

MINUTES OF THE ZONING COMMITTEE
Thursday, July 16, 2015 - 3:30 p.m.
City Council Chambers, 3rd Floor
City Hall and Court House
15 West Kellogg Boulevard

PRESENT: Merrigan, Reveal, Wencil, and Wickiser
EXCUSED: Edgerton, Makarios, Nelson, and Padilla
STAFF: Mike Richardson, Samantha Langer, Allan Torstenson, and Peter Warner

The meeting was chaired by Commissioner Wencil.

Wesenberg Management Group LLC - 15-133-643 - Rezone approximately 28 feet between 2238 Doswell and 2275-2283 Como from B2 Community Business to T2 Traditional Neighborhood

Mike Richardson presented the staff report with a recommendation of approval for the rezoning. He stated District 12 recommended approval, and there was 1 letter in support, and no letters in opposition.

Judd Fenlon, Project Manager, 1644 Grand Avenue, Saint Paul was available for questions.

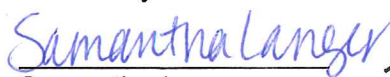
No one spoke in support or opposition. The public hearing was closed.

Commissioner Paula Merrigan moved approval of the rezoning. Commissioner Elizabeth Reveal seconded the motion.

The motion passed by a vote of 4-0-0.

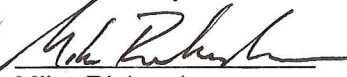
Adopted Yeas - 4 Nays - 0 Abstained - 0

Drafted by:



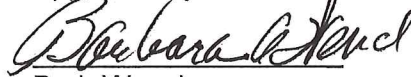
Samantha Langer
Recording Secretary

Submitted by:



Mike Richardson
Zoning Section

Approved by:



Barb Wencil
Chair

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The meeting was chaired by Commissioner Wencil.

St. Anthony Housing - 15-133-740 - Conditional use permit for a maximum height of 43 feet, 2301 Como Ave, SE corner of Doswell and Como

Mike Richardson presented the staff report with a recommendation of approval with a condition for the conditional use permit. He stated District 12 recommended approval, and there was 1 letter in support, and 4 letters in opposition.

Upon questions from the Commissioners, Mr. Torstenson explained that the height limit limitation if the property remains B2 zoning is 30 feet with additional height added for every foot the building is stepped back from the property line.

Judd Fenlon, Project Manager, 1644 Grand Avenue, Saint Paul was available for questions.

No one spoke in support or opposition. The public hearing was closed.

Commissioner Elizabeth Reveal moved approval with a condition of the conditional use permit. Commissioner Paula Merrigan seconded the motion.

The motion passed by a vote of 4-0-0.

Adopted Yeas - 4 Nays - 0 Abstained - 0

Drafted by:



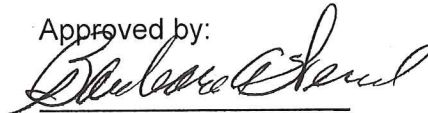
Samantha Langer
Recording Secretary

Submitted by:



Mike Richardson
Zoning Section

Approved by:



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STAFF: Jake Reilly, Hilary Lovelace, Samantha Langer, Allan Torstenson, and Peter Warner

The meeting was chaired by Commissioner Wencil.

Best Pawn - 15-134-166 - Conditional use permit for commercial outdoor sales for food trucks and used vehicles, 525 7th St E, between Kittson and Hwy 52 ramp

Hilary Lovelace presented the staff report with a recommendation of approval with conditions for the conditional use permit. She stated District 4 made no recommendation, and there were no letters in support or opposition.

Upon questions from the Commissioners, Mr. Reilly explained that the intent was, due to the parking space arrangement, that no more than three purveyors could be located there at the same time. Any food truck can operate at the location as long as they submit a trash collection plan prior to starting operations.

The applicant, Larry Kasella, 12166 Gantry Lane, Apple Valley, stated they have had fun having some of the food trucks located on their property, and it brings business into the store. He said currently they have only had about one food truck at a time on their property, and he would like the option to allow more in the future.

No one spoke in support or opposition. The public hearing was closed.

Commissioner Elizabeth Reveal moved approval with conditions of the conditional use permit. Commissioner David Wickiser seconded the motion.

The motion passed by a vote of 3-0-0.

Adopted Yeas - 3 Nays - 0 Abstained - 0

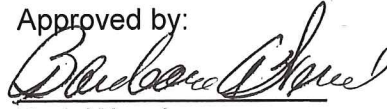
Drafted by:


Samantha Langer
Recording Secretary

Submitted by:


Hilary Lovelace
Zoning Section

Approved by:


Barb Wencil
Chair

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STAFF: Jake Reilly, Vincent Ferguson, Samantha Langer, Allan Torstenson, and Peter Warner

The meeting was chaired by Commissioner Wencil.

Meridian Behavioral Health - 15-130-256 - Conditional use permit to increase the number of residents to 64 in the existing licensed human service community residential facility, 135 Colorado St E, Terminus of Colorado and Clinton

Vincent Ferguson presented the staff report with a recommendation of approval for the conditional use permit. He stated District 3 recommended approval, and there was 1 letter in support, and no letters in opposition.

Peter Beck, Meridian Behavioral Health, 800 Nicolet Mall, Minneapolis, MN, summarized the project briefly. Currently they are licensed for 51 clients and would like to remodel to allow up to 64 clients. There will be no exterior changes to the facility. The program, Tapestry, is an award winning mental illness chemical dependency treatment program for women. Currently they are at 100% capacity. There is a desperate need for this type of facility in the community. Tapestry has been on the site since 2008 and the use of the property for a community residential facility extends back to 1976. In 2008, Tapestry received support from West Side Community Organization to move into the facility and they also received support for this request. He said that to his knowledge, during Tapestry's existence at this location, there have been no adverse impacts to the neighborhood. Typically clients stay for no more than 30 days and it is an intensive treatment program with very limited visiting hours. He said they will go from having 24 employees to 30 with the addition. At no time will they exceed the 30 stall capacity of the onsite parking lot.

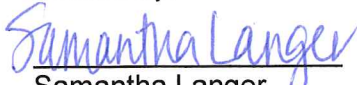
No one spoke in support or opposition. The public hearing was closed.

Commissioner Elizabeth Reveal moved approval of the conditional use permit. Commissioner David Wickiser seconded the motion.

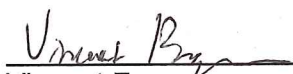
The motion passed by a vote of 5-0-0.

Adopted Yeas - 5 Nays - 0 Abstained - 0

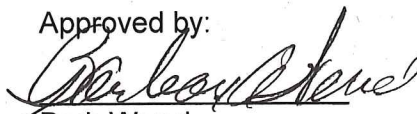
Drafted by:


Samantha Langer
Recording Secretary

Submitted by:


Vincent Ferguson
Zoning Section

Approved by:


Barb Wencil
Chair

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STAFF: Bill Dermody, Samantha Langer, Allan Torstenson, and Peter Warner

The meeting was chaired by Commissioner Wencil.

Northern Iron of St. Paul LLC - 15-133-357 - Rezone from VP Vehicular Parking to IT Transitional Industrial, 877-897 Wells St, between Mendota and Forest

Bill Dermody presented the staff report with a recommendation of approval for the rezoning. District 5 made no recommendation, and there were no letters in support or opposition.

Upon questions from the Commissioners, Mr. Dermody confirmed that the construction of storage condos is allowed in the IT Transitional Industrial district.

Roger Saylor, 867 Forest Street, Saint Paul, was available for questions.


No one spoke in support or opposition. The public hearing was closed.

Commissioner David Wickiser moved approval of the rezoning. Commissioner Elizabeth Reveal seconded the motion.

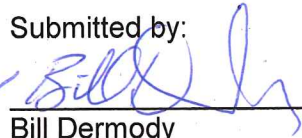
The motion passed by a vote of 4-0-0.

Adopted Yeas - 4 Nays - 0 Abstained - 0

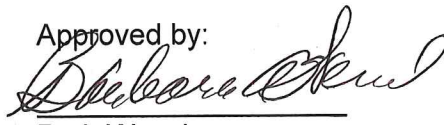
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Samantha Langer
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Submitted by:


Bill Dermody
Zoning Section

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The meeting was chaired by Commissioner Wencil.

Taco Bell/Border Foods - 15-134-559 - Conditional use permit with modification for drive-thru sales, to increase the maximum number of off-street parking spaces, and variances of minimum floor area ratio (0.5 required, 0.11 proposed), window and door openings of front facade length (50% required, 47% proposed), and interior parking lot landscaping (15% required, 12% proposed), 565 Snelling Ave N, SW corner at Edmund

Jake Reilly presented the staff report with a recommendation of denial for the conditional use permit & variances. He stated District 11 recommended denial, and there was 1 letter in support, and 5 letters in opposition.

Upon questions from the Commissioners, Mr. Reilly stated we don't know what decibel level the speaker box is set to and haven't received any information from the applicant about the style or type of speaker. Mr. Reilly confirmed that the applicant has the choice to leave the property operating as is.

Dean Madson, Architect, 4931 W. 35th Street, Suite 200, St. Louis Park, explained a few points of the new remodel. He stated the vehicular circulation on the new site is much improved. The drive-through stacking has been moved to the perimeter to allow for less conflict with patrons. Currently the drive through stacking makes it difficult for people trying to park or leave the parking lot. The design includes an exit and entrance at the same location. The building will be built to the corner to align with the existing buildings and make it a better pedestrian experience. The site will be extensively landscaped, and a large eight-foot opaque solid fence will be added along the alley side. The fence will be about 20 feet long and the buffer on the alley side is about four feet in width. He also noted that they moved the menu board further away from the neighborhood and about 30 feet closer to Snelling.

Barb Schneider, Vice President of Development for Borders Foods, 5425 Boone Avenue, New Hope, provided history on the parcel. In 2011 it was part of the rezoning that took place with the Transit Overlay. Border Foods spoke in opposition at a few meetings because they were only ¼ mile from the track and at the time they had hoped to rebuild the restaurant within a few years. She said a lot of people spoke against what the Transit Overlay might mean to the auto-related uses. Their parking lot plan reduces their number of parking spaces from 29 to 20. The nine missing parking spaces will allow them to deal with storm water and landscaping. She said the total number of landscaped area is more than what is required, but they are not given any credit for the perimeter landscaping around the facility. This neighborhood is undergoing a lot of changes with transit and it has affected the businesses. By her count today, through information she received from brokers, there is over 100,000 square feet of retail available from Lyndhurst to Lexington. They are asking the Committee to approve their application for private investment, at their own risk, to make their business better and that isn't an unreasonable request. The public improvements in front of their property are assessed in excess of \$20,000 and that remains with the property whether this application is approved or not. It is not

economically feasible to build an 8,000 square foot restaurant. It is not what their business model is based upon.

Upon inquiry from the Commissioners, Ms. Schneider addressed the concerns from the neighborhood regarding noise and litter. She knows there have been complaints about the trash company picking up too early in the morning. They have contacted the company and she said that if they are in violation of they will speak to them again or if necessary change their contract. She stated the restaurant employees pick up litter periodically during the day. There are surprise inspections from corporate representatives and there are standards that have to be met and employees are graded and evaluated accordingly. If they need to implement a more rigid standard because of increased pedestrian traffic they can do that. She stated they have addressed noise levels by hiring a private patrol company. She noted that some information the Committee received from the neighborhood about the number of police calls needs an explanation. They looked into it and found that if a call comes in and it is within their property lines even though they didn't initiate the call the call is tagged to them. She said that something in the neighborhood has changed. They have found that there is a group that has created some additional activity in the neighborhood. Many of the noise complaint calls were unverified and no one was around when the police arrived.

At questions from the Commissioners pertaining to the variances, Ms. Schneider stated that the variance for the windows is due to the location. The windows are within the kitchen and storeroom areas, and they would prefer not to have windows at those locations, and Spandrel windows are not allowed. Commissioner Merrigan questioned if there could be a way to increase the height of the windows not located in the kitchen or storage area to avoid the small variance. Ms. Schneider confirmed with the architect that this is possible.

Brian Alton, Representative of Border Foods, 951 Grand Avenue, Saint Paul, explained that this process started several months ago when Border Foods expressed an interest in replacing the store. They met with City staff and the Hamline Midway Coalition and made adjustments to the plans and ultimately submitted a plan they thought was the best possible application they could submit. The idea was to improve the look of the property and to address the concerns expressed by the neighbors and to make an investment within ¼ mile of the Green Line. It is not a three- or four-story mixed used development, but the market really isn't there for that type of development. This is a small lot and there is no way that type of development could exist at this location. The new plan includes better landscaping, reduced parking spaces, moving the speaker box further away from the neighbors, and adding multiple layers of buffering between the order/pick-up window and residential property to the west. He also stated they are working with the Midway Murals Project at the request of the Hamline Midway Coalition. They will be adding a mural to their property that will complement the mural painted on building to the south. Mr. Alton also referred to a written response to the staff report he submitted (see attached). Specific references included; Finding H.5., and their need to increase maximum parking, it will allow them to lessen congestion by providing off-street parking and for off-street loading and unloading of commercial vehicles. Finding H.6.(a) pertaining to compliance with the Comprehensive Plan and Snelling Station Area Plan, Finding H.7.a regarding the FAR variance, and that it is in keeping with the spirit and intent of the code, Finding H.7.c)ii. stating their practical difficulties complying with the 15% interior landscaping requirement.

Commissioner Merrigan replied to Mr. Alton's response to the staff report. She said that while there may be some difficulty in interpreting some of the language such as, "not prescriptive, but

perhaps suggested," of the Comprehensive Plan and Snelling Avenue Plan, ultimately the goal is to achieve the ideas adopted into the plans. With regard to the FAR variance, she stated they were very carefully included in the revised code as it pertains to the Central Corridor, and the density of development is what provides vitality. She does understand that this building cannot meet the FAR and have the use that it has because it is impractical, but it is important to note it was very carefully considered and we need to get there at some point. She also spoke to the practical difficulties of meeting the FAR. She understands there isn't a lot of flexibility with corporate designed restaurants, however, that is more a driver of how this building performs on this site than any consideration for the broader city requirements for what might be more ideal on this site.

Mr. Alton stated he thinks it is a good thing that Border Foods want to redevelop this site. It would be ideal if there were a three- or four-story mixed use building, but it is not feasible or viable. By making an investment on Snelling Avenue it will encourage further development.

Commissioner Merrigan added that there is no doubt that the appearance of the building will be an improvement, but she has concerns with taking parking from neighboring properties and perhaps the unresolved noise issues for the neighbors. These issues may be a detriment in some ways and may harm property values for the surrounding neighbors.

Upon questions from the Commissioners, Ms. Schneider stated the hours of operation are currently 7:00 a.m. to 5:00 a.m. and the dining area is open from 7:00 a.m. to Midnight.

