

MINUTES OF THE ZONING COMMITTEE
Thursday, November 21, 2024 - 3:30 p.m.
City Council Chambers, 3rd Floor
City Hall and Court House
15 West Kellogg Boulevard

PRESENT: Grill, Syed, and Taghioff
EXCUSED: Hood, Ochoa, and Starling
STAFF: Josh Williams, Bill Dermody, Samantha Langer, and Dan Stahley

The meeting was chaired by Commissioner Taghioff.

University of St Thomas Review of CUP - 24-078-362 - Review of a conditional use permit (ZF #04-054-501) for noncompliance of Planning Commission conditions at 2260 Summit Avenue, between Mississippi River Blvd. and Cretin Avenue S.

Josh Williams explained that there was an error with public noticing for this application. St. Thomas owns three properties on the east side of Cleveland Avenue adjacent to the North Campus that were not included when creating the 350' public notice list of properties, resulting in a handful of properties not receiving a notice. The solution he is proposing is for the Committee to hear the staff report and the testimony of anyone present, and hold open the public hearing to December 5, to allow staff time to correctly send notice to the neighborhood.

Mr. Williams presented the staff report with a recommendation of deleting Condition 16 from the 2004 CUP and replacing it with the following condition: the loading drive which currently exists between Goodrich Avenue and the Binz Refectory shall be used only for deliveries to Binz Refectory, maintenance vehicles, and emergency vehicles. It may not be used for student, employee, or visitor vehicular traffic and it may not be connected to parking spaces accessed by those users.

District 14 Housing and Land Use Committee submitted a letter recommending approval, and there were 0 letters in support, and 26 letters in opposition.

In response to Commissioner Grill, Mr. Williams said it is his understanding the driveway is currently used for emergency vehicles. It is the closest access for some buildings including Grace Hall. There is also a large arena under construction so maintaining it during the time of construction until alternate accesses are complete would be reasonable.

In response to Chair Taghioff, Mr. Williams confirmed that the Zoning Administrator made the determination that currently Saint Thomas is out of compliance with the conditional use permit (CUP). The Committee can choose to modify the CUP, leave it as is, or impose additional conditions. Within the subject matter area, it is unlikely that the Committee would reopen the entire CUP. Mr. Williams said Chapter 65.220 lays out specific standards for college campuses and like any CUP we look at the standard general findings as well. He noted this is an unusual CUP in terms of its origins and the number of conditions that are listed. The staff report sites one aspect that seemed relevant to this issue of an access drive and staff believes it is consistent with that Finding. He referred to Finding 4 in the staff report, Section 61.108 provides guidance on the process.

Tamera Diehm, Winthrop & Weinstine, said in our written submission, we outlined our request that the Planning Commission clarify, remove or modify the Goodrich Avenue condition that is contained in the 2004 CUP in recognition that Goodrich Avenue provides an important access point to the South Campus not only for operational purposes, but also for emergency and critical care vehicles. The condition opposed over 2 decades ago is not needed to protect the health, safety and welfare of the community. Our goal today is to expand upon Planning staff's report and answer any questions you may have as you consider your recommendation to the Planning Commission. As a preliminary matter, we already noted our position that the removal of the driveway should not be required as a result of the interior remodel or renovations that have occurred at the Binz Refectory. Our position is that this does not rise to the level of the remodel that was contemplated in the 2004 CUP because the work did not involve any structural changes, it did not require site plan approval, and it did not change the continued or prior use of the building. Neighbors raised concern over the 2004 CUP condition that was imposed because Saint Thomas at that time envisioned an expanded residential village and dining facility on the South Campus that would occur sometime in the future. When that occurred alternate access points would have needed to be developed. We acknowledge that city staff has the right to interpret the CUP language as the city is in a position of authority on all matters related to zoning and related to the CUP that governs our campus. The same authority gives the city the right to interpret the CUP also gives the city the right to make modifications, to delete, to clarify or to modify the conditions attached to the CUP as noted in Section 61.108. Upon a determination that the conditions imposed are not being complied with, you have the ability to revoke the approval and require that the noncompliance will be corrected. However, you have the right to impose additional conditions, modify or delete conditions which are deemed to be either unnecessary, unreasonable or impossible of compliance. Saint Thomas is asking you to clarify the condition requiring the removal of Goodrich Avenue because of something that's more significant than remodeling that has already occurred. In the alternative, we're asking you to exercise the authority that's provided in the zoning code and delete or modify the removal of Goodrich Avenue because it is unnecessary and it's unreasonable. In terms of it being unnecessary the city staff provided an extensive analysis of the CUP condition in the staff report and in doing so, concluded that the removal of Goodrich Avenue as a condition of the CUP is not necessary. It is noted in Finding seven and in making that Finding, staff identified several reasons to support the position, including that the current use of the drive is consistent with the City's objectives in the Comprehensive Plan and does not interfere with adequate ingress or egress or contribute to traffic congestion and is not detrimental to the character of the neighborhood or endangering public welfare, and does not impede normal use allowed within the District. The Intent of the Goodrich Avenue condition in the CUP was to minimize disruption to the surrounding neighborhood caused by the potential expanded use of the driveway to South Campus upon the development of a residential village and the potential expanded use has not come to fruition. The use of the Goodrich Avenue access point has actually decreased over time, and it is less intense now than in 2004. Therefore, it is unnecessary to remove the driveway in order to honor the CUP. St. Thomas believes that requiring the removal is also unreasonable. The loading drive serves as an important access point for campus deliveries. The Binz Refectory is still used for food service and receiving deliveries at the building is an important part of its operation. It also provides important access for emergency and critical care vehicles. This access point is extremely important and the quickest way for emergency vehicles to access some of the buildings. Requiring the removal of the drive under the circumstances present here does not advance the health, safety, and general welfare of the community.

