

ZONING COMMITTEE STAFF REPORT

1. **FILE NAME:** Taco Bell **FILE #** 19-103-751
 2. **APPLICANT:** Border Foods **HEARING DATE:** January 16, 2020
 3. **TYPE OF APPLICATION:** Conditional Use Permit
 4. **LOCATION:** 565 Snelling Ave N, SW corner at Edmund Avenue
 5. **PIN & LEGAL DESCRIPTION:** 332923140031; Lots 1, 2, and 3, Block 2, R.B. Thompson Addition, Ramsey County, Minnesota AND Lots 1 and 2, Block 1, Stierle, McConville and Seeger's Midway Addition, according to the recorded plat thereof, Ramsey County, Minnesota, EXCEPT the South 6.05 feet of the West 37.42 feet of said Lot 2, block 1, and EXCEPT the South 1.00 feet of the East 10.50 feet of Lot 2, Block 1, Stierle, McConville and Seeger's Midway Addition.
 6. **PLANNING DISTRICT:** 11 **PRESENT ZONING:** T2
 7. **ZONING CODE REFERENCE:** § 61.503, § 65.513, § 61.501, § 61.502
 8. **STAFF REPORT DATE:** January 10, 2020 **BY:** Josh Williams
 9. **DATE RECEIVED:** November 25, 2019 **60-DAY DEADLINE FOR ACTION:** February 3, 2020
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- A. **PURPOSE:** Conditional use permit for drive-thru sales as part of reconstruction of a fast-food restaurant, with modification of the required separation for a drive-thru lane from residential property (60' required, 24' proposed).
- B. **PARCEL SIZE:** 16,584 sq. ft. (approx. 0.38 acres)
- C. **EXISTING LAND USE:** Fast food restaurant with accessory drive-through sales
- D. **SURROUNDING LAND USE:**
 - North: Commercial (T2)
 - East: Commercial (T2)
 - South: Commercial (T2)
 - West: Single-Family Residential (R4)
- E. **ZONING CODE CITATION:** § 61.503(d) requires a new conditional use permit when a building containing a conditional use is torn down and a new building is constructed; § 65.513 lists standards and conditions for drive-through sales and services; § 61.501 lists general conditions that must be met by all conditional uses; § 61.502 authorizes the planning commission to modify special conditions after making specified findings.
- F. **PARKING:** For restaurants, Zoning Code § 63.207 requires a minimum of one (1) off-street parking space for each 400 square feet of gross floor area. For T-zoned properties within ¼ mile of University Avenue, the minimum off-street parking requirement is reduced by 100%, but is still used for purposes of calculating the allowed off-street parking maximum. The size of the proposed building is 1,847 gross square feet, which would require a minimum of five (5) off-street parking spaces. For restaurants within an LRT station area, off-street surface parking provided may not exceed the minimum requirement by more than 200% (15 spaces) for the proposed building. The applicant is proposing 18 spaces. However, this a reduction from the current 25. Reduction of an existing nonconformity during reconstruction does not require a variance as long as the extent of nonconformity is not increased.
- G. **HISTORY/DISCUSSION:** The building presently located at 565 North Snelling Avenue was constructed in 1973, at which time the site was zoned "commercial." Fast-food restaurants were a permitted use in the commercial zoning district with a conditional use permit. When the City adopted a new zoning code in 1975, the subject property was rezoned to B3 (general business). In 2011, as part of the Central Corridor zoning study, the subject land was rezoned again, this time to T2 (traditional neighborhood). Fast-food restaurants are permitted in both B3 and T2 zoning districts, with a conditional use permit if over 10,000 sq. ft. Drive-through sales and services are permitted with a conditional use permit in T2 zoning districts and permitted of-right in B3 zoning districts.

The first fast-food restaurant on the site was known as Zapata. Consistent with the commercial zoning classification for the property, Zapata obtained a conditional use permit from the city in

1973. At the public hearing for the permit, the Zapata representative said the hours of the restaurant would be 11 a.m. to 11 p.m. during the week and 11 a.m. to 1 or 2 a.m. on weekends. This was not specifically included as a condition of the permit. Each fast-food restaurant occupying the subject property since 1973, including the present occupant, Taco Bell, has used the property subject to the 1973 conditional use permit. At some point in time after 1973, a drive-through window was added to this use. Staff has found no record of any zoning or building permits pulled for the construction and operation of this drive-through window.

When adopting new zoning codes in 1975, the City added language governing fast-food restaurants and drive-through windows. These provisions remain in the code, and are administered through the site plan and conditional use permitting processes.

In March 2014, a complaint was made to the Department of Safety and Inspections alleging that the Taco Bell was a nonconforming use, and that a recent at that time increase in operating hours constituted an expansion of nonconforming use. In April 2014 the Zoning Administrator issued a letter stating that the business was a conforming use but that if a new drive-through service with a different configuration was proposed, a new conditional use permit would be required for the drive through. An appeal of this determination to the Board of Zoning Appeals was denied.

In 2015, the current applicant applied for a new conditional use permit for drive-through sales and service associated with a proposed demolition and reconstruction of the building at the subject site. The Planning Commission approved the conditional use permit with a number of conditions. The conditions of approval were appealed to the City Council by the applicant. Prior to a hearing being held on the appeal by the City Council, the applicant withdrew the application.

Around the time of the 2014 Zoning Administrator decision and 2015 conditional use permit application, City records show a number of noise complaints associated with the property to the police department and the Department of Safety and Inspections.

H. **DISTRICT COUNCIL RECOMMENDATION:** The Hamline Midway Coalition (HMC, District 11 Council) recommends denial of the application. If the application is approved, HMC recommends drive-through hours be limited to no later than 12:00 midnight Sunday through Thursday and 1:00 a.m. on Fridays and Saturdays, and that the drive-through may only be open when the building is also open for counter service.

I. **FINDINGS:**

1. The applicant proposes to tear down the existing building on the site and to construct a new building, including drive-through sales, with a different parking lot and drive-through lane configuration. The proposed new building and lot configuration will be nonconforming as to Floor Area Ratio (FAR) and maximum off-street parking in a surface lot. These nonconformities are allowed to remain if reconstruction occurs within one year of demolition, provided that they are not increased. The current building is 1,834 gross square feet, and the proposed building is 1,847 gross square feet. The required minimum FAR is 0.5, and both current and proposed FAR are 0.11. The current off-street parking is 28 spaces, and the proposed site plan has 18 spaces, both legally nonconforming with regard to the current 15-space surface lot maximum.
2. § 65.513 lists the following standards and conditions for drive-through sales and services:
 - (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 standard is **not** met. The proposed drive-through service lane and windows are located to the rear of the proposed building. The drive-through service lane as proposed is 24 feet away from the closest point of residentially zoned property. The drive-through window is more than 60 feet from the adjacent residential zone. The applicant has requested a modification of this condition. See finding No. 3.
 - (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.*

This standard is met. The single ingress/egress point is at least 60 feet from the intersection of two streets and from abutting residentially zoned property.

(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 standard **can** be met. According to the applicant, speaker box sounds will not be audible from the closest residential property, 100 feet to the west. A fence and landscaping will be installed along the west side of the property to further minimize noise impacts from the speaker box. However, there is not enough information provided by the applicant to state the manner in which speaker box sounds, and drive-through-related sounds generally, will be minimized so as to not be plainly audible on abutting residentially zoned property.

(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 standard does not apply. There is no adjoining existing residence or residentially zoned property. There is an alley between this property and the existing residence to the west.

(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 standard is met. The proposed drive-through lane has 10 stacking spaces.

