

MINUTES OF THE ZONING COMMITTEE
Thursday, July 16, 2020 - 3:30 p.m.

PRESENT: Baker, DeJoy, Edgerton, Grill, Hood, Lindeke, and Rangel Morales
EXCUSED: Ochs
STAFF: Josh Williams, Samantha Langer, Allan Torstenson, and Peter Warner

The meeting was chaired by Commissioner Edgerton. He stated that the chair of the Planning Commission had determined that due to the COVID-19 pandemic it is neither practical nor prudent for the Zoning Committee to meet in person, and therefore the meeting was being conducted remotely, with all members of the Zoning Committee attending the meeting remotely and the public able to submit comments by noon on the day before the meeting and monitor the meeting remotely.

Taco Bell - 20-047-173 - Conditional use permit for restaurant drive-thru reconstruction with building replacement., 565 Snelling Ave N, SW corner at Edmund Avenue

Josh Williams presented the staff report with a recommendation of approval with conditions for the conditional use permit. He said District 11 submitted a letter recommending denial, and there were 6 additional letters in opposition. All written testimony is published online and made available to the Zoning Committee members for review before the meeting.

In response to Commissioner Lindeke, Mr. Williams provided more information on the conditional use permit (CUP) that was applied for in 2015. He said that in the years prior to that application there had been a number of complaints related to noise associated with the drive through, litter, inappropriate behavior in the parking lot, and general unhappiness with the functioning of the drive through. The recommended conditions for the CUP to address those issues were that the building be open when the drive through was open, a trash pickup plan, reduced hours of operation, and security located onsite. The applicant felt that the conditions were onerous and withdrew the application at that time.

In response to Commissioner Grill regarding limiting hours of the drive through operation, Mr. Williams said that any conditions placed on approval should be reasonable, related to the use, and generally have some basis in the zoning code. He said this is an existing business that has been operating without a condition on drive through hours for a long time. He views the condition he has recommended as a compromise. The applicant has agreed to drive-through hours of operation that go no later than 3 a.m. on Saturday and Sunday, and no later than 2 a.m. Monday through Friday.

Mr. Williams summarized the public comments that were received. The issues that were mentioned repeatedly by neighbors were that the drive through is not consistent with City and neighborhood goals and area plans for creating pedestrian friendly development, the hours of operation for the drive through should be no later than midnight on week days and 1 a.m. on weekends, and the building should remain open during drive through hours. A number of people also said that although the new drive through design meets the requirements of 60 feet of separation, it is still too close to the adjacent residential properties. All letters submitted are available on the Zoning Committee website.

Commissioner Lindeke asked about an application submitted by Kimball Court for supportive housing next to the Taco Bell site. Mr. Williams said that Kimball Court has a purchase agreement for the building north of their existing building and proposes to expand their building. It would bring Kimball Court property within 60 feet of the Taco Bell drive-through. The zoning code states that a drive-through use must have at least 60 feet of separation from residentially zoned property or property with a one-, two- or multifamily dwelling. Kimball Court is supportive housing, which is defined as a different use than a multifamily dwelling. Mr. Williams does not believe that gives the Committee a basis to say that the drive-through does not meet the separation requirement. He said that the applicant for Kimball Court is aware of this proposal and they have not commented on the Border Foods application. Kimball Court's design includes a vertical separation on the north elevation of their building.

Mr. Torstenson said the requirement in Finding 2(a) is for a 60-foot separation from the closest point of any residentially zoned property or property occupied with a one, two or multiple family dwelling. Multiple family dwelling is defined as a building or portion thereof designed exclusively for occupancy by three or more families living independently of each other in individual dwelling units. Kimball Court is not a multiple family dwelling, but rather is a supportive housing facility, a type of congregate living facility.

Commissioner Edgerton noted a public comment letter that said although the site design meets Zoning Code requirements for drive-through separation from residential property, it is too close. He asked if the Committee can require greater separation from residential property than the code requires. Mr. Williams said there is little the applicant could do to move the drive-through lane further from residential property without requiring other modifications or variances.

