

**WAYZATA PLANNING COMMISSION
MEETING MINUTES
AUGUST 19, 2013**

AGENDA ITEM 1. Call to Order, Roll Call and Approval of Minutes.

Chair Gonzalez called the meeting to order at 7:00 p.m.

Present at roll call were Commissioners: Crowder, Gonzalez, Iverson, Pearson, Ramy Jr., and Vanderheyden. Absent and excused: Commissioner Cooper. City Planner Gadow was also present.

Commissioner Ramy requested the following corrections: Page 7, Line 33, change “lives” to “lived”.

Commissioner Vanderheyden made a motion, seconded by Commissioner Ramy, to approve the August 5, 2013, meeting minutes as amended above. The motion passed 5/0/1 (Pearson).

AGENDA ITEM 2. Regular Agenda Public Hearing Item.

- a. 935 Wayzata Boulevard East – Glenbrook Office Building Partnership**
 - i. Text Amendment to C-1A Zoning District**
 - ii. Project Design Review**
 - iii. Conditional Use Permit for Medical Clinic Use**

City Planner Gadow presented the application of Glenbrook Office Building Partnership and Ness Building Association, LLC for approval of a text amendment to the C-1A Zoning District to allow Medical Clinic as a Conditional Use Permit (CUP); Design Review for the remodeling of the front façade of the existing office building at 935 Wayzata Boulevard E; and, approval of a CUP for Medical Office use on the property for Dr. John Ness. If approved, Dr. Ness would open a medical office and surgical suite with two practitioners to start and the option to expand to a total of four practitioners within the building in the future. City Planner Gadow displayed an aerial photograph of the subject site and slides depicting the location of tuck under parking, lower and upper level storage spaces, and room layout of the medical practice.

Commissioner Vanderheyden asked whether the decision relating to the C-1A zoning is for this parcel only and does not include the Legion or Nature’s Harvest properties. City Planner Gadow stated it would only involve this property and other properties would have to make separate application.

Commissioner Vanderheyden asked about the percent of medical use and parking calculation should a percentage of the building go back to mixed use. City Planner Gadow stated it would depend on the amount of left over office use and assuming a four-doctor practice, there would be fewer than 20 spaces left for office use, dictating the square footage that could be used for office.

1 Commissioner Vanderheyden stated the plan removes one parking space in the front of the
2 building.

3
4 Commissioner Pearson referenced the planning report, Section 3.1 indicating: “An amendment
5 to the Zoning Ordinance (text or map) may be initiated by the governing body or the planning
6 agency by filing an application with the City.” He asked whether an affirmative
7 recommendation by the Planning Commission is required to move this application to the City
8 Council. City Planner Gadow stated a Planning Commission recommendation is not required as
9 a prerequisite.

10
11 Commissioner Crowder asked why the current ordinance does not allow for a medical clinic.

12
13 Chair Gonzalez stated the Planning Commission recommended a C-1A zoning for certain
14 properties to protect the residential neighborhoods to the north and within the bluff area. Some
15 properties needed to be rezoned to harmonize with the Comprehensive Plan so the Planning
16 Commission made a recommendation of limited commercial meeting the R-3 setbacks and hoped
17 the buildings would look more like a house. She stated there is another building at the corner
18 that appears to be a house but is a commercial building. Chair Gonzalez stated she does not
19 remember specifically why medical offices were left out but it may have been to have a use with
20 limited traffic.

21
22 City Planner Gadow stated today medical clinics are of smaller size and offer more flexible uses.
23 He stated medical clinics are allowed in C-2 and C-3 Districts that have larger lot sizes and are
24 more concentrated along the Wayzata Boulevard corridor.

25
26 Commissioner Ramy asked, with respect to protecting adjacent neighborhoods, would the
27 Glenbrook access ever be closed off and to only allow a Wayzata Boulevard entrance/exit. City
28 Planner Gadow stated the Planning Commission could talk with the applicant about that to see
29 how it would impact the practice.

30
31 There being no public comment, Chair Gonzalez opened and closed the public hearing on the
32 Zoning Ordinance text amendment at 7:19 p.m.

33
34 Dr. John Ness, applicant, stated he has been looking for a Wayzata property for quite some time,
35 noting there is not a lot to choose from. He stated when they learned that this building maybe a
36 possibility, they became excited about bringing their practice to Wayzata. He thanked the
37 Planning Commission for protecting and preserving the character of this community and
38 neighborhood. He stated they looked at a property on Barry Avenue, the Nolan Building, loved
39 the aesthetic and design, and decided to use that firm to design this building with the idea it
40 would be something more contemporary yet maintain a friendly wood-tone and variety of
41 textures to blend with the surrounding wooded lot. Dr. Ness stated parking is a problem in
42 Wayzata and several other locations had no parking but this site already has 42 stalls and will
43 easily accommodate their practice. They will occupy 60% of the building and hold the rest for
44 potential growth or a future tenant. He stated they invited the neighborhood for participation in
45 anticipation of this meeting and a concern was identified with some of the lighting and signage
46 so they prepared a concept for the monument sign.

1
2 Nate Enger, Elness Swenson Graham (ESG) Architects, stated they were involved with the Barry
3 building and view it as the standard of quality they will work towards with this building as the
4 materiality is in keeping with the community and Dr. Ness' aesthetic.

5
6 Chair Gonzalez stated medical uses were left out of this zoning district due to concern with too
7 much traffic into the residential neighborhoods. She asked what type of traffic they envision this
8 practice creating.

9
10 Dr. Ness stated they are a boutique practice, not a minute clinic with hundreds of clients. Over
11 an 8-hour day may see 30 patients, or 5 visitors per hour, but only 2 or 3 patients per day on
12 surgery days.

13
14 Chair Gonzalez asked the Planning Commissioners whether they had concern with this type of
15 medical use at this location.

16
17 Commissioner Vanderheyden stated he has no particular concern with this use.

18
19 Commissioner Iverson asked about the modification to lighting mentioned by Dr. Ness. Dr.
20 Ness stated they modified the monument sign.

21
22 Chair Gonzalez asked the Planning Commission to address the Design Review of the building.

23
24 Commissioner Crowder stated he has no questions relating to the Design Review.