Bernie Hess, 1602 Thomas Avenue, Saint Paul, spoke in opposition. Mr. Hess stated he believes there should be flexibility between both the neighbors and Taco Bell. He would like to see the hours of operation restricted because the longer they stay open the more activity near the store has increased. He also would like to request that the hours of the drive-through and restaurant are the same. He would like to see it a little less auto intense and perhaps add a speed bump. There is a lot of loitering in front of the property. He would like to see them get rid of the river rock and he is interested in what type of storm water plan will be in place. He asks that Taco Bell would be considerate of the people that live in the neighborhood. He also would like to see the drive-through speaker noise reduced. He is not asking for them to close the business, but would like to see the hours reduced, to be more attentive to certain behaviors that happen outside of the store, and to address the litter issue on the property.

Kristine Vesley, 1598 Edmund Avenue, Saint Paul, spoke in opposition and submitted written and video testimony (see attached). Ms. Vesley explained her main concern is the significant noise that rises to the level of nuisance. She is very upset with the process and feels it is very biased towards the business. She does not believe that they should be open from 7:00 a.m. to 5:00 a.m. The new plan will not be an improvement for them and it also will not meet the zoning code. This is an intense use and there can be 10-13 cars in the drive-through at noon or 2:00 or 3:00 a.m. The new plan will have the cars lining up right across from their property. It should not be open any later than midnight during the week and 1:00 a.m. on the weekends. The drive-through speaker noise, as well as the behavior and noise of the patrons, particularly the post bar crowd, are awful, and rise to the level of a nuisance. She has complained to Taco Bell and there is a lack of responsiveness to her complaints. She played a sound clip of the typical noise they hear on a regular basis. She explained that Taco Bell is in a T2 district while her property is zoned a R1-R4 one-family residential district. The code states R1-R4 should provide for an environment of predominantly low-density, one-family dwellings along with civic and institutional

uses, public services and utilities that serve the residents in the districts. Because of their residential nature, these districts are not intended for more intensive uses such as small conference centers, private retreat centers, and reception houses. She explained their house is on a rise and no amount of fencing is going to prevent them from seeing and hearing what is happening on the Border Foods property. She noted that it is disingenuous for Taco Bell to claim that by having a little more parking in their lot they will be able to prevent on-street parking in the neighborhood. She also noted that Officer Graupman has negotiated some helpful changes with Taco Bell such as moving deliveries from the parking lot to the street. It has helped with noise during deliveries, and she is worried that this was a short-lived agreement with the new parking lot. She wanted to emphasize the degree of impact to them and the neighborhood is severe. They expect to have reasonable enjoyment of their property and currently they do not. It has been very stressful and time consuming for the past eight years to work on these on-going issues. Ms. Vesley affirmed multiple times that she and her neighbors are not able to have "reasonable enjoyment" of their property, as the code requires, yet the businesses are able to have "maximal use" of their properties. She suggested that perhaps that standard should be reversed. She also noted that when Taco Bell has "maximal use" of its property, she and her neighbors are unable to have "reasonable enjoyment" of their property, due to the nuisance nature of the Taco Bell.

Commissioner Merrigan stated she agrees with many of her points she has made through her research, but wanted to address the issue of her implication of willful oversight she alleged to in the letter she submitted. She stated that Mr. Alton has earned his reputation for integrity. She added that no member of this Committee would be influenced by a relationship with someone, in spite of their respect for them, and it will not play a part to how they consider dealing directly with the zoning code.

Ms. Vesley said she appreciates that and accepts the criticism. She explained she wrote the testimony within a day and perhaps she should have edited the document before she submitted it. She apologized to Mr. Alton on a personal level.

Mark Vesley, 1598 Edmund Avenue, Saint Paul, spoke in opposition. He stated that within the 25 years he and his wife have lived there they have seen Taco Bell relentlessly intensify its use of the property. Over the years Taco Bell has added glare to the neighborhood with overhead lights and a brighter menu board. They have added noise with an incredibly loud air conditioner in the back of their building and loud drive-through speaker. They have requested many times for them to turn down the volume on the speaker box and have been told by employees that they have no control over it. The patrons are often loud and unruly. They have the most issues with patrons who are inebriated after bar close and have documented the behavior that happens at as late as 3:00 or 4:00 a.m. He said that when they moved into the neighborhood they closed at midnight. Their original SCUP said that they were going to close around 11:00 p.m. or midnight. They have taken advantage of that through two rezonings, and felt that since they have been grandfathered in they can do whatever they please. Mr. Vesley showed and submitted a few other images regarding parking issues, drive-through issues, and patron issues (see attached). This is too intense a use for this largely residential area. He also submitted conditions he would like to see on any permit for a new Taco Bell (see attached).

Margaret Langer, 826 Montana Avenue, Saint Paul, spoke in opposition. She and her husband own the property at 1597 Charles Avenue. She stated she fully supports Mark and Kristine Vesley's in their endeavor to mitigate this nuisance. She stated her renters have issues with the

Taco Bell. This neighborhood is improving and this is an area that really needs improvement and attention. She hopes the Committee will consider the Vesley's suggestions.

Mr. Alton responded to testimony. He said that Taco Bell wants to be a good neighbor. The Vesley's have experienced some things that are certainly unacceptable. He said they do not want those sorts of things happening on their property. They hope by rebuilding the store and making a nicer looking building it will help with some of the issues. Mr. Alton stated that those are operational issues and are not related to whether they should be allowed to get a conditional use permit or variance. Those issues may not go away if Border Foods abandons its attempt to build a new facility. Border Foods can continue operating the way they have been operating and that is not in any way thumbing their nose at the neighbors and their complaints. It is the operational decision that they are going to have to make if they don't get the CUP and variances. Mr. Alton stated that Officer Graupman, Western District Force Unit, sent an e-mail, dated July 8, to Julie Sargent who works with Border Foods and that stated that in April 2015, 565 Snelling was closed as a problem property because of significantly reduced calls and minimal community complaints. That is a result of efforts by Border Foods to address the issues raised by the Vesleys. Mr. Alton addressed the delivery agreement facilitated by Officer Graupman and stated he in no way intended to suggest that the agreement was going to change with the new layout. If it continues to be a viable option it will continue in the future.

Ms. Schneider stated that at the time a lot of noise complaints were raised, Officer Graupman worked with Border Foods to implement a plan due to noise complaints and to specifically address some of the Vesley's complaints. They implemented the suggestions and if Officer Graupman had not thought they had followed through he would have been in contact with Julie Sargent. She doesn't believe he would have closed their property as a problem property if he thought there was still something to be addressed. Border Foods does not condone this behavior. They have upgraded security cameras that can identify people who are causing problems and once they identify them they will prosecute. She noted they will be vigilant and they certainly are not abdicating their responsibilities.

Upon inquiry from Commissioners, Ms. Schneider stated they have five different Taco Bell restaurants in Saint Paul and she believes each location is generally open until 3:00 a.m. or 4:00 a.m.

No one spoke in support. The public hearing was closed.

Upon questions from the Commissioners, Mr. Reilly stated that the original CUP does not appear to have limitations to the hours of operation. The record shows that there was a conversation about hours, but there are no conditions listed that state those hours are a condition of the SCUP.

Peter Warner, City Attorney, stated he has looked at the original permit and there are no conditions attached. He stated that when the permit was granted it was for a restaurant building and it did not include the drive-through. Mr. Warner stated they were not able to find any record of the addition of the drive-through.

At further questions from the Commissioners, Mr. Reilly stated that when the SCUP was permitted there were standards that had to be met. There were not special conditions related to things that are typically added conditional use permits for restaurants. There was not a

standard for operations, but there were standards for the nuisance issues. Mr. Reilly stated the only the restaurant use was permitted through the SCUP and the drive-through was added sometime after that. City staff has not been able to identify when the drive-through was added through building or zoning permits or other permissions that might have been requested from the City. There is an opportunity now to condition this particular application.

Commissioner Elizabeth Reveal moved to deny the conditional use permit and variances. Commissioner Paula Merrigan seconded the motion.

Commissioner Wickiser stated he does not agree with the staff recommendation. He believes that the size of this lot will not bring in the type of redevelopment that the zoning allows, therefore, removing the equation of FAR, in his mind. Although we could certainly see it in the future the market does not allow it at this time. He stated he also finds it a bit troubling with respect to some of the Station Area Plans and the anti-car push. People are still driving cars and a balance is necessary. He likes the fact that the building will be holding the corner and notices there are obvious efforts to improve the property. He also stated that the testimony of some of the neighbors is very troubling and should have been addressed in a manner that didn't need to necessarily come to this level.

Commissioner Reveal stated this is the kind of case they are increasingly seeing as we move more aspirational plans through many different areas of Saint Paul. What we hope to see happen doesn't happen overnight. There have been a number of cases where the option is to leave a problematic site or to grant a use that is not ideally what they want because of market conditions, but market conditions change over time. When the conditions change, and it is the right time for a multi-use structure on this small site, it would be beneficial to the development everyone hopes to see on University Avenue. She is torn on this decision because right now this site needs improvement. It is a problematic site. She is not sympathetic to the architectural issues that are required in the code and aren't being addressed because of corporate standards. She also believes every effort needs to be made to contain some of the public nuisance problems and she is concerned with the operating times. She would like to see statistics on other drive-throughs along University Avenue that are in Station Area Plan areas and what their operating hours. She is also curious about the feasibility of whether the restrooms in the new building could be accessible when the rest of the building is closed.

Commissioner Edgerton stated the two issues he sees are if this use is consistent with the requirements of the T2 district and if it is detrimental to the character of the neighborhood. In regards to the T2 district requirements some of the design decisions are easy to deal with, but the FAR is a tough one. Fast food restaurants with drive-through windows are allowed in T2 districts, but there is a floor area ratio requirement and the market doesn't call for a really big fast food restaurant. He believes some of the requirements, such as the floor area ratio, will not make the property usable or viable. The other issue is the detriment to the neighborhood. There are requirements listed in Finding 3.j. that are conditions and standards for fast food restaurants that are obviously not being followed. He questioned if it would be possible to allow this use with added conditions, and that would allow the permit to be revoked if the applicant doesn't comply with the conditions.

Mr. Warner stated that is a reasonable step to take. The factual evidence supports the need for some type of conditions.

Commissioner Wencel stated that this restaurant will continue whether or not it's rebuilt. It seems to her that this is an opportunity to make a building that will be more efficient and correspond to a number of requirements in the zoning code and add conditions that don't exist on the current permit. This is an opportunity to make positive changes otherwise the restaurant will continue running as is and from that stand point she is not in favor of the motion to deny.

Commissioner Elizabeth Reveal stated she wished to withdraw her motion to deny.
Commissioner Paula Merrigan seconded the motion to withdraw.

Commissioner Elizabeth Reveal moved to lay over the conditional use permit and variances to July 30, 2015. She requested that staff compile the following information; an analysis of the times of other fast food restaurants within Station Area Plans along the Central Corridor and verifying the operating times of the other Taco Bell restaurants, as well as times of fast food restaurants abutting residential properties, and a recommendation from staff about how they can incorporate specific conditions listed in Finding 3.j. to address the nuisance concerns. Commissioner Paula Merrigan seconded the motion.

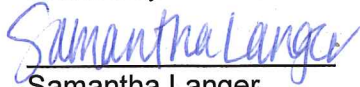
Commissioner Merrigan noted that the testimony by the neighbors stated they would not like to see the Taco Bell close, but they want the intensity reduced. Some possible conditions to consider would be to reduce the hours of operation, specifying hours of delivery and loading location, specifying maximum truck size, hiring full time security personal for the hours of operation, and specify a decibel level max for the drive through speakers.

Commissioner Wencel hopes that the applicant will consult with City staff regarding the number and nature of the variances they have requested and see if these can be reduced.

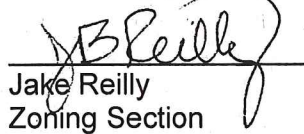
The motion passed by a vote of 5-0-0.

Adopted Yeas - 5 Nays - 0 Abstained - 0

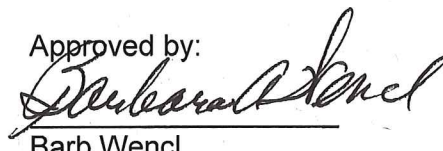
Drafted by:


Samantha Langer
Recording Secretary

Submitted by:


Jake Reilly
Zoning Section

Approved by:


Barb Wencel
Chair

Response of Border Foods to Staff Report.

The Staff Report findings generally show that the CUP and variances are supported. There are a few findings that staff use to support a recommendation for denial. Border Foods response is:

H.2.(c). Speaker box sounds. The drive-through speaker box will be further away from residential property. It will be buffered by landscaping and a fence. Volume will be monitored.

A study done by DSI staff showed that the sound of the existing drive through is in compliance with City code. The report states that: The sound levels when the voices of Taco Bell customers and/or Taco Bell employees could be heard talking...are well below the 60db level for conversational speech. At no time did the sound levels from the drive-thru speakers exceed a conversational speech level.

H.3.(h) Litter Collection. Currently, the parking lot and alley are cleaned every morning. Whenever any litter is noticed, it is picked up. Periodically during each day, a manager walks around the area to monitor the condition and pick up any litter.

H.5. Need to increase maximum parking. Customers and employees who arrive by car need a place to park. On street parking on Snelling is limited. Neighbors do not want the side streets to be taken up by business uses. Parking is being reduced by 1/3rd. There is enough, but not too much parking. The amount of parking proposed is not based on a rigid formula, but on what experience in operating the restaurant has shown is needed to accommodate customers and employees.

H.6.(a) Comprehensive Plan. The staff report states that the proposal is generally in compliance with the Comprehensive Plan. But, then recommends denial on the basis that the proposal is not consistent with the Snelling Station Area Plan.

That is not a valid basis to deny the application. The Snelling Station Area Plan explicitly states (in a section titled "Using this Station Area Plan") that the development concepts in this Plan are **not intended to be prescriptive** for evaluating future development proposals. Their purpose is to illustrate how the principles and objectives for new development could be realized over time. The Comprehensive Plan is not a valid basis to deny a conditional use application.

The staff report also incorrectly states the proposal is not in compliance with the Hamline-Midway Community Plan because the proposal does meet the overall intent of T2 zoning. But a fast food restaurant with a drive through is a permitted use in a T2 zoning district. The Board of Zoning Appeals has confirmed that.

H.7.a) FAR variance. The variance for the floor area ratio is in keeping with the **spirit and intent of the code**. The variances will promote the health, safety, economic viability and general welfare of the community. The variances will lessen congestion in the public streets and will promote a compatible mix of land uses.

H.7.b) Variances in compliance with Comprehensive Plan. See above. The aspirational statements in the Snelling Station Area Plan are not a sufficient basis to deny the variances.

H.7.c)i. FAR practical difficulties. The building is an appropriate size for the business and the existing lot. If the floor area of the building was increased there would be less space available for required landscaping and needed parking. Border Foods seeks to replace an existing restaurant with a building with the same use. There is no need or use for a larger building.

H.7.c)ii. Landscaping practical difficulties. It is impractical or unreasonable to provide 15% landscaping. The landscape plan shows that the landscaping has been maximized and that there is plenty of landscaping. If the perimeter landscaping is included in the calculation, 15% is exceeded. All of the parking spaces that are provided are needed. There are no other areas where landscaping can be added

H.7.d) Unique circumstances. The size of the lot and the use of the property is a circumstance not created by the landowner.