Impeding the ability of emergency vehicles to gain critical access causes potential harm and is therefore unreasonable. Some of the neighbors argue that the city forfeited its right to exercise its zoning authority when it signed a settlement agreement in 2004 and we disagree with this position. Both public policy and case law are clear that an elected body cannot sign away or bind future elected or appointed officials who are charged with making discretionary decisions that are required to govern the city. Part of this governance includes not only the authority, but also the responsibility to make decisions regarding zoning of land within the boundaries of your community. If the city were to refuse to consider changes to zoning based on a 20-year old private settlement agreement, the city officials who are making that decisions would be abdicating their duty as elected and appointed officials. The city has the authority to consider modifications to the CUP condition. They respectfully request that the Committee either delete the condition that requires the removal of Goodrich Avenue or modify the condition to limit the use of the drive. They would like to expand the limited uses to allow pick up as well as delivery and not only include the Binz Refectory, but also the Brady Education Center, which has a loading dock and would be necessary for deliveries as well. In addition, they would like additional flexibility in the use of this drive during the remainder of arena construction as students move out from Grace Hall will be affected by construction and it's anticipated that the Goodrich drive would be utilized for a limited period of time.

In response to Commissioner Grill, Jim Brummer, Vice President for Facilities Management at Saint Thomas, said currently they don't have semi traffic. They do have two or three deliveries per week in smaller vehicles.

Ms. Diehm said it is not a designated pick up or drop off area by the University. Mr. Brummer said with the construction of the multi-purpose arena, students are calling Uber and getting picked up and dropped off at that location. After construction of the arena that will not be an issue anymore because they have a drop off turnabout that is being added to the site along with the parking lot that will be adjacent on the north side of the property.

In response to Chair Taghioff, Mr. Brummer showed where the arena site was located. A portion of a current parking lot will remain and there will be a drive that will continue that exists today from Summit Avenue that will come down and there will be a turnabout. The access will be from the north post construction for student drop off. Access to the loading docks of Brady Education Center and Binz will still be a critical operational need post construction because there is no way to access from this parking lot to these loading docks. He said the turn around would be west of the Grace Hall building and there will be no direct access to Goodrich.

Catherine Plessner, 2038 Summit Avenue, Saint Paul, spoke in support. She served on the Macalester Groveland District Council for 12 years and represented them for two stints on the West Summit Neighborhood Advisory Council. The CUP for Saint Thomas was an outcome of a lawsuit. This set an adversarial tone that remains today. This is the most common sense recommendation she has heard in all her years. Our city leaders gave us the 2040 Comprehensive Plan with the values and equity and opportunity for all. We need you, members of the Zoning Board, to help us implement that plan. She noted that the staff member who has worked with the community through all these years deserves recognition for his unbiased treatment and consideration of all parties. Please accept the Goodrich Avenue access staff recommendation.

