



**CITY OF SAINT PAUL**  
Christopher B. Coleman, Mayor

25 West Fourth Street  
Saint Paul, MN 55102

Telephone: 651-266-6700  
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DATE: February 1, 2013  
TO: Planning Commission  
FROM: Zoning Committee  
SUBJECT: Results of January 31, 2013 Zoning Committee Hearing

**NEW BUSINESS**

		<u>Staff</u>	<u>Recommendation</u> <u>Committee</u>
1.	<b>Keith Jacobson &amp; Patricia Jacobson ( 13-142-919 )</b> Rezoning from B2 Community Business to BC Community Business (Converted)	Approval	Approval ( 6 - 0 )
	<b>Address:</b> 1836 -1838 Grand Ave between Fairview and Howell		
	<b>District Comment:</b> District 14 recommended approval		
	<b>Support:</b> 0 people spoke, 1 letter		
	<b>Opposition:</b> 0 people spoke, 0 letters		
	<b>Hearing:</b> Hearing is closed		
	<b>Motion:</b> Approval		
		<u>Staff</u>	<u>Recommendation</u> <u>Committee</u>
2.	<b>Dairy Queen (Craig Thaemert / Maureen Herring) ( 13-143-806 )</b> Rezoning from B2 Community Business to T2 Traditional Neighborhood	Approval	Approval ( 6 - 0 )
	<b>Address:</b> 1537 White Bear Ave N between Hoyt & Montana		
	<b>District Comment:</b> District 2 recommended approval		
	<b>Support:</b> 0 people spoke, 2 letters		
	<b>Opposition:</b> 0 people spoke, 0 letters		
	<b>Hearing:</b> Hearing is closed		
	<b>Motion:</b> Approval		



city of saint paul  
planning commission resolution  
file number \_\_\_\_\_  
date \_\_\_\_\_

WHEREAS, Keith Jacobson & Patricia Jacobson, File # 13-142-919, has applied for a Rezoning from B2 Community Business to BC Community Business (Converted) under the provisions of § 61.801(b) of the Saint Paul Legislative Code, on property located at 1836 - 1838 Grand Ave, Parcel Identification Number (PIN) 042823310070, legally described as Lot 5 Kennas Subdivision of Lot 53, Block 4, Rosedale Park Addition; and

WHEREAS, the Zoning Committee of the Planning Commission, on January 31, 2013, held a public hearing at which all persons present were given an opportunity to be heard pursuant to said application in accordance with the requirements of § 61.303 of the Saint Paul Legislative Code; and

WHEREAS, the Saint Paul Planning Commission, based on the evidence presented to its Zoning Committee at the public hearing as substantially reflected in the minutes, made the following findings of fact:

1. This application is to rezone the property at 1836 -1838 Grand Avenue from B2 community business to BC community business (converted) to permit the use of the building as a residential duplex.
2. The proposed zoning is consistent with the way this area has developed. According to §66.413 "The BC community business (converted) district is a business district expressly for existing residential structures in commercial areas, which will permit the operation of businesses which do not generate large amounts of traffic and at the same time will retain the visual character of the building forms and open space associated with residential uses." There are similar structures both to the east and west of this building.
3. The proposed zoning is consistent with the 2030 St. Paul Comprehensive Plan, Land Use Policy 1.1 *Guide the development of housing in Established Neighborhoods, Commercial areas within Established Neighborhoods, and in Residential Corridors*. This policy is intended to provide for the development of housing in these areas consistent with the area's prevailing character and overall density. Grand Avenue is designated a Residential Corridor along this section of the Avenue. Residential Corridors are defined as corridors that run through Established Neighborhoods and that are predominately characterized by medium-density residential uses.
4. The proposed zoning is compatible with the surrounding uses, which are a mix of retail, commercial, and multi- and single-family residential.

moved by \_\_\_\_\_  
seconded by \_\_\_\_\_  
in favor \_\_\_\_\_  
against \_\_\_\_\_

5. Court rulings have determined that "spot zoning" is illegal in Minnesota. Minnesota courts have stated that this term "applies to zoning changes, typically limited to small plots of land, which establish a use classification inconsistent with the surrounding uses and create an island of nonconforming use within a larger zoned property." Approval of this proposal would not result in spot zoning as the area to the west of this property is currently zoned BC. This proposal would extend the existing BC zoning to the east along the Residential Corridor.

NOW, THEREFORE, BE IT RESOLVED, that the Saint Paul Planning Commission recommends to the City Council that the application of Keith Jacobson & Patricia Jacobson for a Rezoning from B2 Community Business to BC Community Business (Converted) for property at 1836 - 1838 Grand Ave be approved.

ZF # 13-142-919



Macalester Groveland  
COMMUNITY COUNCIL

320 South Griggs Street  
St. Paul, MN 55105  
www.macgrove.org

Phone: 651-695-4000  
Fax: 651-695-4004  
E-mail: mgcc@macgrove.org

January 30, 2013

Re: Application for Rezoning at 1836/38 Grand Avenue

Dear Scott:

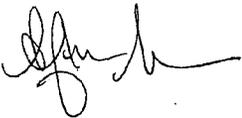
The Housing & Land Use Committee of the Macalester-Groveland Community Council met in response to the application for Rezoning at 1836/38 Grand Avenue on Wednesday, January 23<sup>rd</sup>. The Committee passed the following motion:

*The Macalester-Groveland Community Council approves the application for rezoning from B2 to BC at 1836/38 Grand Avenue.*

The Community Council did not receive any objections for this application.

Thank you for your consideration of this recommendation. Please contact me with any questions at 651-695-4000.

Sincerely,



Afton Martens  
Executive Director

cc: Keith Jacobson  
Fritz Ludwig  
Ward 3 Councilmember Chris Tolbert

city of saint paul  
planning commission resolution  
file number \_\_\_\_\_  
date \_\_\_\_\_

WHEREAS, Craig Thaemert and Maureen Herring, File # 13-143-806, have applied for a rezoning from B2 Community Business to T2 Traditional Neighborhood under the provisions of § 61.801(b) of the Saint Paul Legislative Code, on property located at 1537 White Bear Ave N, Parcel Identification Number (PIN) 222922140019 and 222922140020, legally described as J A Humphreys Subdivision A, Lots 28 29 And Lot 30 Blk 1; and

WHEREAS, the Zoning Committee of the Planning Commission, on January 31, 2013, held a public hearing at which all persons present were given an opportunity to be heard pursuant to said application in accordance with the requirements of § 61.303 of the Saint Paul Legislative Code; and

WHEREAS, the Saint Paul Planning Commission, based on the evidence presented to its Zoning Committee at the public hearing as substantially reflected in the minutes, made the following findings of fact:

1. The application requests rezoning from B2 to T2 in order to allow for consideration of a drive-through addition to the existing restaurant. The restaurant meets the definition of a fast-food restaurant in §65.616 and is a legal nonconforming use in the B2 district. The drive-through is prohibited in B2. Both the fast-food restaurant and the drive-through can be considered through a conditional use permit in T2.
2. The proposed zoning is consistent with the way this area has developed. The T2 district allows most, but not all of the commercial uses prevalent along White Bear Avenue. The T2 district also allows residential uses that would not be inconsistent with the surrounding area, which is predominantly residential to the west.
3. The property is located within the Hillcrest Village Overlay District (HVOD). The HVOD prohibits certain uses including auto service stations, auto repair facilities, pawn shops, and currency exchange businesses. The HVOD is unaffected by the proposed rezoning.
4. The proposed zoning is consistent with the Comprehensive Plan, which designates the property as being part of a Mixed Use Corridor, as shown in the Generalized 2030 Future Land Use Map (Figure LU-B). The property is also on the edge of a Neighborhood Center, as designated by the Comprehensive Plan. Both the Mixed Use Corridor and Neighborhood Center designations call for a mix of uses, such as those allowed in T2. The District 2 Plan has no provisions specific to this site.
5. The proposed zoning is compatible with the surrounding uses, including commercial uses to the north and south along White Bear Avenue and residential uses to the west.
6. Court rulings have determined that "spot zoning" is illegal in Minnesota. Minnesota courts have stated that this term "*applies to zoning changes, typically limited to small plots of land, which establish a use classification inconsistent with the surrounding uses and create an island of*

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*nonconforming use within a larger zoned property.*" The proposed zoning is not "spot zoning" because it allows uses consistent with the adjacent B2 uses along White Bear Avenue and provides a potential transition between the commercial uses and residential uses to the west.