Mr. Warner said that if the standard listed in the zoning code is met, and according to the staff report they have met the 60-foot separation requirement, then the Committee lacks the discretion to modify the standard. The ordinance would need to be amended to change the standard.

In response to Commissioner Grill regarding adding conditions to reduce the impact of light and sound on adjacent property, Mr. Warner said that as long as there is a basis in the record to impose requirements it is reasonable to do so. Typically, that may come up in site plan review, but it can be noted by the Commission that the design should be the best possible to minimize the impact of light and sound on adjacent properties.

Commissioners Rangel Morales and Hood said they needed to leave the meeting.

Barry Zelickson, 5425 Boone Avenue, New Hope MN, represents Border Foods, the local company that operates the Taco Bell at 565 Snelling Avenue. They have worked with the city to develop a plan that best addresses the optimal use of their lot without requiring any variances. Proposed changes include increased car stacking, reduced late night hours, increased distance of the speaker box from neighboring homes, reduced curb cuts onto Snelling Avenue, and improved building design and landscaping. They are still learning how to best operate the business to keep our customers and employees safe during the COVID-19 pandemic. They have found that having drive-through service and take-out food is important to their customers when restaurants are not able to have their dining rooms fully open. They hope the Committee supports their plan to reinvest and build a new and improved building to replace the currently closed Taco Bell. Mr. Zelickson addressed questions that came up from the Commissioners. He said it is not an issue to add a fence between their property and adjacent residents. He said that the conditions placed on their previous CUP application that they withdrew included a number of operational conditions not related to zoning that they felt were not appropriate. A trash pickup plan has been put in place and they have also been working with Police and others, and to their knowledge there have been no issues regarding speaker sounds, lighting or anything else along those lines. He said that there are requirements in site plan review for sound and noise and other elements that will be considered.

Brian Alton, 951 Grand Avenue, Saint Paul, represents Border Foods. Currently the restaurant is closed having been recently damaged as were other buildings in the area. Rather than repair the existing old building, Border Foods wants to rebuild a new one and make it better. This is a good time to do that and Border Foods is ready to go ahead. Border Foods is not asking for any modifications, waivers, or variances. The new building and site plan will be a major improvement over the existing conditions. It reduces parking, decreases impervious surface area, increases landscaping, includes rain gardens, and will improve traffic flow. In the midst of this pandemic, a new building will improve the ability of Taco Bell to provide a moderately priced food option for people, delivered in a safe and secure way. Snelling Avenue is a busy state highway, but still most of Taco Bell's customers are local people who like the food and convenience. It is impractical to ask for the dining room to be open at all times the drive-through is open during the COVID pandemic, with the closure of dining rooms throughout the state of Minnesota

and country, and this should not be a condition of approval. The Midway Chamber of Commerce supports Border Foods' efforts stating that "projects which upgrade existing development will help spur additional redevelopment in the surrounding area." There is a need for more development in the area. There is an existing conditional use permit for this Taco Bell that remains in effect, without violations. They are asking for approval of this new application as recommended by staff so that Border Foods can rebuild and improve.

In response to Commissioner Grill, Mr. Zelickson said that dine-in hours are different than drive-through hours throughout most of their restaurants. There are options for walk-in business at certain restaurants and those options will increase as they are developing new technology to address those options. He said if this location were open and the dine-in service was closed you could not walk up to the drive-through window. He added that delivery service is an option for someone without a vehicle during drive-through only hours. In response to Commissioner DeJoy, Mr. Zelickson said that they agree with the staff recommendation for hours of operation, which is a reduction from their current hours of operation.

In response to Commissioner Lindeke, Mr. Alton said Border Foods withdrew their CUP application in 2015 because of some of the proposed operational conditions that they thought were overreaching and unacceptable. They agreed with the litter collection plan, but the recommended hours of operation were not acceptable. There was also a recommendation that there be onsite security for a significant number of hours per day, which they found that to be unnecessary. Since that time Border Foods has continued to operate without onsite security and have had no issues.

Commissioner Baker said he needed to leave the meeting.

The public hearing was closed.