Compliance with TN Standards. The proposal complies with T2 Standards. It is a walk up restaurant built out to the corner, with bicycle racks and indoor seating, adjacent to a BRT stop and within a quarter mile of a transit stop, which also provides parking for customers who drive. It is pedestrian friendly and oriented, while accommodating customers who may also arrive by car.

Sunday, July 12, 2015

To the Members of the St. Paul Zoning Committee:

We live across the alley from Taco Bell at 565 N. Snelling Avenue. Our address is 1598 Edmund Avenue, St. Paul, Minnesota, 55104. The main two-part response to File No. 15-134559 that we hope to convey and support before and at the Thursday Zoning Committee hearing is:

- 1) No way (because it's July in Minnesota and we barely got a week's notice before the hearing), and
- 2) They've got to be kidding.

The application to rebuild the Taco Bell at 565 N. Snelling is seriously flawed and disingenuous. It is less an application for a fast-food restaurant with a drive-through lane than for a primary drive-through lane with a little afterthought of a fast-food restaurant attached. The new lane would be closer to our property across the alley than the current lane, which already is too close per City code. It will be approximately 23 feet from our property, whereas the current one is approximately 30 feet away. Yet the applicant claims this arrangement will somehow be an improvement for us and that an improvement over a non-code-compliant, grandfathered-in arrangement is the best we can expect for a newly built facility with a newly granted conditional use permit.

Apparently, the person who drafted the application "forgot" about ordinance 65.513(a) when claiming that the new site plan would meet all the standards in 65.513. Did Brian Alton, formerly of the Board of Zoning Appeals for the city, really make such an omission accidentally? Or did he and his client, Border Foods, hope that no one would notice this important detail — much more than a "t" not crossed — and that his friends in City Hall would let it slide by? These are terrible thoughts to think, but we are thinking them.

Likewise, the drawings showing a 4-car stacking lane are laughably inaccurate. Someone needs to sketch in around 8 more cars to show how the lane will look circa 3:00am most nights and some lunch hours. Where do you suppose vehicles 5 to 12 (and sometimes more) will appear on the renderings? Why, they'll be lined up just across from our property, mere feet from our living room and dining room windows downstairs, and the view from our bedroom windows upstairs will be the tops of all those autos. Yes, this new design cleverly moves waiting cars off of southbound Snelling Avenue, where currently they line up and create a road hazard to enter the lane, neatly onto the parking lot. This new design merely trades floor area and a few parking spots it doesn't even need for more drive-through lane in order to more efficiently process more orders for more idling, engine-revving, boom-stereo-playing, horn-honking, pollution-emitting vehicles!

We have endured increasing noise and other forms of nuisance from Taco Bell for the past decade or so, and it has cost us sleep and sanity and money (see **Appendix A** for a rough chronology of "moments" in our history with Taco Bell). This Taco Bell enjoys a great location on a state highway going through our capital city with some 45,000 cars traveling past on a daily

basis. It also has the distinct advantage over competitors of a uniquely unregulated location. Because it has a special use permit from 1973 (the precursor to the conditional use permit) with no conditions on it for some odd reason, it has been able to do pretty much as it wants, especially in terms of hours. (The hearing minutes for this Taco Bell's permit included the restaurant's proposed hours of operation, but those never got transferred to the CUP. No one in 1973 probably imagined that any drive-through in the city near residences would try to remain open, and very busy, all night long and at 7:00am.) Unlike a nonconforming use, which has strict limitations imposed on it, this conforming use gets to flout code in perpetuity, indefinitely — no amortization of use, no expiration date.

So, this Taco Bell came to realize that this is the perfect location to gradually, through hours creep, become the only all-night fast-food restaurant with a very busy drive-through on this part of Snelling in St. Paul, because any new such use would have to submit to public input and city scrutiny and most likely have to close at what most people would term "a decent hour." It is only closed for three hours a day during the week and two hours a day on weekends, hours during which noisy maintenance and deliveries often take place.

This site, we believe, was never intended to have a high-intensity drive-through as a primary use. It is not a community bank with a teller window open until just 5:00pm and serving perhaps a mere 3 cars per hour. But now that the use is established, is the city obligated to allow it to continue even with a new CUP in the same fashion on a site that is really too small for it and too close to residential property on three sides? (In addition to us there are apartments to the south at Kimball Court and John Snell Apartments on 550 N. Snelling to the east, as well as 1597 Charles behind us to Taco Bell's southwest.)

We think that the answer is no for a variety of reasons. With all the changes to it and to the zoning code, it is past time for a fresh look at what the business does and who it is (in addition to how well it fits in with updated density and other planning goals). What kind of environment has the business created? How responsive has the business been to neighborhood concerns? Yes, the current use was established in 1973, but most of the houses surrounding it were built and their use established some 60 years earlier, some even in the late 1800s. These deserve at least as much consideration.

Since around 2007, we who are closest to it have actively sought and tried remedies for the noise produced by Taco Bell and its customers. Taco Bell has made token efforts to improve only when under pressure, but those efforts have been short-lived. We run out of fingers when counting the number of times the supposedly "broken" speakerbox has been "fixed" only to "break" (and be loud) again the next week, for instance. The most effective remedy is going to be reduced hours of operation, and that is the main condition we ask the Zoning Committee to support. It would give us a bloc of peace that would make normal impacts during normal business hours easier to handle.

For years, frustrated city officials as well as a couple of complacent ones have told us "nothing can be done until Taco Bell remodels or rebuilds." We hope they were not just saying that to placate us, while secretly knowing that just because something could be done when Taco Bell rebuilds, in all likelihood nothing would be. We hope that now, something will "be done."

Our plight is certainly not all the City's fault, but the City has made some mistakes, or at least has let us down in four distinct ways that have added up — first, in ever allowing a CUP with no conditions (and then not being able to keep track of it, as shown in a couple of communications that constitute **Appendix B** just to illustrate the shaky existential foundation of this Taco Bell); second, in not just re-zoning in 1975, 2004, and 2011 (or any time) such that certain uses would become nonconforming and therefore subject to some oversight instead of left as permitted but nonstandard uses and offering no available recourse for those affected by intensification/expansion, such as Nuisance Exceptions in City code. In this case, we have been paradoxically worse off for the way Snelling was re-zoned, which was intended to improve the neighborhood, not better off.

The third mistake we think the City has made is its treatment of drive-throughs as a use, but we realize that's been problematic for municipalities nationwide. This was the basis for our hearing before the Board of Zoning Appeals in June of 2014, but the argument was a stretch made in desperation: that because drive-throughs now require CUPs, the Taco Bell drive-through should not be able to offer a whole new breakfast menu with 3 whole new hours of operation without seeking such a CUP or being subject to a status change to nonconforming. What is true is that this drive-through lane, for this restaurant, was a later addition that the City just gave a free pass. Fine, that makes sense — as an accessory use. But once the drive-through lane started to be a primary use for many hours of the day? That, we can't help believing, should and could have been stopped or curtailed somehow.

Regardless, now this Taco Bell has a very sweet deal, and it has clung to it, waiting to bring this location up to modern Yum! brand identity requirements just about as long as possible to avoid this very CUP process, we believe. We are very aware that if this new CUP is denied or imposes what Taco Bell considers onerous conditions, this Taco Bell will probably continue to operate in its present form with Yum! blessings until the building just crumbles and the last dollar has been squeezed from it like hot sauce from a little white packet.

We have not even touched on the crime that happens at and near Taco Bell that we feel its business model attracts or its record of police calls to its address. Just last month we personally witnessed a man getting kicked in the head in the parking lot late at night and called in that incident ourselves in case Taco Bell employees did not see it. The police call record for the past three years is attached as **Appendix C**, but it is not our main issue, because we believe changes to hours and perhaps restrictions to on-street parking could reduce police calls as a side benefit.

We also will not have time to create an appendix to illustrate the fourth and final way we feel the City has let us down, and we appreciate this chance to share it briefly here in hopes of instigating some cultural change. It is relevant to the application in being another reason that enforcement in the case of this Taco Bell's noise and other nuisance effects cannot be the answer to all of the problems all day and night; reduced hours is the best answer to many of them. There seems to be a mindset in the City that all "complaints" (which could be reframed as assertions of rights) must come from groups of people rather than individuals in order to have merit. Countless times in our quest to get some enforcement of noise ordinances (and the City seemed to have a hard time even deciding whether it was general noise or zoning-related noise law that needed enforcing,

which would determine both whether the standard was to be "not audible beyond 50 feet" or not above a certain decibel limit and whether the enforcer should be police or DSI), we were told that we should start a petition and get neighbor signatures, etc. That is balderdash and simply a dereliction of public service! We feel that DSI and beat officers fail the citizens of St. Paul if they insist incorrectly that nuisances are only valid if they involve "the power of numbers," a phrase we have heard repeatedly.

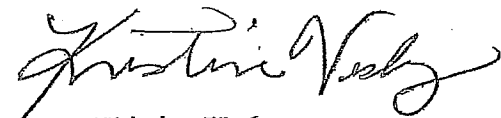
Now, if you will, please take a look at **Appendix D**, a hard copy of an email message (to be forwarded to you all by Senior City Planner Jacob Reilly) that will contain live links to videos that supplement and clarify our testimony. We know that your time is limited, but we hope that you can all view at least some of these videos to get a sense of the types and volume of noise that this Taco Bell and its customers have produced — and that they should not be allowed to continue producing after midnight during the week and 1:00am on weekends (if not earlier) in any new configuration. This hard copy should also contain a couple of photos of our property for reference.

We don't hate Taco Bell. In fact, we are partial to the current Taco Bell building with the Spanish roof and will miss it when it's gone. It's now considered retro. But we do hate an almost 24/7 Taco Bell. We hate what it does to our quality of life and to our property values. The property next to us, 1600 Edmund, was formerly an owner-occupied house. It is now a rental property. The property across the street from us, 1595 Edmund Avenue, was formerly an owner-occupied house, but its run on the real estate market didn't end well. It too is now a rental property. Will ours be next? Will a domino effect take hold of our block, our whole street west of Snelling? A mix is fine, but anchoring homeowners are critical.

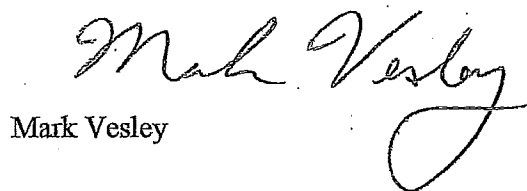
Our neighborhood's evolution has kept us here as its very particular character has also somehow deepened. There's a lot to love — for us and for the next owners of our property. We cannot be accused of NIMBY-ism. We have in our extended back yard the old brick multi-story Hamline Hotel now used for low-income housing, and we get along just fine with the residents of it, appreciating them and hoping to contribute to their sense of stability here. In any case, there's just no compelling need for a 22/7 Taco Bell to be in anyone's back yard. A respectful 17/6 one could be welcome, though.

Thank you for your attention.

Sincerely,



Kristine Vesley



Mark Vesley

APPENDIX A:

Brief Chronology of Our History with Taco Bell

1989: We moved here in 1989, and to the best of our recollection, Taco Bell was open until midnight during the week and 1:00am on the weekend.

1992: There was a gap in the fence behind Taco Bell along the alley through which customers and others on foot could pass, and we observed that this became a site for drug deals and drug use with easy access and/or escape to and from a fairly hidden spot behind the opaque wall. In addition, the fence ended several yards short of Edmund Avenue so that cars could enter and exit the parking lot via the alley, which was not supposed to happen. Our City Council Representative at the time, Paula Maccabee, worked with zoning staff and traffic engineers with the result that Taco Bell was required to replace the old gapped and too-short fence with a new, continuous fence of the proper length. The improvement was dramatic, though at a later time the decorative and screening green vinyl inserts in the chain link fence proved problematic in providing privacy and cover for illicit activity in the alley and were removed.

Circa 2005 -- Taco Bell's hours expanded around this time, to the best of our recollection and records, to closing at 2:00am during the week and 3:00am on weekends.

2006 -- The drive-through ordering kiosk speakerbox seemed to get louder, especially in the late-night hours.

2007-2008 -- We started contacting City Council Representative Russ Stark and city officials when Taco Bell's hours expanded again, to 3:00am during the week and 4:00am on weekends and the noise became almost unbearable from numerous sources. At this point Taco Bell was serving a growing post-bar-closing crowd. We had a frustrating meeting with Russ Stark, his aide Samantha Henningson, DSI staff person Jeff Hawkins, and city attorney Rachel Tierney, who all told us that Taco Bell was zoned business and we were zoned residential and there was no buffer or mixed-use area. We were just unlucky. Jeff Hawkins opened the meeting by declaring that he "would be sad if Taco Bell went away" because he used to work for Public Works and enjoyed stopping at Taco Bell around 2:00 am. We were told by Rachel Tierney, when we asked what our rights were vis a vis Taco Bell: "You have a right to exist." She then said she could relate because she had neighbors who liked to have bonfires, which could become loud at times. We were told that our best option was to call the police for noise ordinance enforcement. We asked if they meant that we should do this every day, as the noise was a regular and predictable occurrence, and we were told yes.

2008-2009 -- We did as DSI told us to do and called police often with noise complaints, usually agreeing to speak in person with officers after they looked into the complaints. We won't go into the details of those encounters here except to note that only one officer was brave enough to tell Taco Bell that its speakerbox was too loud and therefore it would have to close down for the remainder of the evening.

In early 2009, we were contacted by Sgt. Pat Kane about the high number of calls from us. We explained to him what we were told by DSI, and he suggested we meet to discuss the problem of noise and possible solutions. In February of 2009, we met at our house during his shift. He took an interest in the situation and decided to reach out to other departments, including DSI. He went to visit DSI staff in person and later told us he was disappointed that the staff characterized us as chronic complainers. He said he recognized that we were complaining only because so far, nothing had been done. He said DSI staff made reference to our old complaint about the old fence, and he recognized that this had nothing to do with our noise complaint, which deserved separate consideration. He asked DSI to allow him to borrow a decibel monitor and said DSI would not allow him to do this, even though at that time DSI refused to monitor at night when most of our calls occurred.

Sgt. Kane then suggested we try to find a "middle person" and referred us to the Dispute Resolution Center. We contacted the DRC and followed protocol, which was for DRC, not us, to contact the other party, in this case Border Foods. Unfortunately, Border Foods (represented by then District Manager Steve McBride) refused to join us in dispute resolution regarding noise at Taco Bell, saying that our concerns "did not rise to the level of mediation." Sgt. Kane had to take a leave of absence, so we lost some momentum. Sgt. Kane had said that even if he were on his leave, he would attend any DRC meetings with us if it would help.

(We do not have time to go through all our records before the hearing, but at some point after this, DSI did agree to do decibel measurements from our driveway and concluded that Taco Bell's noise was within the acceptable limits, which we and others found very strange given the naked-ear experience of it. Mark Kaisersatt of DSI insisted that "we're good.")

2010 -- Taco Bell's hours expanded to 4:00am on weekdays and 5:00am on weekends.

