



# CITY OF SAINT PAUL Christopher B. Coleman, Mayor

25 West Fourth Street Saint Paul, MN 55102 Telephone: 651-266-6700 Facsimile: 651-266-6549

DATE:

July 24, 2015

TO:

**Zoning Committee** 

FROM:

Jake Reilly, Planning Staff, 651-266-6618

RE:

Zoning File #15-134-559 - Taco Bell/Border Foods

#### **Background**

The applicant, Border Foods, intends to demolish the existing Taco Bell restaurant at 565 Snelling Avenue North and construct a new Taco Bell restaurant at the same location, but with a different site plan. Per a decision by the Zoning Administrator, this triggers the requirement for a new conditional use permit application. The configuration of the drive-through and traffic flow will change, as will the number of parking spaces, and the location of the structure on the property. The applicant seeks a conditional use permit for a drive-through service lane, with a modification of the condition to allow the drive-through lanes to be closer than 60 feet to a residentially zoned or used structure and a conditional use permit to increase the maximum number of off-street parking spaces. The applicant also has applied for variances of minimum floor area ratio (0.5 required, 0.11 proposed), window and door openings as a percentage of front facade length (50% required, 47% proposed), and interior parking lot landscaping (15% required, 12% proposed).

In a staff report at the Zoning Committee meeting on July 16, 2015, Planning and Economic Development Staff recommended denial of the conditional use permit for the drive through, the conditional use permit to increase the parking maximum, and all three requested variances.

The rationale for denial of the Conditional Use Permit for the drive through and modification of the distance requirement was based in part on the failure to meet the condition of §61.501 that the use be consistent with the city's adopted comprehensive plan, and in part due to failure to demonstrate that the requested variances are due to practical difficulties, without which the use can not meet the standards for the district in which the use is located (T2 district). The rationale for denial of the conditional use permit to increase the parking maximum was based in part on the failure of the applicant to demonstrate need for 20 parking spaces (four times the minimum), especially in a station area where there is no minimum required. The rationale for denial of the variance requests was based in part on the applicant's failure to demonstrate practical difficulties in meeting the floor area ratio standard, a design standard related to window and door openings, and the interior landscaping standard.

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Staff was requested to analyze other conditional use permits granted for fast food restaurants and/ordrive-through windows, hours of operations for other fast food restaurants, particularly those in station areas, those adjacent to, or proximate to residentially zoned districts, and to work with the applicant on reducing the number of variances requested.

### **Analysis**

#### Fast food restaurants

Thirty-nine fast food restaurants, of which 36 have drive-through windows, were evaluated for their current zoning, the zoning of adjacent parcels, location related to the Green Line, and hours of operation. Of those restaurants, five of them are Taco Bells, all held by Border Foods. All restaurants were within the city limits of the City of Saint Paul. *Please see the attached tables (a full table of fast food establishments and an inset specific to the five Taco Bell restaurants) for details*.

Generally, there are 13 fast food restaurants within 1/4 mile of the Green Line, most in station areas. Of those all but one has a drive through. All save the Culver's on University Avenue were existing uses at the time the Central Corridor Rezoning Study took place, as was the Taco Bell. Culver's stands out as an adaptive reuse of an existing structure, and was redeveloped after the Central Corridor Overlay Zoning was permanently codified.

There are eight fast food restaurants that are adjacent to single-family residential zones similar to that of this building at 535 Snelling Avenue, including the Taco Bell on White Bear Avenue. Those fast food restaurants and their drive through windows (if present) are open fewer hours than that of the Taco Bell in question. The Taco Bell on White Bear Avenue, in fact, is immediately adjoining an R4 zone, and list's hours on its Web site as 7 a.m. to 1 a.m. for the drive through, and 7 a.m. to 11 p.m. for the dining room. Other similar restaurants close their drive through as early as 10 p.m. (Culver's - this is their standard nationwide), with most closing at midnight or 1 a.m. If 24-hour restaurants are excluded, the Snelling Avenue Taco Bell is an outlier, generally, among fast food restaurants located in the City of Saint Paul, even when not located adjacent to residentially-zoned property.

