

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

PRESENT: Edgerton, Merrigan, Nelson, Padilla, Reveal, Wencil, and Wickiser  
EXCUSED: Makarios  
STAFF: Jake Reilly, Samantha Langer, and Peter Warner

The meeting was chaired by Commissioner Nelson.

**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**

The public hearing was closed at the July 16, 2015 meeting.

Jake Reilly presented a memo with additional information that was requested by the Committee members at the July 16, 2015, Zoning Committee meeting.

Commissioner Padilla questioned why the existing permit isn't being enforced with so many issues at the site.

Mr. Reilly explained that current site operates with a Special Conditional Use Permit (SCUP) that was granted in the 1970's for a fast food restaurant. There were conditions for the operation of food restaurants that were attached to the use. At the time the Commission approved the SCUP it was understood that these items would continue to be part of the permit. Conditions A-F now exist in a different part of the zoning code for all fast food restaurants whether or not they have a CUP and they are outlined in the memo. He also noted that staff has not been able to find any documentation or building permits for the drive through that was added to this site. The enforcement issue is difficult because there are no conditions listed on the permit or staff report. Many complaints are about noise and there is a difference between how the zoning code identifies noise issuing from speaker boxes at drive through windows and how the Department of Safety and Inspection (DSI) has been handling complaints related to noise at this site, which relate to the city-wide noise ordinance.

Commissioner Wickiser questioned if there was testimony from any residents or the District Council pertaining to the site not meeting the Comprehensive Plan-related findings. He also doesn't recall there being testimony stating that people did not want the Taco Bell to stay; only that they wished for restrictions.

Mr. Reilly stated we don't often get testimony regarding Comprehensive Plan issues when it is an existing use, often it is received when a disparate use is proposed. The Comprehensive Plan deals with desired conditions and is forward looking. The zoning code, however, implements the Comprehensive Plan. In this case the finding addressed the intent of the small area plan, a comprehensive plan amendment, to have a desired zoning district because of the intent statement in that zoning district's description. If the intent of one zoning district negatively

impacts the ability of the property owner on an adjacent zoning district to enjoy their property, and that was something the Zoning Committee wanted to enforce, that would be a policy call by the Planning Commission. In regards to testimony, Mr. Reilly stated a lot of people mentioned they didn't want to see anyone lose their jobs, but he recalled testimony saying that this particular instance of a fast food restaurant is not a good fit for the neighborhood. The oral testimony did reflect a request for the commission to deny this application. Written testimony from the District Council did not take a firm position on approval or denial.

Upon questions from Commissioner Reveal regarding deliveries to the store once the proposed Bus Rapid Transit (BRT) is operational, Mr. Reilly explained that BRT typically runs in existing right-of-way and the stops would be proximate to the curb. At this point no stops have been identified. Staff and the applicant would like to reevaluate the delivery scenario if and when the proposed new transit infrastructure has happened. Staff and the applicant want to make sure that it is safe for everyone involved. The site is deep enough that delivery trucks could potentially deliver on site if they are able to back onto the property.

Upon inquiry from the Commissioners, Mr. Reilly confirmed that if the application is denied Taco Bell can continue to operate as is. He said the document entitled "proposed conditions of approval" was provided by the applicant's representative, Brian Alton.

Commissioner Wencel stated her concerns with the suggested condition in the staff report that ties the property owner to using an intercom system from a specific brand. She also stated her concerns with the hours of operation listed in the applicant's proposed conditions of approval document. This particular property is located so close to a residential neighborhood that the hours of operation may need to be less than requested.

Mr. Reilly suggested that the condition would not need to specify a brand or type for the intercom system, but language can be added to state it should be equivalent in design standards to the particular system specifications provided by the applicant.

Commissioner Merrigan and Commissioner Wencel both concurred with Mr. Wickiser that they remembered the testimony, including the nearest neighbors, to be that they didn't want the Taco Bell to go away, but felt this was an opportunity to put some conditions on the property.