2012 -- Still amazed that this nuisance was permitted to exist and frustrated on a number of fronts after more talks with licensing and other officials, we considered moving and thought of a clever solution to the problem of trying to sell a house next to a loud, late-night Taco Bell: We offered to sell our house to Border Foods in a letter and were surprised to get a call from Vice President

Barb Schneider the next week expressing interest. We entered negotiations that went on for the entire summer. Border was coincidentally considering a larger campus that would include our property and an alley "vacation" for more land and better traffic flow. Mark and I agreed that preventing speeding in the alley in this way, and diverting through-traffic (use of the alley as a frontage road) could be a boon to the neighborhood. We got as far as the drafting of a purchase agreement by Border Foods that was supposed to be "redlined" over a late-August weekend by our lawyer and our realtor, but the following Monday, Ms. Schneider called to say that site plans had been preliminarily examined by city staff and rejected and therefore Border foods no longer had interest in purchasing our property but that "we might see each other in a couple of years" when Taco Bell went back to the drawing board with a new site plan.

2013: We were busy and did not seek relief from or remedy for noise from Taco Bell aside from the occasional call to police, knowing that in most instances, nothing would be done about speaker system noise and most customers producing noise would be gone by the time officers arrived.

2014: In late February, we read in *The Pioneer Press* that Taco Bell/Yum! Brands intended to launch a new breakfast menu in the spring with extended hours at most locations. We decided we had to check in with our contacts in the city to see if this expansion, too, would be permitted without any public input. We were told that it would be. Feeling that this was "the last straw," we decided to hire an attorney to investigate our options. He researched changes in zoning code and determined that this Taco Bell's drive-through, as of 2011, had been nonconforming in not having obtained a conditional use permit. The Zoning Administrator did not agree with his reasoning, and he appealed her decision to the Board of Zoning Appeals in June. The vote was 5-4 in favor of the status quo of Taco Bell being allowed to operate and expand its hours at will.

Although we lost that appeal, we did take advice we got to start documenting nuisance activity at Taco Bell. A city attorney who had been present at the BZA hearing also contacted our attorney and said he thought we had some valid points and that he would look into a possible public nuisance charge against Taco Bell. We met with him in August and agreed to the plan he proposed. He said he thought it would take a few months to prepare and present it and that if we were unhappy with the results of this work, we could still appeal our BZA decision to the City Council and that meanwhile it would be considered "stayed." We heard from him sporadically in the fall, and then once in December, telling us he was going to meet with the Zoning Administrator about delivering the charge to the Planning Commission, which was her administrative duty per City code. We never heard from him again and in the spring of 2015 informed him through our lawyer that we were terminating the case and dropping the stayed appeal and would like our appeal filing fee returned.

Meanwhile, Officer Charles Graupman from the Police Department sent Taco Bell a first notice for excessive consumption and negotiated some helpful changes with Taco Bell such as moving deliveries from the parking lot to the street, which greatly reduced the banging and clanging we heard inside our house during deliveries. The illegally early garbage pickups were also changed to a later time, which also helped by increasing the small window of non-noisy time in the Taco Bell parking lot.

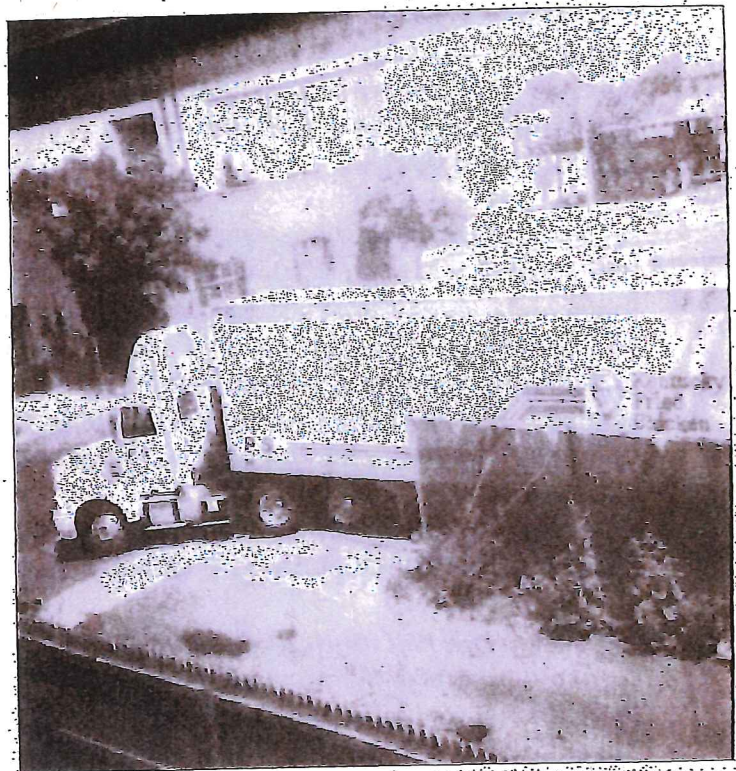
2015: In July we got a notice regarding the upcoming hearing before the Zoning Committee of the Planning Commission and obtained Taco Bell's application packet and guidelines for submitting testimony, which we are doing now. We noticed a discrepancy in the application.

Appendix A
(5 of 5)

Photo taken in 1992, not long after we moved in, showing a giant semi delivery truck trying to cram itself into the Taco Bell parking lot backwards via Edmund Avenue, running over the curb illegally.

This reminds us that even then, Taco Bell's use of the site was fairly intense and that Taco Bell always really required more space.

air
fence



Holiday
↓

alley
X

6/29/92 Snelling +
Edmund

APPENDIX B:

The Elusive Original CUP for 565 N. Snelling's Current Use

It turns out that the original Conditional Use Permit, or Special Use Permit, for the Taco Bell at 565 N. Snelling is somewhat similar to what are called "virtual particles" in physics. It seems this magical permit both *existed* and *did not exist* at the same time! But, like most of physical reality, the gross manifestation of Taco Bell seems solid and immutable and permanent. It is approaching actual permanence as a structure and an idea, having resisted entropy and escaped Planning Commission approval for more than 40 years now.

This SUP, typewritten in 1973, is the ticket to Taco Bell's "right" to maximal use of its property, neighbors be damned. As such, it is gold to Border Foods. On the other hand, since it has absolutely no conditions on it, it is as worthless as a used burrito wrapper to neighbors and community members who would like the opportunity to know about and respond to plans by Taco Bell to make changes in its operations. No conditions, which are parameters defining the nature and extent of the permitted use? Then no hearings or public input.

Considering how important to Taco Bell's recognition by the City of St. Paul this permit was and remains, it is amazing to the layperson that for many years, no one knew for sure if it was needed or whether or not it existed. Zoning officials seemed to agree that if it did not exist, it was not needed, but that if it was needed, it did exist.

An illuminating email message from Patricia Smith in the zoning department in 2008 said that "at some point the zoning administrator decided that some of these restaurants (Clark's Submarine, Burger Chef, Wendy's, Arby's, McDonald's, and Zantigo {note: precursor to Taco Bell}) were not fast food restaurants, and therefore they only needed a site plan review (not a special use permit)." She said she tried to find out when the drive-through service was added, but "wasn't able to find a record of that in our old history cards."

As of April 18, 2014, current Zoning Administrator Wendy Lane corroborated Patricia Smith's 2008 statement, writing the following to our attorney:

"The Taco Bell fast food restaurant is a use permitted in a T2 district although a conditional use permit was never obtained because one was not required at the time the use was established. It is not a nonconforming use and therefore, it is not subject to Sec. 62.106." {our italics}

But this weird virtual particle of a permit suddenly appeared upon "further research" by zoning department staff within the next couple of weeks in the spring of 2014! (Basement archive? Dusty old metal file cabinet? Where on earth could it have been all those years, and did Taco Bell even have a copy?)

Appendix B
(2 of 7)

In the staff report for the Board of Zoning Appeals for our June 2014 appeal of a decision regarding Taco Bell's possibly nonconforming status following a 2011 change making drive-through lanes a conditional use (file no. 14-289691), item 6 states, "It must be noted that at the time the letter from the Zoning Administrator was written, the conditional use permit for the subject property had not been found. *Upon further research, the 1973 conditional use permit was located and has been provided to the appellants.*" {our italics}

WE GET THE IDEA THAT WHETHER OR NOT THE CUP EXISTED, THE DRIVE-THROUGH WAS A PERMITTED USE PIGGYBACKED ONTO THE PERMITTED FAST-FOOD USE, NOT A NONCONFORMING USE. THAT WAS IMPORTANT TO THE VERY SPECIFIC BZA CASE FOCUSED ON THE EXPANSION OF USE.

STILL, THIS MISSING AND SUDDENLY APPEARING SUP/CUP IS NOW THE BASIS FOR MOST REGULATIONS OR LACK OF REGULATIONS APPLYING TO THIS TACO BELL. THIS MISSING AND SUDDENLY APPEARING SUP/CUP HAS BEEN THE BASIS FOR TACO BELL'S FREE PASS ON RELEVANT CITY CODE. THIS MAKES THE CITY LOOK REALLY DISORGANIZED. THIS MAKES GRANDFATHERING-IN WITH NO TIME LIMIT LOOK LIKE A VERY BAD IDEA.

HALLELUJAH FOR THE CHANCE TO REVISIT THIS TACO BELL AS IT SUBMITS A NEW SITE PLAN FOR APPROVAL WITH VARIANCES AND A NEW CUP FOR ITS DRIVE-THROUGH LANE.

Copies of the emails from Patricia Smith and Wendy Lane and p. 5 of the staff report follow, along with copies of copies of the elusive 1973 SUP and the hearing minutes that preceded it from the BZA hearing packet.

Appendix B
(3 of 7)

From: Russ Stark Russ.Stark@ci.stpaul.mn.us
Subject: Fwd: Re: zoning question
Date: January 9, 2008 at 4:33 PM
To: kves@earthlink.net
Cc: jwang@hamlinmidway.org

||| Samantha Henningson 1/9/2008 2:23 PM >>>
Patricia,

Thank for your thorough response. The history is helpful in moving forward.

Jeff, what are next steps to resolve this issue?

Thanks, be well,
Samantha

Ward 4 Legislative Aide
City of Saint Paul
651-266-8641

||| Patricia James 1/9/2008 12:48 PM >>>
Samantha (and Tom and Jeff H.),

I've looked up the zoning history for this site, and it's quite complicated. It looks like a number of fast food restaurants tried to open up at this site in the 1970's and were turned down because they wanted access from Edmund. Then at some point the zoning administrator determined that some of these restaurants (Clark's Submarine, Burger Chef, Wendy's, Arby's, McDonald's, and Zantigo) were not fast food restaurants, and therefore they only needed site plan review (not a special use permit), and finally that the ban on access from a residential street didn't apply. This decision was appealed to the Board of Zoning Appeals in 1979 by the planning administrator. I don't see the record of the outcome in the files I found, but obviously at some point these establishments were determined to be fast food restaurants since they are all classified that way today.

In any event, it looks like the Taco Bell (formerly Zantigo) opened in 1979 at that site under (as far as I can tell) the determination that they weren't fast food.

I don't know when the drive-through service was added (I wasn't able to find a record of that in our old history cards). However, today's standards for drive-throughs for fast food restaurants state:

(c) Speaker box sounds from the drive-through lane shall not be plainly audible so as to unreasonably disturb the peace and quiet of adjoining residential property. (Sec. 65.513)

I would assume that the existing Taco Bell would need to comply with this standard, even if the drive-through predates the regulation. Plus, as these folks found out, the City has a noise ordinance.

I'm sending this to Jeff Hawkins in DSI, since he does zoning enforcement for the City. Taco Bell should be able to take care of this noise issue on a consistent basis. The DSI enforcement folks can work with them to ensure this. Jeff can let you know about specific enforcement steps that can be taken if this continues to be a problem.
Patricia

confusion
as to need
for/existence
of SUP

Appendix B
(4 of 7)

DEPARTMENT OF SAFETY AND INSPECTIONS
Ricardo X. Cervantes, Director



CITY OF SAINT PAUL
Christopher B. Coleman, Mayor

375 Jackson Street, Suite 220
Saint Paul, Minnesota 55101-1806

Telephone: 651-266-8989
Facsimile: 651-266-9124
Web: www.stpaul.gov/dsi

Via Email: (MarkThieroff@siegelbrill.com)

April 18, 2014

Mark Thieroff
Siegel Brill PA
100 Washington Ave. S., Suite 1300
Minneapolis, MN 55401

Re: 565 N. Snelling Ave.
Taco Bell


Dear Mr. Thieroff:

In response to your recent letter regarding Taco Bell at the referenced site, this property is located in a T2 traditional zoning district. A fast food restaurant with drive-through service is a use allowed in a T2 district; a conditional use permit is required for a new fast food restaurant with drive-through service.

The use of this property as a fast food restaurant was established in 1973 as a permitted use in a commercial zoning district; no conditional use permit was required at the time. When the new zoning code was adopted in 1975, the property was rezoned to B3, which allowed a fast food restaurant but required a conditional use permit for a new fast food restaurant. As part of the Central Corridor and Traditional Neighborhood Zoning Study, this property was rezoned from a B3 to a T2 zoning district in 2011. The Taco Bell fast food restaurant is a use permitted in a T2 district although a conditional use permit was never obtained because one was not required at the time the use was established. It is not a nonconforming use and therefore, it is not subject to Sec. 62.106.

Sec. 61.503 specifically states the circumstances under which a new conditional use permit is required for those uses that required a conditional use permit. Changing the hours of operation for Taco Bell's drive-through service is not a circumstance listed that requires a new conditional use permit. The city has no authority to require Taco Bell to be reviewed by the Planning Commission neither for a conditional use permit nor for a nonconforming use permit.

Sincerely,


Wendy Lane
Zoning Administrator
651-266-9081

cc: Councilmember Russ Stark

4. In a letter dated March 31, 2014, an attorney representing Kristine and Mark Vesley, neighbor's to the subject property and the appellant's here, alleged that Taco Bell was a "nonconforming use" and that by extending its drive-through hours (opening at 7 a.m. rather than 10:00 a.m.) the earlier opening hours constitute an illegal expansion of the subject restaurant's nonconforming use status. See, Exhibit No. 2. The Vesleys contend that the expanded drive-through service hours requires planning commission approval under Sec. 62.106.(d).

5. In response, the Zoning Administrator issued a letter dated April 18, 2014, stating that the use of the property as a restaurant with drive-through service was a conforming use and not a nonconforming use. See, Exhibit No. 3. The Zoning Administrator noted that in the T2 zoning district, a restaurant with drive-through service is a permitted use. The letter further noted that if a new drive-through service is proposed, a conditional use permit would be required for the drive-through.

6. Leg. Code § 61.503 lists the circumstances under which a new conditional use permit is required. Changing the hours of operation is not one of the circumstances listed. It must be noted that at the time the letter from the Zoning Administrator was written, the conditional use permit for the subject property had not been found. Upon further research, the 1973 conditional use permit was located and has been provided to the appellants.