#### Conditional use permits

A close review of conditional use permits granted for fast food restaurants and drive-through windows suggests several findings. The first is that many fast food restaurants with drive-through windows in Green Line Station Areas do not even get past an initial exploratory staff review of the proposal. Applicants who have met with staff prior to submitting applications on several occasions since the Central Corridor Overlay was codified, have decided to not even apply, due to staff concerns with variance requests primary related to floor area ratios, but also locations of drive-through windows and curb cuts along or proximate to station areas. Conditional use permits to increase the parking maximum have generally not had additional conditions placed on them.

#### Drive-through windows

Those conditional use permits for drive-through windows for fast food restaurants that have been approved, have included some fairly common conditions, such as providing a litter collection plan and limiting hours of operation of the drive through window.

Some suggested conditions for this particular location that are consistent with existing conditional use permits and consistent with code language regarding both drive-through windows and fast food restaurants generally (there are existing standards and conditions for any fast food restaurant, whether it requires a CUP or not, in §65.615) and attempt to address the nuisance situation are:

• The hours of operation of the dining room portion of the restaurant shall be from 7 a.m. to 11 p.m. daily.

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- The hours of operation of the drive-through portion of the restaurant shall be from 7 a.m. to midnight on Sunday, Monday, Tuesday, and Thursday and shall be from 7 a.m. to 1 a.m. on Wednesday, Friday and Saturday.
- No access from the site to the alley or from the alley to the site shall be permitted.
- Trash receptacles shall be housed in a three-sided masonry enclosure, six (6) feet high, or equal in height to the dumpster, whichever is greater, and have an entrance gate constructed of a durable, opaque material. This structure shall have a permanent, roof, lid or cover.
- A litter collection plan shall be developed and submitted to the planning commission and the zoning administrator, which obligates the restaurant operator to keep the area surrounding said restaurant free of restaurant litter for a reasonable specified distance. The plan shall address the following operational issues:
  - A description of the hours of operation of the fast food restaurant and how those hours are divided into employee shifts.
  - A description of the numbers of times within each shift when restaurant employees will police the site to collect and to dispose of litter.
  - Trash receptacles will be inspected at least twice during each shift to determine if there is sufficient space within each one to accommodate additional trash and emptied as needed.
- Impact on adjoining property by use of the site may not result in the following:
  - Loud, boisterous and disturbing noise levels.
  - Hazardous traffic conditions.
  - Offensive, obnoxious and disturbing odors.
  - Excessive litter.
  - Excessive artificial lighting.
  - Substantial decrease in adjoining property values.
- Staff will be trained to call the police when encountering any behavior that has the effect of impacting adjoining property.
- A camera system shall be installed and maintained in order to facilitate prosecution of illegal activity, including, but not limited to public nuisance activity such as public drunkenness, public urination, and loitering.
- The drive-through intercom system installed shall be that of the 3M Wireless Communication System
  Mode XT-1 as specified by the applicant. This intercom system must not be audible at the midpoint of
  the alley adjoining the property or across the street and the applicant and employees must ensure
  that the intercom system is in working order which includes that the automatic reduction of sound
  volume for night time operation as specified by the manufacture is not altered or tampered with.
- No more than three deliveries per week may take place. Semi-tractor-trailer deliveries may not take place prior to 7 a.m.
- Until such a time as becomes impracticable due to changing transit infrastructure, all deliveries must take place on the Snelling side of the property.
- A private duty security company or off-duty police officer must be present at the site between the hours of 10 p.m. and the time the last employee leaves the business during late-night operations of both the dining room and the drive through.
- The site plan must be approved, with any modifications or changes as specified by the committee, by the zoning administrator.
- That these conditional use permits supersede and effectively revoke any existing conditional or special use permits granted to this property.

# Increasing the parking maximum

The applicant has provided documentation of a new landscaping plan that removes one parking space from the request, for a total 19 parking spaces. Analysis of the site and the variances that work in

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coordination with this application suggest that 18 parking spaces would be sufficient and also minimize the variance for internal landscaping. The applicant has not provided parking usage numbers at peak and non-peak times, nor provided much data regarding who parks in the lot and at what times. The applicant's representative noted that the applicant does not restrict employees from parking in the lot, and that employees use a number of transportation options to reach the site including driving, biking, and walking or using transit, so some number of parking spaces will be used by employees.