There was discussion about corporate standards as applied to franchisees and the practicality of meeting zoning code standards and corporate design or site standards. There was some concern that the applicant might lose the franchise if they were not able to comply with corporate standards due to zoning code regulations and enforcement.

Commissioner Barbara Wencel moved denial for a variance of window and door openings as a percentage of front façade length (50% required, 47% proposed) at 565 Snelling based on new elevations provided by the applicant demonstrating 51% of the front façade length being window and door openings is possible; based on findings 7(a)(iii), 7(c)(iii), 7(d)(ii), 7(e), and 7(f).

Commissioner Barbara Wencel moved approval for a variance of interior parking lot landscaping based on findings 7(a)(iii), 7(c)(iii), 7(d)(ii) subject to the condition that a new site plan is

submitted with no more than 18 parking spaces and demonstrating at least 14 percent interior landscaping for an effective variance of 1 percent.

Commissioner Barbara Wencil moved approval with conditions of the conditional use permit with modification of the distance requirement for drive-through sales; a conditional use permit to increase the maximum number of off-street parking spaces; and variance of minimum floor area ratio (0.5 required, 0.11 proposed) subject to the conditions stated in the staff memo dated July 24, 2015, with modifications and an addition. Commissioner Dan Edgerton seconded the motion.

The modified conditions agreed upon are as follows; a drive-through communications system to be installed that shall be equivalent in specifications to that of the drive-through communication system as provided in written specifications by the applicant; parking in the lot shall be limited to 30 minutes and signed as such with employees exempt. It shall be incumbent upon the management to alert any security or police officers patrolling the site to those vehicles owned by employees; semi-tractor-trailer deliveries may not take place prior to 7 a.m. and may not take place later than 10 p.m.; a private duty security company shall be present at the site between the hours of 10 p.m. and the time the last employee leaves the business during late night operations of both the dining room and the drive-through. Staff and Management shall also work in coordination with the St. Paul Police Department on security measures.

The Commission also agreed on an additional condition that the Zoning Administrator annually review the operations permitted under this permit and determine whether the operations are in compliance with the permit's conditions. The Administrator shall report the results of this review to the Commission together with any recommendations. City Attorney Peter Warner stated he would provide language for such a condition to zoning staff for the preparation of the Planning Commission resolution.

After further discussion pertaining to item #9 in the document submitted by the applicant and a condition in the staff memo stating that the conditional use permits granted (through this action) supersede any previous conditional or special use permits for the property, Commissioner Merrigan moved to open the public hearing to allow the applicant's representative, Brian Alton to explain the intent behind item #9. Commissioner Revele seconded the motion. The motion passed by a vote of 7-0-0.

Brian Alton, representative of Border Foods, 951 Grand Avenue, Saint Paul, clarified #9 on the document he submitted. Mr. Alton stated their intention was to create a balance between what Mr. Reilly suggested as conditions and what the applicant thinks would be acceptable. He said #9 would be acceptable if conditions one through eight, as identified on his document, are adopted by the Planning Commission. He stated he was unable to have a discussion with Mr. Reilly about the conditions listed in his memo. He submitted his conditions after a discussion with Border Foods and they are conditions the applicant finds acceptable. If Border Foods determines that they are going to proceed, they expect that these conditions would be in place once the new the new building is constructed and operational. He has not had a discussion on reducing the hours immediately. If the conditions proposed by the applicant were acceptable to the committee then the applicant/operator may consider reducing the hours of the business.

Upon questions from the Commissioners, Mr. Alton stated he was assuming that the new conditions would be placed upon the newly constructed restaurant, and not the existing structure and configuration.

The public hearing was closed.

City Attorney, Peter Warner, explained the procedure pertaining to the existing SCUP and this application. There is an existing use that has a SCUP that can continue to operate under that permit unless the terms and conditions of that permit are violated. If this application is approved Zoning Committee Minutes with these conditions they will not take effect until the applicant receives a Certificate of Occupancy from code enforcement staff at DSI. The Zoning Administrator has the ability to enforce the existing SCUP and it will be up to the Zoning Administrator to determine whether or not to bring it back to the Zoning Committee to review for modifications or revocation.