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. There is only one drive-through lane and only one drive-through 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. This is in the Snelling Avenue Station area, but not adjacent to the station platform. There is only one curb cut on one block face, the Snelling Avenue face.

3. 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 **not** met. The applicant is proposing to locate portions of the drive-through access lane closer than allowed (60' required, 24' proposed) to the residential property located to the west of the subject property, across the alley. While site design and drive-through lane location requirements limit options for site configuration, it is possible to come closer to, and potentially meet, the required standard by reconfiguring the drive-through access lane and the parking area west of the building. The inner curb line of the portion of the proposed drive-through lane closest to the adjacent residential property is 70 feet from the curb line of the portion of the lane directly adjacent to the building. The space between the two sections is proposed to contain parking and landscaping. Relocation of the proposed drive-through lane farther from the adjacent residential property, along with relocation of some of the proposed parking spaces, is possible with site reconfiguration. The proposed configuration of the property is preferred by the applicant and may be operationally optimal. However, it is possible to meet or come much closer to meeting the required standard of 60 feet of separation from adjacent residential property. Therefore, strict application of the standard has not been demonstrated to be unreasonable or to cause the owner/applicant exceptional undue hardship.

4. §61.501 lists five standards that all conditional uses must satisfy:

- (a) *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 **not** met. Policy LU 5 of the Hamline Midway Community Plan is to “Encourage appropriate transitions between disparate land uses.” The location of the proposed with only 24 feet of separation from the adjacent residential use is inconsistent with this policy. The extent and intensity of the use, which involves late night operation, is also inconsistent with this policy.

The 2030 Saint Paul Comprehensive Plan identifies the subject property as part of both a “Mixed-Use Corridor” and a “Neighborhood Center”. The following policies in the plan address the proposed use of the property for drive-through sales:

- LU (Land Use) 1.52 “Prioritize the development of compact commercial areas accessible by pedestrians and transit users over commercial areas more readily accessed by automobile. Discourage new and expanded auto-oriented uses.”
- LU 1.53 “Encourage changes to the design of existing auto-oriented buildings and areas with elements of traditional urban form to minimize impacts on the pedestrian realm.”
- LU 1.21 “Balance the following objectives for Mixed-Use Corridors through the density and scale of development: accommodating growth, supporting transit use and walking, providing a range of housing types use, and providing housing at densities that support transit.”
- LU 1.12 “Balance the following objectives for Neighborhood Centers through the density and scale of development: accommodating growth, supporting transit use and walking, providing a range of housing types use, providing housing at densities that support transit, and providing opens space and recreational opportunities.”

The subject property is also located within the Green Line LRT Snelling Station Area. The City adopted Station Area Plans for all stations along the Green Line outside of Downtown to “provide a more detailed framework for integrating decisions about future land use and development; the public realm; and the movement of LRT, buses, cars, pedestrians, and bicycles at each station area” (Snelling Station Area Plan, page 3). The plan calls for new development in the area of the subject property to be “predominately low to mid-rise in scale” (pg. 31) and in regard to movement states that “improving movement in the Snelling Station Area will require the collaboration of many partners in... improving both Snelling and University as more balanced, multi-modal corridors, and realizing frequent and safe options for pedestrian routes and crossings in consideration of a documented high volume of vehicles.

The proposed new fast-food restaurant with drive-through sales does not expand this existing auto-oriented use. The proposed new building and site layout reduces the amount of Snelling Avenue lot frontage occupied by parking. The number of curb cuts would also be reduced from two to one, which would help to reduce pedestrian-vehicle conflict opportunities. While the proposed use doesn’t add density in support of transit, the proposed building does not increase the nonconformity with regard to minimum FAR in comparison to the existing building.

- (b) *The use will provide adequate ingress and egress to minimize traffic congestion in the public streets.* This condition may be met. Public Works – Traffic staff will evaluate the proposed drive-through at the time of site plan review, and may require a traffic study and/or counts of current drive-through traffic volumes. The proposed plan provides a single right-in/right-out access from Snelling Avenue, removing one egress point relative to the current configuration, leaving only the combined ingress/egress furthest from the intersection of Edmund and Snelling. Consolidation of curb cuts as far away from intersections as possible generally improves function and safety. The proposed configuration also provides 10 spaces

of drive-through stacking, exceeding the City requirement, and additional space is avail in parking area drive lanes.

- (c) *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 proposed new building and site plan replace an outdated and obsolete building and inefficient site. The new building, landscaping, and customer amenities like bicycle racks, may improve the existing character of the neighborhood. The reconfigured drive through will improve upon the existing situation and will provide better stacking of vehicles than in the existing condition.
- (d) *The use will not impede the normal and orderly development and improvement of the surrounding property for uses permitted in the district.* The fast-food with drive-through use, which is a reconstruction of the existing use, will not itself impede the normal and orderly development of the surrounding properties
- (e) *The use shall, in all other respects, conform to the applicable regulations of the district in which it is located.* This condition is **not** met. The proposed use does not meet the standard requirement for distance separation from adjacent residential property.

J. **STAFF RECOMMENDATION:** Based on the above findings, staff recommends **denial** of the conditional use permit for drive-thru sales as part of reconstruction of a fast-food restaurant, with modification of the required separation for a drive-through lane from residential property (60' required, 24' proposed).



CONDITIONAL USE PERMIT APPLICATION

Department of Planning and Economic Development
Zoning Section
1400 City Hall Annex, 25 West Fourth Street
Saint Paul, MN 55102-1634
(651) 266-6583

Zoning Office Use Only	
File #	<u>19-103751</u>
Fee Paid \$	<u>840⁰⁰</u>
Received By / Date	<u>11/22/19</u>
Tentative Hearing Date	<u>12/2/19</u>

PD-11
332923140031

APPLICANT

Name Border Foods, Inc.
(must have ownership or leasehold interest in the property, contingent included)

Address c/o McClay-Alton, PLLP, 951 Grand Ave. City St. Paul State MN Zip 55105

Email _____ Phone 651-290-0301

Name of Owner (if different) _____ Email _____

Contact Person (if different) Brian D. Alton Email brian@mcclay-alton.com

Address _____ City _____ State _____ Zip _____

PROPERTY INFO

Address/Location 565 N. Snelling Ave.

PIN(s) & Legal Description See attached
(attach additional sheet if necessary)

Lot Area 16,584 sq.ft. Current Zoning T2

TYPE OF PERMIT: Application is hereby made for a Conditional Use Permit under provisions of Zoning Code Section(s) 61.501 for the following use or purpose:
Tear down and rebuild existing restaurant building with drive through; 65.513(a), modification of condition

SUPPORTING INFORMATION: Explain how the use will meet all of the applicable standards and conditions for the use. If you are requesting modification of any standards or conditions for a conditional use, explain why the modification is needed and how it meets the requirements for modification of special conditions in Zoning Code § 61.502. Attach additional sheets if necessary.

See Attachment.

Required site plan is attached

If you are a religious institution you may have certain rights under RLUIPA. Please check this box if you identify as a religious institution.

CK
30646
840⁰⁰

Applicant's Signature

Brian D. Alton, Attorney for Applicant

Date 11/21/19

add
11-21-19

565 North Snelling Avenue – Border Foods Attachment to CUP Application

Border Foods, Inc. will rebuild its Taco Bell restaurant located at 565 N. Snelling Avenue to replace an inefficient and obsolete building. Border Foods is making this investment in order to vastly improve the property, reconfigure the parking lot, reduce the number of parking spaces, add landscaping, move the drive through ordering area further from the adjacent residences, and build an improved restaurant.