#### **Variances**

#### Window and door openings

The standard for window and door openings is 50 percent of the façades facing a public street. The applicant's architect has provided new elevations demonstrating that the window and door openings on the sides of the structure facing a public street will be greater than 50 percent (51 percent), rather than the 47 percent proposed in the original application. This removes the requirement for the variance. The applicant has not yet withdrawn this variance application.

#### Interior landscaping

The standard interior landscaping requirement is 15 percent. The applicant has provided site plans that demonstrate that they have removed one parking space for an effective interior landscaping of 13.2 percent, or 1.2 percent more landscaping than originally proposed. The applicant could remove an additional parking space for a total interior landscaping percentage of 14.4 percent, which would require a variance from the standard of only .6 percent.

#### Floor area ratio

Given the amount of landscaping required, the size of the restaurant required by the applicant, and the layout of the site and its proximity to a corner, meeting the floor area ratio (FAR) of .5 is likely to be difficult. The applicant's representative pointed out that the effective floor area ratio of the site, given the required landscaping and setbacks, is closer to an FAR of .26. The applicant was encouraged to construct a larger building with a drive-through window internal to the structure, but declined to consider that option.

#### Other considerations

Staff declined to state in the original staff report that finding §61.501 (c) and (d) were **not** met, however, should the commission so desire findings could be made, based on the nuisance quality of this use that these standards are **not** met. The zoning code requires that residentially zoned uses like that on the other side of the alley to this use must have "reasonable enjoyment" of their property. Given the quantity and quality of police calls and the vivid testimony of adjacent property owners it has been demonstrated that adjacent property owners do not have reasonable enjoyment of their property and therefore the use can be considered "detrimental to the existing character of the development in the immediate neighborhood or endanger the public health, safety and general welfare." In addition, while the use will not "impede the normal and order development and improvement of the surrounding property" in the same zoning district (T2), it may very well impede the normal and orderly development and improvement of the surrounding property for uses permitted in the adjoining residential zoning district (R4).

Given the specifications for the drive-through intercom presented by the applicant, it is possible to state a specific decibel level at any point on the property from the speaker box itself, should the committee so desire.

#### Recommendation

Should the committee wish to recommend approval, staff recommends mitigating the nuisance as much as possible through conditions as outlined above, and any other conditions considered reasonable; mitigating the request to increase the parking maximum by reducing the number of requested spaces from 20 to 18 which will have the effect of mitigating the request for a variance of interior landscaping requirement; and require that the new elevations featuring 51 percent window and door openings be substituted for the previous request.

Should the committee wish to affirm the original staff recommendation for denial of the entirety of the application, staff recommends enhancing the rationale for denial by stating that conditions (c) and (d) in §61.501 are **not** met and that of the existing standards for all fast food restaurants listed in §65.616, standards (h) and (j) are **not** currently met by the existing use.

Fast Food Restaurant details for Saint Paul, MN (as of 07/24/2015)