25
26 Commissioner Ramy asked if the monument sign will be lighted. Mr. Enger stated they would
27 remove the two up-lights and install something more subtle, such as a back mounted/back lit
28 sign.

29
30 Commissioner Iverson asked about the anticipated construction timeline. Mr. Enger stated if
31 approved, they would submit permit application the beginning of September and construction
32 mid- to late-October with six months of construction anticipated.

33
34 Commissioner Pearson asked who prepared Attachment B, noting the compliance column. City
35 Planner Gadow stated he prepared Attachment B.

36
37 Chair Gonzalez asked about Page 3 of the Design Review, screening of the rooftop equipment
38 and stated she hopes it will be installed as far from the residential property as possible. Mr.
39 Enger stated it will be placed as far inboard as possible while still meeting medical standards for
40 ducting. He stated there would be two units, one 5 feet tall serving the office area and one 4.6
41 feet tall serving the surgery center.

42
43 Commissioner Iverson asked whether it would be screened only on the front or also on the back.
44 Mr. Enger stated it would be screened from Wayzata Boulevard and offered to provide a
45 viewshed.

46

1 Chair Gonzalez asked about the use of metal. Mr. Enger stated metal will be used on the parapet
2 and also to create vertical lines to break down the scale of the stucco and to create patterning
3 plus there will be metal elements in the curtain wall.

4
5 Chair Gonzalez asked if the metal will have the effect of oil canning. Mr. Enger stated the metal
6 will not have oil canning and on the parapet flashing they will use only four-foot lengths to
7 minimize oil canning.

8
9 Mr. Enger described slides of the existing building, noting it is a great location and has the asset
10 of tuck under parking. Their intent is not to change the entire site but to give it a facelift. He
11 stated the front façade is fairly visible from Wayzata Boulevard with the other elevations being
12 screened by existing vegetation. Those three sides will be left alone.

13
14 Mr. Enger displayed slides of the existing sign, the building previously designed by ESG,
15 building materials, and described a colored rendering of the proposed contemporary-designed
16 building façade. He stated they will use IPE exterior grade wood that will hold its finish for a
17 long time and not weather as cedar while providing a pedestrian scale. Mr. Enger stated the
18 punched windows will remain to give pedestrian scale more prominence but the use of IPE will
19 bring down the scale and the lower edge will be softened with sculptured plantings. He stated
20 one parking stall will be removed to create a more prominent entry and space for a rain garden.
21 Mr. Enger displayed a slide depicting the new monument sign, noting the letters will be lit from
22 behind so light is diffused. He stated the building materials will carry through from the
23 monument sign to the building.

24
25 Dr. Ness stated a neighbor asked them to bring down the landscaping at the west corner to at
26 least window level.

27
28 Mr. Enger displayed additional slides of the monument sign, noting it retains the aesthetic of the
29 building.

30
31 Commissioner Vanderheyden stated he had no questions.

32
33 Commissioner Pearson stated there is also signage on the building and asked if there are
34 restrictions for additional signage. City Planner Gadow stated this applicant is allowed a multi-
35 tenant sign and wall sign but no more than 150 square feet. He stated this plan is well under that
36 threshold.

37
38 Commissioner Iverson asked if the sign meets the height requirements. City Planner Gadow
39 stated the plan is to reuse the existing monument sign so the height would not be changed.

40
41 Commissioner Iverson asked if they will be leasing or purchasing the building. Dr. Ness stated
42 they are in the process of buying the building for their business purposes.

43
44 Commissioner Ramy asked if they have a strong opinion on closing the Glenbrook Road drive
45 access. Mr. Enger stated they have not discussed that but generally, based on patient flow, it
46 may not be a huge issue. He stated there is a right and left in and out at that location.

1
2 Peter Pflaum, building owner, stated he worked for a long time with City Engineer Kelly to
3 determine how to have an east side access through the berm, noting the bank traffic also has a
4 problem if they want to turn and go west. He stated he would be hesitant to have only one
5 entrance, noting the intent was to use it only occasionally and not as the main entrance. Mr.
6 Pflaum stated he used this building for 35 years for his contracting business and used the entire
7 parking lot, with Legion parking when needed, which is a lot more traffic than Dr. Ness is
8 talking about. He cautioned against closing the Glenbrook Road access because of all the work
9 it took to get it.

10
11 Chair Gonzalez asked if it is possible to have two curb cuts on Wayzata Boulevard. City Planner
12 Gadow stated it is possible if there is adequate lot width. Dr. Ness stated that may result in the
13 loss of another parking stall. Mr. Enger stated they can investigate that option, if desired.

14
15 Commissioner Ramy stated a traffic study was not provided but he would like to see the
16 Glenbrook Road access point closed if feasible with the building design.

17
18 Chair Gonzalez asked for comment on the CUP and potential conditions.

19
20 Commissioner Crowder stated he has no questions relating to the requested CUP.

21
22 Commissioner Ramy stated he is excited to see this potential use and has no concerns but
23 supports the possibility of closing the Glenbrook Road access.

24
25 Commissioner Iverson stated this would result in a nice improvement to the building and she has
26 no concerns.

27
28 Commissioner Pearson stated he supports the reuse of this building and that it would not be torn
29 down.

30
31 Commissioner Vanderheyden stated he has no further comment at this point.

32
33 There being no public comment, Chair Gonzalez opened and closed the public hearing on the
34 Design Review and CUP at 7:40 p.m.

35
36 City Planner Gadow advised of action steps for the Commission's consideration to develop
37 findings of fact based upon the staff report and any revisions the Commission wishes to make or
38 to direct staff to prepare a Planning Report and Recommendation with appropriate findings for
39 review and adoption at the next Planning Commission meeting.

40
41 Commissioner Crowder asked if it would delay action before the City Council should the
42 Planning Commission direct staff to prepare a Planning Report and Recommendation. City
43 Planner Gadow stated the Report would then be considered at the next Planning Commission
44 meeting and if approved, it would be considered by the City Council the following night. Should
45 there be changes to the Report, he would inform the City Council and it would not alter the
46 timeline.