NOW, THEREFORE, BE IT RESOLVED, that the Saint Paul Planning Commission recommends to the City Council that the application of Craig Thaemert and Maureen Herring for a rezoning from B2 Community Business to T2 Traditional Neighborhood for property at 1537 White Bear Ave N be approved.

city of saint paul  
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file number  
date

WHEREAS, Allen Plaisted File # 13-143-820, has applied for a conditional use permit for fast food restaurant with drive-through service, with modifications for entrance/exit location, access from street primarily serving abutting residential property, under the provisions of §65.513; § 65.616; §66.643; §61.501; §61.502 of the Saint Paul Legislative Code, on property located at 1537 White Bear Ave N, Parcel Identification Number (PIN) 222922140019 & 222922140020, legally described as J A Humphreys Subdivision A, Lots 28 29 And Lot 30 Blk 1; and

WHEREAS, the Zoning Committee of the Planning Commission, on January 31, 2013, held a public hearing at which all persons present were given an opportunity to be heard pursuant to said application in accordance with the requirements of §61.303 of the Saint Paul Legislative Code; and

WHEREAS, the Saint Paul Planning Commission, based on the evidence presented to its Zoning Committee at the public hearing as substantially reflected in the minutes, made the following findings of fact:

1. The application requests a conditional use permit to allow for the existing fast-food restaurant to add a drive-through. The proposal also involves a 230 square foot building addition along Montana Avenue to accommodate the drive-through service. Associated site improvements proposed for the property include closing off access from the alley to the north, moving the Montana Avenue driveway west at the request of city Public Works staff, planting new trees along the western property line, and adding wrought iron fencing along the White Bear Avenue frontage.
2. The property currently has access via the alley to its north. The proposed development will close off this access; vehicular access will be solely via White Bear Avenue and Montana Avenue.
3. §65.615 permits fast-food restaurants in the proposed T2 zoning district subject to the following conditions:
  - (a) *Except in I1-I2 Industrial Districts, a conditional use permit is required for establishments of more than 10,000 square feet in gross floor area, and for any establishment with drive-through service. In T2-T3 Traditional Neighborhood Districts, these uses are intended to be of a moderate size compatible with neighborhood-level retail. This condition is met. The subject application is for said conditional use permit. The fast-food restaurant with drive-through service is at a size compatible with neighborhood-level retail.*
  - (b) *In the B2 Community Business District, fast-food restaurants shall be incorporated within a multi-use retail center, and shall not provide drive-through service. This condition is met if the accompanying rezoning to T2 is approved.*
  - (c) *Drive through service shall meet the standards and conditions in Sec. 65.513. Drive-through sales and services, primary and accessory. This condition is met, as described in Findings 4 and 6 below.*
  - (d) *Points of vehicular ingress and egress shall not be onto a street which is used primarily for*

moved by \_\_\_\_\_  
seconded by \_\_\_\_\_  
in favor \_\_\_\_\_  
against \_\_\_\_\_

*access to abutting residential property.* The application requests modification of this condition. Montana Avenue is used primarily for access to abutting residential property to the west. However, the restaurant has long had access via Montana Avenue. Also, maintenance of access via Montana Avenue is necessary for orderly traffic flow on the site.

- (e) *Points of vehicular ingress and egress shall be located at least sixty (60) feet from the intersection of any two (2) streets and at least sixty (60) feet from any abutting residentially zoned property.* The application requests modification of this condition. A reduced separation of only 10 feet is proposed from the abutting residentially zoned property to the west. The driveway is being moved to this location at the request of the city's Public Works department in order to provide greater separation from White Bear Avenue in pursuit of improved safety.
- (f) *When the site abuts an alley which also serves residentially zoned land, no access from the site to the alley shall be permitted.* This condition will be met. The site currently has access via the alley to the north. However, that access is being removed as part of the proposal.
- (g) *Trash receptacles shall be housed in a three-sided masonry enclosure, six (6) feet high, or equal in height to the dumpster, whichever is greater, and have an entrance gate constructed of a durable, opaque material.* This condition will be met. A new trash receptacle area is proposed for the site's northwestern portion that will meet this requirement.
- (h) *A litter collection plan shall be developed and submitted to the planning commission, which obligates the restaurant operator to keep the area surrounding said restaurant free of restaurant litter for a reasonable specified distance.* The applicant intends to meet this condition by submitting a litter collection plan.
- (i) *A landscaped area not less than fifteen (15) percent of the impervious surface area of the lot shall be provided and maintained.* The existing restaurant does not meet this condition and is legally nonconforming. The existing property has no landscaping with two nearby trees located in the White Bear Avenue right-of-way. The proposal will add landscaping adjacent to the White Bear Avenue entrance, surrounding the new drive-through, and along the western property line in order to meet the requirement.
- (j) *Impact on adjoining property by use of the site may not result in the following:*
  - (1) *Loud, boisterous and disturbing noise levels.*
  - (2) *Hazardous traffic conditions.*
  - (3) *Offensive, obnoxious and disturbing odors.*
  - (4) *Excessive litter.*
  - (5) *Excessive artificial lighting.*
  - (6) *Substantial decrease in adjoining property values.*

This condition is met. The use will have no such impacts.

4. Sec. 65.513 permits drive-through sales and services in the proposed T2 district subject to the following five conditions:

- (a) *Drive-through lanes and service windows shall be located to the side or rear of buildings, shall not be located between the principal structure and a public street, and shall be at least sixty (60) feet from the closest point of any residentially zoned property or property occupied with a one-, two-, or multiple-family dwelling.* This condition is met. The drive-through lane and service window are to the building's rear and are located at least 60 feet from the closest residential property.
- (b) *Points of vehicular ingress and egress shall be located at least sixty (60) feet from the intersection of two streets and at least sixty (60) feet from abutting residentially zoned property.* As noted in Finding 4e above, the application requests modification of this condition. A reduced separation of only 10 feet is proposed from the abutting residentially zoned

property to the west. The driveway is being relocated to this location at the request of the city's Public Works department in order to provide greater separation from White Bear Avenue in pursuit of improved safety.

- (c) *Speaker box sounds from the drive-through lane shall not be plainly audible so as to unreasonably disturb the peace and quiet of abutting residential property.* This condition will be met.
- (d) *A six-foot buffer area with screen planting and an obscuring wall or fence shall be required along any property line adjoining an existing residence or residentially zoned property.* This condition is met. A ten-foot landscape buffer is proposed along the property's western boundary.
- (e) *Stacking spaces shall be provided for each drive-through lane. Banks, credit unions, and fast-food restaurants shall provide a minimum of four (4) stacking spaces per drive-through lane. Stacking spaces for all other uses shall be determined by the zoning administrator.* This condition is met. Stacking spaces are provided for four vehicles.