As shown on the plans, the site will be improved in many ways:

1. There is a reduction of the existing parking. 18 parking spaces are provided on site. This is a reduction, but will still be sufficient to meet the needs of the restaurant and not take up scarce on-street parking in the neighborhood.
2. The parking, drive through and restaurant are screened from the neighboring residential properties with a fence, new trees and other significant perimeter and interior landscaping.
3. The interior landscaping will also include new storm water retention areas.
4. The drive through order window has been moved to be over 90 feet from the residential property. It is presently approximately 68 feet from the residential property.

Rather than simply remodel the old building, Border Foods wants to make a substantial upgrade to the entire property. The upgrades to the property at 565 Snelling Avenue will be done in compliance with most all of design standards, dimensional standards, and other conditions for property located in T2 zoning districts. Given the present circumstances regarding the property, there is a need for a modification of one condition.

Conditional Use Permit.

Removing the existing building and constructing a new building requires a new conditional use permit. (§61.501). Border Foods, Inc. is applying for a conditional use permit for a new building for its existing fast food restaurant with a drive through.

A conditional use must meet general standards in §61.501. These standards are all met.

(a) *Substantial compliance with the Comprehensive Plan and applicable subarea plans which were approved by the city council.*

The use complies with the City Comprehensive Plan Land Use Policy:

- 1.24 Support a mix of uses on Mixed-use corridors.
- 1.45 Maintain and enhance retail commercial areas throughout the city by promoting standards that make them vital and attractive
- 1.50 Facilitate the redevelopment of commercial areas where existing buildings are no longer considered functional.

(b) *The use will provide adequate ingress and egress to minimize traffic congestion in the public streets.*

The proposed plan provides a single right-in/right-out access from Snelling Avenue which will minimize congestion in the local streets, as will the stacking lanes provided for the drive through. The location of the drive through and parking spaces is designed to minimize conflicts between vehicles and pedestrians and business operations' effect on abutting residential properties.

(c) *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.*

The proposed new building and site plan replace an outdated and obsolete building and inefficient site. The new building, landscaping, and customer amenities like bicycle racks, may improve the existing character of the neighborhood. The reconfigured drive through will improve upon the existing situation and will provide better stacking of vehicles than in the existing condition.

(d) *The use will not impede the normal and orderly development and improvement of the surrounding property for uses permitted in the district.*

The restaurant food with drive through, which is a reconstruction and continuation of the existing use, will not impede the normal and orderly development of the surrounding properties.

(e) *The use shall, in all other respects, conform to the applicable regulations of the district in which it is located.*

It does.

Modification of Condition.

§ 65.513 (a) – (g) contains standards and conditions for drive-through sales and services. Border Foods application meets all but one of these standards and conditions.

Border Foods is requesting a modification of the condition in §65.513(a) that the drive through lane be *at least sixty (60) feet from the closest point of any residentially zoned property.*

The property across the alley to the west is zoned residential. Modification of the 60 foot distance condition is appropriate given the shallow depth of the lot. The lot is only 125 feet deep from Snelling Ave. to the alley. It is not possible to design the drive through without creating many violations of other required conditions. To meet the 60 foot distance standard, the drive through lane would have to be placed between the building and the street. As a result the building would have to be moved away from the corner contrary to the standards for the T2 district. Strict application of the standard would result in an impossibly difficult and dangerous layout; would increase potential for conflicts with pedestrians; and decrease the distance of the speaker box and windows from the residentially zoned property. The new drive through will improve upon the existing conditions. The modification will not impair the intent and purpose of the special condition and is consistent with health, morals, and general welfare of the community, and is consistent with reasonable enjoyment of adjacent property.

Fast-Food Restaurants Conditions.

§65.616 lists standards and conditions for fast-food restaurants. Border Foods application will meet all of these standards and conditions. A litter collection plan is enclosed.

Request for Continuance

December 18, 2019

VIA email

Dan Edgerton, Chair
Zoning Committee
City of Saint Paul
1400 City Hall Annex
Saint Paul, Minnesota 55102

Re: Zoning File #19-103-751

Dear Mr. Edgerton:

I am the applicant or the applicant's duly appointed representative for this zoning file.

I request a continuance of the public hearing on the application in this zoning file, which is presently scheduled before the Zoning Committee on January 2, 2020.

I understand that a continuance of the public hearing before the Zoning Committee means that the decision of the Planning Commission on this application, which is presently scheduled for January 10, 2020, will also be continued.

I request that the Zoning Committee continue the public hearing for this zoning file to January 16, 2020, I understand that the Planning Commission would then be scheduled to make their decision on January 24, 2020.

I am aware of and understand the statutory requirements found in Minn. Statute § 15.99 (1995) requiring the City of Saint Paul to approve or deny this application within sixty days of its submission. I desire to extend the sixty day period for a City decision under Minn. Stat. §15.99 by fourteen (14) days to February 4, 2020, to accommodate the continuance I am requesting.

Sincerely,



Signature of Applicant or
Applicant's duly appointed
representative.

Brian D. Alton, McClay•Alton, PLLP
Printed name of applicant or
applicant's duly appointed
representative

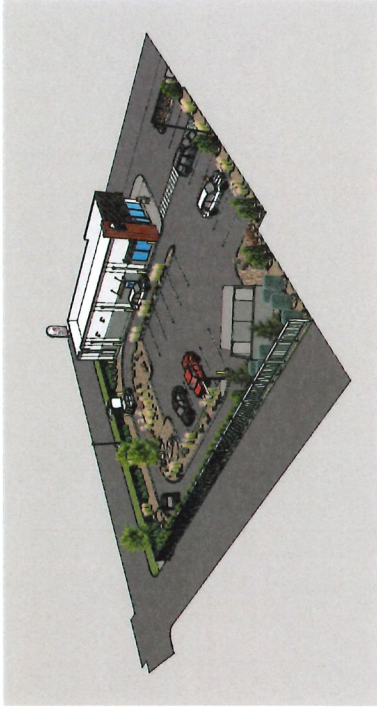
Updated: 10/13/2017

PRELIMINARY
CONSTRUCTION

DATE:	10.18.2019
PROJECT HISTORY:	SITE PLAN REVIEW
DESIGNER:	RYAN SCHNEIDER
APPROVED:	
CHECKED:	
PROJECT:	565 SINGLELINE
LOCATION:	NE
DATE:	
PROJECT HISTORY:	
DESIGNER:	
APPROVED:	
CHECKED:	