7. The appellants disagreed with the Zoning Administrator's April 18, 2014 determination regarding the use status of the subject fast food restaurant and on April 28, 2014, filed an appeal of the Zoning Administrator's decision claiming that the Administrator is in error and that the subject fast food restaurant is in fact a nonconforming use under the T2 zoning classification and that expanding the hours of operation of the drive-through service requires planning commission approval. See, Exhibit No. 4.

8. Based upon the foregoing staff recommends that the Board finds that there was no error in the Zoning Administrator's decision. The original fast food restaurant use was a permitted use with a conditional use permit. All subsequent fast food restaurants have operated subject to the original conditional use permit. The subsequent addition of the drive-through service was in all likelihood done after the property was rezoned to B3 but required no additional zoning permitting because the drive-through service complied with the standards and conditions for fast-food drive-through windows in a B3 zoning district. Therefore, the drive-through service was a permitted use subject to a conditional use permit and the property held conditional use permit. Thus, the property was a conforming use. The 2011 amendments to the zoning code which changed the zoning classification of the subject property did not change the underlying classification of the use: the fast-food restaurant with a drive-through window remains as a conforming use and is not subject to the review required for the expansion of a nonconforming use.

CUP
had
not
been
deemed
needed
until
found
=
chaos
and
shaky
ground

Exhibit No. 1

FILE
14-289691

ST. PAUL ZONING BOARD

A special use permit was approved for the facility as indicated below. Along with respective copies of this form containing the information presented below, copies of the final plan were delivered to the Division of Housing and Building Code Enforcement, to the Division of Operations of the Department of Public Works and to the applicant.

Date : November 21, 1973

Zoning File number: 7545

Applicant's name : Construction 70

address: 1430 W. County Road C 55111

Purpose : Fast Food Restaurant

Location : Southwest corner of Edmunds and Juelling

Legal description : Lots 1-7, Block 2, R. H. Thompson's Addition; Lots 1-4, Block 1, Stierle, McDonnell & Seeger's Midway Addition.

Plans approved : 11/12/73

Final plans dated : 09/11/73
received :

Comments :

SPECIAL USE PERMIT APPROVAL

56

Exhibit No.1

FILE
79-289691

Appendix B (7 & 7)

MINUTES OF THE PUBLIC HEARING BEFORE THE BOARD OF ZONING
ON THURSDAY, SEPTEMBER 6, 1973, AT 2:00 P.M.

PRESENT: Messrs. Norton and Cockrane; Messrs. Willits, Madden and Rupp of the Board;
Mr. Rosetter and Mrs. Barriault of the Planning Department Staff.

CONSTRUCTION 70 (7543): An application for a permit for a fast food restaurant on property located on the southwest corner of Edmund and Snelling.

Mr. Rosetter read the staff report for this matter. He explained the changes that had to be made to the plan to meet design standards and explained why they had to be made. He said he also requested a 4-foot high screen fence on the alley line because of the residential area behind it. The Traffic Engineer also wanted some traffic control devices installed if the driveways remain the way they are.

Mr. Gordon Weber, representing Zepeta, briefly explained the operation and said this would be an improvement over the car wash that was in there.

Mr. Willits asked if the car wash will be removed.

Mr. Weber said the building will stay but the pumps will come down.

Mr. Rupp asked about the hours.

HOURS: Mr. Weber said they would be 11 in the morning to 11 at night during the week and 11 to 1 or 2 a.m. on weekends, depending on the business they get.

Mr. Merrill Robinson, representing Hauke Community Association, said they have a policy of opposition to fast food restaurants going in the area.

Mr. Madden asked if a higher redwood weave fence would be better.

Mr. Robinson said if this did go in, he would like to see a 6-foot fence or shrubbery.

Mr. Weber said he could see no problem with this. He said they usually place shrubbery behind the fence.

Mrs. Norton wondered how high the house behind it was, how much a 6-foot fence would hide the business.

Mr. Weber said they would plant trees in there now and eventually they would buffer the area better than a fence.

Mrs. Cockrane moved they recommend approval of the permit subject to the recommendations of the staff. She said she shared the feelings of Mr. Robinson, but they do want to meet all the requirements. The motion was seconded by Mr. Rosetter. The motion carried unanimously.

Submitted by:

Paul L. Rosetter
Paul L. Rosetter

Approved by:

William H. Rupp, Jr.
William H. Rupp, Jr.

58

Appendix C
(1 of 6)

Saint Paul Police Department Address/Intersection Report

Address Search: 565 SNELLING AV N
Incident date from 07/11/2012 to 07/11/2015
(Sector 1, Grid 84)

Total Records: 165

Complaint #	Occur Date & Time	House No	Apt#	Incident Type	Dispo
15144205	07/09/2015 13:33:00	565		DRUGS-NARCOTICS	GOA
15139080	07/03/2015 17:19:42	565		DISTURBANCE-DISORDERLY BOYS,GIRLS,PERSONS	GOA
15138661	07/03/2015 02:19:31	565		DISTURBANCE-DISORDERLY BOYS,GIRLS,PERSONS	ADV
15138564	07/02/2015 23:46:58	565		DISTURBANCE-DISORDERLY BOYS,GIRLS,PERSONS	GOA
15138333	07/02/2015 19:53:08	565		DISTURBANCE-DISORDERLY BOYS,GIRLS,PERSONS	GOA
15135352	06/29/2015 15:24:09	565		DRUGS-NARCOTICS	ADV
15134116	06/27/2015 23:03:41	565		INVESTIGATE-AND ALL OTHER	Unfou
15133342	06/27/2015 02:31:58	565		DISTURBANCE-DISORDERLY BOYS,GIRLS,PERSONS	GOA
15130527	06/24/2015 00:50:08	565		DISTURBANCE-DISTURBANCE CALLS	Unfou
15130127	06/23/2015 16:21:28	565		DISTURBANCE-DISTURBANCE CALLS	GOA
15129724	06/23/2015 06:46:01	565		DISTURBANCE-DISTURBANCE CALLS	GOA
15126802	06/19/2015 15:37:31	565		INVESTIGATE -JUVENILE	GOA
15125178	06/17/2015 19:23:32	565		MISSING PERSONS	ADV
15123521	06/15/2015 19:21:50	565		DISTURBANCE-FIGHTS	GOA
15122366	06/14/2015 02:40:11	565		INVESTIGATE -JUVENILE	GOA
15122166	06/13/2015 22:05:00	565		AGG ASSAULT-W/KNIFE,CUTTING INSTRUMENT,ETC	RR
15121435	06/12/2015 22:48:46	565		DISTURBANCE-DISTURBANCE CALLS	ADV
15121024	06/12/2015 13:29:13	565		DISTURBANCE-DISORDERLY BOYS,GIRLS,PERSONS	GOA
15120231	06/11/2015 12:54:49	565		DISTURBANCE-DISORDERLY BOYS,GIRLS,PERSONS	ADV
15119849	06/10/2015 21:53:54	565		DISTURBANCE-DISTURBANCE CALLS	ADV
15118905	06/09/2015 22:59:59	565		DISTURBANCE-DISTURBANCE CALLS	ADV
15118642	06/09/2015 16:57:22	565		INVESTIGATE -JUVENILE	GOA
15118370	06/09/2015 11:26:05	565		POLICE VISIT-PROACTIVE POLICE VISIT	ADV
15112995	06/02/2015 22:30:39	565		DISTURBANCE-DISORDERLY BOYS,GIRLS,PERSONS	ADV
15112769	06/02/2015 17:51:28	565		POLICE VISIT-PROACTIVE POLICE VISIT	ADV
15111277	05/31/2015 21:10:41	565		DISTURBANCE-FIGHTS	GOA
15110777	05/31/2015 03:27:30	565		OTHER ASSAULTS	GOA
15101687	05/19/2015 16:09:06	565		INVESTIGATE -JUVENILE	ADV
15099768	05/17/2015 03:48:47	565		DISTURBANCE-DISORDERLY BOYS,GIRLS,PERSONS	ADV

Appendix C
(2 of 6)

Saint Paul Police Department Address/Intersection Report

Address Search: 565 SNELLING AV N
Incident date from 07/11/2012 to 07/11/2015
(Sector 1, Grid 84)

Total Records: 165

Complaint #	Occur Date & Time	House No	Apt#	Incident Type	Dispo
15088573	05/03/2015 00:25:55	565		DISTURBANCE-DISORDERLY BOYS,GIRLS,PERSONS	GOA
15084085	04/27/2015 14:57:23	565		DISTURBANCE-SUSPICIOUS PERSON, CAR, ACTIVITY	GOA
15082771	04/25/2015 16:47:25	565		DISTURBANCE-DISORDERLY BOYS,GIRLS,PERSONS	GOA
15077892	04/18/2015 21:44:27	565		DISTURBANCE-FIGHTS	CAN
15076578	04/17/2015 09:50:49	565		INVESTIGATE-AND ALL OTHER	ADV
15075581	04/16/2015 00:58:09	565		DISTURBANCE-DISTURBANCE CALLS	CAN
15066465	04/03/2015 03:14:47	565		DISTURBANCE-DISTURBANCE CALLS	GOA
15060057	03/24/2015 23:21:22	565		DRUNKENNESS	ADV
15059220	03/23/2015 22:45:40	565		INVESTIGATE -JUVENILE	ADV
15059100	03/23/2015 19:13:20	565		DISTURBANCE-DISORDERLY BOYS,GIRLS,PERSONS	ADV
15057088	03/20/2015 20:56:53	565		DISTURBANCE-DISTURBANCE CALLS	ADV
15049039	03/10/2015 15:42:01	565		PREVIOUS CN	PCN
15043772	03/03/2015 10:26:00	565		TRAFFIC ACCIDENT-PERSONAL INJURY	RR
15041765	02/28/2015 12:53:51	565		911 HANGUP	GOA
15037493	02/22/2015 13:38:29	565		TRAFFIC ACCIDENT-PROPERTY DAMAGE ACCIDENT	ADV
15034489	02/18/2015 05:17:24	565		ASS-ASSIST FIRE/AMBULANCE	ADV
15010179	01/16/2015 00:00:00	565		WEAPONS-POSS FIREARM BY FELON	RR
15003363	01/06/2015 01:07:46	565		DISTURBANCE-DISTURBANCE CALLS	ADV
15003303	01/05/2015 22:56:15	565		DISTURBANCE-DISTURBANCE CALLS	ADV
15000796	01/02/2015 05:17:37	565		DISTURBANCE-DISTURBANCE CALLS	CAN
15000770	01/02/2015 03:04:47	565		TRAFFIC VIOLATION-OTHER PARKING VIOLATIONS	ADV
14276799	12/24/2014 16:51:00	565		WARRANT-OOC WARRANT SERVED	RR
14266158	12/09/2014 16:09:21	565		DISTURBANCE-SUSPICIOUS PERSON, CAR, ACTIVITY	CAN
14264468	12/07/2014 02:08:07	565		INVESTIGATE-CIVIL PROBLEM	ADV
14249158	11/15/2014 16:19:01	565		DISTURBANCE-DISORDERLY BOYS,GIRLS,PERSONS	GOA
14246941	11/12/2014 16:36:39	565		DISTURBANCE-FIGHTS	GOA
14244951	11/09/2014 15:30:32	565		INVESTIGATE -JUVENILE	GOA
14240478	11/03/2014 19:58:52	565		INVESTIGATE -JUVENILE	ADV
14226106	10/17/2014 02:10:35	565		DISTURBANCE-DISTURBANCE CALLS	GOA
14210909	09/28/2014 02:28:25	565		DISTURBANCE-DISORDERLY BOYS,GIRLS,PERSONS	GOA

Saint Paul Police Department Address/Intersection Report

Appendix C
(3 of 6)

Address Search: 565 SNELLING AV N
Incident date from 07/11/2012 to 07/11/2015
(Sector 1, Grid 84)

Total Records: 165

Complaint #	Occur Date & Time	House No	Apt#	Incident Type	Dispo
14209649	09/26/2014 21:30:06	565		DISTURBANCE-DISTURBANCE CALLS	GOA
14209606	09/26/2014 20:56:35	565		DISTURBANCE-DISTURBANCE CALLS	CAN
14207624	09/24/2014 17:14:42	565		DISTURBANCE-DISTURBANCE CALLS	GOA
14198134	09/13/2014 20:43:07	565		DISTURBANCE-DISTURBANCE CALLS	GOA
14195673	09/11/2014 00:51:58	565		DRUNKENNESS	CAN
14192296	09/06/2014 21:19:33	565		CHECK WELFARE	ADV
14192053	09/06/2014 17:01:39	565		DISTURBANCE-DISTURBANCE CALLS	CAN
14191639	09/06/2014 02:42:19	565		DISTURBANCE-SUSPICIOUS PERSON, CAR, ACTIVITY	GOA
14188599	09/02/2014 19:01:48	565		DISTURBANCE-DISORDERLY BOYS, GIRLS, PERSONS	ADV
14186320	08/31/2014 01:48:16	565		FAMILY/CHILDREN-MENTAL/VULNERABLE ADULT	ADV
14183973	08/28/2014 14:27:13	565		DWI-COMBINATION OF ALCOHOL AND DRUGS	GOA
14168782	08/11/2014 03:18:50	565		DISTURBANCE-SUSPICIOUS PERSON, CAR, ACTIVITY	GOA
14167062	08/09/2014 01:55:02	565		DISTURBANCE-DISTURBANCE CALLS	GOA
14166065	08/08/2014 01:11:16	565		DISTURBANCE-DISORDERLY BOYS, GIRLS, PERSONS	GOA
14161547	08/02/2014 22:00:32	565		ASS-ASSIST FIRE/AMBULANCE	SNR
14156604	07/28/2014 02:14:00	565		INVESTIGATE-AND ALL OTHER	RR
14155512	07/26/2014 18:14:42	565		ASS-ASSIST FIRE/AMBULANCE	DTX
14143763	07/13/2014 03:11:58	565		DISTURBANCE-DISTURBANCE CALLS	GOA
14135884	07/04/2014 02:31:11	565		911 HANGUP	GOA
14126040	06/22/2014 13:30:30	565		PREVIOUS CN	PCN
14121939	06/17/2014 19:53:47	565		FAMILY/CHILDREN-MENTAL/VULNERABLE ADULT	GOA
14117976	06/13/2014 04:16:09	565		DISTURBANCE-DISTURBANCE CALLS	Unfou
14116004	06/10/2014 19:24:30	565		DISTURBANCE-SUSPICIOUS PERSON, CAR, ACTIVITY	GOA
14115399	06/10/2014 04:41:43	565		DISTURBANCE-DISTURBANCE CALLS	ADV
14115396	06/10/2014 04:22:00	565		INVESTIGATE-AND ALL OTHER	RR
14115392	06/10/2014 04:07:17	565		DISTURBANCE-DISTURBANCE CALLS	ADV
14113917	06/08/2014 07:56:56	565		DISTURBANCE-DISTURBANCE CALLS	GOA
14111058	06/04/2014 22:26:53	565		FAMILY/CHILDREN-MENTAL/VULNERABLE ADULT	SNR
14110282	06/04/2014 00:33:00	565		INVESTIGATE-AND ALL OTHER	RR
14109948	06/03/2014 17:10:18	565		DRUGS-NARCOTICS	GOA
14109487	06/03/2014 05:08:54	565		POLICE VISIT-PROACTIVE POLICE VISIT	GOA