1
2 Commissioner Pearson stated if the Planning Commission considers the Report at the next
3 meeting, it will not slow down the City Council's consideration. City Planner Gadow stated that
4 is correct if staff verbally presents the report to the City Council the following night.

5
6 Chair Gonzalez stated there would also be a Zoning Ordinance amendment process, resulting in
7 some delay.

8
9 Commissioner Vanderheyden asked if the Planning Commission's consideration of the Report at
10 the next meeting will delay the two required ordinance readings. City Planner Gadow stated it
11 would not as first reading can be considered by the City Council on September 3 and second
12 reading at the following meeting.

13
14 Commissioner Pearson made a motion, seconded by Commissioner Crowder, to direct staff to
15 prepare a Planning Report and Recommendation with appropriate findings for review and
16 adoption at the next Planning Commission meeting for approval of a text amendment to the C-
17 1A Zoning District to allow Medical Clinic as a Conditional Use Permit (CUP); Design Review
18 for the remodeling of the front façade of the existing office building at 935 Wayzata Boulevard
19 E; and, approval of a CUP for Medical Office use on the property for Dr. John Ness.

20
21 City Planner Gadow corrected his earlier statement relating to timing and advised that the next
22 Planning Commission meeting was rescheduled to Wednesday, September 4, due to the Labor
23 Day holiday so it is not possible to have the Planning Commission review a draft Report prior to
24 the September 3 City Council meeting.

25
26 Commissioner Vanderheyden stated support, in that case, to consider a recommendation of
27 approval without the delay for staff to draft a Planning Report and Recommendation.

28
29 Commissioner Pearson withdrew his motion as it was based on Section 4.2 but the Planning
30 Commission now supports proceeding under Section 4.1 due to the rescheduled meeting date and
31 resulting delay.

32
33 Commissioner Crowder made a motion, seconded by Commissioner Vanderheyden, to
34 recommend approval of the application of Glenbrook Office Building Partnership and Ness
35 Building Association, LLC for approval of a text amendment to the C-1A Zoning District to
36 allow Medical Clinic as a Conditional Use Permit (CUP); Design Review for the remodeling of
37 the front façade of the existing office building at 935 Wayzata Boulevard E; and, approval of a
38 CUP for Medical Office use on the property for Dr. John Ness with findings adopted as detailed
39 in the staff report. The motion passed 6/0.

40
41 City Planner Gadow stated this application will be considered by the City Council at its meeting
42 of September 3, 2013.

43
44
45
46

b. 700 Lake Street – Sunsets Restaurant

i. Amendment to Conditional Use Permit (CUP)

ii. Outdoor Sidewalk Café as a CUP

City Planner Gadow presented the application of Clock Tower Venture, LLC representing Sunsets Restaurant at 700 Lake Street East to expand their existing outdoor patio space at the rear of the building and amend an existing 1988 Conditional Use Permit (CUP) to create an outdoor bar area and increase the number of outdoor seats. It was noted the existing outdoor dining area has 81 seasonal seating spaces and the application is for nine additional seats for a total of 90 and a new 18 seats covered outdoor bar. In addition, the applicant requests to utilize 12 feet of City right-of-way adjacent to the property for a seasonal waiting area and a 480 square foot rear addition to the main level to allow for interior trash storage.

City Planner Gadow displayed an aerial slide of the subject site, noting the proposed tables/chairs would be located on the rear patio of the restaurant and along the City's right-of-way adjacent to the western property line. He also displayed photographs of the outdoor patio area and described the removal of three brick planter boxes and relocation of landscaping. City Planner Gadow reviewed elements of the existing and proposed site plans, noting the location of additional seating and waiting area where alcoholic beverages (but not food) could be ordered.

Commissioner Crowder asked if the waiting area will extend to the northwest edge of the building. City Planner Gadow stated it would and while the modifications to the City's rights-of-way would be permanent, the patio area would be seasonal.

Commissioner Crowder asked if customers can order alcoholic beverages in the waiting area, a width of a sidewalk away from the street. City Planner Gadow answered in the affirmative.

Commissioner Crowder asked why three brick planters would be removed. City Planner Gadow stated it would make room for additional landscaping that is proposed in that location.

Commissioner Crowder asked what would happen to the trees within the brick planters. City Planner Gadow stated the trees would be removed from the planters and trees would be planted with tree grates.

Commissioner Iverson asked if there is adequate underlying soil to support the root system. City Planner Gadow stated he does not know.

Commissioner Ramy stated they would plant new trees, not attempt to save the existing trees.

City Planner Gadow completed review of the site plans, noting the area of upper level office space, lower level addition for storage, and main level office and enclosure of trash area. He displayed images of exterior elevations, metal rail with fabric inserts, and door system to provide enclosure yet ability to be open when seasonally appropriate.

Neil Weber, Neil Weber Architects, Long Lake, representing the applicant, stated the CUP amendment was done in 1988 and Sunsets opened in 1989. He reviewed that when the Noeltings purchased the building in 1987 and remodeled for Sunsets, they added space, the clock tower,

1 entrance, and totally remodeled the restaurant to create an image at Lake Street. When the
2 restaurant was done, all of the condensing units were on the ground and a small indoor space was
3 used for trash. However, since that time there are additional requirements for recycling so the
4 trash area has grown to the outside. Mr. Weber stated four to five years ago, the building was
5 reroofed and without a requirement, all of the condensing units were relocated to the rooftop and
6 screening of roof top mechanicals was done. He stated this project would be an extension of the
7 premise that they are stuck with the massing of the building but have gone out of their way to
8 continue to improve the building. The addition on the backside will totally enclose the trash, use
9 a brick exterior with vines that had been originally planted by Mr. Petit, and create a more
10 uniform building appearance.

11
12 Mr. Weber stated when they started the outside bar, they decided this was a seasonal use and did
13 not want it to appear boarded up during the off season. Instead, this design will tie the space into
14 the existing building so when it is closed for the season, it will not appear as an extension. This
15 type of construction will also extend the length of seasonal use. That is the premise of the
16 outside bar. Relating to the trees, over the years the raised planters have become a maintenance
17 issue. They propose to remove three of the existing trees and plant the species of trees, with
18 grates, that the City has used on Lake Street. This will remove the existing maintenance issues
19 and improve aesthetics. Mr. Weber stated the fence detail is as old as Sunsets so it has been
20 changed to a more contemporary and modern look. In addition, the piers in the seasonal area
21 would be removed during the off season. He stated they want to upgrade the appearance of the
22 exterior and improve the appearance of the back of the building and view from the Lake.