*Additional conditions in the T2 traditional neighborhood district:*

- (f) *There shall be no more than one (1) drive-through lane and no more than two (2) drive-through service windows, with the exception of banks, which may have no more than three (3) drive-through lanes.* This condition is met. The proposal is for a single drive-through lane with a single service window.
  - (g) *The number of curb cuts shall be minimized. In light rail station areas, there shall generally be no more than one (1) curb cut on a block face per drive-through. Drive-through sales and services are prohibited along the entire length of block faces adjacent to light rail transit station platforms.* This condition is met. The site has only two curb cuts and is not in a light rail station area.
5. §61.501 lists five standards that all conditional uses must satisfy:
- (1) *The extent, location and intensity of the use will be in substantial compliance with the Saint Paul Comprehensive Plan and any applicable subarea plans which were approved by the city council.* This condition is met. The Comprehensive Plan designates the property as being part of a Mixed Use Corridor, as shown in the Generalized 2030 Future Land Use Map (Figure LU-B). The property is also on the edge of a Neighborhood Center, as designated by the Comprehensive Plan. Both designations call for a compact mix of uses. The proposed use does not detract from these goals. The District 2 Plan has no provisions specific to this site.
  - (2) *The use will provide adequate ingress and egress to minimize traffic congestion in the public streets.* This condition is met. Adequate ingress and egress are already provided. Alley access is eliminated, which effectively eliminates one more commercial access point on White Bear Avenue. Additional traffic generated by the proposed use is anticipated to be minimal and can be adequately handled by the arterial street.
  - (3) *The use will not be detrimental to the existing character of the development in the immediate neighborhood or endanger the public health, safety and general welfare.* This condition is met. The use must abide by regulations regarding shielding of new light poles and controlling menu box volumes so as to not negatively affect the apartment neighbors. Landscaping proposed for the west property line, in combination with the existing residential garages, will provide a visual buffer.
  - (4) *The use will not impede the normal and orderly development and improvement of the surrounding property for uses permitted in the district.* This condition is met. The proposed use is essentially an expansion of an existing use and does not have a significant effect on the normal and orderly development and improvement of the surrounding property.

- (5) *The use shall, in all other respects, conform to the applicable regulations of the district in which it is located.* This condition is met. The development will reduce the number of parking spaces from 27 to 16. Sixteen (16) spaces is above the maximum of 6, but brings the site closer to compliance. The development will meet the landscape buffer requirements along the western property line, including the provision of several trees that will reduce direct views from the adjacent apartment building to the drive-through.

The proposal does not provide, along the façade facing White Bear Avenue, windows and doors that comprise 50% of the length and 30% of the area, as is normally required by the T2 district design guidelines. Instead, the applicant's representative anticipates windows and doors to comprise approximately 48% of the length and 27% of the area along this frontage. The existing building is brick and siding construction with large service windows and a prominent red roof. The proposed addition will be of a similar architectural style, but will not contain any windows on the elevations facing Montana Avenue or White Bear Avenue because of the functional needs for its interior. The existing building will obscure views from the north along White Bear Avenue because the addition is set back about 12 feet from the existing building's front façade. The T2 design guidelines shall apply "unless the applicant can demonstrate that there are circumstances unique to the property that make compliance impractical or unreasonable." In this case, the functional needs of the expansion area make compliance with the design guideline impractical.

6. The planning commission may approve modifications of special conditions when specific criteria of §61.502 are met: *strict application of such special conditions would unreasonably limit or prevent otherwise lawful use of a piece of property or an existing structure and would result in exceptional undue hardship to the owner of such property or structure; provided, that such modification will not impair the intent and purpose of such special condition and is consistent with health, morals and general welfare of the community and is consistent with reasonable enjoyment of adjacent property.* This finding is met. The strict application of the conditions regarding the Montana Avenue driveway and its distance from residential zoning would unreasonably limit the otherwise lawful use of this property. As described in findings above, the modifications will not impair the intent and purpose of the conditions, nor be inconsistent with general welfare or reasonable enjoyment of adjacent property. The depth of the subject lot makes it impossible to place a driveway along Montana Avenue that is both 100 feet from White Bear Avenue and 60 feet from the residential property, as normally required. Also, there is a garage on the residential property's eastern end that buffers the two uses.

NOW, THEREFORE, BE IT RESOLVED, by the Saint Paul Planning Commission, under the authority of the City's Legislative Code, that the application of Allen Plaisted for a conditional use permit for fast food restaurant with drive-through service, with modifications for entrance/exit location, access from street primarily serving abutting residential property, at 1537 White Bear Avenue N is hereby approved subject to the following additional conditions:

1. Rezoning to T2 is approved by the City Council.
2. Final plans approved by City staff for this use shall be in substantial compliance with the plan submitted and approved as part of this application.
3. The hours of operation of the drive-through service shall be limited to 7:00 a.m. to 11:00 p.m. daily.

## ZONING COMMITTEE STAFF REPORT

1. **FILE NAME:** Dairy Queen **FILE #** 13-143-820
  2. **APPLICANT:** Allen Plaisted **HEARING DATE:** January 31, 2013
  3. **TYPE OF APPLICATION:** Conditional Use Permit
  4. **LOCATION:** 1537 White Bear Ave N, between Hoyt and Montana
  5. **PIN & LEGAL DESCRIPTION:** 222922140019, 222922140020, J A Humphreys Subdivision A, Lots 28 29 And Lot 30 Blk 1
  6. **PLANNING DISTRICT:** 2 **PRESENT ZONING:** B2
  7. **ZONING CODE REFERENCE:** §65.513; § 65.616; §66.643; §61.501; §61.502
  8. **STAFF REPORT DATE:** January 24, 2013; ~~REVISED JANUARY 28, 2013~~ **BY:** Bill Dermody
  9. **DATE RECEIVED:** January 9, 2013 **60-DAY DEADLINE FOR ACTION:** March 10, 2013
- 

- A. **PURPOSE:** Conditional use permit for fast food restaurant with drive-through service, with modifications for entrance/exit location and access from street primarily serving abutting residential property
- B. **PARCEL SIZE:** 123 ft. (White Bear Ave.) x 118 ft. (Montana Ave), totaling 14,500 sq. ft.
- C. **EXISTING LAND USE:** C-Restaurant-Fast Food
- D. **SURROUNDING LAND USE:** North and south along White Bear Avenue are a variety of commercial uses (B2), including retail and gas station. To the west is an apartment property (RM2) with a residential building on its western portion and a single-level parking garage for residents on its eastern portion. Beyond the apartments to the west are single-family houses (R3).
- E. **ZONING CODE CITATION:** §65.513 lists standards and conditions for drive-through sales and services; §65.616 lists standards and conditions for fast-food restaurants; §61.501 lists general conditions that must be met by all conditional uses; §61.502 authorizes the planning commission to modify any or all special conditions after making specified findings; §66.643 addresses T2 district design standards.
- F. **HISTORY/DISCUSSION:** The site was developed for the restaurant use prior to 1953. It has been zoned B2 since 1975. In 2001, the Hillcrest Village Overlay District was created and it includes the subject property. An application for rezoning (File # 13-143-806) accompanies this request.
- G. **DISTRICT COUNCIL RECOMMENDATION:** The District 2 Council recommends approval, conditional on the addition of stop signs and a change in the proposed fencing. Both proposed conditions are agreeable to the applicant's representative.
- H. **FINDINGS:**
  1. The application requests a conditional use permit to allow for the existing fast-food restaurant to add a drive-through. The proposal also involves a 230 square foot building addition along Montana Avenue to accommodate the drive-through service. Associated site improvements proposed for the property include closing off access from the alley to the north, moving the Montana Avenue driveway west at the request of city Public Works staff, planting new trees along the western property line, and adding wrought iron fencing along the White Bear Avenue frontage.
  2. The property currently has access via the alley to its north. The proposed development will close off this access; vehicular access will be solely via White Bear Avenue and Montana Avenue.
  3. §65.615 permits fast-food restaurants in the proposed T2 zoning district subject to the following conditions:
    - (a) *Except in I1-I2 Industrial Districts, a conditional use permit is required for establishments of more than 10,000 square feet in gross floor area, and for any establishment with drive-*

*through service. In T2-T3 Traditional Neighborhood Districts, these uses are intended to be of a moderate size compatible with neighborhood-level retail. This condition is met. The subject application is for said conditional use permit. The fast-food restaurant with drive-through service is at a size compatible with neighborhood-level retail.*