Appendix C
(4 of 6)

Saint Paul Police Department Address/Intersection Report

Address Search: 565 SNELLING AV N
Incident date from 07/11/2012 to 07/11/2015
(Sector 1, Grid 84)

Total Records: 165

Complaint #	Occur Date & Time	House No	Apt#	Incident Type	Dispo
14109482	06/03/2014 04:26:28	565		DISTURBANCE-DISTURBANCE CALLS	SNR
14108693	06/02/2014 04:50:35	565		DISTURBANCE-DISTURBANCE CALLS	ADV
14107045	05/31/2014 02:09:53	565		DISTURBANCE-DISORDERLY BOYS,GIRLS,PERSONS	CAN
14106597	05/30/2014 17:17:28	565		DISTURBANCE-DISORDERLY BOYS,GIRLS,PERSONS	ADV
14106088	05/30/2014 04:15:45	565		DISTURBANCE-DISTURBANCE CALLS	ADV
14104038	05/27/2014 23:36:53	565		DISTURBANCE-FIGHTS	GOA
14097846	05/20/2014 14:37:25	565		DISTURBANCE-DISORDERLY BOYS,GIRLS,PERSONS	ADV
14097072	05/19/2014 12:36:57	565		DISTURBANCE-DISTURBANCE CALLS	ADV
14092033	05/13/2014 00:50:00	565		INVESTIGATE-AND ALL OTHER	RR
14086597	05/05/2014 19:21:43	565		DISTURBANCE-FIGHTS	CAN
14085509	05/04/2014 03:14:44	565		DISTURBANCE-DISTURBANCE CALLS	Unfou
14083601	05/02/2014 03:10:20	565		INVESTIGATE-AND ALL OTHER	ADV
14081698	04/29/2014 13:59:36	565		PREVIOUS CN	PCN
14080306	04/27/2014 04:14:14	565		DISTURBANCE-DISTURBANCE CALLS	GOA
14076886	04/22/2014 17:34:15	565		DISTURBANCE-DISTURBANCE CALLS	ADV
14075862	04/21/2014 09:54:53	565		POLICE VISIT-PROACTIVE POLICE VISIT	ADV
14075135	04/20/2014 03:17:18	565		DISTURBANCE-DISTURBANCE CALLS	GOA
14075085	04/20/2014 01:11:59	565		DISTURBANCE-DISTURBANCE CALLS	ADV
14074807	04/19/2014 18:14:21	565		TRAFFIC ACCIDENT-PROPERTY DAMAGE,HIT & RUN	ADV
14074327	04/18/2014 23:09:08	565		DISTURBANCE-DISORDERLY BOYS,GIRLS,PERSONS	GOA
14069587	04/12/2014 18:35:03	565		DISTURBANCE-DISORDERLY BOYS,GIRLS,PERSONS	CAN
14068717	04/11/2014 18:25:26	565		DISTURBANCE-DISTURBANCE CALLS	ADV
14066304	04/08/2014 15:08:34	565		DISTURBANCE-DISTURBANCE CALLS	ADV
14059588	03/30/2014 01:34:48	565		DISTURBANCE-DISTURBANCE CALLS	Unfou
14059345	03/29/2014 20:04:46	565		ASS-ASSIST FIRE/AMBULANCE	ADV
14054603	03/23/2014 01:57:22	565		DWI-COMBINATION OF ALCOHOL AND DRUGS	GOA
14051752	03/19/2014 12:57:04	565		DISTURBANCE-DISORDERLY BOYS,GIRLS,PERSONS	ADV
14051212	03/18/2014 15:38:32	565		DISTURBANCE-DISORDERLY BOYS,GIRLS,PERSONS	CAN
14050031	03/17/2014 00:16:22	565		INVESTIGATE-CIVIL PROBLEM	ADV
14046893	03/12/2014 13:29:35	565		DISTURBANCE-DISORDERLY BOYS,GIRLS,PERSONS	ADV

Appendix C
(5 of 6)

Saint Paul Police Department Address/Intersection Report

Address Search: 565 SNELLING AV N
Incident date from 07/11/2012 to 07/11/2015
(Sector 1, Grid 84)

Total Records: 165

Complaint #	Occur Date & Time	House No	Apt#	Incident Type	Dispo
14044767	03/09/2014 04:37:37	565		DRUNKENNESS	ADV
14044110	03/08/2014 06:40:00	565		ALARMS	RR
14039996	03/02/2014 01:29:06	565		911 HANGUP	ADV
14039390	03/01/2014 01:43:33	565		DWI-COMBINATION OF ALCOHOL AND DRUGS GOA	
14035380	02/23/2014 00:16:40	565		TRAFFIC-STOP/ADVISE	ADV
14030686	02/16/2014 00:47:43	565		DISTURBANCE-DISTURBANCE CALLS	ADV
14025131	02/07/2014 22:17:50	565		DRUNKENNESS	ADV
14021766	02/03/2014 05:49:00	565		ALARMS	RR
14009695	01/16/2014 02:43:57	565		DISTURBANCE-SUSPICIOUS PERSON, CAR, ACTIVITY	ADV
14009237	01/15/2014 13:57:25	565		OTHER ASSAULTS	GOA
14004509	01/08/2014 15:53:00	565		ALARMS	RR
13266069	12/14/2013 22:30:28	565		DRUNKENNESS	DTX
13261818	12/09/2013 01:13:45	565		DISTURBANCE-DISTURBANCE CALLS	ADV
13244722	11/13/2013 22:38:16	565		DISTURBANCE-DISORDERLY BOYS,GIRLS,PERSONS	ADV
13240364	11/07/2013 15:21:05	565		TRAFFIC VIOLATION-OTHER PARKING VIOLATIONS	CAN
13237233	11/03/2013 02:07:09	565		DISTURBANCE-SUSPICIOUS PERSON, CAR, ACTIVITY	GOA
13226909	10/20/2013 04:31:52	565		DISTURBANCE-DISTURBANCE CALLS	Unfou
13220430	10/11/2013 13:43:35	565		PREVIOUS CN	PCN
13220300	10/11/2013 10:40:00	565		ROBBERY-MISC.,STRONG ARM	RR
13214054	10/03/2013 00:55:26	565		DISTURBANCE-SUSPICIOUS PERSON, CAR, ACTIVITY	ADV
13196612	09/11/2013 15:55:16	565		FRAUD	ADV
13142299	07/09/2013 23:49:37	565		DISTURBANCE-DISORDERLY BOYS,GIRLS,PERSONS	ADV
13138991	07/05/2013 22:02:24	565		DISTURBANCE-DISORDERLY BOYS,GIRLS,PERSONS	GOA
13136824	06/30/2013 23:30:00	565		THEFT-ALL OTHER,UNDER \$500	RR
13128830	06/24/2013 03:13:00	565		DISTURBANCE-DISTURBANCE CALLS	ADV
13125160	06/19/2013 19:17:15	565		DRUNKENNESS	ADV
13125151	06/19/2013 19:08:29	565		DISTURBANCE-FIGHTS	SNR
13106378	05/28/2013 17:47:02	565		DISTURBANCE-DISORDERLY BOYS,GIRLS,PERSONS	ADV
13086887	05/03/2013 20:48:32	565		DISTURBANCE-SUSPICIOUS PERSON, CAR, ACTIVITY	GOA
13083451	04/29/2013 03:12:35	565		DWI-COMBINATION OF ALCOHOL AND DRUGS GOA	

Appendix C
(6 of 6)

Saint Paul Police Department Address/Intersection Report

Address Search: 565 SNELLING AV N
Incident date from 07/11/2012 to 07/11/2015
(Sector 1, Grid 84)

Total Records: 165

Complaint #	Occur Date & Time	House No	Apt#	Incident Type	Dispo
13049874	03/13/2013 19:42:17	565		FAMILY/CHILDREN-MENTAL/VULNERABLE ADULT	ADV
13043884	03/05/2013 02:40:55	565		DISTURBANCE-DISORDERLY BOYS,GIRLS,PERSONS	ADV
13035786	02/21/2013 16:24:13	565		DRUNKENNESS	DTX
13029989	02/13/2013 13:20:57	565		CHECK WELFARE	ADV
13003412	01/05/2013 23:47:31	565		DISTURBANCE-DISTURBANCE CALLS	ADV
12303250	12/28/2012 18:50:03	565		DRUNKENNESS	DTX
12285844	12/05/2012 15:27:56	565		DISTURBANCE-DISORDERLY BOYS,GIRLS,PERSONS	GOA
12284546	12/03/2012 23:19:21	565		DWI-COMBINATION OF ALCOHOL AND DRUGS	GOA
12256823	10/28/2012 18:13:42	565		THEFT EXCEPT AUTO THEFT	CAN
12256822	10/28/2012 18:11:00	565		ROBBERY-HIGHWAY,STRONG ARM	RR
12248855	10/18/2012 14:07:28	565		DISTURBANCE-DISTURBANCE CALLS	ADV
12231982	09/28/2012 15:12:51	565		DISTURBANCE-SUSPICIOUS PERSON, CAR, ACTIVITY	ADV
12188406	08/08/2012 17:53:10	565		POLICE VISIT-PROACTIVE POLICE VISIT	ADV
12177224	07/26/2012 20:06:00	565		WARRANT ARREST-WHERE NO CN IS REF ON RR WARRANT	
12164826	07/12/2012 17:09:55	565		DRUGS-NARCOTICS	GOA

Appendix D
(1 of 8)

Monday, July 13, 2015

Hello, Jake —

Please forward this email message to the members of the St. Paul Zoning Committee as Appendix D of our testimony regarding file number 15-134559 (Border Foods/Taco Bell at 565 N. Snelling Avenue): Videos of related noise and nuisance taken from our property.

Let us know if there are problems with the format that need to be fixed.

Thank you,
Kristine and Mark Vesley

To the Zoning Committee:

We have thus far submitted written testimony that was to be included in the hard copy of the application/staff report packet for file number 15-134559. Because we want to make sure all Zoning Committee members have a chance to see and hear the nature of much of the nuisance activity at Taco Bell at 565 N. Snelling Avenue, we also wish to submit live links to relevant videos that we have posted on-line.

Below are 38 videos of the Taco Bell parking lot and grounds taken mostly from the two upper-story windows on the east side of our house, directly facing Taco Bell. Most were taken in 2013 and 2014 (at the suggestion of a friend; it had not occurred to us to document in this way before), and there are many more where these came from. As you can see, the alley that separates our property is just the standard 12-plus feet wide. We seldom are able to enjoy the use of our yard because of the constant noise from Taco Bell's intensive use of its site. We also are often unable to enjoy quiet inside our

house that we believe should be expected in a residentially zoned neighborhood. [As our property is on a hill, or rise, above both the alley and Taco Bell, we look directly down into Taco Bell's parking lot even from the first floor of our house. Therefore, the 6-foot fence and shrubbery proposed are inadequate as a buffer, as you will be able to see. Even the jungle of so-called junk trees that we have allowed to grow on our property between our fence and the alley screens only partially, and we have plans to clear that area and re-plant it as a productive mini alley orchard for urban fruit foraging.]

The videos show various sources of nuisance by category: the ordering kiosk speaker box; loud car engines; loud car radios; loud customer voices; car horns; urinating customers (usually when the building is closed and only the drive-through lane is open); leaf blowers (which come for maintenance in all seasons); garbage take-out and pick-up; and delivery truck unloading and generator noise.

While viewing and listening to some of these videos, please bear in mind that Border Foods has known about the sources of noise and nuisance (criminal conduct sometimes overlaps) for many years and chosen not to eliminate or reduce them voluntarily, and of course it is difficult to "control" the source of bad customer behavior in a parking lot and drive-through lane when employees are inside.

Attempts to seek enforcement by the Department of Safety and Inspections and the Police Department have been difficult and frustrating. We believe that promises of improvement in a rebuilt Taco Bell site cannot be trusted and that relying on City departments for the enforcement of regularly occurring, built-into-the-business-operation violations of City code is impractical.

We believe the noise we currently experience goes far beyond, in volume and number of hours per day, what residential property owners in a mixed-use area of a city should have to accept. We use the term "mixed use" loosely, knowing there is officially no such designation here. Overall, the City's zoning code recognizes a need to balance the rights and interests of businesses with those of adjacent residential properties. The Taco Bell at 565 N. Snelling does not currently meet the standards set by zoning code to achieve that balance. The site plans in the application for a rebuilt Taco Bell

also do not meet those standards. Not only is the drive-through lane as proposed longer to accommodate more loud and idling cars than does the current one; it is closer to our property and thus further from complying with 65.513(a). The garbage area remains in the same location at the back of Taco Bell's lot where it will offend no one on Snelling or Edmund Avenues; instead it sits right behind our driveway and the southeastern corner of our yard, where we have a shade garden planted and bench installed.

As we will state whenever we get the chance, we believe that significantly reduced hours of operation, and no hours of drive-through operation with the building closed, would mitigate the modification for 65.513(a)—that is, closing both restaurant and drive-through no later than midnight Sunday through Thursday and 1:00am Friday and Saturday. We also will request a condition on garbage-related activity, including both garbage take-out by employees and hauling by vendor (see videos #34 through #36; we have not called attention to this category of noise elsewhere).

Thank you for attending to portions of our multimedia testimony.

Please note that we only own a point-and-shoot digital camera and that no audio is amplified; what you hear is what the camera's one setting has picked up. In a few cases it is obvious I am zooming in and out, but most of the time the distance is "natural." Most but not all of these videos are short, around one minute long. Some of these videos may offend. Sorry, but they offend us, too. Humor is also present in some. I regret some of my voiceover narration, but hearing my voice directly behind the camera does serve to provide a basis for comparing the noise from Taco Bell at points 25, 40, and 60 feet away.