PROJECT VIEWS

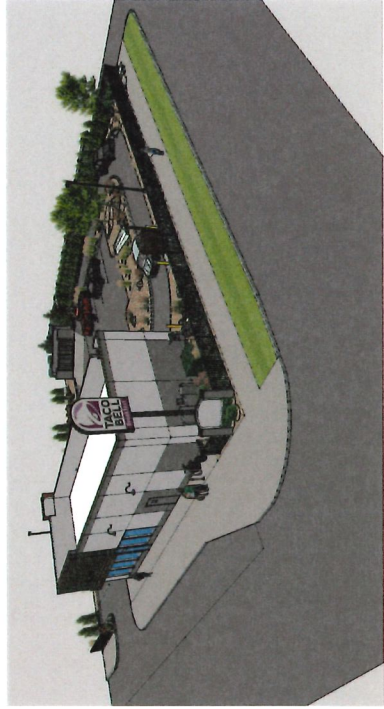
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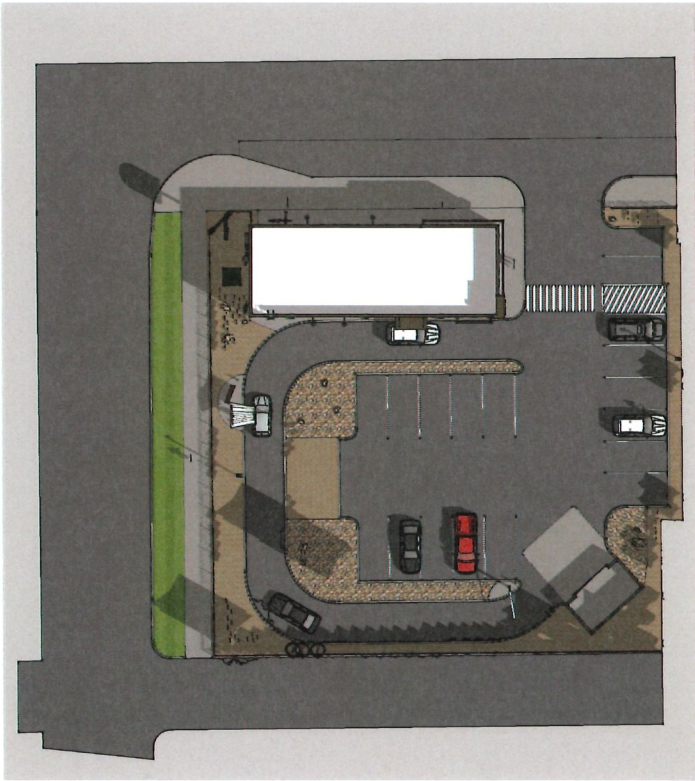
3 PROJECT VIEW
NO SCALE



4 PROJECT VIEW
NO SCALE



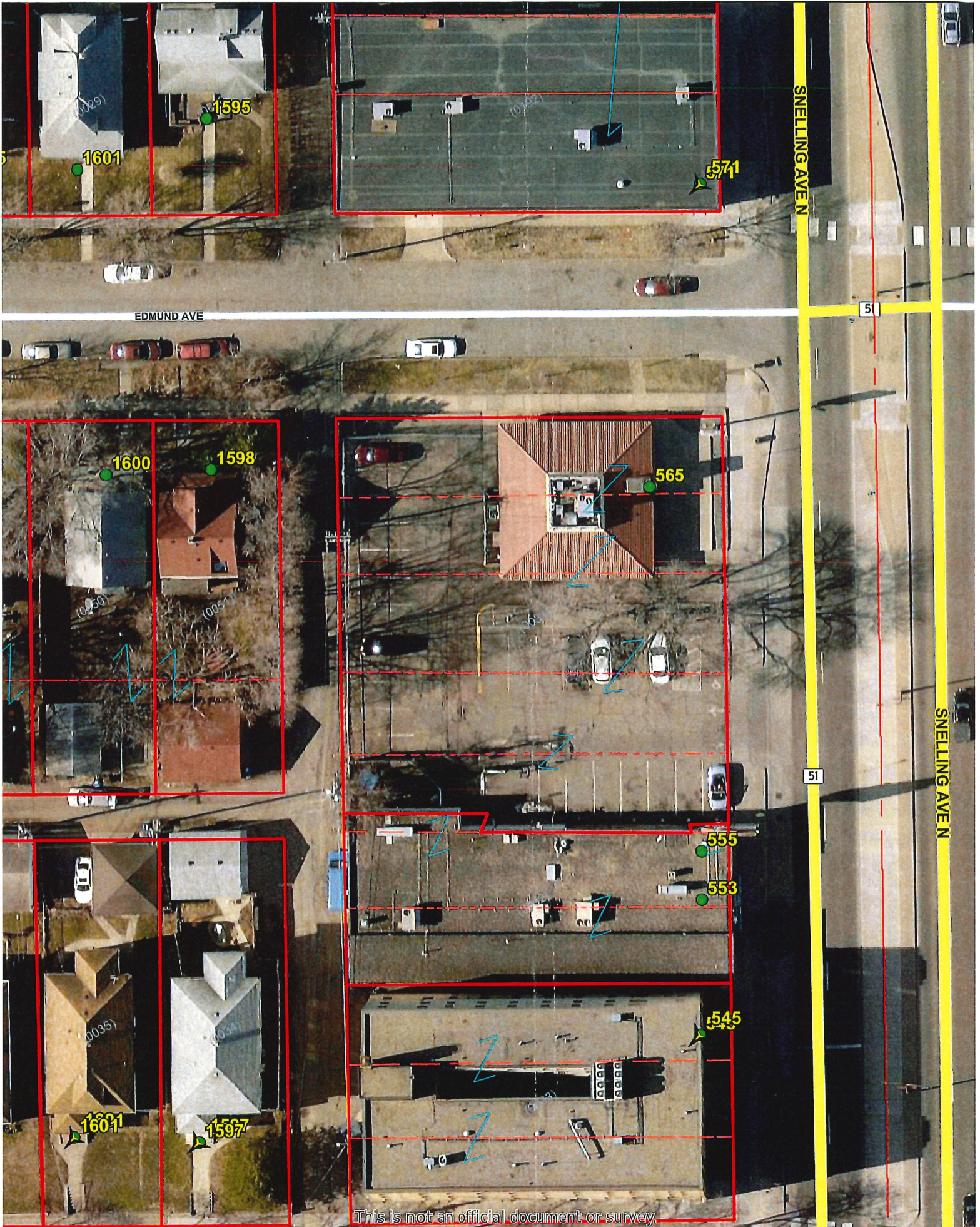
5 PROJECT VIEW
NO SCALE



1 SITE PLAN
1/8" = 1'-0"



2 PROJECT VIEW
NO SCALE



EDMUND AVE

SNELLING AVEN

51

SNELLING AVEN

51

This is not an official document or survey.









District Council 11
1558 Minnehaha Ave W
St. Paul, MN 55104
651.494.7682
www.hamlinemidway.org

December 18, 2019

Subject: Border Foods/Taco Bell Zoning File # 19-103-751 CUP with Modification

To the Zoning Committee of the Saint Paul Planning Commission:

Regarding the application of Border Foods, Inc. for a conditional use permit and variances related to the proposed site plan for a new Taco Bell store at 565 North Snelling Avenue, Hamline Midway Coalition/District Council 11 (HMC) offers the following comments:

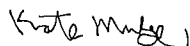
1. HMC is OPPOSED to granting a conditional use permit for locating a drive through lane within 60 feet of the closest residential property. The layout of the proposed development places the ordering location in close proximity to two residential properties. The Hamline Midway Community Plan encourages appropriate transitions between disparate land uses such as auto-oriented drive-thru facilities and residential properties. No such transition is provided for in the design of this proposal.
2. HMC CONTESTS the assertion that the proposed development is in agreement with the City of Saint Paul's Comprehensive Plan. The establishment of a single-use, auto-oriented development within less than one-quarter mile of the Snelling Avenue Green Line Station runs counter to the following from Saint Paul's Comprehensive Plan:

- Transportation Chapter - Goal 4 (establishment of an auto-oriented drive-thru perpetuates single-occupancy vehicle dependence in Saint Paul)
- Land Use Policy LU-1 (low-density, single-use development within 1/4 mile of LRT)
- Land Use Policy LU-8 (continued support for auto-oriented development)
- Land Use Policy LU-9 (hazard of drive-thru lanes on key walking corridors)
- Land Use Policy LU-14 (a substantial percentage of this proposal is dedicated to auto-uses including parking)
- Land Use Policy LU-30 (drive-thru runs counter to pedestrian-friendly design)
- Land Use Policy LU-33 (spill-over from drive-thru lane would negatively impact transit service)
- Land Use Policy LU-36 (drive-thru oriented fast food is not compatible with transit-oriented neighborhood character)

3. If a conditional use permit is to be granted, HMC requests that the following conditions be added to the CUP: 1) That the restaurant be required to close at 12:00 midnight on weeknights (Sunday – Thursday), and 1:00 am on weekends (Friday & Saturday); 2) That the drive-thru can only be open when the restaurant building is also open for counter service. HMC believes that these two conditions would ameliorate many of the nuisance conditions created by the restaurant and are commensurate with the significant impacts that would occur should the CUP be granted.