Mark Manderscheid, 2136 Goodrich Avenue, Saint Paul, spoke in opposition. He was the co-author with Doug Hennes, the university's Vice President for Governmental Relations, of Condition 16. There was a deal struck between the neighbors and the university, and now the university seeks to renege on its promises. The university is not being clear as to what is going on at this location. At many of the public meetings, the university has said they need that driveway to provide for deliveries to the central part of the South Campus and we need that driveway for emergency vehicles to access the South Campus. There is a new driveway that the university has under construction from Cretin Avenue. That driveway which empties into the parking lot and is immediately north of the Binz Refectory and east of Grace Hall, could be connected to the loading drives for both Binz and Brady by adding a small driveway that would go south of Grace between Binz and an area from the parking lot. There is no undue hardship. The language to modify special conditions in Section 61.502 requires that it result in exceptional undue hardship the owner. The university has many ways that it can get vehicles to Grace, Brady or Binz, and they don't need to go on Goodrich Avenue. The university agreed to remove the driveway such that there shall be no vehicular access from Goodrich Avenue to any of the university's buildings on the South Campus. That way the neighbors on Goodrich Avenue are allowed to live their lives without having university vehicles, student vehicles and others come down on a residential street. It is not a busy street with a median like Summit. The purpose behind this condition was to allow Goodrich Avenue, west of Cretin, to remain a residential street.

Chair Taghioff asked about the specific language in Condition 16 in the 2004 CUP. It is the university's testimony that the community concern was for expansion at the time, and that the community seemed to be okay with the current situation, but if the university expanded then they wanted the driveway removed.

Mr. Manderscheid said the university issued its anticipated growth and development statement and talked about the many things it was going to do and much of it was focused on the south side of Summit Avenue. The drawings that the university sent out showed removal of every building on the blocks that are south of Summit and north of Grand and between Cretin and Cleveland. Their plan was to demolish two dormitories, Cretin and Grace, build a whole new housing complex and either enlarge or remodel the Binz Refectory building. Concern grew because there were already a lot of deliveries to the Binz building at that time and there were concerns it would increase and safety became an issue of concern. After discussions it was agreed that they would remove the driveway if the university removed Grace Hall or if the university demolished or remodeled the Binz building. As part of the university's project redoing its steam system, they've torn up the parking lot to the north of the Binz building. They have to reconstruct and repave part of it, and it would allow them to fulfill the condition in the 2004 CUP because they are doing construction in that area.

Virginia Housum, 2229 Fairmount, Saint Paul, spoke in opposition. She said the driveway is 20 feet west of her property. Mr. Williams said this is not a standard CUP and he is right about that, it is a contract with SARPA, the university, and the city. The city can't modify this without SARPA's approval because they are a contract party. If Saint Thomas wants to breach this agreement they need to provide remedies for violation of a contract like anybody else would. The staff proposal that Mr. Williams came up with is completely impractical as a compromise.

She is frequently on Goodrich Avenue and there is a lot more use to that driveway than is being said. It is clearly being used as a place where people can get access to the South Campus which is inconsistent with what the CUP provided. Now we find out today that the University of Saint Thomas not only doesn't like this compromise, but they want to expand the use. They are changing the neighborhood dramatically in a negative way. There is a lot more traffic than there used to be and there are cars parked illegally all the time on Goodrich Avenue. She cannot believe that the city will enforce the use for the limitations provided in the staff report.

Bill Richtman, 1939 Portland Avenue, St. Paul, spoke in opposition. Saint Thomas has overstated the emergency access to this site because there is now an access drive that was recently put in as part of the construction for the new arena, which gives direct access to Grace and is better access than currently exists in the service drive. Part of the reason for that is because the service drive doesn't go to Grace. There's a sculpture and sidewalk and very little access. It would be impossible to get a fire truck there. The service drive that is now being built goes directly to Grace. There is no reason to consider emergency access as part of this. Saint Thomas was well aware of the CUP and the requirements as they began their arena project. If they didn't plan to have emergency access to be able to get to Grace then that problem is on them, not the neighborhood. This is a standard CUP except for item 16. There is a release of claim that's involved with the CUP and that's what makes the CUP not standard. Why wasn't the city attorney offering a finding of fact or recommendation on this because if that happened you would realize that the neighborhood has the right to sue and will sue if this CUP is not lived up to.