Sincerely,
Kristine (and Mark) Vesley
1598 Edmund Avenue
St. Paul, MN 55104
651.645.2606

SPEAKER BOX NOISE

1. Video documenting unacceptable volume of speaker box

<https://www.youtube.com/watch?v=fvpquqwBIt4>

2. Video of loud male worker violating the standard of a "not plainly audible" speaker box

<https://www.youtube.com/watch?v=LvLzfFvQ34>

3. Video of even louder use of speaker box

<https://www.youtube.com/watch?v=bNGCMOlurM>

4. Video of loud female worker

<https://www.youtube.com/watch?v=7XhhBui44Aw>

5. Video 2 of loud female worker

<https://www.youtube.com/watch?v=3T3rZmJzmAo>

6. Video of loudest female worker

<https://www.youtube.com/watch?v=LM8C98mmJhg>

7. Video of daytime loudness

<https://www.youtube.com/watch?v=LeiEal27GA0>

8. Video of worker telling me via phone that frontline employees may not control volume of speaker box

<https://www.youtube.com/watch?v=THygPyydoLc>

BOOM CAR AND VEHICLE NOISE

9. Video of obnoxious boom car

<https://www.youtube.com/watch?v=TX9Q42Qa9r0>

10. Video of really offensive boom car

<https://www.youtube.com/watch?v=g9vFA-zktsY>

11. Video of typical boom car

<https://www.youtube.com/watch?v=XGpB5H24W8g>

12. Video of loud car stereo

<https://www.youtube.com/watch?v=zHGj7vTb2Qo>

13. Video of honking and revving

<https://www.youtube.com/watch?v=zgNe2w2c460>

14. Video of customer honking late at night when service slows and staff are fewer

<https://www.youtube.com/watch?v=qsnbPK4aQ1Q>

15. Video of a throb car

<https://www.youtube.com/watch?v=UPRBqENits4>

16. Video of a daytime boom car

<https://www.youtube.com/watch?v=WM6QxaDZ3NQ>

17. Video showing typical number of cars in late-night drive-through lane

<https://www.youtube.com/watch?v=X4Rlz-ns8Aw>

18. Video of Taco Bell customer's truck parked in front of house/leaving

<https://www.youtube.com/watch?v=WvHSQfsAddw>

PUBLIC URINATION IN ABSENCE OF TOILETS

19. Video of swearing urinator

<https://www.youtube.com/watch?v=MDD2MI1bxfI>

(Appendix D)
(6 of 8)

20. Video of mouthing-off urinator

<https://www.youtube.com/watch?v=7QjkulDsJBM>

21. Video of woman yelling "I gotta pee" when restaurant/restrooms are closed

<https://www.youtube.com/watch?v=z06fiUTDiHs>

22. Video of nice man peeing right under our bedroom window in the middle of the night and admitting his girlfriend had also done it

<https://www.youtube.com/watch?v=UqoLOtmFzI0>

CUSTOMER VOICES/YELLING

23. Video of loud drive-through customers

<https://www.youtube.com/watch?v=GfLICNYcGa4>

24. Video of couple yelling/fighting in parking lot

<https://www.youtube.com/watch?v=khBjm5gwX4I>

25. Video of couple fight escalating

https://www.youtube.com/watch?v=d1b4NQIq_Zo

26. Video of customer yelling her order at kiosk

https://www.youtube.com/channel/UCsFhSlq6kVATlwC_aT3OsVg

27. Video of street party by Taco Bell

<https://www.youtube.com/watch?v=ovAGNGLoPpc>

28. Video of yelling teens

<https://www.youtube.com/watch?v=4QNL1S037I4>

29. Video of the general loud scene, very typical

https://www.youtube.com/watch?v=f_jdTWSEf6U

30. Video of partying St. Thomas boys

<https://www.youtube.com/watch?v=K2IAGcKMZ-U>

BUSINESS OPERATION NOISE

31. Video of early morning supplies delivery truck dolly clang

<https://www.youtube.com/watch?v=CygD2Wd5nIE>

32. Video of amazingly loud delivery truck departure

<https://www.youtube.com/watch?v=7hTFT44CR-M>

33. Video of Easter morning early delivery

https://www.youtube.com/watch?v=0P_mqPHV0Q

34. Video of (illegal) 4:00am garbage pickup

<https://www.youtube.com/watch?v=L4VtSwzp8L4>

35. Video of worker dragging garbage can over gravelly lot

<https://www.youtube.com/watch?v=llh3uAI4N2s>

36. Video of even louder trash take-out

<https://www.youtube.com/watch?v=NhTeZwyM5qA>

37. Video of Taco Bell leaf blowers (usually 3 or 4 at a time)

<https://www.youtube.com/watch?v=hvQ4BYdbng4>

MISC.

38. Video of possible drug deal in Taco Bell parking lot

<https://www.youtube.com/watch?v=bVh7ijHCNJM>

PHOTOS

Submitted by:
Kristine Vesley
1598 Edmund Ave



Photo of 1598 Edmund Avenue



Photo of Large Bus Parked in front of 1598 Edmund Avenue while Driver Goes to Taco Bell for Lunch
(Note house across street for scale)



Photo of the Alley between Our House and Taco Bell Showing House atop Several-Foot Rise
(slope outside of fence line is mostly ours, with approximately one foot belonging to the right-of-way)

2F# 15-134-559
Taco Bell
Oppose

From: Kristine Vesley [mailto:kristinevesley@icloud.com]

Sent: Wednesday, July 15, 2015 2:24 PM

To: Reilly, Jake (CI-StPaul)

Subject: Short Electronic Testimony on Pollution: Noise and Auto-Emitted for Taco Bell CUP Application

Jake, would you be willing to forward this email to the Zoning Committee to remind them of the

(1) noise pollution impacts of drive-through restaurants, especially ones near heavily used highways, that raise speakerbox volumes to compensate for, or overcome, traffic noise, and

(2) increased exhaust emitted from idling vehicles in drive-through lanes?

I believe this is relevant to 61.501(c) in City code regarding endangering public health, safety, and general welfare — in particular near Snelling and University, one of the busiest and most polluted intersections in Minnesota. By itself, one drive-through may not technically endanger, but there is a cumulative effect that should be considered at every opportunity. Who is to say which source pushes a problem past the tipping point?

Sources of information:

(1)

<http://ehp.niehs.nih.gov/1307272/>

(2)

"In a given year, U.S. cars burn some 1.4 billion gallons of fuel just idling. Not to mention idling trucks, which waste another 1.5 billion gallons. Collectively, we emit about 58 million tons of carbon dioxide while we're essentially doing nothing.

Taking the fast-food industry as an example, and taking into account that the average McDonald's drive-through wait is 159 seconds, we can calculate that the company's consumers burn some 7.25 million gallons of gas each year. The figure for the entire U.S. fast-food industry? Roughly 50 million gallons."

(source: Sierra Club, 2009; <http://blogs.sierraclub.org/mrgreen/2009/02/advice-about-recreational-eating-.html>)

If not, I understand that it's now the day before the hearing, and I can try to raise the pollution issues in oral testimony if no one else does.

Thank you,
Kristine Vesley
1598 Edmund Avenue
St. Paul, MN 55104

15-134-359
Taco Bell

**CONDITIONS WE WOULD LIKE TO SEE ON ANY PERMIT
FOR A NEW TACO BELL RESTAURANT AND DRIVE-
THROUGH LANE AT 565 N. SNELLING**

1. Closing hour no later than midnight Sunday through Thursday and 1:00am Friday and Saturday.
2. Changes to garbage takeout by staff (quieter or less often) and later garbage pickup by commercial hauler OR better garbage area location on lot.
3. On-street semi delivery and unloading of supplies.
4. Expiration date or permit renewal requirement in five years in acknowledgment of changing station area and district.
5. Good treatment of any affected current late-night workers to include job offers at other sites and/or job-seeking help plus a generous interim or severance payment.

Submitted by:
Mark K Vesley
1598 Edmund

Langer, Samantha (CI-StPaul)

From: Kristine Vesley <kristinevesley@gmail.com>
Sent: Monday, July 20, 2015 12:01 AM
To: Langer, Samantha (CI-StPaul)
Subject: Photos Shown at Hearing on Taco Bell on Thursday

and intended as submitted testimony — I am sending them now assuming you will be able to include them in the post-hearing documents (see my email “One Last Question for You”) because I won’t be in to do so before 1:00pm Monday:



Puddle of urine left by female customer behind Taco Bell by air conditioner.

Submitted by:
Mark Vesley



Vomit left by car passenger in Taco Bell drive-through lane



Intoxicated customer behind Taco Bell awaiting police



“Pee trail” left behind in parking spot at Taco Bell



Taco Bell drive-through "stack" after 2:00am: at least 9 cars (which, in new configuration, would drive around perimeter of lot about 15 feet from our property)

MINUTES OF THE ZONING COMMITTEE

Thursday, July 16, 2015 - 3:30 p.m.

City Council Chambers, 3rd Floor

City Hall and Court House

15 West Kellogg Boulevard

PRESENT: Edgerton, Merrigan, Reveal, Wencil, and Wickiser

EXCUSED: Makarios, Nelson, and Padilla

STAFF: Jamie Radel, Samantha Langer, Allan Torstenson, and Peter Warner

The meeting was chaired by Commissioner Wencil.

BleuAnt LLC (rezone) - 15-134-693 - Rezone from BC Community Business Converted District to RM2 Multiple Family, 1174 Grand Ave,

BleuAnt (variance) - 15-134-770 - Variance of side-, rear-, and front-yard setbacks and lot coverage requirements, 1174 Grand Avenue, between Dunlap and Ayd Mill Road

Jamie Radel presented the staff report with a recommendation of approval for the rezoning and for the variances with conditions. She stated District 16 recommended denial, and there were no letters in support, and two letters in opposition.

Upon questions from the Commissioners, Ms. Radel stated that the other buildings in the area do not meet the 35% lot coverage standard. The other buildings are all legally nonconforming buildings and were built in the early 1900's. It's difficult to try and meet the scale and also internalize the parking that is required under the modern code. It's also challenging in an infill setting to try and meet the requirements of the RM2 district.

Ryan Burke, BleuAnt, 1387 Eleanor Avenue, Saint Paul provided some background on the site. The current home is a condemnable single family home and it would be difficult to redevelop as a single-family home that is set in between four large apartment buildings. They decided on building condos to maximize the site and fit in well with the neighborhood. After meeting with city staff they have designed a building that fits with the current streetscape and provides off-street parking in an underground ramp. They have also met with the neighborhood and have adjusted the plan due to some of their concerns. They have tried to minimize the parking garage and building as much as possible and they have reduced the building to eight unit's verses nine to help with this goal. The plan has three levels of residential living, but the height is at 36 feet because the ramp cannot be completely underground. The garage will be six feet above ground and four feet below. Mr. Burke described how the footprint of the building will compare to the rest of the block. He said they have talked with business neighbors in the area and they have a signed petition in support for the project. There has been a lot of positive feedback about the project, but there are also neighbors who have concerns about the height of the building. That is one reason why they are only requesting three stories as opposed to four or five stories to help address these privacy concerns.

Ms. Radel made a point of clarification. She stated that in the Grand Avenue Overlay District the maximum height on a residential structure would be forty feet. A four- to five-story building might be challenging to accommodate with the underground parking.

Nilgun Tuna, Representative for the Summit Hill Association, 691 Lincoln Avenue, Saint Paul, spoke in opposition. The district also submitted a letter with their concerns and recommendations (see attached). The key concerns they heard from the neighbors were the overall scale and height of the building in comparison to the existing apartment buildings and the increased traffic in a dead end alley that is already in distress.

Andrew Rorvig, 1171 Lincoln Avenue, Saint Paul, spoke in opposition. Mr. Rorvig also submitted a memo detailing their opposition (see attached). He stated that the proposed project will be the tallest, widest, longest, and will take up the greatest footprint on the block. The developers are seeking a lot coverage variance of almost 50%. This is a huge privacy concern for the neighbors and it is not consistent with the Comprehensive Plan. He also expressed concern with parking in the area and the underground parking ramp might not be sufficient for the number of residents. There will also be an increase in traffic in the dead end alley.

Upon questions from the Commissioners regarding privacy, Mr. Rorvig explained that the proposed building will be a foot closer to his house and over a foot higher. People will be able to peer down into his backyard. If the project were to be the same height as the other buildings located next door they wouldn't have the same height or the proximity to the alley or to his backyard.

Lyndon Shirley, 1187 Lincoln Avenue, Saint Paul, spoke in opposition. Mr. Shirley expressed his concerns regarding parking and traffic in the area. With the proposal before you there will be eleven vehicles possibly multiplied by two for each resident of the proposed building. That will be more than double the traffic than the existing apartment buildings that are in existence today. They have concerns about the significant increase in traffic in the alley.

Karyn Wrenshall, 1201 Lincoln Avenue, Saint Paul, spoke in opposition. Ms. Wrenshall supports the neighbors who previously spoke and the neighbors who have signed the memo submitted by Mr. Rorvig.

Mr. Burke responded to the testimony. He said he understands the concerns and that was part of their goal to meet with the people in the neighborhood. It is their intent to have the character of the building match the surrounding area. In regards to building a similar building between the existing apartment buildings, he said he has spoken to some residents who welcomed the proposed project. Right now on the zero lot line there is a lot of bushes and trees and they would rather see a beautiful new building 7 ½ feet away than what is currently there. Also, the house is an eyesore. They have spoken with the apartment owners and they would much rather see them do a structure 18 inches closer to the property lines and 1 foot closer to the alley to be able to accommodate a condo project rather than another apartment building. The height of the building is six feet taller, not to try and get another residential level added, but to accommodate the parking needs and requirements. The dead end alley is a concern and they have minimized the concern with this proposal. If they did a smaller building with all surface parking and no garage parking there might be greater problems. He addresses the concern with alley traffic during construction and said they will work with neighbors on a schedule. It will accommodate deliveries and rush hour times and they will utilize Grand Avenue as much as possible. In regards to the variances, they are trying to preserve the historical presence of Grand Avenue and have designed a building that will follow the character of the area. They are

not trying to add a big condo building in the middle of single family homes they are only trying to keep the flow with the surrounding buildings. In response to the privacy issue, the windows on the new building will be roughly three feet higher than the existing apartment buildings. They have eliminated patios or porches on the back side. They will also work with the architect to have the bathrooms and closets on the south side and have elevated horizontal windows and/or privacy glass. They have requested to rezone to RM2 at the recommendation of City staff because it would follow the Comprehensive Plan and the district's plan. The ramp is not a hardship, and they are only trying to meet the requirements of the city code regarding parking.

Commissioner Merrigan stated if the project was reduced to six units it could allow them to be closer to the rear yard setback requirements or possibly eliminate the variance for the rear yard setback. She also suggested that one way that might make the building more sympathetic in elevation on the front face is symmetry and a central entrance.

No one spoke in support. The public hearing was closed.

Commissioner Paula Merrigan moved approval of the rezoning. Commissioner David Wickiser seconded the motion.

The motion passed by a vote of 5-0-0.

Adopted Yeas - 5 Nays - 0 Abstained - 0

Commissioner Paula Merrigan moved denial of the variances based on Findings 3b, 3c, and 3d not being met. Commissioner Elizabeth Reveal seconded the motion.

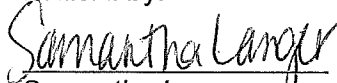
Commissioner Edgerton he doesn't agree with the motion. The project doesn't seem oversized compared to adjacent buildings. It seems to fit the character of the adjacent buildings better than the current structure and meet the spirit of the zoning code. Commissioner Wickiser agreed and said this particular development is not egregious.

The motion passed by a roll call vote of 3-2-0.

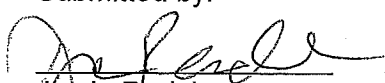
Commissioner Reveal and Commissioner Wencil sited the reasons stated by the maker of the motion for voting against.