23
24 Commissioner Crowder asked if the three tree grates will be permanent if the brick planters are
25 removed. Mr. Weber stated the three trees are shown on the drawing and will not be in the exact
26 same location as the brick planters. Commissioner Crowder asked if the trees will be relocated
27 within the restaurant grounds and not accessible to the public. Mr. Weber stated that is correct
28 and is the same as occurred at Gianni's and the Pub, accessible during non-season but within the
29 enclosure during the patio season.

30
31 Commissioner Crowder asked if the fence is a permanent feature. Mr. Weber stated the fence
32 will be permanent on the access but not permanent on the right-of-way.

33
34 Commissioner Ramy asked if the new bar area will not be utilized during cold weather.

35
36 Paul Svensson, owner of Sunsets, stated during the winter months it is not a practical function to
37 have two bar areas so the inside bar would be the functioning bar during winter months.

38
39 Commissioner Iverson asked if there will be additional offices on the rear elevation. Mr. Weber
40 stated it is just a one story and lower level addition.

41
42 Commissioner Iverson asked about potential water issues in the trash enclosure area, as
43 referenced in Attachment B. Mr. Weber stated that is a potential and if this is approved, they
44 will take a soil boring. He stated there is an existing four-foot crawl space on the eastern side
45 that narrows to two feet in the reception area and it is currently dry. He stated the Carisch block
46 is all sand but the Beltz building has bad soils. Mr. Weber stated the railroad has existed since

1 Wayzata has existed and over the years, railroad vibration has compressed the dirt, acting as a
2 reverse dam. He stated with the Carisch building, they drilled down 20 feet without hitting water
3 but that would not exist with the Beltz building. Mr. Weber explained how the lower level will
4 be constructed and need for additional storage that can be accommodated in the lower level
5 without impacting the building's appearance.

6
7 Commissioner Pearson stated there was approval for a temporary seasonal waiting area in 2011
8 and asked what were the results of that experiment. City Planner Gadow stated the City Council
9 approved a one-year experiment for Sunsets to have a temporary seasonal waiting area on the
10 City's right-of-way and Sunsets did not make application for it in 2012. Commissioner Pearson
11 asked if it was an experiment of the City or Sunsets. City Planner Gadow stated it was an
12 experiment of Sunsets with City approval.

13
14 Mr. Weber stated it was a failed experiment as it started too late in the season and was not
15 constructed well so they did not apply in 2012 because they did not want to again do a poor job.
16 However, they now want it approved to assure it is done right for the next season.

17
18 Commissioner Pearson asked what the City is getting for giving away public space to a private
19 business to make money. City Planner Gadow stated like other uses of City rights-of-way, the
20 City Council will have to determine public policy and it will be considered during 2014 budget
21 discussions whether to institute a fee for use.

22
23 Commissioner Pearson stated the applicant will not want to make capital improvements without
24 knowing if the City will assess a fee.

25
26 Mr. Weber stated other restaurants are doing this and the City has encouraged it by approving
27 uses to make downtown Wayzata more vital during the summer with more activity. Sunsets is
28 saying they want to do it too and should the City decide to charge or not charge for the space,
29 Sunsets would be on the same "playing field" as Gianni's and other restaurants.

30
31 Commissioner Pearson stated he wants this to be successful but wanted to raise the issue of
32 public policy and whether the City is giving away something for nothing. City Planner Gadow
33 stated that issue will be tackled during the 2014 budget discussions.

34
35 Chair Gonzalez stated this would be a modification of the CUP that runs with the land and asked
36 if a condition is needed that they agree should the City decide to charge for the space. City
37 Planner Gadow stated they have permanent use for expansion of their private space but there is
38 an annual permit for use of the expanded public space.

39
40 Commissioner Iverson stated a lot of people sit on the brick planters during the summer and
41 asked if the City or Sunsets will install another seating arrangement after the three planters are
42 removed.

43
44 Commissioner Crowder stated if three brick planters are removed for the applicant's benefit,
45 Sunsets should not only replace the trees but all six planters should be removed because it will

1 look stupid to remove only three. He agreed that the seating has to be replaced and should be the
2 applicant's responsibility.

3
4 Mr. Weber stated the three brick planters could be left in place without impacting their project
5 but they thought of it as a favor to the City to remove three of the planters and improve the
6 appearance. He agreed that all six planters should be removed and replaced with more attractive
7 seating. Mr. Weber stated next spring, the remaining planter boxes will need repair and he
8 thinks it is anticipated to remove them at some point as the raised planters at the Beltz building
9 were removed, they are not attractive, and not intended to provide seating. He felt it would be
10 more attractive to provide typical seating.

11
12 Commissioner Iverson stated she has a differing opinion as the trees provide shade and green.

13
14 Chair Gonzalez asked what size of trees will be planted to replace the existing trees. Mr. Weber
15 stated they will plant whatever the City says they should plant and he thinks the City would
16 support uniform plantings on Lake Street. City Planner Gadow stated the City would want to
17 maintain the same streetscape with the same species and of similar caliper size (about three
18 inches).

19
20 Chair Gonzalez stated it would be nice to have larger trees planted instead of removing sizable
21 trees and replacing them with twigs.

22
23 Mr. Svensson showed the Planning Commission pictures depicting the current status of the brick
24 planters and described the need for repair.

25
26 Commissioner Iverson stated there is a construction dolly nearby the damage to one of the
27 planters. Mr. Svensson stated it may be in use by the upstairs tenant making repairs to their
28 lobby. Commissioner Iverson asked whether it resulted in the planter damage. Mr. Svensson
29 displayed pictures of other planter boxes showing past repairs.

30
31 Commissioner Vanderheyden named the location of other damaged planters and stated it is a
32 universal issue with this planter style.

33
34 Commissioner Iverson stated it is a City issue and not one on which to make a decision tonight
35 as it is a larger issue.