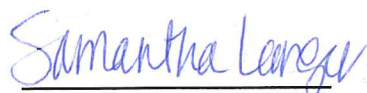
Commissioner Reveal strongly suggested that the applicant reduce their hours of operation to 2:00 a.m. between now and when the new building is opened based on neighbor testimony. She is not prepared to change the hours of operation listed in the staff memo for the new application.

Commissioner Padilla stated she would encourage the applicant to follow the existing code requirements in the SCUP related to nuisance and health of the neighborhood. If the applicant can't manage to clean up the site after hearing all of the comments over the last few weeks she would encourage DSI to submit a revocation if necessary to create some sort of security on the site for neighbors.

The motions on the condition use permits and variances passed by a vote of 7-0-0.

Adopted                      Yeas - 7              Nays - 0              Abstained - 0

Drafted by:



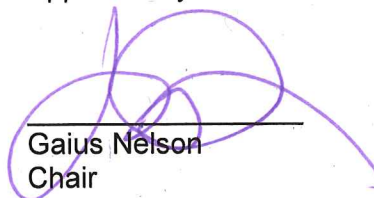
Samantha Langer  
Recording Secretary

Submitted by:



Jake Reilly  
Zoning Section

Approved by:



Gaius Nelson  
Chair

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**Joan Bassing - 15-138-295 - Reestablishment of nonconforming use as a triplex, 900-902 Jenks Avenue, between Forest and Mendota**

Jake Reilly presented the staff report with a recommendation of denial for the reestablishment of nonconforming use permit. He stated District 5 recommended denial, and there were 0 letters in support, and 1 letter in opposition.

The applicant's representative, Terry Dakovich, 4243 Boulder Ridge Pt., Eagan, stated he was available for questions.

Upon inquiry from the Commissioners, Mr. Dakovich stated he has been doing light maintenance for Ms. Bassing. He said he believes it was 2009 or 2010 when it was changed from a duplex to a triplex. Prior to 2009, the kitchen of the third unit remained intact. He believes that at one time the unit maintained two kitchens.

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

Commissioner Barbara Wencil moved denial of the reestablishment of nonconforming use permit. Commissioner Elizabeth Reveal seconded the motion.


The motion passed by a vote of 7-0-0.

Adopted                      Yeas - 7                      Nays - 0                      Abstained - 0


Drafted by:

  
Samantha Langer  
Recording Secretary

Submitted by:

  
Jake Reilly  
Zoning Section

Approved by:

  
Gaius Nelson  
Chair



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The meeting was chaired by Commissioner Nelson.

**Kowalski Companies - 15-139-934 - Rezone from R2 One-Family Residential to B2  
Community Business, 1261 Grand Avenue, NE corner at Syndicate**

Mike Richardson presented the staff report with a recommendation of approval for the rezoning. He stated District 14 made no recommendation, and there was 1 letter in support, and 0 letters in opposition.

Michael Oase, Kowalski's Company, 1261 Grand Avenue, Saint Paul, stated they appreciate the recommendation of approval by staff. They have been working with staff for a couple years on the remodel and they are pretty excited about moving forward.

Upon questions from the Commissioners, Mr. Oase stated they meet will meet all code requirements with the building expansion plans.

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

Commissioner Barbara Wencil moved approval of the rezoning. Commissioner Paula Merrigan seconded the motion.

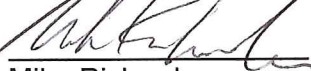
The motion passed by a vote of 7-0-0.

Adopted                      Yeas - 7                      Nays - 0                      Abstained - 0

Drafted by:

  
Samantha Langer  
Recording Secretary

Submitted by:

  
Mike Richardson  
Zoning Section

Approved by:

  
Gaius Nelson  
Chair