- (b) In the B2 Community Business District, fast-food restaurants shall be incorporated within a multi-use retail center, and shall not provide drive-through service. This condition is met if the accompanying rezoning to T2 is approved.*
- (c) Drive through service shall meet the standards and conditions in Sec. 65.513. Drive-through sales and services, primary and accessory. This condition is met, as described in Findings 4 and 6 below.*
- (d) Points of vehicular ingress and egress shall not be onto a street which is used primarily for access to abutting residential property. The application requests modification of this condition. Montana Avenue is used primarily for access to abutting residential property to the west. However, the restaurant has long had access via Montana Avenue. Also, maintenance of access via Montana Avenue is necessary for orderly traffic flow on the site.*
- (e) Points of vehicular ingress and egress shall be located at least sixty (60) feet from the intersection of any two (2) streets and at least sixty (60) feet from any abutting residentially zoned property. The application requests modification of this condition. A reduced separation of only 10 feet is proposed from the abutting residentially zoned property to the west. The driveway is being moved to this location at the request of the city's Public Works department in order to provide greater separation from White Bear Avenue in pursuit of improved safety.*
- (f) When the site abuts an alley which also serves residentially zoned land, no access from the site to the alley shall be permitted. This condition will be met. The site currently has access via the alley to the north. However, that access is being removed as part of the proposal.*
- (g) Trash receptacles shall be housed in a three-sided masonry enclosure, six (6) feet high, or equal in height to the dumpster, whichever is greater, and have an entrance gate constructed of a durable, opaque material. This condition will be met. A new trash receptacle area is proposed for the site's northwestern portion that will meet this requirement.*
- (h) A litter collection plan shall be developed and submitted to the planning commission, which obligates the restaurant operator to keep the area surrounding said restaurant free of restaurant litter for a reasonable specified distance. The applicant intends to meet this condition by submitting a litter collection plan.*
- (i) A landscaped area not less than fifteen (15) percent of the impervious surface area of the lot shall be provided and maintained. The existing restaurant does not meet this condition and is legally nonconforming. Though the proposal also does not meet this requirement, it moves substantially closer to meeting it and makes the site more conforming than the existing configuration. The existing property has no landscaping with two nearby trees located in the White Bear Avenue right-of-way. The proposal will add landscaping adjacent to the White Bear Avenue entrance, surrounding the new drive-through, and along the western property line.*
- (j) Impact on adjoining property by use of the site may not result in the following:*
  - (1) Loud, boisterous and disturbing noise levels.*
  - (2) Hazardous traffic conditions.*
  - (3) Offensive, obnoxious and disturbing odors.*

- (4) *Excessive litter.*
- (5) *Excessive artificial lighting.*
- (6) *Substantial decrease in adjoining property values.*

This condition is met. The use will have no such impacts.

4. Sec. 65.513 permits drive-through sales and services in the proposed T2 district.subject to the following five conditions:

- (a) *Drive-through lanes and service windows shall be located to the side or rear of buildings, shall not be located between the principal structure and a public street, and shall be at least sixty (60) feet from the closest point of any residentially zoned property or property occupied with a one-, two-, or multiple-family dwelling.* This condition is met. The drive-through lane and service window are to the building's rear and are located at least 60 feet from the closest residential property.
- (b) *Points of vehicular ingress and egress shall be located at least sixty (60) feet from the intersection of two streets and at least sixty (60) feet from abutting residentially zoned property.* As noted in Finding 4e above, the application requests modification of this condition. A reduced separation of only 10 feet is proposed from the abutting residentially zoned property to the west. The driveway is being relocated to this location at the request of the city's Public Works department in order to provide greater separation from White Bear Avenue in pursuit of improved safety.
- (c) *Speaker box sounds from the drive-through lane shall not be plainly audible so as to unreasonably disturb the peace and quiet of abutting residential property.* This condition will be met.
- (d) *A six-foot buffer area with screen planting and an obscuring wall or fence shall be required along any property line adjoining an existing residence or residentially zoned property.* This condition is met. A ten-foot landscape buffer is proposed along the property's western boundary.
- (e) *Stacking spaces shall be provided for each drive-through lane. Banks, credit unions, and fast-food restaurants shall provide a minimum of four (4) stacking spaces per drive-through lane. Stacking spaces for all other uses shall be determined by the zoning administrator.* This condition is met. Stacking spaces are provided for four vehicles.

*Additional conditions in the T2 traditional neighborhood district:*

- (f) *There shall be no more than one (1) drive-through lane and no more than two (2) drive-through service windows, with the exception of banks, which may have no more than three (3) drive-through lanes.* This condition is met. The proposal is for a single drive-through lane with a single service window.
  - (g) *The number of curb cuts shall be minimized. In light rail station areas, there shall generally be no more than one (1) curb cut on a block face per drive-through. Drive-through sales and services are prohibited along the entire length of block faces adjacent to light rail transit station platforms.* This condition is met. The site has only two curb cuts and is not in a light rail station area.
5. §61.501 lists five standards that all conditional uses must satisfy:
- (1) *The extent, location and intensity of the use will be in substantial compliance with the Saint Paul Comprehensive Plan and any applicable subarea plans which were approved by the city council.* This condition is met. The Comprehensive Plan designates the property as being part of a Mixed Use Corridor, as shown in the Generalized 2030 Future Land Use Map (Figure LU-B). The property is also on the edge of a Neighborhood Center, as designated by the Comprehensive Plan. Both

designations call for a compact mix of uses. The proposed use does not detract from these goals. The District 2 Plan has no provisions specific to this site.

- (2) *The use will provide adequate ingress and egress to minimize traffic congestion in the public streets.* This condition is met. Adequate ingress and egress are already provided. Alley access is eliminated, which effectively eliminates one more commercial access point on White Bear Avenue. Additional traffic generated by the proposed use is anticipated to be minimal and can be adequately handled by the arterial street.
- (3) *The use will not be detrimental to the existing character of the development in the immediate neighborhood or endanger the public health, safety and general welfare.* This condition is met. The use must abide by regulations regarding shielding of new light poles and controlling menu box volumes so as to not negatively affect the apartment neighbors. Landscaping proposed for the west property line, in combination with the existing residential garages, will provide a visual buffer.
- (4) *The use will not impede the normal and orderly development and improvement of the surrounding property for uses permitted in the district.* This condition is met. The proposed use is essentially an expansion of an existing use and does not have a significant effect on the normal and orderly development and improvement of the surrounding property.
- (5) *The use shall, in all other respects, conform to the applicable regulations of the district in which it is located.* This condition is met. The development will reduce the number of parking spaces from 27 to 16. Sixteen (16) spaces is above the maximum of 6, but brings the site closer to compliance. The development will meet the landscape buffer requirements along the western property line, including the provision of several trees that will reduce direct views from the adjacent apartment building to the drive-through.

The proposal does not provide, along the façade facing White Bear Avenue, windows and doors that comprise 50% of the length and 30% of the area, as is normally required by the T2 district design guidelines. Instead, the applicant's representative anticipates windows and doors to comprise approximately 48% of the length and 27% of the area along this frontage. The existing building is brick and siding construction with large service windows and a prominent red roof. The proposed addition will be of a similar architectural style, but will not contain any windows on the elevations facing Montana Avenue or White Bear Avenue because of the functional needs for its interior. The existing building will obscure views from the north along White Bear Avenue because the addition is set back about 12 feet from the existing building's front façade. The T2 design guidelines shall apply "unless the applicant can demonstrate that there are circumstances unique to the property that make compliance impractical or unreasonable." In this case, the functional needs of the expansion area make compliance with the design guideline impractical.

6. The planning commission may approve modifications of special conditions when specific criteria of §61.502 are met: *strict application of such special conditions would unreasonably limit or prevent otherwise lawful use of a piece of property or an existing structure and would result in exceptional undue hardship to the owner of such property or structure; provided, that such modification will not impair the intent and purpose of such special condition and is consistent with health, morals and general welfare of the community and is consistent with reasonable enjoyment of adjacent property.* This finding is met. The strict application of the conditions regarding the Montana Avenue driveway and its distance from residential zoning would unreasonably limit the otherwise lawful use of this property. As described in findings above, the modifications will not impair the intent and purpose of the conditions, nor be

inconsistent with general welfare or reasonable enjoyment of adjacent property. The depth of the subject lot makes it impossible to place a driveway along Montana Avenue that is both 100 feet from White Bear Avenue and 60 feet from the residential property, as normally required. Also, there is a garage on the residential property's eastern end that buffers the two uses.