	The second secon	THE REAL PROPERTY AND ADDRESS OF THE PERSON NAMED IN COLUMN TWO IS NOT THE PERSON NAMED IN COLUMN TWO IS NAMED IN C				
Restaurant	Location	Station area	Zoning	Adjacent zoning	_	Hours
					Dining Room	Drive Through
Arby's	1807 Suburban Ave.	N/A	B2	R2 (across)	10 a.m. to 2 a.m.	10 a.m. to 2 a.m.
Arby's	654 Snelling Ave. S.	N/A	B3	R4 (behind)	10 a.m. to midnight	10 a.m. to midnight
Arby's	1810 University Ave.	Fairview	T3	RM2 (across)	10 a.m. to midnight	10 a.m. to midnight
Burger King	1600 W 7th Street	N/A	B3	12/RM2	6 a.m. to midnight	same
Burger King	244 Grand Avenue	N/A		R4 (behind)	6 a.m. to midnight	same
Burger King	841 Maryland Ave E.	N/A	T2	R4 (behind)	6 a.m. to midnight	same
Burger King	455 S. Robert St.	N/A	T2	T2	6 a.m. to midnight	same
Burger King	695 E. 7th Street	N/A	T2	B (varies)	7 a.m. to midnight	same
Culver's	2065 Old Hudson	N/A	B3	B (varies)	10 a.m. to 10 p.m.	same
Culver's	1491 University Ave. W.	Snelling	T2	R4 (behind)	10:30 a.m. to 10 p.m.	same
Dairy Queen	143 Snelling Ave. N.	N/A	B2	RT1 (behind)	11 a.m. to 11 p.m.	N/A
Dairy Queen	450 Lexington	Lexington	T3	T (varies); R4 (behind)	11 a.m. to 10 p.m.	N/A
Dairy Queen	1959 Ford Parkway	N/A		R4 (behind)	10:30 a.m. to 11 p.m.	N/A
Dairy Queen	1354 Maryland Ave. E	N/A	172	RM1 (behind)	11 a.m. to 9 p.m.	same
Hardee's	369 Hamline Ave. N.	Hamline	T4	T4	24-hours	24-hours
McDonald's	471 Marion St.	Capitol/Rice	T3	RT2 (behind)	5 a.m. to 10 p.m.	24-hours
McDonald's	551 Jefferson	N/A	B3	RM2 (across)	6 a.m. to 10 p.m.	6 a.m. to 11 p.m.
McDonald's	1535 Rice Street	N/A	B3	RM2 (behind)	5 a.m.t o 10 p.m.	5 a.m. to midnight
McDonald's	1388 Maryland Ave	N/A	T2	T2; RM1 (across)	5 a.m. to 10 p.m.	24-hours
McDonald's	1841 Suburban	N/A	B2	R2 (across)	6 a.m. to 11 p.m.	24-hours
McDonald's	2322 W. 7th Street	N/A	Т3	T2	5 a.m. to 10 p.m.	5 a.m. to midnight
McDonald's	2213 University Ave. W.	Raymond	Ţ	l (varies)	5 a.m. to 10 p.m.	5 a.m. to 11 p.m.
McDonald's	1570 University Ave. W	Snelling	T4	T (varies)	5 a.m. to 11 p.m.	24-hours
Popeye's Louisiana Kitchen	1089 University Ave. W.	Lexington	T2	RT1 (behind)	10:30 a.m. to 11 p.m.	10:30 a.m. to midnight
Popeye's Louisiana Kitchen	1624 Rice Street	N/A	B3	RM2 (behind)	10:30 a.m. to 11 p.m.	10:30 a.m. to midnight
Popeye's Louisiana Kitchen	1722 Suburban Ave	N/A	B2	B2	10:30 a.m. to 11 p.m.	10:30 a.m. to midnight
Taco Bell	565 N. Snelling	Snelling	T2	R4	7 a.m. to 11 p.m.	7 a.m. to 5 a.m.
Taco Bell	2545 W. 7th	N/A	T2	R3	7 a.m. to 11 p.m.	7 a.m. to 4 a.m.
Taco Bell	1672 Rice Street	N/A	B3	RM2	7 a.m. to 11 p.m.	7 a.m. to 4 a.m.
Taco Bell	1484 White Bear	N/A	B3	R4	7 a.m. to 11 p.m.	7 a.m. to 1 a.m.
Taco Bell	1940 Suburban	N/A	T2	T2	6 a.m. to 11 p.m.	6 a.m. to 4 a.m.
Sonic Drive-In	1960 Suburban Ave.	N/A	T2	T (varies); B2 (across)	N/A	7 a.m. to 11 p.m.
Wendy's	255 Maryland Avenue E	N/A	. B2	B2	10 a.m. to midnight	10 a.m. to 2 a.m.
Wendy's	612 University Ave. W.	Dale	T3	T (varies)	10 a.m. to midnight	10 a.m. to 1 a.m.
Wendy's	1770 University Ave. W	Fairview	T3	T (varies)	10 a.m. to midnight	10 a.m. to 2 a.m.
White Castle	1601 White Bear Ave.	N/A	B3	RM3 (behind)	24-hours	same
White Castle	1120 University Ave. W.	Lexington		T (varies)	24-hours	same
White Castle	505 Rice St.	Capitol/Rice	CAAPB	CAAPB	24-hours	emes

Taco Bell/Border Foods Restaurant details for Saint Paul, MN (as of 07/24/2015)