36
37 Commissioner Pearson asked if it is inherent in the way the planters are constructed. Mr. Weber
38 stated that is the case as water gets into the planters and when it freezes, it pushes out the bricks.
39 He stated this same damage occurred when there were bricks in the City's sidewalks. He stated
40 the repairs were done as patches, perhaps on the anticipation that they would be removed at
41 some point.

42
43 Commissioner Pearson stated when something is built, he prefers the construction methods last
44 forever so he is disappointed with the quality of construction used with the planter boxes.

45

1 Mr. Weber stated several years ago, there was a vote to keep brick sidewalks but it cost \$15,000
2 to \$20,000 to repair sidewalks each year. City Planner Gadow stated that included planters and
3 brick inlaid into the street.

4
5 Commissioner Vanderheyden stated the back of the building by the trash area is currently brick
6 and wood with a rolling door. He asked if that is the total dimension and would not be changed.
7 Mr. Weber stated that is correct and the exterior would be changed to all brick. Commissioner
8 Vanderheyden asked if all of the trash containers and other items being stored in that area would
9 go indoors. Mr. Weber answered in the affirmative.

10
11 Commissioner Vanderheyden asked if commercial can build to the lot line. City Planner Gadow
12 stated that is correct in this zoning district.

13
14 Commissioner Crowder stated Page 5, Section 2, Standards, Paragraph 2.2,1.c. indicates: "Café
15 area shall be limited to the public right-of-way abutting the lot front as defined by this
16 Ordinance." He asked how the Ordinance defines "lot front." City Planner Gadow stated the
17 ordinance indicates that lot front is considered to be the boundary abutting a public right-of-way
18 considered to have the least width. In this case, it is a corner lot with public right-of-way on
19 Lake Street and Broadway. He used a site plan to point out the area of least width on the west
20 side.

21
22 Chair Gonzalez asked if this right-of-way is part of an easement, an extension of Broadway, used
23 to access the Section Foreman's house. She also asked if this application will impact that
24 easement. City Planner Gadow stated it will not be an impact to the benefiting property owners
25 from crossing the easement to the railroad track.

26
27 Commissioner Crowder stated Page 6, Section 2, Paragraph 2.2,1.j. indicates: "No outside bar,
28 cooking facility, food preparation or holding area, or wait station shall be established." He asked
29 if staff is comfortable with the outdoor space. City Planner Gadow stated that section addresses
30 use on the City's right-of-way portion so Sunsets could not have the outdoor bar on the City's
31 side but they can have it on their private property.

32
33 Chair Gonzalez stated the bar will be attached to the Sunset building.

34
35 Commissioner Pearson asked whether people would be allowed to consume alcohol on the City-
36 owned portion in the waiting area. City Planner Gadow stated that is correct.

37
38 Commissioner Iverson asked who would assume liability. City Planner Gadow stated a hold
39 harmless agreement would be required for the applicant to sign, the same as with every other
40 outdoor sidewalk café.

41
42 Commissioner Crowder stated this is different with alcohol being consumed. He stated the City
43 can require an indemnification clause but millions of dollars are spent each year for attorneys
44 trying to assert or defend an indemnification clause. He stated requiring such a clause does not
45 mean the City will not spend dollars should a drunk step off the curb, be hit by a car, and sue the
46 City and Sunsets. Commissioner Crowder stated he does not want anyone thinking it would not

1 cost the City a lot of money should something like that happen. This is why he is concerned
2 with making alcohol available just a few feet away from the street.

3
4 City Planner Gadow stated that is why an enclosure with fencing is required around the waiting
5 area, so someone cannot walk from the waiting area to the City' sidewalk.

6
7 Commissioner Crowder asked where is the entrance into the waiting area. City Planner Gadow
8 used a site plan to describe the restaurant, waiting area, and patio seating entrance points. He
9 stated staff has worked with the State to determine the requirement for enclosure in this situation
10 and the enclosure as proposed meets the State's requirement.

11
12 Commissioner Ramy stated McCormick's enclosure has a more precarious relationship to
13 alcohol and relation to traffic than this proposal.

14
15 Commissioner Crowder agreed but stated indemnification has been mentioned as a "catch
16 all/cure all" but that is not the case.

17
18 Chair Gonzalez opened the public hearing at 8:35 p.m.

19
20 Cory Devor, 147 Glenbrook Avenue North, stated he loves the idea and could care less about the
21 planters. He stated he lives close by, walks this area often, and uses the docks. He stated it is a
22 very public space with many people sitting and walking in the area and asked about the noise
23 from an open bar. Mr. Devor stated those partying at the bar will enjoy it but he is concerned
24 about the noise from an outdoor bar on a corner of Wayzata.

25
26 There being no additional public comment, Chair Gonzalez closed the public hearing at 8:36
27 p.m.

28
29 Mr. Weber stated that is a concern of theirs as well and they think tucking the bar into the corner
30 with a roof will help control that issue. He stated Sunsets is not a rowdy type of place and the
31 noise you mostly hear is silverware.

32
33 Chair Gonzalez asked about the hours of operation. Mr. Svensson stated the outside bar is
34 totally enclosable with a glass nanowall and the hours of operation for the restaurant closes at
35 midnight on Sunday and 1 a.m. on other nights of the week. He stated late at night, the waiting
36 area would not be used because tables would be available. Mr. Svensson stated they are trying
37 to provide a nicer area to wait and have it confined so customers can enjoy a beverage while
38 waiting.

39
40 Commissioner Iverson asked when the bar is closed.

41
42 Brian Prose, owner of Sunsets, stated service of liquor in Wayzata is until 1 a.m.

43
44 Commissioner Vanderheyden stated he is generally a fan of these because they create energy in
45 the City and are generally positive. His concerns with this project related to timing with the
46 Lake Effect project. He stated if there were a "ground zero" with the Lake Effect, it is the

1 municipal parking lot that is 40 feet away from this use so he is hesitant to give away 12 feet.
2 Commissioner Vanderheyden stated he may feel differently in six months, post programming,
3 and this project may enhance the Lake Effect's desire, but it is a hesitation he has with this
4 project at this time. His second hesitation is with the waiting area, noting the rail height in
5 comparison to a stand up table height, allows a patron to hand a drink to someone outside of the
6 waiting area. His concern is the interpersonal dynamics created, noting with other outdoor cafés,
7 the patrons are seated and that creates a fundamental difference.