In response to Commissioner Lindeke, Mr. Williams said the 2040 Comprehensive Plan should be approved by the end of the year, but a lot of the timing is not in control of the City. He said the 60-foot separation measurements were taken from a scaled version of the previous site plan and will be verified during site plan review. The separation requirement is a condition that must be met.

Commissioner Lindeke expressed concern about the site plan review process and the difficulty for the Department of Safety and Inspection (DSI) to intervene once something has been built if an issue arises about how the site functions.

Commissioner DeJoy noted that the plans meet code requirements for drive-through lanes, said she hopes the hours can be reduced, and moved approval of the conditional use permit with the recommended conditions.

[AUDIO is temporarily lost at approximately 1:57:10 mark of recording]

DeJoy motion failed due to a lack of a second.

Mr. Williams explained the difference between DSI's ability to ensure that plans are in conformance with code requirements and dealing with operational issues that arise later. In the Starbucks case there has been more traffic than anticipated, creating operational issues that have been difficult. DSI is certainly able to ensure that approved site plans are in conformance with setback requirements.

[AUDIO resumes at approximately 2:00:00 mark of recording]

Commissioner Lindeke said that standard that the applicant is applying is that this is an improvement to the current conditions at this site, but the current conditions are very poor and even if it is an

improvement it does not mean that it fits with the City's goals and vision laid out in the Comprehensive Plan. He has concerns with the current Zoning Code drive through regulations, and noted that the code limits the noise from the speaker box but not noise from the vehicles using the speaker box to order that unreasonably disturbs nearby residents. He said he also finds it problematic that the code distinguishes between multi-family housing and supportive housing, and feels the code needs to reflect that everyone is valued. He thinks the City needs to do more to define policies around drive-throughs, particularly with regard to hours of operation. The Comprehensive Plan addresses quality of life and minimizing auto oriented uses and development in station areas, and these goals should be supported.

Commissioner Lindeke moved denial of the conditional use permit. He said that Finding 3(a) is not met, stating that the proposed use is not in compliance with the Comprehensive Plan's goal to minimize auto oriented uses. He also stated that Finding 3(d) is not met, stating that the City has provided a lot of clarity around Greenline Station Areas, transit oriented communities, and T2 zoning that make it clear that the proposed use is not the normal and orderly development envisioned for the area..

Commissioner Grill seconded the motion. She added that Finding 3(c) is not met. The auto-oriented drive-through is generally detrimental to the pedestrian-friendly character of the area by enhancing auto-oriented uses while not providing for pedestrian-oriented services, contrary to required conditions in findings 3(c) and 3(a). She also noted concern regarding noise, light, and litter associated with the proposed late-night operation of the drive-through lane.

There was discussion of past complaints filed with DSI and Police related to the subject property. Mr. Warner noted that those are largely operational matters. Commissioner DeJoy said one of the comment letters received for this application noted that public urination in the parking lot and alley adjacent to the property has occurred during late-night operations. Commissioner Lindeke said he would like feedback from the Department of Safety and Inspections regarding how well they are able to enforce conditions placed on conditional use permits by the Planning Commission.

A roll call vote was taken.

Commissioner Lindeke voted in favor of denial based on Findings 3(a), (regarding LU Policy 1.52), 3(c), and 3(d) not being met.

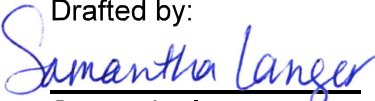
Commissioner Grill voted in favor of denial based on Findings 3(a) (based on Policies LU 1.52., LU 1.21 and LU 1.12), Finding 3(c), and Finding 3(d) not being met.


Commissioner DeJoy vote in favor of denial based on Findings 3(a), 3(c), 3(d) not being met.


Commissioner Edgerton voted in opposition of denial.

The motion passed by a roll call vote of 3-1-0.

Adopted Yeas - 3 Nays - 1 (Edgerton) Abstained - 0

Drafted by:

Samantha Langer
Recording Secretary

Submitted by:

Joshua Williams (Sep 1, 2020 11:10 CDT)
Josh Williams
City Planner

Approved by:

Dan Edgerton (Sep 1, 2020 17:09 CDT)
Dan Edgerton
Chair