Respectfully,

Hamline Midway Coalition Development Committee + Board of Directors



Kate Mudge
 Executive Director
 Hamline Midway Coalition
kate@hamlinemidway.org
 651-494-7682

Williams, Josh (CI-StPaul)

From: Kristine V. <kayelvee@icloud.com>
Sent: Thursday, January 9, 2020 1:50 AM
To: Williams, Josh (CI-StPaul)
Subject: Letter to Zoning Committee on Border Foods/Taco Bell Application 19-103-751

Think Before You Click: This email originated **outside** our organization.

January 8, 2020

Zoning Committee of the Planning Commission
Department of Planning & Economic Development
City of Saint Paul
25 West Fourth StreetStreet
1400 City Hall Annex
Saint Paul, MN 55102

RE: Zoning File No. 19-103-751 (also see No. 15-134-559)

We are certainly surprised that Border Foods is back again already! It was just a few short years ago, in 2015, when Border applied for a conditional use permit (CUP) to “rebuild” the Taco Bell fast-food restaurant with drive-through at 565 North Snelling Avenue, across the alley from our house. Oddly, Border is coming back with an almost identical plan **not** after having its application rejected in 2015, but after having it approved! Even though the zoning staff report in 2015 recommended the CUP be denied, and even though the Hamline Midway Coalition executive director recommended the CUP be denied, **a conditional use permit was in fact granted** to this Taco Bell a few short years ago! So why is Border back in 2020 when it did, in fact, get the permit it sought in 2015? Isn’t that strange?

Well, a couple of little conditions were placed on that 2015 permit, namely hours of operation, and Border Foods did not like those hours, so the company picked up its marbles and went home, just decided not to rebuild.

For the past several years, Border Foods’ Taco Bell on Snelling has continued to operate with longer hours in its present structure rather than rebuild with shorter, more standard, hours. It has been staying open until 5:00am on weekends and 4:00am during the week, whereas the new permit would have required them to close at midnight during the week and 1:00am on weekends, cutting into the very profitable post-bar-closing hours (while honoring the right to enjoyment of property by us and numerous low-income rental neighbors at Kimball Court to the immediate south of this Taco Bell). [Note: Border recently “reduced” its hours, just before submitting this “new” application, presumably to appear to making a good-faith effort to be friendly to the neighborhood. So as of very recently it closes an hour earlier, now at 3:00am during the week and 4:00am on weekends. This still accommodates the busy post-bar-closing period and is detrimental to the character of a residential neighborhood.]

For those on the Committee who do not remember “last time,” and all the arguments and points made in 2015, **a huge issue has always been that the drive-through window of Taco Bell remains open after the restaurant itself closes at 11:00pm.** From 11:00pm until very early in the morning, having only the drive-through open means any patrons who urgently need to use a restroom have no choice but to use the parking lot as a toilet, sometimes just standing right by the door of their car for privacy, sometimes wandering off the property (onto the boulevard or into our alley) if friends are driving and can keep the car moving in line. And from 11:00pm until very early in the morning—basically all night—there is no check on loud boom cars, which from 2:00am to about 3:30am are loudest and most numerous.

There are other nuisance issues associated with the late-night drive-through, but anyone reading this can get the

picture: it's not the most savory scene. In fact, when asked at a neighborhood meeting recently about the drive-through-only hours, Border Vice President Barry Zelickson claimed it was a safety issue, that he felt our neighborhood itself is not safe, and it would endanger his employees to have the building open to marauders after midnight. Lost on him was the fact that the drive-through-only hours may well create a unique atmosphere that contributes to, maybe even helps create, some of the problems.

Given that the design submitted to the city in November 2019 is not significantly different from the one put forth less than five years ago, we wondered why Border/Taco Bell was back. Tweaks like two fewer parking spots did not alter the basic site plan. So at a meeting about Border's new application at the Hamline Midway Coalition/District 11 office on December 12, 2019, we asked Mr. Zelickson what he thought was different now. That is, why try again? Mr. Zelickson said a couple of revealing things. The main one was: "We were having some problems with police calls back then. We are doing much better now. Calls are way down." First of all, police continue to be called to Taco Bell. But certainly, for a period in 2013 and 2014, Taco Bell noise from customers and from an old, malfunctioning speaker system reached true nuisance levels. Teens were also congregating at Taco Bell and fighting on Taco Bell property and in the adjacent streets, as we documented in photos and videos. The city did respond with monitoring and enforcement.

Just because improvements to noise issues at this Taco Bell have been real does not mean it's perfect and that Border deserves to be rewarded. Rather, the situation a few years ago was grossly substandard; now, it is simply acceptable, somewhat better, than it was. ***If Mr. Zelickson believes that merely coming up from substandard to acceptable means the City of Saint Paul should give the Taco Bell on Snelling a new permit without the same reasonable hours conditions imposed in 2015, we hope he is very wrong. If he believes this Taco Bell is somehow entitled to be open until 4:00am on any day of the week, we hope he is told otherwise.*** After all, the Culver's on University near us, also with a drive-through, closes at 10:00pm. The Arby's on South Snelling, with a drive-through window also closer to a residence than city code allows, closes at 11:00pm during the week and 12:00 midnight on weekends. That makes a 1:00am closing time for this Taco Bell look generous.

At the Hamline Midway Coalition meeting, we asked Brian Alton, the attorney for Border Foods, if once again his client would "walk away from the new permit" if the same conditions were placed on it as in 2015. He said he and his client did not want to answer that question.

On general terms, we believe strongly that the permit should be denied entirely, because a drive-through fast-food restaurant does not belong on the edge of a T2 district adjacent to a residential district. We feel a drive-through fast-food restaurant does not belong 2.5 blocks from a lightrail station; that flies in the face of the city's comprehensive plan and numerous other plans — from resilience/climate change to transit-oriented development. But that is for others to argue more forcefully than we can, others who have spent years crafting plans around walkable, bike-able, livable urban neighborhoods.

(For what it's worth, Taco Bells in urban settings with no drive-through component whatsoever are being developed in dense cities, so Yum! Brands and Taco Bell know which way the wind is blowing on this. Yet they are responding to trends, not setting them. If allowed, this Taco Bell will certainly rebuild as a drive-through and will be in place long after any ban on new fast-food drive-throughs may be implemented in Saint Paul, and will help car culture continue to thrive in one of the few areas in the Twin Cities where it really can be lessened.) (For reference, please read this article on the no-drive-through Taco Bells: <https://www.fool.com/investing/2018/08/02/taco-bell-drops-drive-thru-for-its-urban-evolution.aspx>)

Mostly, and most simply, we believe that this CUP should and could be denied solely on the basis of the modification of the distance-from-residential-property condition in city code (65.513a). The drive-through lane is supposed to be no closer to a residential property than 60 feet. The plan proposed by Border Foods for this Taco Bell puts the drive-through lane a mere 24 feet from our property — virtually right under our bedroom windows. That is a 60% modification! Not a 50% modification or 25% or 10%, but a 60% modification. ***Border Foods' CUP application claims that the 60% modification of the distance requirement "is appropriate given the shallow depth of the lot." Well, no. What would be appropriate is an entirely different two- or three-story use, not a one-level suburban drive-***

through-off-a-frontage-road model crammed onto a small city lot. As discussed below, the current drive-through use was probably never officially approved.