Kate Richtman, 1939 Portland Avenue, Saint Paul, spoke in opposition. She doesn't believe this matter is properly before this Planning Commission. In the past, city staff has stated that the City Council and thereby others cannot take action when litigation is ongoing. Access to the South Campus via Goodrich Avenue and the requirement to remove the Binz Refractory drive are governed by a previous lawsuit. The settlement of that lawsuit is currently a portion of a current lawsuit filed on October 18, 2024, case number 62-CV-24-6516, and in that it asks for specific performance of the conditions of the CUP as it was agreed to and as it was part of the settlement of that litigation in 2004. One of the options of this Planning Commission is to do nothing and that is what she is requesting today. That is to find that the University of St. Thomas is in violation of its current applicable CUP, and that no modification of the CUP is warranted at this time, because of the ongoing litigation.

Tony Moss, 175 Woodlawn Avenue, St. Paul, spoke in opposition. In all of his 32 years living here he has never seen an ambulance go in that driveway. Has it ever been used or how often is it used for emergency access?. He doesn't know if St. Thomas willfully ignored the driveway provision in the CUP as they developed the arena or as they remodeled the Binz building or if they just don't look at the CUP as they do projects, but we should all wonder what other parts of the CUP St. Thomas has violated. How can we trust that St. Thomas will abide by the representations it is making relative to its future intentions for the arena and mitigation efforts if they can so blithely disregard this clear provision in the CUP? How can we the community trust that the city will hold St. Thomas accountable to its promises in the future if the city allows them to unilaterally break with the 2004 agreement?

Terry Brueck, 2279 Summit Avenue, Saint Paul, spoke in opposition. He has lived there for 22 years and has seen the expansion of St. Thomas over that time. If this driveway remains he doesn't think there is any way that it will not be used when the arena is up and operational as a drop off point or for buses to park and unload. Without other conditions, that driveway, which was excluded from the neighborhood access, will become a flow into the arena site. It will increase the neighborhood traffic and parking issues that already exist. It will become an access point for the arena, if not for direct vehicles, at least for drop off and pick up.

Meg Grove, 2198 Goodrich Avenue, Saint Paul, spoke in opposition. It was not the Macalester Groveland Board that recommended approval, it was the Housing and Land Use Committee meeting and it was an item that was added quietly and quickly at the last minute. It didn't get a lot of discussion and the vote was 5 – 1 to support the staff recommendation.

Ms. Diehm responded to testimony. Mr. Manderscheid referenced Section 61.502, but the controlling language for your consideration should be code Section 61.108 as noted in the staff report. Also, there was reference to truck turning, but due to the radius that the trucks will need to turn, that newly constructed roundabout will not work for deliveries. There was a reference to the River Road parking lot, but that is a project of the seminary, and is not a University of St. Thomas project.

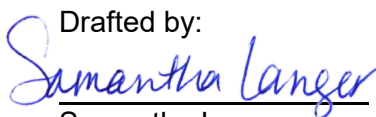
Chair Taghioff said we could continue to close the public hearing, but by doing so we would not be in compliance with notice requirements.

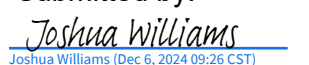
Commissioner Grill moved to lay over of the review of a conditional use permit to December 5, 2024, and to keep the public hearing open. Commissioner Syed seconded the motion.

Chair Taghioff noted that people who already spoke today will not be allowed to speak a second time.

The motion passed by a vote of 2-0-1.

Adopted Yeas - 2 Nays - 0 Abstained - 1 (Taghioff)

Drafted by:

Samantha Langer
Recording Secretary

Submitted by:

Joshua Williams (Dec 6, 2024 09:26 CST)
Josh Williams
City Planner

Approved by:

Simon Taghioff (Dec 12, 2024 11:24 CST)
Simon Taghioff
Chair









University of St. Thomas MINUTES OF THE ZONING COMMITTEE

Final Audit Report

2024-12-12

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