				//- / / / /	//-			
Legend:	Subject Restaurant TB will similar zoning characteristics	TB will similar zo	ning charc	ıcteristics				
Restaurant Location	Location	Station area	Zoning	Station area Zoning Adjacent zoning		工	Hours	
	5 ,A		a B		Dining Room	Soom	Drive T	Drive Through
					M-Thurs	Weekend	M-Thurs	Weekend
Taco Bell	565 N. Snelling	Snelling	T2	R4	7 a.m. to 11 p.m.	7 a.m. to 11 p.m. 7 a.m. to 4 a.m.	7 a.m. to 4 a.m.	7 a.m. to 5 a.m.
Taco Bell	2545 W. 7th.	N/A	T2	. R3	7 a.m. to 11 p.m.	7 a.m. to 11 p.m. 7 a.m. to 2 a.m.	7 a.m. to 2 a.m.	7 a.m. to 4 a.m.
Taco Bell	1672 Rice Street	N/A	B3	RM2	7 a.m. to 11 p.m.	7 a.m. to 11 p.m. 7 a.m. to 3 a.m.	7 a.m. to 3 a.m.	7 a.m. to 4 a.m.
Taco Bell	1484 White Bear	N/A	B3	R4	7 a.m. to 11 p.m.	7 a.m. to 11 p.m.	7 a.m. to 11 p.m. 7 a.m. to midnight 7 a.m. to 1 a.m.	7 a.m. to 1 a.m.
Taco Bell	1940 Suburban	N/A	T2	T2	6 a.m. to 11 p.m.	6 a.m. to 11 p.m. 6 a.m. to 3 a.m.	6 a.m. to 3 a.m.	6 a.m. to 4 a.m.

# 3M™ Wireless Communication System Model XT-1 Technical Data - #131

3M Wireless Communications System Model XT-1's volume control and Night Volume feature to comply with City Decibel Level output ordinance.

With the concern over environmental noise today, many communities restrict the audio level of drive-thru intercom systems during normal day-time business hours and for business operations during night time. Usually, this audio level is specified to be below some number at the property line.

Audio levels are measured in terms of "Sound Pressure Level" with the unit of change being the "Decibel". For example, the city of South Plainfield, NJ requires that sound levels not exceed 65 decibels SPL (sound pressure level) in an industrial area. Taking this into consideration, 3M intercom systems provide an adjustable menu speaker volume to assure compliance with city sound ordinances.

The 3M XT-1 Intercom System can be adjusted at installation to produce an audio sound pressure level of 65 decibels (\*) at a distance of 4 feet on axis to the center of the speaker. It is VERY easy for the installation company to verify this reading using an Audio dB meter (set to A weighing, slow response). Please note that sound diminishes at the rate of 6 decibels every time the distance from the sound source is doubled. So, at a distance of 8 feet, the level is 59 decibels, at 16 feet it is 53 decibels and so on.

The 3M XT-1 Intercom System also provides an AUTOMATIC reduction of sound volume for night time operation to maintain compliance with cities that require lower operating sound levels after normal business hours. This feature assures compliance 24 hours a day.

To give you a reference of comparative audio levels, please peruse the attached list of typical sound levels. Be aware that acoustic barriers (shrubbery, trees, fences, walls, etc) will reduce the distance faster than shown in the chart.

(\* These level measurements assume the use of recommended 3M components.)



3M is a trademark of 3M.

Building and Commercial Services Division St. Paul, MN 55144-1000 1-800-328-0033 www.3M.com/XT1

# Table of Sound Levels and Corresponding Sound Pressure and Sound Intensity

To get a feel for decibels, look at the table below which gives values for the sound pressure levels of common sounds in our environment. Also shown are the corresponding sound pressures and sound intensities.

From these, you can see that the decibel scale gives numbers in a much more manageable range.