8
9 Commissioner Pearson stated he likes the proposal, loves going to Sunsets, and thinks this will
10 make it a better place to go. His only concern relates to a City-wide policy issue in giving away
11 something for nothing.

12
13 Commissioner Iverson stated she supports comments of the other Commissioners, thinks it
14 creates a different environment with patrons standing up, and is concerned with giving away
15 something for nothing. She referenced Attachment A and indication that the applicant will
16 submit, at the time of permit application, appropriate architectural details in how they will deal
17 with potential water issues. Commissioner Iverson stated she is concerned as this is an open
18 ended question and before moving forward, she would like to know if another agency should
19 determine potential impacts. She would like a better understanding of potential water issues and
20 who should come forward with a recommendation. City Planner Gadow stated it would be
21 reviewed during the building permit phase.

22
23 Commissioner Iverson stated she supports getting people out on the street and creating that
24 environment but remains concerned with the proximity of the waiting area to the street.

25
26 Commissioner Ramy stated the Lake Effect issue is an interesting point. He stated he loves
27 Sunsets and finds this would be a great addition but would support higher screening on the north
28 side adjacent to the sidewalk. Commissioner Ramy stated there is attractive landscaping along
29 the fence and he wished there was an upper level.

30
31 Commissioner Crowder stated he shares the concern about the waiting area and comment made
32 during the public hearing relating to noise generation. He stated this is different from Gianni's,
33 the Yogurt place, Caribou, and McCormick's as they did not have an outside space. Sunsets
34 already has an outside space but wants to make it bigger, which is different than other applicants
35 that did not have an outdoor space.

36
37 Chair Gonzalez stated there are two different applications, one for changes to their property that
38 will not affect neighbors and is a nice and attractive expansion to the current building. Her
39 concern is with waiting area on the City's property where they are standing and not seated or
40 eating a meal as with other locations. Chair Gonzalez stated she is willing to consider this
41 request because it is seasonal and only for one year as Sunsets would have to make application
42 next year to renew this permit. Then the City can see how it works.

43
44 Commissioner Iverson stated if allowed for one year, and if found it is not working, she would
45 ask how could the planters be protected because this application would remove the planters and
46 change the landscape.

1
2 Chair Gonzalez stated she would like the planters removed and replaced with benches. City
3 Planner Gadow stated if approved as submitted, modifications would be made to the City's right-
4 of-way. If there are issues with the outdoor space, the City could hold a hearing to consider
5 whether to revoke the CUP.

6
7 Commissioner Pearson stated some do not care about the planters and prefer to see them go.

8
9 Commissioner Iverson stated she respects that but does not feel the same.

10
11 Commissioner Crowder stated as a practical matter, he would ask if Sunsets wants to build a
12 four-season bar that takes up a lot of current tables if all it gets is one year of additional seating
13 in the public area. He asked what happens if in a year or two, the City decides they do not like it
14 and do not want to approve it.

15
16 Mr. Weber stated it is the same as with Gianni's where if the City decides it does not like what
17 Gianni's is doing, the City can revoke the use.

18
19 Commissioner Crowder stated the difference is that Sunsets is building an outside bar. Mr.
20 Weber stated the two owners are in attendance and can make comments. He stated Sunsets will
21 make sure it is not operated in a manner that it will be revoked next year.

22
23 Commissioner Iverson stated a lot of unforeseen things may come up that they have no control
24 over that could lead us down that path.

25
26 Mr. Svensson stated they are cognizant of the fact the City would have the right to not allow
27 them to use the property again in the future but are confident, given the clientele of Sunsets. He
28 stated they are willing to take the chance it will go well and be approved. Mr. Svensson stated
29 the point is well taken that if the bar is constructed, tables will be removed, so if not approved in
30 the future, it will significantly cut down on patio seating. He stated they have evaluated that risk
31 and find it to be slight given their clientele.

32
33 Chair Gonzalez noted they are proposing only eight tables in the right-of-way. Mr. Svensson
34 stated that is correct but a significant number of tables are being displaced by the bar. With
35 regard to the concern with the waiting area, he stated it may be more congenial to use lower
36 tables instead of high-top tables.

37
38 Chair Gonzalez stated chairs were not shown to be provided. Mr. Weber stated the plan shows
39 high-top tables but Mr. Svensson may be open to changing it to lower tables with chairs.

40
41 Mr. Svensson stated after listening to the Planning Commission's comments, he thinks it will be
42 more aesthetically pleasing to customers and they could also use umbrellas with color. He stated
43 they have always been in favor of Gianni's, McCormick's and the sushi place and feel activity,
44 visual interest, and color create more interest for the City.

45

1 Commissioner Crowder stated some are concerned with having alcohol in the waiting area and
2 asked if that is very important. Mr. Svensson stated sometimes there is an hour or longer wait
3 for patio seating and as a customer he would appreciate being able to have a glass of wine while
4 waiting. He stated it is an additional profit center for Sunsets but also accommodates customers.

5
6 Commissioner Ramy asked if it would be possible to have three to four high tables adjacent to
7 the outdoor bar and a couple of dining tables along the front of the waiting area. Mr. Svensson
8 stated the waiting area is as far from the kitchen as you can get so having dining tables in that
9 location would be less desirable from a functional standpoint.

10
11 Commissioner Vanderheyden stated he has no issue with the building CUP, as submitted. He
12 stated the 1988 CUP has granted the owner a right to a view of the Lake and that right is granted
13 so long as the City and/or owner gains control of the area between the building and the Lake. He
14 stated he may be looking for a quid pro quo around the Lake Effect should the City gain a right
15 to the south side of the railroad tracks from the existing docks to the Section Foreman's house.
16 In that event, the City would have picked up a right to which this owner would have a superior
17 right. He stated he would want to be thoughtful about that issue when considering this
18 application and to clarify that right to assure it is to the City's benefit.