We suggest the city apply all relevant code for conditional use permits for fast-food restaurants with drive-through windows and deviate from that code only for plainly defensible reasons. In this case, it cannot possibly be argued that the property presents a “plight” that is not the fault of the owner. The property is simply not big enough for the so-called “existing,” probably never permitted, use, and the owner has always known that.

The Taco Bell at 565 North Snelling currently operates under a Special Use Permit from 1973 (see Exhibit 1, a copy from file no. 14-289-691), and neither the permit nor minutes from the meeting about the permit make any mention of a drive-through window (see also Zoning Committee Staff report on this 1973 SUP from the 2015 file). In 2014, we discovered with the aid of an attorney that there seemed to be no application for the drive-through window that would reveal when it was installed and that would have required a public process that could have resulted in hours and other conditions. ***In other words, unless Border or the City of Saint Paul can provide evidence to the contrary, it looks like this Taco Bell “snuck in” its drive-through window, probably sometime in the late 1970s or early 1980s, and escaped conditions such as hours of operation and therefore the need for city permission in order to change those conditions.*** If proof of a drive-through in 1973 does not exist, we do not think one can be inferred. If proof does not exist, this Taco Bell has had a very sweet, illegitimate deal, and the “existing use” of a drive-through it wants to “continue” should never have begun.

Clearly, the property was acquired in 1973 for continued use only as an eat-in fast-food restaurant. The drive-through use seems to have been added on without city approval, even though the lot is really too small for it, and is definitely too small to meet current city code on the requirement for 60 feet between a drive-through lane and residential property. Shouldn’t that be the end of the story?

The term “rebuild” is subtly prejudicial toward project approval. Our understanding is that a new conditional use permit is indeed new. Addison Vang, in Planning & Economic Development, wrote us an email outlining the differences between “permitted” and “conditional” uses, and it says a conditional use “can be denied, unlike a permitted use.” As another city planning staff person said of the CUP process, “Once the old building is torn down, there is no use on the property. There is no continued use.”

This application is an opportunity for the city to decide, for 2020 and beyond, not based on the past, what is right and what is legal at this address on Snelling Avenue in Saint Paul in a T2 district. For guidance, here is what code section 66.313 has to say on the intent of T2 Traditional Neighborhood Districts:

“The T2 traditional neighborhood district is designed for use in existing or potential pedestrian and transit nodes. Its intent is to foster and support compact, pedestrian-oriented commercial and residential development that, in turn, can support and increase transit usage. It encourages, but does not require, a variety of uses and housing types, with careful attention to the amount and placement of parking and *transitions to adjacent residential neighborhoods.*” {our emphasis}

At the very least, ***if a CUP for a Taco Bell drive-through on Snelling is granted as it was in 2015, the hours of operation should run no later than 1:00am on weekends and 12:00 midnight during the week—exactly as granted (and rejected by the applicant) in 2015.*** These hours would help mitigate the shorter distance of the drive-through window from our house, and the shorter (60% shorter than required per 65.513a!) distance of the drive-through lane from our property line and bedroom windows.

Sincerely,
Kristine and Mark Vesley
1598 Edmund Avenue
Saint Paul, MN 55104

ST. PAUL ZONING BOARD

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

Date : November 21, 1973

Zoning File number: 7343

Applicant's name : Construction 70

address: 1430 W. County Road C 5511A

Purpose : Fast Food Restaurant

Location : Southwest corner of Edmund and Franklin

Legal description : Lots 1-4, Block 2, R. B. Thompson's Addition; Lot 1-A, Block 1, Scieris, McGouville & Seeger's Midway Addition.

Plan approved : 11/13/73

Final plans dated 09/11/73
received :

Comments :

SPECIAL USE PERMIT APPROVAL

MINUTES OF THE PUBLIC HEARING BEFORE THE BOARD OF ZONING
ON THURSDAY, SEPTEMBER 6, 1979, AT 2:00 P.M.

PRESENT: Messrs. Horton and Cochran; Messrs. Hillis, Maddox and Rupp of the Board;
Mr. Rosetter and Mrs. Barriault of the Planning Department Staff.

CONSTRUCTION 79 (7543): An application for a permit for a fast food restaurant
on property located at the southwest corner of Grand and Saelling.

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

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

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

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

Mr. Rupp asked about the hours.

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

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

Mr. Maddox asked if a higher reduced noise fence would be better.

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

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

Mrs. Horton wondered how high the trees behind it are, how much a 6-foot fence
would hide the business.

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

Mrs. Cochran asked they recommend approval of the permit subject to the recom-
mendations of the staff. She said she shared the feelings of Mr. Robinson,
but they do seem to meet all the requirements. The motion was seconded by
Mr. Maddox. The motion carried unanimously.

Submitted by:

Paul L. Rosetter
Paul L. Rosetter

Approved by:

William E. Rupp, Jr.
William E. Rupp, Jr.

58

Williams, Josh (CI-StPaul)

From: Williams, Josh (CI-StPaul)
Sent: Thursday, December 5, 2019 2:36 PM
To: Pereira, Luis (CI-StPaul)
Subject: RE: Please help deny Snelling Taco Bell variance

No, hadn't previously seen it.

From: Pereira, Luis (CI-StPaul) <Luis.Pereira@ci.stpaul.mn.us>
Sent: Wednesday, December 4, 2019 4:43 PM
To: Williams, Josh (CI-StPaul) <josh.williams@ci.stpaul.mn.us>
Subject: FW: Please help deny Snelling Taco Bell variance

Did I forward this?

From: Peter Truitt [<mailto:ptruitt@goldengate.net>]
Sent: Tuesday, December 3, 2019 10:35 AM
To: #CI-StPaul_Ward4 <Ward4@ci.stpaul.mn.us>; kate@hamlinemidway.org
Cc: 'Marge Langer' <mlanger@goldengate.net>; 'Kristine Vesley' <kristinevesley@icloud.com>; Pereira, Luis (CI-StPaul) <Luis.Pereira@ci.stpaul.mn.us>; Stark, Russ (CI-StPaul) <russ.stark@ci.stpaul.mn.us>
Subject: Please help deny Snelling Taco Bell variance

Think Before You Click: This email originated **outside** our organization.

Dear Councilmember Mitra Jalali Nelson and Hamline-Midway Coalition Director Kate Mudge,

We have heard that the Taco Bell at the intersection of Snelling Avenue and Edmond Street is asking for a variance which will be discussed at a Zoning Committee meeting on Thursday December 12, 2019 at 3:30 PM. We plan to be at that meeting.

We live on the other side of the north-south alley behind Taco Bell and at the south end of that alley on the same block. (We live directly across the alley from the Kimball Court building).

Apparently, Taco Bell wants to reconfigure the drive-thru such that more cars will be able to queue in line for business. For Taco Bell, that makes sense. At times, the change may reduce traffic backups on Snelling as cars wait to turn into a packed drive-thru lane. Backups in an area with so many pedestrians reduce pedestrian safety and this specific backup reduces the visibility of the major pedestrian/bikeway crossing at Charles (largely ignored by traffic), just south of Taco Bell. For those of us who live nearby, backups also increase air pollution and noise, reducing our health. Increasing the number of cars queuing in line in the Taco Bell lot will increase air pollution and noise further. The proposal also conflicts with Saint Paul's goals for transportation modality changes.