Adopted Yeas - 3 Nays - 2 (Edgerton and Wickiser) Abstained - 0

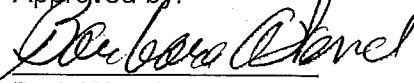
Drafted by:


Samantha Langer
Recording Secretary

Submitted by:


Jamie Radel
Zoning Section

Approved by:


Barb Wencil
Chair

Bleu Ant
Oppose

Summit Hill Association

District 16 Planning Council
860 Saint Clair Avenue
Saint Paul, Minnesota 55105
Telephone 651-222-1222
www.summithillassociation.org
summithill@visi.com

July 15, 2015

Attn: City of St. Paul Planning Commission / Zoning Committee

Re: 1174 Grand Avenue Development Proposal

The Summit Hill Association / District 16 Planning Council met regarding the proposal on 1174 Grand Avenue brought forward by Bleu Ant Design, LLC. The proposal for the project is to rezone the site to a RM-2 zoning district, which would allow for multi-family housing, and would bring it in line with the zoning of the two properties to the East and two properties to the West. The developer is also requesting a number of variances, including a front yard setback of 20 feet (25 feet required), a side yard setback of 7.5 feet on each side (1/2 the height of the building required), a rear yard setback of 15 feet (25 feet required), and a coverage variance for 55% (35% required).

There were a number of neighbors at the meeting speaking against the project. The key issues that they spoke about were.

- The overall scale of the building in comparison to the existing apartment buildings, and how this would be the largest of the group.
- The additional traffic in the dead end alley that the proposed underground parking would present.
- The height of the building in comparison to the adjacent buildings.
- The lack of commitment to a height of the building in the city submittal package.
- There was a statement to the effect of not being against the idea of a multi-family building, but wondering why it couldn't be the same size as the existing.

There was discussion regarding this matter at 2 separate ZLU Committee Meetings prior to our Full Board Meeting to try and flush out some of the main concerns of the neighborhood. Our recommendations are as follows.

- The rezoning was discussed as being somewhat appropriate, due to the neighboring buildings, but possibly premature, as there wasn't a consensus on the proposed development being appropriate as submitted. In order to rezone this property to the multi-family use, it seems appropriate to have a development proposal put forward that would employ that amended

- zoning in a responsible manner. To take away the ability to utilize it for uses already available to the current BC district, which our neighborhood plans calls for the preservation of, seems unfitting at this time. By rezoning the parcel now it is limiting the development by closing the door to have the parcel rezoned to another district for a project that could work without all of these variance requests.
 - Based on the findings of our ZLU Committee and Board several of the findings put forward by staff in recommending approval of the rezoning are contradictory. Specifically the statements of "The Housing Chapter of the Comprehensive Plan provides further guidance in Policy 2.17(c), which states: "Encourage the development of attached single-family and neighborhood-sensitive multi-family infill housing as appropriate locations as identified in the Land Use Plan and small area plans to increase housing choice.", and the statement referring to the District 16 Plan supporting it based on the fact that rezoning from BC to RM2 retains nearly identical residential regulation on the property. If the zoning requirements are going to be waived to the extent proposed for the development, then it seems inappropriate to argue that the development is "neighborhood-sensitive", or that the rezoning should be at all based on the fact that the lot coverage requirements are similar between the existing and new zoning when the proposal is to waive the lot coverage requirement to the tune of 20%.
 - The City's argument that the proposed zoning is compatible with the surrounding uses may hold some truth, but that change in zoning should then respect the required zoning regulations for that new zoning district
- The front yard setback variance request is such that it would align with the existing buildings on either side. This variance request was recommended to be approved, as holding the front edge of the buildings to the same dimension feels appropriate along the street frontage.
- The side yard setback variance request for 7.5 feet from the required 1/2 the height of the building (which would be somewhere between 18-20+ feet based on the existing proposal) was felt to be too much, and not a clear variance. It is recommended that this variance request be denied. By allowing the variance at each side, as well as the additional height that this building will have over its shorter neighbors, the natural light for the neighboring properties will be diminished, and the spacing between the buildings will not continue the regularity in pattern and spacing that staff suggests.
- The rear yard setback variance request for 19' from the required 25' was also recommended for denial by our Board.
- The lot coverage request from 35% to allow the requested 55% was thought to be too great a variance at 20% more than allowed. It is recommended that this variance request be denied, as the project clearly doesn't fit within the allowable parameters of the ordinance.

The overall feeling of our ZLU committee and Board was that, though the use of the lot as multi-family may be the most appropriate use for the site, the number and size of the variance requests were too great for the development as proposed. The applicant is not requesting a variance on one side or even two, but the request is to push the property beyond the limits on all four sides, as well as the overall allowable coverage requirements for the zoning districts.

We also feel that the findings have not been sufficiently met in regards to the variance requests. To assume that this project will fit into the regularity, pattern and spacing as the adjoining buildings is misguided, when the facts of the proposed development being between 7%-17% larger than the adjacent multi-family buildings in footprint, and 17% higher than the adjacent buildings, which are only 2 1/2 stories tall as opposed to the proposed 3 1/2 stories proposed for this building, is taken into account.

Although our District 16 Plan does put an emphasis on parking, and encourages off-street and underground parking, it does not support rezoning to more intensive uses and variances where parking and traffic problems create undue hardship for neighboring businesses, residents, and visitors, and with the nature of the dead end alley, the parking overflow from SPA, the existing rentals and businesses on that block there is a lot of parking demand in that immediate area. We also place significance on increased density, and ensuring that the impact conforms to zoning and building requirements, and that the City considers the development's adverse impacts. This development is stretching the zoning and building requirements on all sides, and needs to take into account adverse impacts on neighboring properties.

In regards to altering the character of the surrounding area, it should be noted again, that this is a new development proposal to be the largest building on the block, and is to be up to 17% larger and taller than neighboring properties. Staff's findings even call for elements that should be taken into consideration in order to try and maintain character of the existing buildings, and measures to address privacy concerns of neighboring residents in response to the setback variance requests, but these are not in any way made conditions of approval. This will also be the only building on the East end of Grand Avenue where underground parking pushes the building out of the ground 1/2 story, and will be a full story taller than its neighbors.

The Summit Hill Association/District 16 Council does not feel that the required conditions have been sufficiently met in order to allow for the numerous requested variances for this proposal, other than the front yard variance, and we would ask that the Zoning Committee and the Planning Commission deny those requests for this development.

Sincerely,

Philip Wahlberg
SHA Vice President
ZLU Committee Chair

**MEMO IN OPPOSITION TO PROPOSED REZONING AND VARIANCES FOR
1174 GRAND AVENUE**

ATTN: Zoning Committee
CC: Jamie Radel, Tom Beach & Summit Hill Association ZLU
FROM: Below-signed residents
DATE: July 14, 2015

Please accept this memorandum along with the two-previous memorandums (*Attachments "A" & "B"*)¹ as the neighborhood opposition to the requests for re-zoning and four plus variance requests for 1174 Grand Avenue.

• ***Introduction***

As point of background, my wife, Amanda Karls, and I² live at 1171 Lincoln Avenue – directly south of this proposed development. We first met with the developers in February, again with neighbors in March, and with a smaller group of neighbors in May. We, along with many of the neighbors, attended two Summit Association ZLU meetings along with the full-board meeting on July 9, 2015. The proposed project has been presented in many forms since our first meeting in February. The attached memorandums³ address the constantly inaccurate and shifting figures and measurements. It was not until the July 9 meeting that we were finally presented with an actual height. In order to not re-invent the so-called wheel, we ask that this Committee review those documents in conjunction with this memo, which strives only to hit the high points.

Contrary to any statement from the developers or City Staff, this proposal does not include nor address the concerns of the neighbors. Rather we and the additional below-listed residents maintain opposition to the re-zoning and the variance requests as the proposed building will be bigger than any of the others that City Staff are trying to "match." Staff uses terms like "generally consistent with the size and type of building," but that is not true. **To be clear, the proposed project will be the tallest, widest, longest, and will take up the greatest footprint on the block.**

We ask that this current version of this project be denied. Here are some of the many reasons why:

• ***Inappropriate size***

This development will have an immediate impact on privacy and livability for nearby neighbors in three ways. First, the proposed structure includes a roof-edge height (not including the structure above the roof line that is clearly even taller) at 6-7 feet higher than any other building on this block. This means that neighbors on both side of Lincoln

¹ City Staff, including Jamie Radel received copies of both of these memorandums that were directed to the Summit Hill Association prior to the creation of her July 16, 2015 report. Attachment B was included with her report.

² Amanda and I are both Directors of the Summit Hill Association.

³ *Id.*

will be forced to see a towering building that now peers into their home. This is especially problematic because of the second reason, which is that the structure will be closer to neighbors on the other side of the alley than any other structure -- and 6 feet closer than allowed by code. This results in the would-be condo owners being able to have much greater visual access to back-yards on Lincoln. Conversely it also means that views of blue sky now enjoyed by those neighbors will be greatly impeded. This impediment is further increased because of the width proposed building. The area between existing adjacent apartment buildings is, according to the developers, 25 and 19 feet, but this project would have just 17.5 and 16.5 between it and the existing buildings on either side. This too takes away from the sky and visual green space that should normally be enjoyed by the neighborhood. For these common sense reasons, privacy and livability on Lincoln Avenue is detrimentally impacted.

We understand why the city planning office may favor the tax base that comes from a high-density unit like the one proposed by the developers, but that preference cannot be allowed in violation of city code without meeting the standards required for variances. Such standards are not met here. Approving the dumping of this inappropriately-sized project in this location would be reckless.

We also recognize that, in order to make this a high-density project that does not greatly increase street parking problems, city planners are willing to trade off back and side yard variances to get enough underground parking spots. Unfortunately that comes at the expense of neighbors who will have their views sharply diminished and alley use compromised. The developers made a bad business decision by buying a property that cannot support the underground parking they seek for the size of building they want to build. Their mistake should not result in a burden born by neighbors who stand to gain nothing while developers profit.

- ***Inappropriate rezoning***

We remain generally open to the idea of rezoning from BC to RM2, but only to the extent that a building can be erected without significant zoning variances. If that cannot be accomplished the building should remain BC. In this case the zoning variances mean that a building that is much too large for the space would be placed on this alley. If a building with fewer units and a smaller, appropriate footprint can be constructed we have no problem with that theoretical project. However, here, per the City's Zoning Committee Staff Report, it seems that rezoning to RM2 is actually creating "a plight of the landowner" staff believes justifies the need for variances. If that is the case, the zoning should remain BC.

- ***Significant traffic congestion***

The proposed project is on a dead-end alley, which presents a unique issue. All homeowners on the north side of Lincoln and residents/business personal on Grand Avenue between Dunlap & Ayd Mill must enter and exit the alley at the same point. The proposed development calls for eight units. Assuming, two vehicles per unit, that means 16 more vehicles will have to compete for access. Because this is a dead-end, from a congestion perspective, that is like adding 32 more vehicles to any other street because all of those vehicles will have to enter and exit at Dunlap. We have problems with entering and exiting the alley with the current business patrons, residents and utility vehicles that already use the alley. An additional eight unit condo building will place an even greater burden on the alley. In short, this number of units, residents, and vehicles places congestion to an otherwise limited area.

- ***Flaws in the City Staff Report***

The Staff Report includes errors and faulty arguments that need to be addressed in order for this committee to have accurate information.

- ✓ ***Lot Coverage***

Staff states the requested variance from 35% of the lot area (including half of the alley area) to 52.4% of the lot area is a 17.4% variance. This is a basic math error—one does not simply subtract one percentage from the other! In fact 52.4% coverage is 49.7% more coverage than 35%. **This means that the developers are seeking a lot coverage variance of almost 50% more than what is allowed by code!**

- ✓ ***Height***

The staff report overlooks that the developers essentially need a height variance. With 7.5 foot side setbacks, the developers should only be allowed to go up to 15 feet under the city code, which requires side set-backs half of the building height for RM2 properties. Here the developers will not only exceed that amount by at least 16 feet, but they will be taller than any other building on the block by at least 6-7 feet.

- ✓ ***Variance is not in harmony***

The standard forbids a variance change if it results in an “overly dense site” and creates an “overly burdensome to adjacent properties”. The staff report concludes that because the “project is generally consistent in size” that there is no burden. This conclusion is inconsistent with the facts that this building is longer, taller, and wider than every building on the block. That size, and installation of a parking garage cause privacy and traffic congestions as mentioned above.

- ✓ ***Primary impact caused by this increase in density (parking) is not met***

The report sweeps under the rug the unique issue surrounding this project location – the dead-end alley. The analysis focuses only on parking spaces with no regard for the competition for entering/exiting the alley as well as the obvious spillover to Lincoln Avenue. Again, the conclusion, while well intended, is simply incomplete.

✓ **Other development options are ruled out with any evidence of feasibility**

Staff concludes that only this proposed development with this size is appropriate. The author seems fixated on matching the structures of the 4 current buildings. Again, that is not the standard for purposes of this decision. The standard is whether the owner has practical difficulties, and economic considerations alone do not constitute practical difficulties. Here, assertions have been made over the course of many meetings regarding feasibility of developing a business (as currently zoned) or a smaller multi-family unit. The reasons these developers have not chosen those options is purely because of profit. Staff fails to mention the feasibility of these other projects or the fact that the proposed building is a taller, wider and deeper building than currently exists. **Because other options have not been considered by staff, common sense tells us that there has been no establishment that these developers have suffered practical difficulties justifying change. Profit is not a sufficient justification.**

✓ **No protections for Lincoln Avenue**

Staff concludes the report by touting the fact that these developers have indicated a willingness (not a binding agreement) to minimize fenestration on the south of the building. Apparently that's enough to protect the privacy loss caused by this large structure. The obvious defect in this clearly worrisome analysis is that there is no quantification of this willingness. Does that mean 20-windows instead of 10? Or are we talking 1 porch instead of 4? Promises are easy to make when you want something, and even though the City seems very much satisfied with this unenforceable gesture the reality that is lacking is the clear result of loss of light and privacy caused by this proposal is not addressed anywhere in the report. Furthermore, the neighbors are the only ones who are bearing the negative impacts caused by this project.

• **Conclusion -- deny this current proposal**

We are cognizant of the need to do something with this property. We are not opposed to development *per se*. However, we are opposed to this particular one. There is plenty of chance to do something right with this property that betters both Lincoln Avenue and the neighborhood at large, whether that is a home, a business, or a multi-family structure. However, this proposal doesn't amount to positive change. **For the above stated reasons, we ask that you please deny the request of the applicants in full.**

- ❖ **Andrew Rorvig & Amanda Karls, 1171 Lincoln Avenue**
- ❖ **Lyndon Shirley & Christy Shirley, 1187 Lincoln Avenue**
- ❖ **Winnie Moy, 1185 Lincoln Avenue**
- ❖ **Margaret Keefe, 1195 Lincoln Avenue**
- ❖ **Josh Peltier, 1167 Lincoln Avenue**
- ❖ **Steve Hancock & Jill Stedman, 1200 Lincoln Avenue**
- ❖ **Mark King & Jonathan Lubin, 1177 Lincoln Avenue**
- ❖ **Mark & Bonnie Genereux, 1165 Lincoln Avenue**
- ❖ **Andy & Gina McCabe, 1186 Lincoln Avenue**
- ❖ **Karyn Wrenshall, 1201 Lincoln Avenue**
- ❖ **Carol & Joe Bell, 1196 Lincoln Avenue**
- ❖ **Tom & Kristi Kuder, 1176 Lincoln Avenue**
- ❖ **Laura & Ryan Willemsen, 1180 Lincoln Avenue**