Chart of sound levels L and				
corresponding				
sound pressure and sound				
intensity				
		Sound	Sound	
	Sound	Pressure	intensity	
	Pressure	р	1	
	Level		4	
Examples	dBSPL	$N/m^2 = Pa$	watts/m <sup>2</sup>	
Jet aircraft, 50				
m away	340	200	100	
Threshold of		- 2.2		
pain	0 250	63.2	10	
Threshold of				
discomfort	Tall .	20	1	
Chainsaw 1m	***	0.0	6.4	
distance	110	6.3	0.1	
Disco, 1 m	400		0.04	
from speaker	100	2	0.01	
Diesel truck, 10	00	0.63	0.001	
m away	90	0.03	0.001	
Curbside of				
busy road, 5 m	80	0.2	0.0001	
Vacuum	- 00	V.E.	0.0001	
cleaner.		9		
distance 1 m	70	0.063	0.00001	
Conversational	r 10	41244		
speech, 1m	60	0.02	0.000001	
Average home	50	0.0063	1E-07	
Quiet library	40	0.002	1E-08	
	THE REAL PROPERTY.			
Quiet bedroom				
at night	-30	0,00063	1E-09	
Background in	NY 3.2			
TV studio	20	0.0002	1E-10	
Rustling leaf	10	0.000063	1E-11	
Threshold of	14 TO 18 TO	-		
hearing	0	0.00002	1E-12	



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A given sound pressure level  $L_p$  in dBSPL, without the distance of the measurement to the specific sound source is useless.

The reference for 0 dBSPL sound pressure level is  $p = 20 \mu Pa = 2 * 10^{-5}$  pascal, the threshold of hearing.

The sound pressure level decreases in the free field with 6dB per distance doubling. **That is the 1/r law.** 

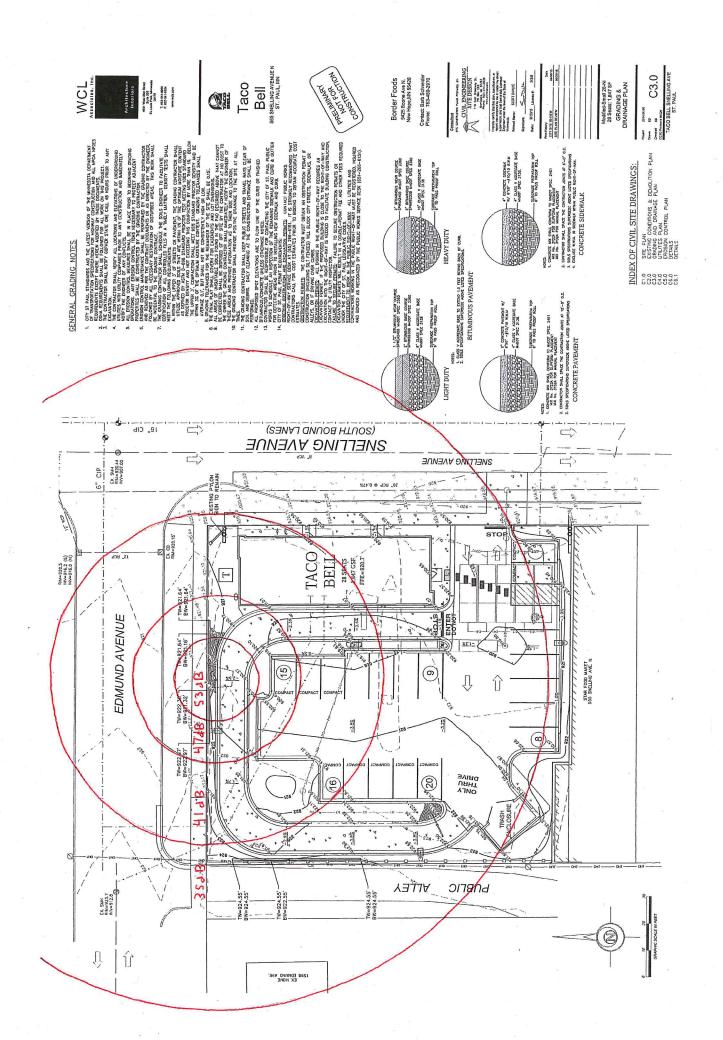
Often it is argued the sound pressure would decrease after the  $1/r^2$  law (inverse square law). **That is wrong.** 

The sound pressure in a free field is inversely proportional to the distance from the microphone to the source.  $p \sim 1/r$ 

Distance From Menu Post	3M Intercom SPL (dB)
4'	65
8'	59
16'	53
32"	47
64'	41
128'	35
256'	29
512'	23
1024'	17
2048'	11
4096'	5

<u>Note:</u> 20 dB is approximately the threshold of hearing. This occurs at approximately 700 feet from the speaker post in a very QUIET environment. In an environment of average traffic noise, a 35 dB limit is virtually inaudible and should be considered the practical limit. This occurs are approximately 125 feet from the speaker post.