- I. **STAFF RECOMMENDATION:** Based on the above findings, staff recommends approval of the conditional use permit for a fast-food restaurant with drive-through service, with modifications for entrance/exit location and access from street primarily serving abutting residential property subject to the following additional conditions:
  1. Rezoning to T2 is approved by the City Council.
  2. Final plans approved by City staff for this use shall be in substantial compliance with the plan submitted and approved as part of this application.
  3. The hours of operation of the drive-through service shall be limited to 7:00 a.m. to 11:00 p.m. daily.

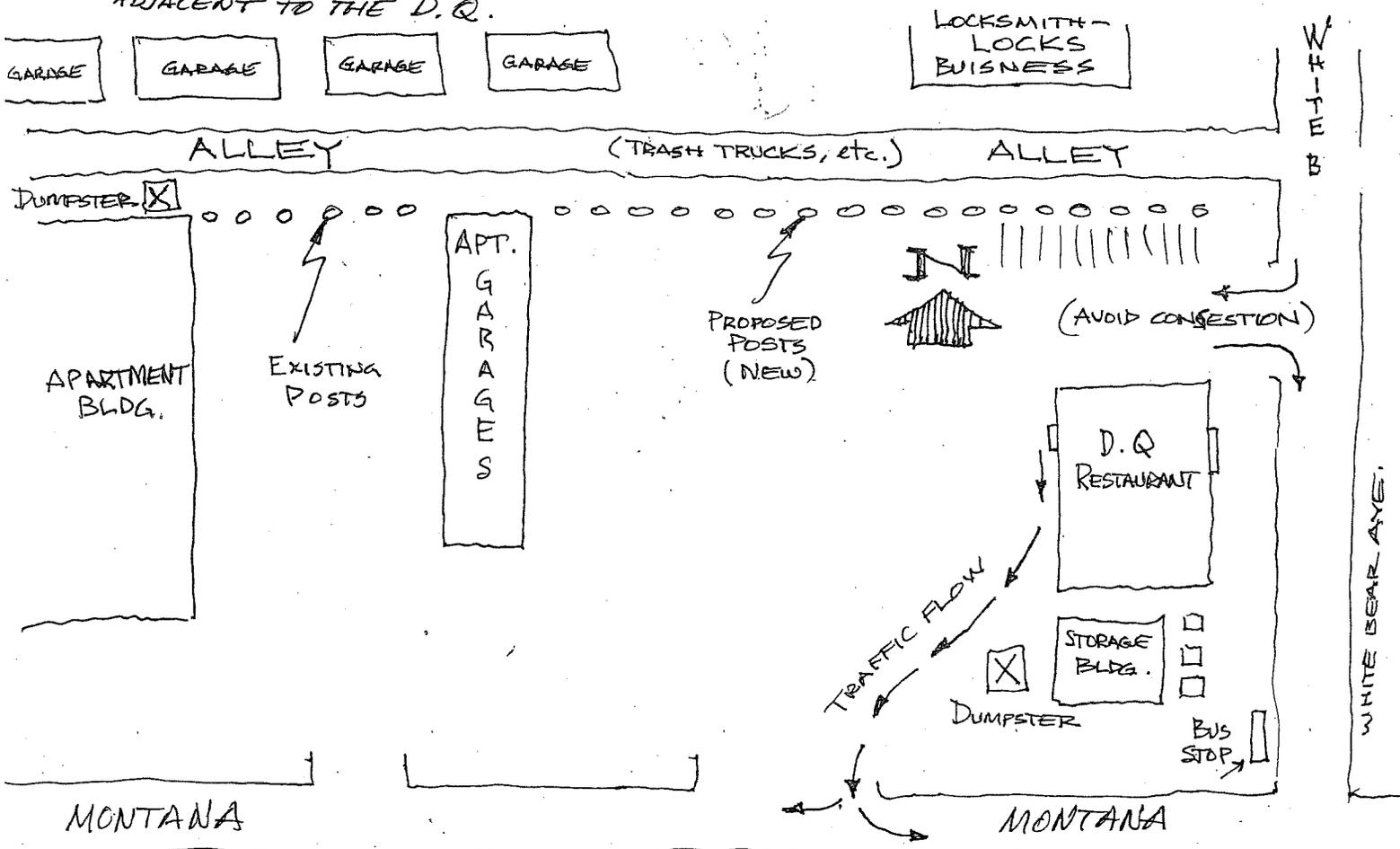
DAVID G. LACY  
1750 HOYT AVE. E.  
ST. PAUL, MN 55106  
JANUARY 21, 2013

CITY OF ST. PAUL  
ST. PAUL PLANNING COMMISSION  
1400 CITY HALL ANNEX  
25 W. 4th ST.  
ST. PAUL, MN 55102-1634

ZONING COMMITTEE :

IN RE FILE # 13-143-806 AND 13-143-820.

THE ADDITION OF A "DRIVE-THROUGH" AT THE DAIRY QUEEN (1537 WHITE BEAR AVE. N.) SEEMS LIKE A GOOD IDEA, PROVIDED CERTAIN STEPS BE TAKEN TO PREVENT TRAFFIC-FLOW PROBLEMS. MY PRIMARY CONCERN IS THE POTENTIAL OF INCREASED TRAFFIC FLOW THROUGH THE ALLEY LOCATED BETWEEN MONTANA AND HOYT. I PROPOSE A LINE OF PERMANENT POSTS (SEE ILLUSTRATION BELOW) ALONG THE NORTHERN PROPERTY LINE OF THE D.Q., SIMILAR TO THE EXISTING POSTS OF THE APARTMENT BUILDING, ADJACENT TO THE D.Q.



city of saint paul  
planning commission resolution  
file number  
date

WHEREAS, Saint Paul Parks and Recreation, File # 13-143-460, has applied for a conditional use permit for placement of fill and grading in the flood plain and variance for wetland impact in the River Corridor (Lilydale Regional Park improvements) under the provisions of §§61.501; 61.601; 61.202(b); 68.601(a); 72.63 of the Saint Paul Legislative Code, on property located at 720 Water St W, Parcel Identification Numbers (PINs) 122823430037, ; 122823410013; 122823410012; 122823410011; 122823410008; 122823410007; 122823410015, 122823140013; 122823140007; 122823140011; 122823140014; 122823140015; 122823140016; 122823140017; 122823330001; 122823340002; 122823410002; 122823410005; 122823410066; 062822340011; 122823330032; 122823410016; 122823440048; 072822230139; (see file for legal descriptions); and

WHEREAS, the Zoning Committee of the Planning Commission, on January 31, 2013, held a public hearing at which all persons present were given an opportunity to be heard pursuant to said application in accordance with the requirements of §61.303 of the Saint Paul Legislative Code; and

WHEREAS, the Saint Paul Planning Commission, based on the evidence presented to its Zoning Committee at the public hearing as substantially reflected in the minutes, made the following findings of fact:

1. Saint Paul Parks and Recreation has developed a master plan for improvements to Lilydale Regional Park. Long-term improvements include a dog off-leash area, trail improvements, road realignment, a picnic area including pavilion, and clean-up of legacy contamination. The portion of the project for which a conditional use permit and variance is being sought includes additional excavation of contaminated soil from the Lilydale Dump site and backfilling with clean stockpiled material from the former Lilydale Marina to allow construction of the realigned road, trail improvements and construction, and placement of additional fill for a picnic area near Pickerel Lake. This work will be constructed in two phases: spring through fall 2013 and, pending funding, spring through fall 2014.
2. The proposed project will require grading and fill in the floodway, and wetland impacts within the river corridor. Floodway grading and filling is a conditional use, per §72.63 of the zoning code. Impact of wetlands in the river corridor requires variance of §68.402(b)(5)(e) of the zoning code.
3. The applicant has submitted the following information with the application: A narrative project description, project plans, and phase I construction documents; A revised Response Action Plan (RAP) and Construction Contingency Plan for mitigation of soil contamination associated with the former Lilydale Dump Site (approved by Minnesota Pollution Control Agency (MPCA)); A No-Rise Certification verifying that the proposed project will not impact the 100-year flood elevation of the Mississippi River (reviewed by Minnesota Department of Natural Resources (DNR)); All documentation associated with a voluntary Environmental Assessment Worksheet (EAW) completed by the applicant; Documentation of an approved conditional use permit from the City of Lilydale for the proposed project. The EAW Finding of Facts identifies needed mitigation in the form of wetland replacement for impacted wetlands and accommodation for blundings turtle and bald

moved by \_\_\_\_\_

seconded by \_\_\_\_\_

in favor \_\_\_\_\_

against \_\_\_\_\_

eagle habitat. The project as proposed includes the required mitigation.

