

MINUTES OF THE ZONING COMMITTEE
Thursday, August 13, 2015 - 3:30 p.m.
City Council Chambers, 3rd Floor
City Hall and Court House
15 West Kellogg Boulevard

PRESENT: Edgerton, Makarios, Merrigan, Padilla, and Wenc
EXCUSED: Nelson, Wickiser, and Reveal
STAFF: Jake Reilly, Nicole McCarthy, and Peter Warner

The meeting was chaired by Commissioner Padilla.

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

This public hearing remains closed.

Chair Padilla stated that this item was returned to the Zoning Committee from Planning Commission on August 7, 2015. She explained that there was an alternative resolution proposed at the August 7 Planning Commission meeting including revised language that encapsulated the conditions that the Committee recommended at the July 30 Zoning Committee meeting. The applicant felt that they did not have enough time to review the resolution and conditions and requested additional time to review the information and see if there were changes they wanted to recommend.

Chair Padilla referred to a handout from staff including staff revisions to the Planning Commission Resolution and revisions proposed by Border Foods (see attached).

Mr. Reilly clarified a few items regarding the handout and resolution. The applicant requested that item 6(c) stating that an inspection schedule for external trash receptacles on site of at least twice during each shift to determine whether the receptacles should be emptied be removed from the conditions. The applicant also had a concern about the section in the handout referring to security measures. Staff had requested they consider having an off-duty police officer onsite and that Border Foods would like that phrase struck. He noted that the applicant requested an earlier delivery time of 6:30 a.m. rather than 7:00 a.m. due to the heavy traffic on Snelling Avenue.

Chair Padilla also noted two items that should be considered related to the resolution presented at the Planning Commission last week. She stated they should request that staff include the entire history related to the site within the resolution so that it is clear what was permitted and what has been enforced on the site. She also stated condition 17 should be moved to be part of the support of the resolution and not listed as a condition of the permit. Condition 17 was recommended at the last Zoning Committee meeting and required DSI staff to review the permit after six months.

Commissioner Barbara Wenc moved approval with conditions of the conditional use permit & variances with modifications listed in the staff handout pertaining to hours of operation and the

camera system. She also moved that the resolution state the history of the site as well as moving condition 17 to the body of the resolution rather than as a condition.

Commissioner Padilla clarified the modifications noted in the motion. The following modifications reflect what is listed as staff revisions on the handout including; the hours of operation of the drive through hours will be 7 a.m. to midnight Sunday-Thursday and 7 a.m. to 1 a.m. on Friday and Saturday. The dining room shall close no earlier than two hours prior to the close of the drive through window. A camera system shall be installed and maintained to monitor activity in the restaurant and parking area.

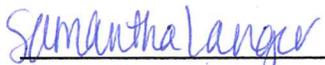
The other conditions on the resolution presented at the Planning Commission on August 7, 2015, will remain the same, with the exception of moving condition 17 to the body of the resolution, and including the history of the site.

Commissioner Kyle Makarios seconded the motion.

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

Adopted Yeas - 5 Nays - 0 Abstained - 0

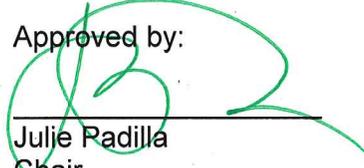
Drafted by:


Samantha Langer
Recording Secretary

Submitted by:


Jake Reilly
Zoning Section

Approved by:


Julie Padilla
Chair

Proposed in Resolution from 08/07/2015	Staff revision	Proposed by applicant
A new site plan shall be submitted that shows no more than 18 parking spaces and at least 14 percent interior landscaping.	none	A new site plan shall be submitted that shows no more than 19 parking spaces and at least 13 percent interior landscaping.
The hours of operation of the drive-through portion of the restaurant shall be no earlier than 7 a.m. and no later than midnight on Sunday, Monday, Tuesday, and Thursday and shall be no earlier than 7 a.m. and no later than 1 a.m. on Wednesday, Friday, and Saturday. In addition, the dining room shall close no earlier than two hours prior to the close of the drive through window.	The hours of operation of the drive-through portion of the restaurant shall be no earlier than 7 a.m. and no later than midnight on Sunday through Thursday and shall be no earlier than 7 a.m. and no later than 1 a.m. on Friday and Saturday. In addition, the dining room shall close no earlier than two hours prior to the close of the drive through window.	The hours of operation of the drive-through portion of the restaurant shall be no earlier than 7 a.m. and no later than 1 a.m. Sunday through Thursday and shall be no earlier than 7 a.m. and no later than 2 a.m. on Friday, and Saturday. In addition, the dining room shall close no earlier than two hours prior to the close of the drive through window.
Trash receptacles shall be housed in a three-sided masonry enclosure, six (6) feet high, or equal in height to the dumpster, whichever is greater, and have an entrance gate constructed of a durable, opaque material. This structure shall have a permanent, roof, lid, or cover.	none	Trash receptacles shall be housed in a three-sided masonry enclosure, six (6) feet high, or equal in height to the dumpster, whichever is greater, and have an entrance gate constructed of a durable, opaque material. This structure shall have a permanent, roof, lid, or cover.
A camera system shall be installed and maintained in order to facilitate prosecution of illegal activity, including, but not limited to, public nuisance activity such as public drunkenness, public urination, and loitering.	A camera system shall be installed and maintained to monitor activity in the restaurant and parking area.	A camera system shall be installed and maintained to monitor activity in the parking area.
No more than three deliveries by semi-tractor-trailer vehicles may take place each week. Semi-tractor-trailer deliveries may not take place prior to 7 a.m. and may not take place later than 10 p.m.		No more than three deliveries by semi-tractor-trailer vehicles may take place each week. Semi-tractor-trailer deliveries may not take place prior to 6:30 a.m. and may not take place later than 10 p.m.
A private-duty security company or off-duty police officer 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 the drive through. The management and staff shall work with the Saint Paul Police Department's Western District FORCE Unit on security measures.	A private-duty security company or off-duty police officer shall be present at the site between the hours of 11 p.m. and the time the last employee leaves the business during late-night operations of the drive through. The management and staff shall work with the Saint Paul Police Department's Western District FORCE Unit on security measures.	Security measures to be employed shall include: a) A private security service patrolling the property during hours of potential high need as determined in cooperation with Saint Paul PD Western District FORCE Unit (currently 11 p.m. to close on Wednesday, Friday, Saturday).

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STAFF: Josh Williams, Jake Reilly, Nicole McCarthy, and Peter Warner

The meeting was chaired by Commissioner Padilla.

Dr. Marie Wang - 15-144-605 - Change of nonconforming use from a law office to psychiatry office and apartment, 1450 Frankson Avenue, between Pascal and McKinley

Josh Williams presented the staff report with a recommendation of approval with conditions for the change of nonconforming use permit. He noted that there was a modification for Section F in the staff report. It should state it was a law office since 1996. He stated District 10 made no recommendation, and there were no letters in support or opposition.

The applicant's representative, Frank Heers, 2304 E. 43rd Street, Minneapolis, stated the applicant is proactively going to call for their own inspection. He believes there is a form they will be signing at closing that triggers an inspection process. He was here twenty years ago when he purchased the property and received a nonconforming use permit. It allowed them to go forth and make a substantial private investment into the property, which was in disrepair. It turned out great for their law practice. The new use is very compatible.

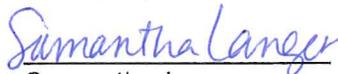
No one spoke in support or opposition. The public hearing was closed.

Commissioner Barbara Wenc moved approval of the change of nonconforming use permit. Commissioner Paula Merrigan seconded the motion.

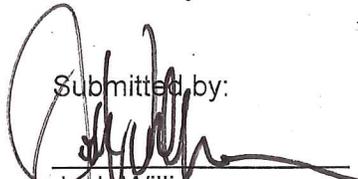
The motion passed by a vote of 5-0-0.

Adopted Yeas - 5 Nays - 0 Abstained - 0

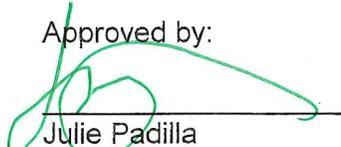
Drafted by:


Samantha Langer
Recording Secretary

Submitted by:


Josh Williams
Zoning Section

Approved by:


Julie Padilla
Chair

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STAFF: Jamie Radel, Nicole McCarthy, Jake Reilly, and Peter Warner

The meeting was chaired by Commissioner Padilla.

Mike and Joelle Olson - 15-138-929 - Establishment of nonconforming use as a triplex at 897 Goodrich Avenue, between Victoria St. S. and Milton St.

Jamie Radel presented the staff report with a recommendation of denial for the establishment of nonconforming use permit. She stated District 16 recommended approval, and there were 5 letters in support, and 5 letters in opposition.

Chair Padilla noted that she prefers that a handout showing an entire list of campaign contributions be removed from public record. She understands that it was submitted to show that Mr. Chelseth was a resident at 897 Goodrich, but that is already noted in another document. The list is public record, but this is a zoning matter, and it isn't useful in this context.

Ms. Radel explained she wanted to make it available to the Committee because the applicant submitted it in pursuit of establishing that the building had been used as a triplex for the last ten years.