19
20 Commissioner Vanderheyden stated with the outdoor sidewalk café CUP, he is not particularly
21 supportive of the timing due to the Lake Effect. He stated in three weeks the initial
22 programming of the Lake Effect will be known and inform his opinion better. Commissioner
23 Vanderheyden stated he would probably not support the second part of the application (outdoor
24 sidewalk café as a CUP) today.

25
26 Commissioner Pearson stated he will support both the inside and outside portions of the project
27 and noted for the record that the City should start charging money in the future for use of public
28 right-of-way.

29
30 Commissioner Iverson stated she supports the improvements to the building but is not 100%
31 comfortable with the outdoor seating and would like to see the City's long-term plans for
32 landscaping on Lake Street to get a better feel of what can be done with what is there. She
33 agreed the City needs to work closely with the Lake Effect to assure the two projects work
34 together. Commissioner Iverson stated at this time she would not support the outdoor seating.

35
36 Commissioner Ramy stated he would support the project in its entirety.

37
38 Commissioner Crowder stated he agrees with Commissioner Vanderheyden due to the timing.

39
40 Chair Gonzalez stated she is not sure whether this project would affect the Lake Effect as it
41 evolves down the road, in future projects. City Planner Gadow stated with the Lake Effect there
42 has been no scenario decided upon and there are different details within each scenario that would
43 have to be worked out once selected. He stated it is difficult to say at this point whether or not
44 this project would impact the Lake Effect.

45

1 Chair Gonzalez stated she does not find the proposed project is that dramatic. A straw poll of
2 the Planning Commission found unanimous support of the amendment to the existing CUP.

3
4 City Planner Gadow asked whether the Planning Commission is considering developing findings
5 of fact based upon the staff report for the first CUP and passing on the first part of the
6 application or if staff is being asked to prepare a Planning Report and Recommendation with
7 appropriate findings for review and adoption at the next Planning Commission meeting.

8
9 Commissioner Vanderheyden stated if there are no modifications, he would support making a
10 recommendation tonight.

11
12 Chair Gonzalez stated a recommendation can be made based on the findings detailed in the staff
13 report and public comment related to noise.

14
15 Commissioner Vanderheyden made a motion, seconded by Commissioner Iverson, to
16 recommend approval of the application of Clock Tower Venture, LLC representing Sunsets
17 Restaurant at 700 Lake Street East, to expand their existing outdoor patio space at the rear of the
18 building and amend an existing 1988 Conditional Use Permit (CUP) to create an outdoor bar
19 area and increase the number of outdoor seats. The motion passed 6/0.

20
21 Mr. Weber stated the owners of Sunsets have been encouraging of the Lake Effect, which is a
22 ten-year plan. He stated the sidewalk café is an annual consideration and Gianni's and all others
23 have the same affect as Sunsets. Mr. Weber stated one detail on the Lake Effect was to increase
24 the sidewalk on the other side of the street and he does not know why a one-year annual renewal
25 would impact a ten-year plan (Lake Effect). Mr. Weber stated whatever comes up with the Lake
26 Effect will be a framework and it is the owners' intention to work hand-in-hand with the Lake
27 Effect. He stated outdoor seating is important to Sunsets and who knows what will happen with
28 the Lake Effect, as the 10-year plan may be 15 years out.

29
30 Commissioner Vanderheyden stated CUPs are granted into perpetuity. City Planner Gadow
31 stated that is correct and the CUP, if approved for the outdoor sidewalk café, would be recorded
32 with the property. In addition, the operator must submit for an annual license to operate an
33 outdoor sidewalk café. If the City found there was an issue with a sidewalk café, it could revoke
34 that annual license or if there were larger issues, the City could proceed with a hearing process to
35 revoke the full CUP for the sidewalk café.

36
37 Commissioner Vanderheyden stated both would be based on conduct, not policy. City Planner
38 Gadow stated that is correct. Commissioner Vanderheyden stated if the conduct was fine, the
39 City has lost its policy right into perpetuity.

40
41 Chair Gonzalez stated that relates to outdoor seating on private property, not on the right-of-way.
42 The City has an annual license for use of public right-of-way. City Planner Gadow stated if
43 there were any violations to both the CUP criteria and annual license, that is where the City
44 would have grounds. Chair Gonzalez stated the City has a lot of control.

45

1 Commissioner Pearson asked what is the on-going review process for the outdoor seating on
2 City property. City Planner Gadow stated if the CUP for outdoor seating on City property is
3 approved, there would be an annual licensing process required. As part of that annual licensing
4 process, the City would review to see whether there had been any complaints, ordinance
5 violations, or police calls. If violations were found, the City would not issue that year's annual
6 permit. If of a more egregious nature with violations of the CUP ordinance, the City could take
7 formal public hearing action to revoke the CUP that is recorded with the property.

8
9 Commissioner Crowder stated if the CUP is approved and there are no conduct issues or police
10 calls, the City will have to approve the annual license.

11
12 Chair Gonzalez stated the City can decide to not approve use of the right-of-way if they want to
13 use it for something else. City Planner Gadow stated the City can determine whether to charge
14 for use of the right-of-way but the CUP is recorded against the property. If the use meets all the
15 criteria, they can continue that CUP use on the right-of-way, the same as Caribou and others.

16
17 Commissioner Pearson asked how the use can be taken away other than conduct, as the City
18 would have to have good cause to take away the use.

19
20 Commissioner Iverson stated once the land is given for use without charging, it is theirs to use.
21 City Planner Gadow stated the City still has the ability to charge for use of the right-of-way.
22 Commissioner Iverson asked whether the use would be grandfathered-in. City Planner Gadow
23 stated the use would not be grandfathered-in with regard to the fee and the City has the ability to
24 charge a fee in coming years for use of right-of-way.

25
26 Commissioner Vanderheyden stated theoretically, the City could "pull trump and charge a
27 million dollars" for use of the right-of-way and in effect get the land back.

28
29 Chair Gonzalez asked if there is a limit to eight tables. City Planner Gadow stated it would be
30 limited to what is shown on the site plan, and that is eight tables. Chair Gonzalez noted the
31 outdoor seating for Gianni's takes the entire sidewalk. She stated she has no problem with this
32 request.

33
34 Commissioner Iverson stated she would not be opposed but would like to attach conditions to
35 require low top tables with chairs and additional seating due to the removal of brick planter
36 boxes.

