be prepared by an attorney knowledgeable in real estate and approval of the city attorney.
  - (b) Submit a right-of-way permit application for work proposed within the Woodland Curve right of way.
  - (c) Submit all required administration and engineering fees.
  - (d) Install a temporary rock driveway, erosion control, tree and wetland protection fencing and any other measures identified on the SWPPP for staff inspection. These items must be maintained throughout the course of construction.
  - (e) 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.

(f) Permits may be required from other outside agencies including, Hennepin County, and the MPCA. It is the applicant's and/or property owner's responsibility to obtain any necessary permits.

c. Prior to issuance of a building permit:

(1) Submit the following items for staff review and approval:

(a) A construction management plan. This plan must be in a city approved format and outline minimum site management practices and penalties for non-compliance. If the builder is the same entity doing grading work on the site, the construction management plan submitted at the time of grading permit may fulfill this requirement.

(b) 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.

If the builder is the same entity doing grading work on the site, the cash escrow submitted at the time of grading permit may fulfill this requirement.

- (c) An electronic CAD file or certified as-built drawings for public infrastructure in microstation or DXF and PDF format.
  - (d) Unless submitted in conjunction with a grading permit, submit a letter of credit or cash escrow for 125% of a bid cost or 150% of an estimated cost of all required landscaping.
- (2) Pay any required hook-up fees.
  - (3) Submit a snow removal plan to staff for review.
- d. The property owner is responsible for replacing any required landscaping that dies.
  - e. 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.
  - f. Construction must begin by December 31, 2012, unless the planning commission grants a time extension.

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

The tentative date for the city council to review this item is November 14, 2011.

**D. Resolution approving the construction of a new parking lot at 9705 Data Park Drive (Project No. 11025.11a)**

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 overlay would cover part of the woods. S. Thomas explained that there is a woodland preservation area on the site. The proposal would remove one tree from the woodland preservation area. Colleran pointed out the woodland preservation area boundary. The parking lot would cause the removal of a 14-inch oak tree. Other significant and high priority trees that would be removed are located outside of the woodland preservation area. The trees were tagged during the tree inventory process.

Lehman noted that this variance is a technical one involving the site's proximity to another city. He asked if the parking lot would be located in the woodland preservation area without the variance. S. Thomas pointed out an open area with a significant slope that could serve as parking space, but the impact to the significant slope and forested area compared to a technical variance resulted in staff's recommendation. The variance allows a much better use of the site and preservation of slope.

Adams asked why another level would not be added to the parking ramp instead. S. Thomas responded that the structural design of the parking ramp would need to be altered to allow another story and it would be financially impractical for the applicant.

Adams asked when there would be access to the site. S. Thomas stated that access would occur with the finalization of the United Health Group (UHG) site. The applicant does have an agreement with UHG to provide parking. Comcast has an agreement for use of the drive. Once construction ends it would open.

Adams noted that the road is gravel. He asked if the street would be paved and who would fund it. S. Thomas answered that it would be a private drive. She suspected that there would be an improvement from the crushed bituminous surface.

Dan Jackson, representing Comcast, applicant, was present to answer questions. He stated that the road would be improved to handle two lanes of traffic. He was pleased to present the proposal. It would positively impact the economy of the area significantly by adding 450 jobs.

Adams asked when the paving would happen. Mr. Jackson stated that construction would begin in May of 2012 when frost and road conditions permit. He is working with United Health Group to provide the parking needed for the interim period.

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

Adams was gratified that Comcast added jobs in Minnetonka.

***Adams moved, second by Lehman, to adopt the resolution on pages A29–A35 of the staff report. This resolution approves site plans, with a parking setback variance, for construction of a new parking lot at 9705 Data Park Drive. Approval is based on the following findings:***

1. Aside from the technical parking setback variance, the proposal meets all required standards and ordinances.
2. The proposal meets the variance standard as outlined in state statute and city code:
  - a) Intent of the Ordinance. The intent of the zoning ordinance as it pertains to parking lot setback to ensure adequate separation between the traveling public and parked vehicles. The applicant's proposal is not to decrease setback between a traveled right-of-way and parking lot. Rather, it is to allow a cohesive parking lot to be constructed on a property which happens to straddle a municipal boundary. The proposal meets the intent of the ordinance.
  - b) Comprehensive Plan. The proposed parking lot is consistent with the goals and policies of the comprehensive plan. In particular, the comprehensive plan recognizes that continued business development is likely to take the form of expansion or redevelopment given the lack of vacant parcels in the community.
  - c) Practical Difficulties. The variance meets the practical difficulty standard.
    - 1) Reasonableness. It is reasonable for parking stalls serving one building to be built as one parking lot. (See pages A6–A7.)
    - 2) Unique Circumstance. The applicant owns property on both side of the city of Minnetonka/city of Edina municipal boundary. This boundary is not delineated by any roadway or structure. Rather, it is simply noted by a line on a map.

This is a unique circumstance not common to all industrially-zoned properties.

- 3) Character of Locality. Given that the subject site is surrounded by a state highway, woodland preservation area, and wetland, it is unlikely that the parking setback variance would impact the character of the surrounding area.

Approval of the site plan 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 September 30, 2011
  - Grading plan dated September 30, 2011
  - Landscaping plan dated September 30, 2011
- 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) An electronic PDF copy of all required plans and specifications.
    - (2) Two full size and three 11x17 sets of construction drawings and three sets of project specifications.
    - (3) Final site, grading, drainage, utility, landscape, tree mitigation plans, a stormwater pollution prevention plan (SWPPP), and an illumination plan for staff approval.
      1. Final landscaping and tree mitigation plans must meet minimum landscaping and mitigation requirements as outlined in ordinance. However, at the sole discretion of natural resources staff, mitigation may be adjusted based on site conditions.

2. Grading activity and tree loss required in or near the wetland south of the site must be minimized.
  3. Any pipe or rip rap installed near the wetland south of the subject property must be moved upland of the wetland edge. The location of the pipe or rip rap must be confirmed by city staff in the field prior to installation.
- (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 all required administration and engineering fees.
  - (2) Install a temporary rock driveway, erosion control, tree and wetland protection fencing and any other measures identified on the SWPPP for staff inspection. These items must be maintained throughout the course of construction.
  - (3) 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 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.

- c. Permits may be required from other outside agencies including, Hennepin County, the Nine-Mile Creek Watershed District, and the MPCA. It is the applicant's or property owner's responsibility to obtain any necessary permits.
- 3) Prior to reduction or release of the required letter of credit or cash escrow:
    - a. All approved grading and landscaping must be completed according to the plans approved the city.
    - b. All required landscaping must be in good condition one full growing season after the date of installation; and
    - c. As as-built survey must be submitted.
  - 4) The property owner is responsible for replacing any required landscaping that dies.
  - 5) Construction must begin by December 31, 2012, unless the planning commission grants a time extension.

***Adams, Daeges, Lehman, Magney, A. Thomas, and Cheleen voted yes. Sjeklocha was 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.

## 9. ADJOURNMENT

***Adams moved, second by A. Thomas, to adjourn the meeting at 8:03 p.m. Motion carried unanimously.***

By: \_\_\_\_\_  
Lois T. Mason  
Planning Secretary