4. Sec. 63.600 of the zoning code specifies that the Planning Commission shall not consider wetland replacement unless the applicant has complied with this sequencing requirement, and that the City may seek the advice of a Technical Evaluation Panel (TEP), as provided for in Minnesota Rules 8420, in making this determination. The TEP has given preliminary approval for wetlands avoidance sequencing and mitigation (replacement) plan, pending final report and notice of decision. DNR and United States Army Corps of Engineers (USACE) approval is also required. DNR approval is pending. USACE has given preliminary approval, pending determination of need for additional cultural resources study of wetlands. Conditional use permit and variance approvals should be conditional upon final approvals from the TEP, DNR, and USACE.
5. A stormwater pollution prevention plan (SWPPP) was submitted as part of site plan review. Pending final approval of this plan by the city's Water Resources Coordinator, the applicant will make application to MPCA for a National Pollutant Discharge Elimination System (NPDES) permit. City SWPPP approval and MPCA NPDES permit issuance should be conditions of CUP and variance approval.
6. §72.32 lists factors that the Planning Commission shall consider in reviewing conditional use permits applications in the FW Floodway district:
  - (a) *The relationship of the proposed use to the comprehensive plan and floodplain management program for the city.* The proposed use is consistent with the Comprehensive Plan. Two major strategies of the Parks and Recreation Plan (Chapter) are to *Promote Active Lifestyles* and *Promote a Vital Environment*. The proposed project will improve accessibility and facilities for recreational use of Lilydale Regional Park. It is also a net benefit to the environment by removing contaminated soils and providing for replanting with native plants. The proposed project is also consistent with the City's floodplain management program; it will not compromise floodway capacity and does not permit development prone to flood damage.
  - (b) *The importance of the services provided by the proposed facility to the community.* The proposed use will contribute to the improvement of facilities in Lilydale Park. Open space and passive recreational facilities are an important amenity for the community.
  - (c) *The ability of the existing topography, soils and geology to support and accommodate the proposed use.* The proposed project will include replacement of contaminated soils in the proposed road bed with clean, structural sufficient soils. The topography and soils of the remainder of the site are suitable for the proposed park uses.
  - (d) *The compatibility of the proposed use with existing characteristics of biologic and other natural communities.* The propose use will result in the replacement of mixed native and non-native vegetation existing on the site with native vegetation. The proposed road will be built along an existing trail corridor to minimize disturbance. Tree removal will be limited. The plan accommodates blandings turtle and bald eagle habitats as required by the mitigation measure identified in the EAW Findings of Fact.
  - (e) *The proposed water supply and sanitation systems and the ability of those systems to prevent disease, contamination and unsanitary conditions.* The proposed project includes extension of water supply and sanitary sewer lines for a planned future picnic shelter and restrooms.
  - (f) *The requirements of the facility for a river-dependent location, if applicable.* The facility is already located in the river floodplain.

- (g) *The safety of access to the property for ordinary vehicles.* Road access to, from, and through the park already exists. The proposed project includes a road realignment, which will improve maintain safe access to the property and reduce trail/road conflicts.
- (h) *The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner.* Floodway grading will allow realigned and new road and trail segments to be constructed; these segments will not be highly susceptible to flood damage, and any potential damage does not present an unacceptable risk to the facility owner. Interim soil stabilization and restoration of disturbed areas with native vegetation will provide protection from flood-related erosion.
- (i) *The dangers to life and property due to increased flood heights or velocities caused by encroachments.* The project will not result in a net-rise of flood heights or increased flood velocities. A No-Rise Certification from a professional engineer verifying this has been submitted to the City of Saint Paul and the regulatory authority, the Minnesota DNR.
- (j) *The expected heights, velocity, duration, rate of rise, and sediment transport of the floodwaters expected at the site.* The property is located within the floodway. However, the proposed use will not increase the susceptibility of the area to damage, nor increase the likelihood of contribution of the area to downstream problems, based on height, velocity, duration, rate of rise, or sediment transport of floodwaters.
- (k) *The danger that materials may be swept onto other lands or downstream to the injury of others.* The proposed use will not result in location of additional materials on the site that may be subject to downstream movement.
- (l) *The availability of alternative locations or configurations for the proposed use.* The proposed realignment of the road, enabled by the proposed use, is the best alternative when considering facility improvement plans, water quality in Pickerel Lake and the Mississippi River, site access, and trail safety.
- (m) *Such other factors as are relevant to the purposes of this chapter.* No other factors suggest alternative conclusions to those above in regard to the purposes of this chapter.

7. §72.33 lists conditions which the Planning Commission may attach to conditional use permits issued in the floodplain:

- (a) *Modifications of design, site planning or site treatment.* No such modifications are suggested.
- (b) *Requirements for implementation of erosion and sediment control, vegetation management, wildlife management and other protective measures.* The applicant has submitted a SWPPP for review by the city's Water Resource Coordinator. Pending approval of the SWPPP, the applicant will apply for a NPDES permit from MPCA. CUP approval should be conditional on SWPPP approval and issuance of a NPDES permit.
- (c) *Modifications of waste disposal and water supply facilities or operations.* The proposed project includes extension of water supply and sanitary sewer lines for a planned future picnic shelter and restrooms.
- (d) *Limitations on period of use and operation, a flood warning system and an evacuation plan.* The proposed project is located within Lilydale Regional Park, which is subject to closure during times of seasonal flooding. The area is not subject to flash flooding.
- (e) *Imposition of operational controls, sureties and deed restrictions.* No such controls or restrictions are needed.
- (f) *Requirements for construction of channel improvements, modifications, dredging, dikes, levees and other protective measures.* No improvements, modifications, or protective measures are needed.

- (g) *Floodproofing measures shall be designed consistent with state-established floodproofing standards in the Minnesota State Building Code and with the flood protection elevation for the particular area including flood velocities, duration and rate of rise, hydrostatic and hydrodynamic forces, and other factors associated with the regulatory flood. The planning commission shall require that the applicant submit a plan or documents certified by a registered professional engineer or architect that the floodproofing measures are consistent with the regulatory flood elevation and associated flood factors for the particular area. The floodproofing measures that may be required include, but are not limited to, the following:*
- (1) *Anchorage to resist flotation and lateral movement.*
  - (2) *Installation of watertight doors, bulkheads and shutters, or similar methods of construction.*
  - (3) *Reinforcement of walls to resist water pressure.*
  - (4) *Use of paints, membranes or mortars to reduce seepage of water through walls.*
  - (5) *Addition of mass or weight to structures to resist flotation.*
  - (6) *Installation of pumps to lower water levels in structures.*
  - (7) *Construction of water supply and waste treatment systems to prevent the entrance of floodwaters.*
  - (8) *Installation of pumping facilities or comparable practice for subsurface drainage systems for buildings to relieve external foundation wall and basement floor pressures.*
  - (9) *Construction to resist rupture or collapse caused by water pressure or floating debris.*
  - (10) *Installation of valves or controls on sanitary and storm drainage which will permit the drains to be closed to prevent backup of sewage and stormwaters into the buildings or structures. Gravity draining of basements may be eliminated by mechanical devices.*
  - (11) *Location of all electrical equipment, circuits and installed electrical appliances such that they are not subject to the regional flood.*
  - (12) *Location of any structural storage facilities for chemicals, explosives, buoyant materials, flammable liquids or other toxic materials that could be hazardous to public health, safety and welfare (if permissible under the Minnesota State Building Code) above the flood protection elevation or provision of adequate floodproofing to prevent flotation of or damage to storage containers which could result in the escape of toxic materials into floodwaters.*

The proposed project does not include structures. The future planned picnic shelter and restrooms will be located above floodplain elevation.