37
38 City Planner Gadow stated the tall tables were proposed for the waiting area but the applicant
39 has indicated a willingness to switch to lower tables with chairs.

40
41 Chair Gonzalez stated she has no problem with eight additional dining tables on the south side of
42 the entrance; however, cannot support serving alcohol in the waiting area where people are
43 standing there drinking with no food.

44
45 Commissioner Iverson stated she wants to impose a condition for lower tables with chairs.
46

1 Commissioner Ramy stated that may cause chaos with unorganized chairs to accommodate
2 different sized groups. He stated tall tables would be affixed.

3
4 Commissioner Iverson stated the tall tables may not be affixed, if seasonal, and after parties are
5 seated, wait staff could reorganize the chairs and tables to better serve customers.

6
7 Commissioner Ramy supported the waiting area as proposed.

8
9 Commissioner Crowder stated he has a problem with the waiting area.

10
11 Commissioner Vanderheyden stated he would prefer to wait for several weeks to allow the first
12 view of the Lake Effect, noting it is just around the corner. He preferred to consider this part of
13 the application at the September 17 meeting.

14
15 Chair Gonzalez stated a majority are in support of the eight dining tables on the right-of-way.

16
17 Commissioner Iverson stated she is not comfortable with approval and would like more
18 information on proposed additional seating in the public space for people not using the
19 restaurant. She stated in her view they are taking away three planters currently used for seating
20 and not returning anything to the City.

21
22 Chair Gonzalez stated a condition could be placed to have the applicant work with the City to
23 pay for several seating benches.

24
25 Commissioner Iverson stated she preferred to wait.

26
27 Commissioner Pearson stated that would make the vote 3/3 so no motion would pass.

28
29 City Planner Gadow stated the Planning Commission could continue this part of the application
30 to a future meeting and request information of the applicant on additional outdoor seating in
31 cooperation with the City outside of the patio area, and a final decision on lower tables in the
32 waiting area. Or, this part of the application can be moved on to the City Council based on a tied
33 vote and the City Council can read the Planning Commission's comments in the meeting minutes
34 and made a determination.

35
36 Commissioner Pearson stated if the application is tabled, three votes would win but it seems to
37 him it should be moved on to the City Council with notice it was a 3/3 vote.

38
39 Chair Gonzalez stated she has a hard time supporting drinking in the waiting area but has no
40 problems with the tables.

41
42 Commissioner Pearson stated he has no problem with the waiting area.

43
44 Chair Gonzalez stated she does not think she can justify use of the right-of-way for people to
45 stand there drinking.

46

1 Mr. Svensson stated there is no restriction now for any of the patio tables in Wayzata so
2 customers can use a patio table to enjoy a cocktail only, without food. He asked how different
3 that would be and stated they are trying to accommodate their guests, residents of Wayzata and
4 other surrounding suburbs, that prefer to have a beverage while waiting up to an hour. It is also
5 important from what the City is trying to do to have people and tables with umbrellas closer to
6 the street so people driving by see activity. That is why they are supportive of others to have
7 patio cafés. He stated he would probably have opposed the sidewalk extension around Gianni's
8 taking up the parking spaces but now you can see into the patio instead of the view being
9 blocked by a car or SUV, creating an enhancement. That is another reason they want to bring
10 Sunset's waiting area out to the street.

11
12 Chair Gonzalez stated the applicant has presented a good argument so she can now support it.
13 She asked those in support of the sidewalk café CUP to make a motion and stated if the motion is
14 to direct staff to prepare a Report, it would allow a two-week delay as requested by several of the
15 Commissioners.

16
17 City Planner Gadow stated the Planning Commission can move to approve or deny part two of
18 the application based on information within the packet and public comment, can direct staff to
19 prepare a Report and Recommendation for review and adoption at the next meeting, or can table
20 consideration and request the applicant to submit additional information to address questions.

21
22 Commissioner Pearson asked what a Report and Recommendation would look like that
23 recommends neither approval or denial, as it is a 3/3 vote. City Planner Gadow stated the Report
24 and Recommendation would only be an option if there is majority support for approval or denial.

25
26 Commissioner Ramy made a motion, seconded by Commissioner Pearson, to recommend
27 approval of the application of Clock Tower Venture, LLC representing Sunsets Restaurant at 700
28 Lake Street East, for an Outdoor Sidewalk Café as a CUP to utilize 12 feet of City right-of-way
29 adjacent to the property for a seasonal waiting area, conditioned on table height being at dining
30 table height. The motion failed on a tied vote 3/3 (Crowder, Iverson, Vanderheyden).

31
32 City Planner Gadow stated this application will be considered by the City Council at its meeting
33 of September 3, 2013.

34
35 **AGENDA ITEM 3. Other Items.**

36
37 **a. Review of Development Activities**

38 City Planner Gadow stated he is working to gain the information requested on the Anchor Bank
39 application. If available, it will be considered on September 4 and if not, it will be considered on
40 September 16.

41
42 Commissioner Ramy stated his office is a block from a new Anchor Bank constructed of the
43 same materials as being proposed in Wayzata so he will provide photographs of that building
44 prior to the Planning Commission's consideration.

45

1 Commissioner Iverson stated she has submitted a set of photos to staff. City Planner Gadow
2 stated he received that information and shared it with the applicant.
3

4 **b. Other Items**

5 Chair Gonzalez stated she attended the August 6 City Council meeting and no planning cases
6 were considered but the City Council did consider an amendment to the City Charter to reduce
7 the number of votes required to vacate a street. That Charter amendment did not pass so a
8 unanimous vote is still required to vacate a street.
9

10 Chair Gonzalez stated the Heritage Preservation Board will present its annual report at the
11 August 20 City Council meeting.
12

13 **AGENDA ITEM 4. Adjournment.**

14 There being no further business, Commissioner Vanderheyden made a motion, seconded by
15 Commissioner Ramy, to adjourn the meeting. The motion passed unanimously.
16

17 The meeting was adjourned at 9:29 p.m.
18

19 Respectfully submitted,
20

21
22 Carla Wirth

23 *TimeSaver Off Site Secretarial, Inc.*