50% OF THE LENGTH OF THE ELEVATION

DOOR AND WINDOW CALCULATIONS

Add the 20 Bee Can 20 D. Losi Par, Bleman Bath T. SD 54-862 F. SD 54-4624 wenneds on



Taco

Bell 555 CHELLING AVE. N SAINT PAUL, MH.

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GENERAL NOTES

EXTERIOR FINISH SCHEDULE

MODIFIED-SMALL 28-Ni 28 Seats: 1,847 G.S.F. EXTERIOR ELEVATIONS

A4.0 TACO BELL SNELLING AVE ST. PAUL

**KEY NOTES** 

## OWNED = 25.6; 51% 3 = 193 SF PROVIDED = 25.8; 51% 3 = 193 SF PROVIDED = 25.8 SF, 40% EAST ELEVATION (MAIN ENTRY) 184-15" A NOTE: SEE FULLERTON BUILDING SYSTEMS FOR ADDITIONAL INFORMATION. POP SHIPS THOUSAND TO, PROPOST FINANCIAL BATE LETTER 99 Q 0 28 28 28 -q=()---(E) 0 0 0 25 25 0 Ó 0 (F) SR TI SELFE TO GENERAL OF SEATURE. 0= 0 6 00 Hayeber **OF** 95 0/05 000 **O**E 8 6 (SE) OZGATI PREG GEE BINGS BUTTON OF VALANCE ◆ Z2-T T.D. TONER FRAMES DEG WINSCH SELL TO PREMED SEVONO, 000 10.948

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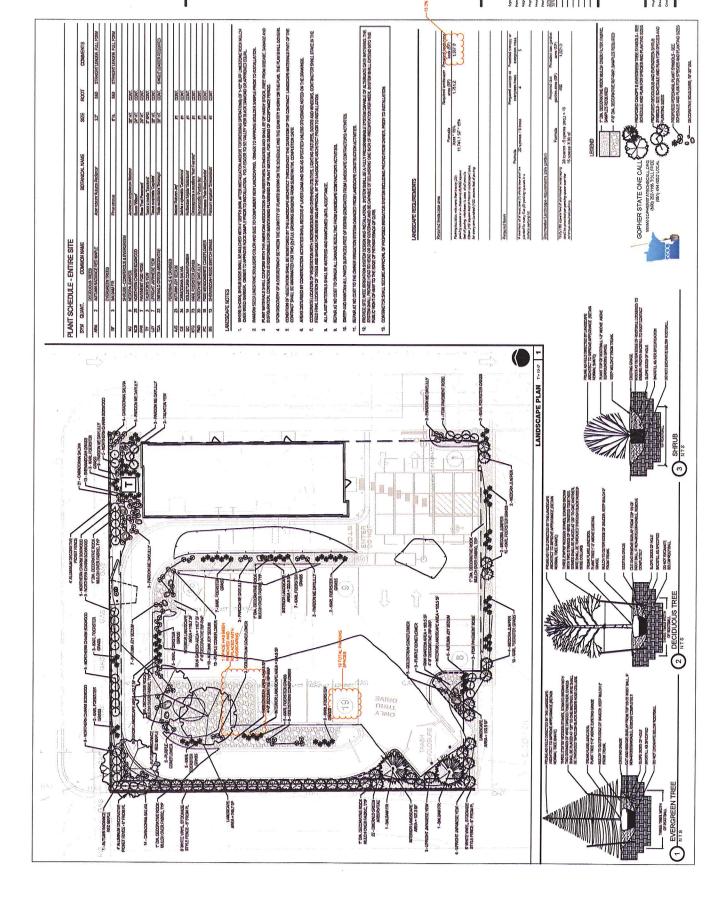
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Border Foods 5425 Boons Ave N. New Hope, MN 55428

Contact: Barb Schneider Phone: 753-489-2970

LANDSCAPE PLAN