In our opinion, the fact that Taco Bell is asking for these changes illustrates that this drive-thru is not working well. The backups onto Snelling are leading to frustration for their customers and are alienating potential customers who are impeded by the backups. Here is an example copied from a Facebook post made last year:

“I think I'm done with the taco Bell on snelling. The consistant 20 minute drive thru wait, the way too quiet drive through speaker, and the consistantly wrong orders... They didn't even have hot sauce tonight. I'm not sure there's even any point in complaining to them anymore.”

Therefore, it is our opinion that Taco Bell not only be denied the variance, but that they be put on notice that the existing variances will be terminated as soon as their license/permits expire. If Taco Bell cannot be profitable without a drive-thru, then this is probably not a good location for their business.

Your help in this matter will be appreciated.

Sincerely,

Peter Truitt (651) 249-4491
Margaret Langer (651) 353-2558
1597 Charles Ave
Apt L
Saint Paul, MN 55104

January 6, 2020

To: St. Paul Planning Commission/Zoning Commission

Re: File 319-103-751 (Taco Bell)

Members-

We would respectfully ask that the following conditions be added to the conditional use permit for Taco Bell.

1. Hours of Operation would permit sales only to 2AM and Morning operations would allow for a 7AM opening.
2. Security cameras installed around the outside of the store.
3. Walk up access for food sales for pedestrians after lobby closes.
4. Clearly marked cross walks and signage alerting drives.
5. Total sidewalk snow removal (Snelling and Edmund sides)
6. Daily litter patrol for a two block radius around the store.
7. Increased lighting around the store.
8. Periodic monitoring of auto emissions.

Respectfully submitted,

Bernie Hesse

1602 Thomas Ave

Saint Paul, MN 55104

Williams, Josh (CI-StPaul)

From: Pereira, Luis (CI-StPaul)
Sent: Monday, December 9, 2019 9:12 AM
To: Williams, Josh (CI-StPaul)
Cc: Eckert, Laura (CI-StPaul)
Subject: RE: Inquiry from Planning and Economic Development

Josh – FYI. Laura – Josh has this Taco Bell zoning case on North Snelling so anything else like this can go to him.

From: Eckert, Laura (CI-StPaul)
Sent: Monday, December 9, 2019 6:41 AM
To: Pereira, Luis (CI-StPaul) <Luis.Pereira@ci.stpaul.mn.us>
Subject: Fw: Inquiry from Planning and Economic Development

I'm not sure who this goes to in your team. Thanks.

From: carol <carolam@usfamily.net>
Sent: Saturday, December 7, 2019 9:26 AM
To: Eckert, Laura (CI-StPaul) <laura.eckert@ci.stpaul.mn.us>
Subject: Inquiry from Planning and Economic Development

Think Before You Click: This email originated **outside** our organization.

Re: File # 19-103-751

Property Address: 565 Snelling Ave. N, SW corner at Edmund Avenue

File Name: Taco Bell

I wish to express my DISAPPROVAL of this request by Taco Bell. From reading this info I surmise that Taco Bell will eventually have an EXIT access on their property onto Edmund Ave. This is not acceptable. UNLESS a sign “No left turn” at the exit is posted. We do not want the excess traffic this would generate in the neighborhood. Respect our neighborhood. Let us have the peace and quiet we deserve.

Carol McMahon

Sent from [Mail](#) for Windows 10

<Luis.Pereira@ci.stpaul.mn.us>

Subject: RE: The Taco Bell matter

Thanks for the note, Peter. I think the planning commission meeting for tomorrow has been cancelled. But I'll make sure planning commission see this email.

Matt Privratsky (he/him/his)
Legislative Aide to Mitra Jalali
Ward 4 - City Council

From: Peter Truitt [mailto:ptruitt@goldengate.net]

Sent: Wednesday, January 8, 2020 7:32 PM

To: Privratsky, Matt (CI-StPaul) <Matt.Privratsky@ci.stpaul.mn.us>

Cc: 'Kristine Vesley' <kristinevesley@icloud.com>; 'Mark' <MVesley@minncle.org>; 'Marge Langer' <mlanger@goldengate.net>

Subject: The Taco Bell matter

Think Before You Click: This email originated **outside** our organization.

Hi Matt,

I'm in Mexico and can't make it to the hearing. I just want to repeat a couple comments I made at the library:

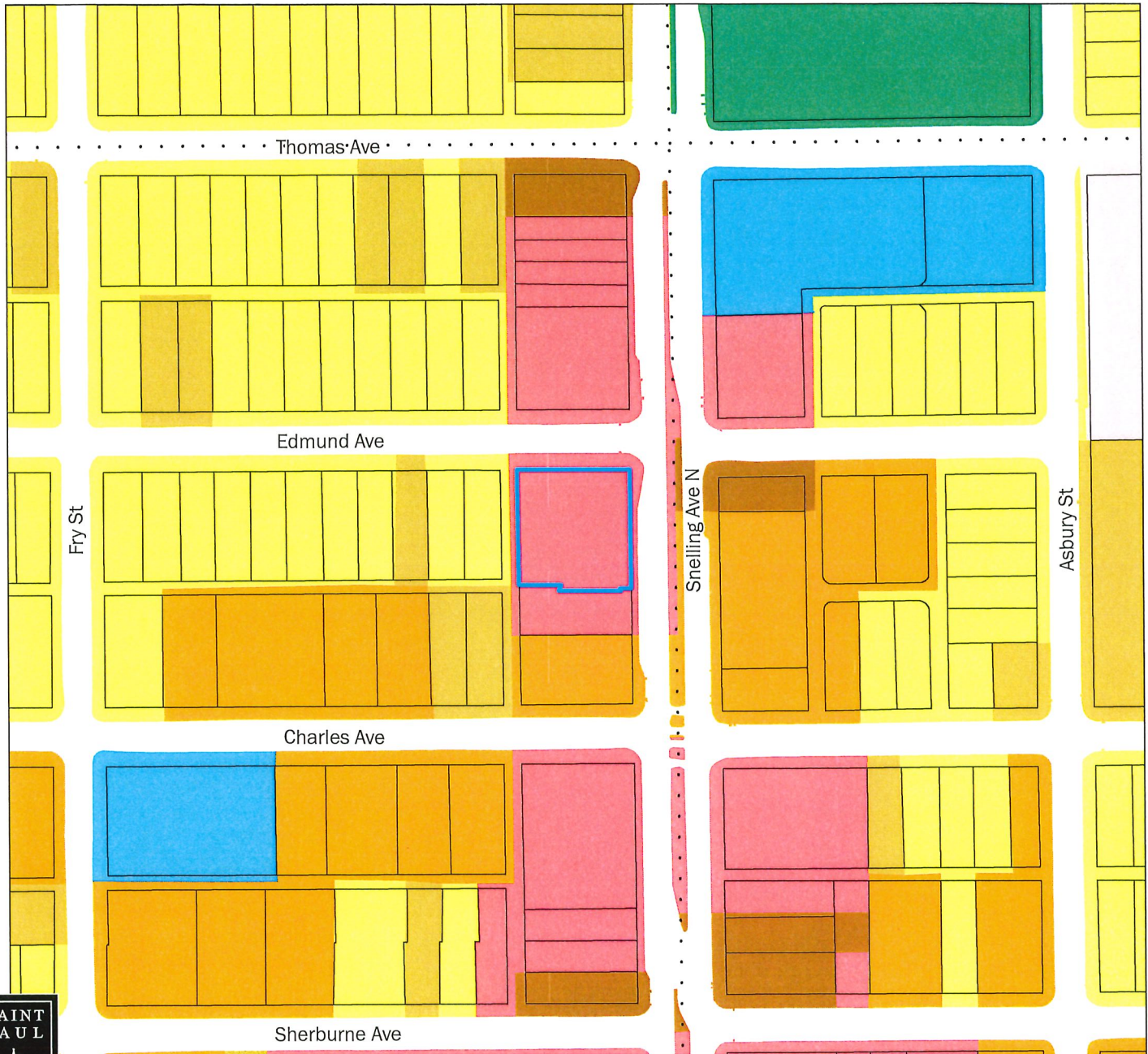
I'm not convinced that the noise at the drive-through would be less, as claimed. It seems to me that it would be worse when I think about where sound would be generated and the hard, flat surfaces that the sound would bounce off of. I don't think the increased foliage would be sufficient to make up the difference.