- (h) *Specifications for building construction and materials, filling and grading, water supply, sanitary facilities, utilities and other work or construction to be submitted to the city department of safety and inspections for review and approval prior to any development. A site plan for the proposed grading and filling activities and site improvements has been submitted to the Department of Safety and Inspections. Planning Commission approval of the conditional use permit should be conditional on final site plan approval.*

8. §72.64 lists standards for conditional use in the FW Floodway district:

- (a) *No structure (temporary or permanent), fill deposit (including fill for roads and levees), obstruction, storage of materials or equipment, or other use may be allowed that will cause an increase in the height of the regional flood or cause an increase in flood damages in the reach or reaches affected. The use shall not adversely affect the hydraulic capacity of the channel or floodway or any tributary to the main stream or of any ditch or other drainage facility or system. For Lake Phalen and Beaver Lake, compensating flood water storage volume shall be provided below the 100-year flood elevation for any obstruction placed in the floodplain. The project will result in a net import of fill to the project site, which includes areas of floodway, flood fringe, and*

non-floodplain, but will not cause an increase in height of the regional flood. A signed A No-Rise Certification has been submitted to the City of Saint Paul and the DNR.

- (b) *Fill shall be protected from erosion by vegetative cover, mulching, riprap or other acceptable method.* The SWPPP filed by the applicant includes temporary and permanent stabilization measures for areas of fill. SWPPP is subject to approval by the city's Water Resources Coordinator and should be a condition of approval.
- (c) *Accessory structures shall not be designed for human habitation.* The proposed use does not include any accessory structures.
- (d) *Accessory structures shall be constructed and placed on the building site so as to offer the minimum obstruction to the flow of floodwaters:*
  - (1) *Whenever possible, structures shall be constructed with the longitudinal axis parallel to the direction of flood flow; and*
  - (2) *So far as practicable, structures shall be placed approximately on the same flood flow lines as those of adjoining structures.*

The proposed use does not include any accessory structures.

- (e) *Accessory structures shall be elevated on fill or structurally dry floodproofed in accordance with the FP-1 or FP-2 floodproofing classification in the Minnesota State Building Code. As an alternative, an accessory structure may be floodproofed to the FP-3 or FP-4 floodproofing classification in the Minnesota State Building Code, provided the accessory structure constitutes a minimal investment, does not exceed five hundred (500) square feet in size, and for a detached garage, the detached garage must be used solely for parking of vehicles and limited storage. All floodproofed accessory structures must meet the following additional standards:*
  - (1) *The structure must be adequately anchored to prevent flotation, collapse or lateral movement of the structure and shall be designed to equalize hydrostatic flood forces on exterior walls;*
  - (2) *Any mechanical and utility equipment in a structure must be elevated to or above the regulatory flood protection elevation or properly floodproofed; and*
  - (3) *To allow for the equalization of hydrostatic pressure, there must be a minimum of two "automatic" openings in the outside walls of the structure having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding. There must be openings on at least two sides of the structure and the bottom of all openings must be no higher than one foot above the lowest adjacent grade to the structure. Using human intervention to open a garage door prior to flooding will not satisfy this requirement for automatic openings.*

The proposed use does not include any accessory structures.

- (f) *The storage or processing of materials that are, in time of flooding, flammable, explosive, or potentially injurious to human, animal, or plant life is prohibited. Storage of materials or equipment may be allowed if readily removable from the area within the time available after a flood warning and in accordance with a plan approved by the Planning Commission. The proposed use does not include processing or storage of any materials:*
- (g) *Structural works for flood control that will change the course, current, or cross-section of protected wetlands or public waters shall be subject to the provisions of Minnesota Statutes Chapter 103G. Structural works for flood control intended to remove areas from the regulatory floodplain shall not be allowed in the floodplain.* The proposed use does not include any flood control structures.
- (h) *A levee, dike or floodwall constructed in the floodway shall not cause an increase to the regional flood and the technical analysis must assume equal conveyance or storage loss on both sides of a stream.* Soil grading activities include creation of a small berm at the former Lilydale Marina.

site; modeling found no net-rise in the regional flood and included the proposed berm as well as the required assumptions.

- (i) *No use shall be permitted which is likely to cause pollution of waters, as defined in Minnesota Statutes, §115.01, unless adequate safeguards, approved by the state pollution-control agency, are provided.* The proposed use, subject to stabilization of fill and reestablishment of vegetation as outlined in the SWPPP, is not likely to result in pollution of waters.

9. §61.501 lists five standards that all conditional uses must satisfy:

- (1) *The extent, location and intensity of the use will be in substantial compliance with the Saint Paul Comprehensive Plan and any applicable subarea plans which were approved by the city council.* This condition is met. The proposed use is consistent with the Comprehensive Plan. Two major strategies of the Parks and Recreation Plan (Chapter) are to *Promote Active Lifestyles* and *Promote a Vital Environment*. The proposed placement of fill will allow planned development of improved facilities for active recreation in Lilydale Regional Park. It is also a net benefit to the environment by removing contaminated soils and providing for replanting with native plants.
- (2) *The use will provide adequate ingress and egress to minimize traffic congestion in the public streets.* This condition is met. Current ingress to and egress from the park as a whole is adequate, and the proposed use will not directly impact this access. Road specifications have been reviewed and approved by Public Works staff as part of site plan review.
- (3) *The use will not be detrimental to the existing character of the development in the immediate neighborhood or endanger the public health, safety and general welfare.* This condition is met. The use is consistent with the character of the immediate area. Removal of some contaminated soils is part of a larger contamination response plan, and will benefit the public health and safety. The general welfare of the public is also benefitted by the long-term planned park improvements.
- (4) *The use will not impede the normal and orderly development and improvement of the surrounding property for uses permitted in the district.* This condition is met. The proposed use will allow park facility development to proceed.
- (5) *The use shall, in all other respects, conform to the applicable regulations of the district in which it is located.* This condition can be met. Subject to the proposed conditions of approval, the proposed use will conform to all applicable regulations for the district in which it is located.

10. §68.601(a) states: *Applications for variance to the provisions of this chapter may be filed as provided in section 61.600. The burden of proof shall rest with the applicant to demonstrate conclusively that such variance will not result in a hazard to life or property and will not adversely affect the safety, use or stability of a public way, slope or drainage channel, or the natural environment; such proof may include soils, geology and hydrology reports which shall be signed by registered professional engineers. Variances shall be consistent with general purposes of the standards contained in this chapter and state law and the intent of applicable state and national laws and programs.*

Construction of the proposed re-aligned roadway will require impacting approximately 21,000 square feet of wetlands, in violation of §68.402(b)(5)(e) which states that *transportation, utility, and other transmission service facilities and corridors shall avoid wetlands* in the river corridor. The applicant has requested variance of this development standard. Pursuant to the Minnesota Wetland Conservation Act, projects must seek to first avoid wetland impacts, then minimize, and finally mitigate any unavoidable wetland impacts. Sec. 63.600 of the zoning code specifies that the Planning Commission shall not consider wetland replacement unless the applicant has complied

with this sequencing requirement, and that the City may seek the advice of a Technical Evaluation Panel, as provided for in Minnesota Rules 8420, in making this determination. The Technical Evaluation Panel, staffed by the City's Water Resources Coordinator, has found that sequencing requirement has been met, and has approved of the Department of Parks and Recreation's proposed wetland replacement (mitigation) plan, subject to United States Army Corps of Engineers (USACE) approval of proposed wetland impacts. The USACE has issued preliminary approval, subject to the determination whether or no additional cultural resources survey of wetlands is required. Final approval from USACE and compliance with all USACE requirements should be a condition of approval.