The applicant, Joelle Olson, 897 Goodrich Avenue, provided background information on the property. At the time they were looking to purchase the home the second floor and basement were occupied and the main floor was vacant. They purchased the home in July 2014 and the leases carried through the sale. Last winter an inspector came to their home and gave them a list of corrections to follow, one of which included applying for a nonconforming use permit to allow for the use of the third unit. They would like to continue to use the basement as a rental unit as it has been used for the last few decades. They have an outstanding amount of support from neighbors. Over 90% of the parcel is in compliance. The Summit Hill Association understands their reasons for this request. They want to clarify to neighbors that what they are asking to do is not an incremental change or disruption it's simply being able to utilize the basement as a separate unit. This will not include any amount of construction. She noted documentation she submitted from the prior owner confirming the basement usage as a separate unit for the last few decades. The neighbor at 903 Goodrich Avenue also confirmed the usage of the home over the last decade as a triplex. She also submitted a history of the tenants that lived in the unit throughout the time the home was listed as a duplex. There is evidence the home was used as a triplex from 2012 to 2014. She explained that hardship would result if they were to reconvert the basement unit and connect it to the main unit. Connecting the two units would disrupt the stairwell that is a shared space between all three units. If they were to connect the basement to the main unit they would be cutting off a second exit point to the tenant on the second floor creating a fire hazard. The shared laundry access would also be cut off which would require construction on the second floor unit.

Upon inquiry from the Commissioners, Ms. Olson stated she didn't recall her conversations with the real estate agent regarding if the home was a duplex or triplex. When they were looking at the house it was set up as a triplex with the second floor and basement units rented.

Ms. Radel stated that the listing represented the home as a triplex. The information from Ramsey County she reviewed stated it was a duplex.

At questions from the Commissioners, Ms. Olson stated that all the information submitted at this point regarding the home has been a grassroots effort. Upon sale of the home the only information that they received was a lease for the basement and second floor unit. There were no prior records that they received on the property. They have done their due diligence to talk to prior tenants and stitch the history together to figure out how the home had been utilized over that time frame. From what she has gathered the document showing it was a duplex was for a temporary time and the home was never used as a duplex.

Commissioner Wencil commented on the MLS listing submitted. She said that even though it states it has three units, it clearly states that the home is a duplex. It doesn't legally state that this home is a triplex.

Upon questions from the Commissioners, Ms. Olson confirmed that at the time they purchased the home there were three kitchens with the basement and second floor occupied. She and her husband were planned to live in the main floor unit.

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

Commissioner Barb Wencil moved denial of the establishment of nonconforming use permit. The motion failed for lack of a second.

Commissioner Makarios stated there is a very significant dispute about the facts. While there is some record of the use as a duplex being abated there is compelling evidence that it wasn't in fact abated, even though it shows that on paper. The applicant makes a compelling argument that it has been a nonconforming use for the last ten years. When they purchased the home it had three kitchens and people living in two units as well as stating it is a triplex on some of the documents. There is a strong case to make that condition 3(a) is met and he agrees with the hardship argument the applicant has made.

Commissioner Padilla stated hardship is subjective and it's not just a matter of whether it would be personally tough. The Committee has seen this before where someone has taken what a realtor has said at face value and not completed their own research on conflicting information in documents. There are also legal standards related to what a reasonable person should know or try to discover when they buy a property. There may be some legitimacy to the argument that we don't know for certain whether or not anyone was actually living in the basement unit at the time of inspection. The previous owner did do something to make an inspector believe that there wasn't a third unit in the property. If the prior owner did something illegally to avoid enforcement, rather than trying to get a legal permit at the time, can't be known for certain. What is proven is that it was inspected and it was a duplex for a period of time, legally interrupting the ten year period of a nonconforming use. Per the zoning code, when there are disruptions on

nonconforming uses, the intention is to bring them into conformity so they are supporting the goals of the surrounding neighborhood. She appreciates the property owner's struggle, but she can't support approval of the application.

Commissioner Merrigan stated that the structural changes that would need to be made to convert the upstairs and downstairs use together are significant from an architectural and safety point of view.

Peter Warner, City Attorney, stated that in terms of the conflict with respect to testimony there is a letter from the fire department stating that the third unit was not there at the time of inspection. At this point no legal lease documents have been submitted only statements by people who state that they lived in the third unit at the property. If the Committee would like more information in order to evaluate how much of a gap there was in occupancy the applicant will need to supply more evidence to determine whether or not the application meets the standards.

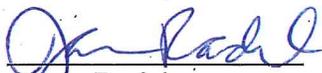
Commissioner Paula Merrigan moved to lay over the establishment of nonconforming use permit to September 10, 2015, in order to allow the applicant time to present documented leases for three distinct units over a period of the last ten years and any additional information the fire department may have on the inspection. Commissioner Dan Edgerton seconded the motion.

The motion passed by a vote of 4-1-0.

Adopted Yeas - 4 Nays - 1 (Wenci) Abstained - 0

Drafted by:

Samantha Langer
Recording Secretary

Submitted by:

Jamie Radel
Zoning Section

Approved by:

Julie Padilla
Chair