Also, the number of cars queuing in line would increase, adding to the noise and air pollution.

Thanks for your efforts!

Peter Truitt

" The ultimate test of a moral society is the kind of world that it leaves to its children." – Dietrich Bonhoffer (Translated)



FILE #19-103751 | EXISTING LAND USE
Application of Border Foods Inc.

Application Type: CUP w/modification
 Application Date: November 22, 2019
 Planning District: 11



This document was prepared by the Saint Paul Planning and Economic Development Department and is intended to be used for reference and illustrative purposes only. This drawing is not a legally recorded plan, survey, official tax map or engineering schematic and is not intended to be used as such. Data sources: City of Saint Paul, Ramsey County, Metropolitan Council, State of Minnesota.

Subject Parcel(s) Outlined in Blue

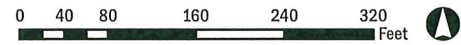
- | | | | |
|---------------------------|--------------------------------|--------------------------------|--------------|
| Farmstead | Office | Extractive | Airport |
| Seasonal/Vacation | Retail and Other Commercial | Institutional | Agricultural |
| Single Family Detached | Mixed Use Residential | Park, Recreational or Preserve | Undeveloped |
| Manufactured Housing Park | Mixed Use Industrial | Golf Course | Water |
| Single Family Attached | Mixed Use Commercial and Other | Major Highway | |
| Multifamily | Industrial and Utility | Railway | |



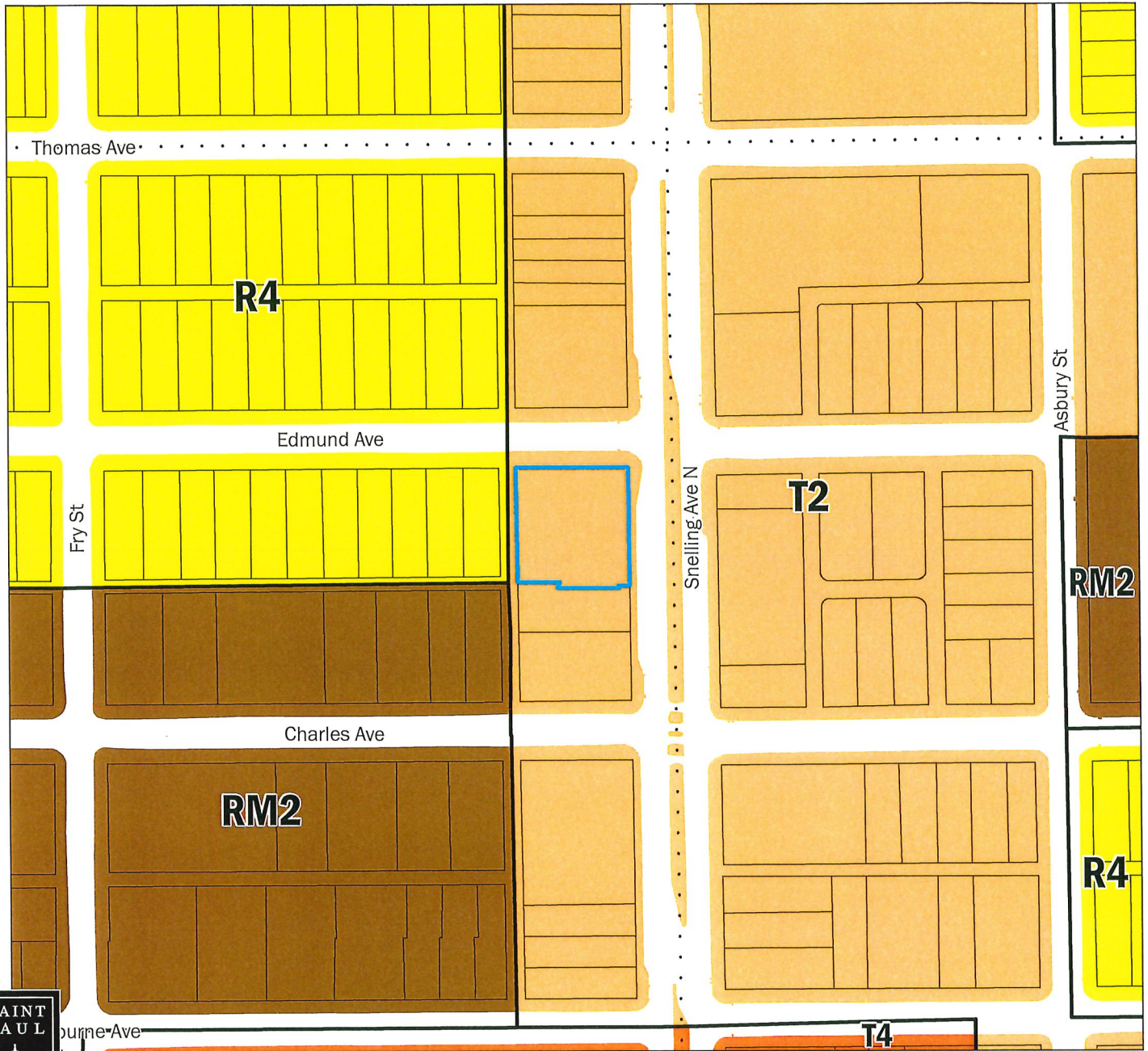
FILE #19-103751 | AERIAL MAP
Application of Border Foods Inc.

Application Type: CUP w/modification
 Application Date: November 22, 2019
 Planning District: 11

Subject Parcel(s) Outlined in Blue



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FILE #19-103751 | ZONING MAP
Application of Border Foods Inc.

Application Type: CUP w/modification
 Application Date: November 22, 2019
 Planning District: 11



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Subject Parcel(s) Outlined in Blue

RL One-Family Large Lot	RM3 Multiple-Family	BC Community Business (converted)	I3 Restricted Industrial
R1 One-Family	T1 Traditional Neighborhood	B2 Community Business	F1 River Residential
R2 One-Family	T2 Traditional Neighborhood	B3 General Business	F2 Residential Low
R3 One-Family	T3 Traditional Neighborhood	B4 Central Business	F3 Residential Mid
R4 One-Family	T3M T3 with Master Plan	B5 Central Business Service	F4 Residential High
RT1 Two-Family	T4 Traditional Neighborhood	IT Transitional Industrial	F5 Business
RT2 Townhouse	T4M T4 with Master Plan	ITM IT with Master Plan	F6 Gateway
RM1 Multiple-Family	OS Office-Service	I1 Light Industrial	VP Vehicular Parking
RM2 Multiple-Family	B1 Local Business	I2 General Industrial	PD Planned Development
			CA Capitol Area Jurisdiction