The proposed wetland impacts will not result in a hazard to life or property, and will not affect the safety or use of any public way, slope or drainage channel. The TEP has determined, as supported by modeling performed for the no-net rise determination, that proposed wetland impacts will not impact flood storage capacity. Plans have also been reviewed for impacts by city staff through the site plan review process.

11. MN Stat. 462.357, Subd. 6 was amended to establish new grounds for variance approvals effective May 6, 2011. Required findings for a variance consistent with the amended law are as follows:
- (a) *The variance is in harmony with the general purposes and intent of the zoning code.* This finding can be met. The proposed wetland impacts have undergone significant review, and are consistent with the general purpose and intent of the zoning code.
  - (b) *The variance is consistent with the comprehensive plan.* This finding can be met. The proposed project is consistent with the comprehensive plan, and the proposed wetland impacts are an unavoidable aspect of the project.
  - (c) *The applicant has established that there are practical difficulties in complying with the provision, that the property owner proposes to use the property in a reasonable manner not permitted by the provision. Economic considerations alone do not constitute practical difficulties.* This finding can be met. The sequencing process required by the Minnesota Wetland Conservation Act has demonstrated that wetland impacts were unavoidable, as confirmed by the preliminary findings of the TEP. The proposed use of the property is reasonable.
  - (d) *The plight of the landowner is due to circumstances unique to the property not created by the landowner.* This finding can be met. Wetlands are naturally occurring and the landowner has made efforts to avoid and minimize wetland impacts associated with the proposed project.
  - (e) *The variance will not permit any use that is not allowed in the zoning district where the affected land is located.* This finding is met. The proposed use is allowed in the zoning district where the affected land is located.
  - (f) *The variance will not alter the essential character of the surrounding area.* This finding is met. The area is largely natural in area, with limited development to create access and allow passive recreation. The variance will not alter this character.

NOW, THEREFORE, BE IT RESOLVED, by the Saint Paul Planning Commission, under the authority of the City's Legislative Code, that the application of Saint Paul Parks and Recreation for a conditional use permit for placement of fill and grading in the flood plain and variance for wetland impact in the River Corridor (Lilydale Regional Park improvements) at 720 Water St W is hereby approved, subject to the following additional conditions:

- 1) Applicant receives final site plan approval.
- 2) Applicant receives approval of its Storm Water Pollution Prevention Plan (SWPPP) and abides by any conditions imposed in the SWPPP by the Department of Safety and Inspections.

- 3) Applicant receives approval of its National Pollutant Discharge Elimination System permit and abides by any conditions imposed under that permit.
- 4) Applicant receives final approval from the Technical Evaluation Panel, Minnesota Department of Natural Resources, and United States Army Corps of Engineers for wetlands impacts and replacement plan, and abides by any conditions of those approvals.
- 5) Applicant abides by the Response Action Plan and Construction Contingency Plan approved by Minnesota Pollution Control Agency.
- 6) Applicant abides by the conditional use permit issued by the City of Lilydale.
- 7) Applicant abides by mitigation measures for wildlife habitat and wetland impacts identified in the Environmental Assessment Worksheet Findings of Fact.



# Friends of the Mississippi River

360 North Robert • Suite 400 • Saint Paul, MN 55101 • 651/222-2193 • www.fmr.org

*Working to protect the Mississippi River and its watershed in the Twin Cities area*

January 29, 2013

Barb Wencil, Chair  
Saint Paul Planning Commission  
1400 City Hall Annex  
25 West Fourth Street  
St. Paul, MN 55102

Gaius Nelson, Chair  
Planning Commission Zoning Committee  
1400 City Hall Annex  
25 West Fourth Street  
St. Paul, MN 55102

Dear Chairs Nelson and Wencil,

As you may know, Friends of the Mississippi River (FMR) is a local non-profit community-based organization that works to protect and enhance the natural and cultural assets of the Mississippi River and its watershed in the Twin Cities. We have 1,700 active members, and more than 3,000 active volunteers who care deeply about the river's unique resources. We have been an active and ongoing partner in planning for the future of the St. Paul river corridor.

We write today about the zoning case in front of you for the reconstruction of roadway and pathways through Lilydale Regional Park. The Park has a special and beloved place in our City as a respite from city life, and as an evolving, and improving ecological amenity for the larger river corridor. As such, this is a park that has been funded over the years as an area of regional and national significance – part of our local Mississippi River-focused National Park.

Alongside many other organizations, we have been involved in planning for the future of Lilydale Regional Park. We participated in the process that updated the Lilydale Regional Park Master Plan, which was adopted by the Parks Commission and City Council in 2009 with broad support.

Subsequently, our staff River Planner, Bob Spaulding, participated in and was chosen to serve as Co-Chair of the Lilydale Regional Park Design Advisory Task Force. The Task Force was charged with reviewing the specific designs of key improvements identified in the Master Plan, prior to construction. The Task Force reviewed designs for a realigned roadway, associated necessary changes to the trail system, bridge designs, roadway placement, entrance sign, the picnic area and restroom design – a first round of projects identified in the Master Plan, for which funding has been secured from outside sources.

This Task Force process represented a new approach for the Parks Department, deepening engagement with community members about specific project designs. The process itself brought to light some tensions inherent in design objectives, but the Task Force worked through these tensions; at the conclusion of the final meeting, when specifically asked, no Task Force members shared objections to the final design. The City's administration stands squarely behind the design:

We can't know in advance what public comment you might receive on Lilydale Park. But as you consider this decision, we think there is one essential distinction to remember. As you are

surely aware, the zoning case in front of you is not a policymaking decision. A great many stakeholders have played a role in policymaking decisions already through separate City processes – most fundamentally the Master Plan process and Design Advisory Task Force. Rather, the case before the Commission today is a quasi-judicial zoning case.

Put another way, it is our understanding that the central question before the Commission is not, “how might we design the project differently,” because that was the charge of the Master Plan process and the Design Advisory Task Force, which have already drawn to a conclusion. Rather, we understand the specific question before the Planning Commission to be, “does this proposal meet the standards that are set out in the zoning code?”

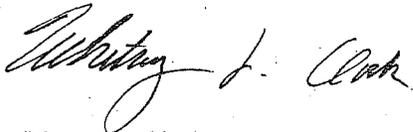
Within that scope appropriate to the Planning Commission, we are confident that you will treat this case as you would a case from any other applicant. Upon review of the application, we see no reasonable way to assert that this project does not, based upon the preponderance of evidence, reasonably meet the requirements of the zoning code, as is outlined by the staff report.

To that end, we offer a few additional observations on this proposal’s compliance with the Comprehensive Plan that you may find helpful:

- As outlined by the staff report, the roadway is realigned to improve upon the basic structure of the park. The new roadway will be realigned to provide more of a natural and scenic buffer to the shorelines of both the Mississippi River and Pickerel Lake. From our perspective, this is a major improvement over what currently exists.
- As an environmental organization, we appreciate that the proposed roadway design sensitively avoids several mature cottonwood trees. These trees provide important ecological functions including nesting habitat for Bald Eagles. Foresters are concerned about the lack of cottonwood regeneration in the river bottomlands throughout the Twin Cities and the cause of this problem is not completely understood. The road rightly avoids these trees, and is part of why the road was designed as it was.
- While we never like losing wetlands, given the other many objectives in the plan, we have no hesitation that the approach outlined in the staff report is the right approach for this park and for the ecological health of the Mississippi River.
- We are pleased that as part of the larger project, potential areas of pollution in this park will be addressed. This project, along with the capping and removal of pollution should be allowed to go forward sooner rather than later to avoid continuing impacts on the river environment.

Thanks again for your careful attention to this case; we appreciate your ongoing partnership in support of our shared river corridor in this and other matters. Please don’t hesitate to call me at 651-222-2193 x13 with any questions.

Sincerely,



Whitney L. Clark  
Executive Director

Cc: Anne Hunt, Director of Environmental Policy, Mayor Chris Coleman’s Office  
Alice Messer, Ellen Stewart & Jody Martinez, St. Paul Department of Parks & Recreation