

MINUTES OF THE ZONING COMMITTEE
Thursday, December 5, 2024 - 3:30 p.m.
City Council Chambers, 3rd Floor
City Hall and Court House
15 West Kellogg Boulevard

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

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 Ave, between Mississippi River Blvd. and Cretin Avenue S.

Chair Taghioff said this item was laid over from November 21, 2024, because staff needed to complete a public notice requirement. The public hearing remains open and anyone who spoke last time should refrain from speaking again, only new testimony will be heard.

Bill Dermody said that staff did properly notice the public hearing and he is available for questions. District 14 submitted a letter recommending approval, and there were no letters in support, and 30 letters in opposition.

No one spoke in support.

Daniel Kennedy, Advocates for Responsible Development, and he resides at 2259 Summit Avenue, Saint Paul, spoke in opposition. He said this conditional use permit resulted from a release of all claims. It was a settlement of a lawsuit and the parties to that agreement were the respective community councils, SARPA, the city of St. Paul and the University of St. Thomas. The community should be able to rely on St. Thomas to comply with that agreement, but if they don't then the community must be able to rely on the city to uphold and enforce the agreement. The notice for today's meeting was for noncompliance by St. Thomas. It is a settled matter and has not been appealed. St. Thomas has remodeled the Binz Refectory and the CUP requires the removal of the driveway to the Binz and removal of access from Goodrich Avenue. How do you enforce the CUP requirement when St. Thomas is not complying. The clear path of action is to revoke the site plan approval for the multipurpose arena. Seven months ago, the community came to the Zoning Committee about that site plan and said this does not comply with the city's laws. The EAW was insufficient and the Binz driveway violates the CUP. PED staff said to ignore those concerns because the EAW had been accepted by PED staff and because no complaint had been made about the Binz driveway. On July 28th the Court of Appeals rejected the EAW, St. Thomas appealed and that was also rejected. There is no environmental review in place right now. The Binz issue has had a complaint filed and the city upheld it. The city ordered the removal of this driveway. The two bases that the Planning Commission relied on are gone for the site plan. The most effective way to enforce this CUP requirement is to revoke the site plan approval. St. Thomas will come back with a new site plan that comports with the environmental review and removes the Goodrich driveway and that will effectively enforce the CUP requirement.

Tom Darling, 445 Summit Avenue, Saint Paul, spoke in opposition. He is the president of the Summit Avenue Residential Preservation Association (SARPA). This issue arises within connection with the CUP St. Thomas is operating under. The CUP is unique because it has resulted from a settlement of several lawsuits. SARPA was a plaintiff in one of the lawsuits with direct assistance of Jay Benenav, a City Council member, and city staff. All the parties got together and negotiated to reach a settlement, and the settlement was the CUP. It involved compromise and it worked. However, now St. Thomas wants to unilaterally change the settlement agreement. The recommendation that the CUP be modified at the request of one party because that party finds it inconvenient to comply should not be allowed. St. Thomas remodeled the Binz Refectory and under the terms of the CUP they should now close this driveway on Goodrich.

Gayle Breutzman, 151 Woodlawn Avenue, Saint Paul, spoke in opposition. Read a letter submitted for the record (see attached).

Steve Sikora, 173 Montrose Place, Saint Paul, spoke in opposition. He said a CUP is issued to allow property owners to use their property in a way that isn't permitted under zoning laws provided they comply with conditions. In 2004 the University of St. Thomas (UST) wanted to expand its campus, they were sued and ultimately five parties came to a mediated agreement, a CUP. A specific condition of the CUP states that UST remove the driveway from Goodrich Avenue to the Binz Refectory if the building is remodeled. In 2022 and 2023 it was remodeled twice to reconfigure most of it into an athletics facility. Building permits verify the projects were remodels. It was even renamed to the Binz Building to reflect the change in purpose. Despite this condition UST has failed to remove the driveway that now gets additional traffic from adjacent athletic fields due in part to the remodel. In July, the Department of Safety and Inspection (DSI) determined that they were in violation of the CUP and ordered the driveway be removed. UST defied the order and refused to uphold its end of the CUP agreement. If UST refuses to comply to the conditions of the existing CUP, why should they be trusted to honor the terms of any new agreement.

Kathryn Mitchell, 2279 Summit Avenue, Saint Paul, spoke in opposition. She has lived in the neighborhood for 22 years and said they are hardworking people who love their neighborhood. It is a beautiful neighborhood, but there are a lot of things that go on because of living so close to UST, that make it very difficult. Parking is a main concern. There is an attitude that there is free parking, but it is not, they pay taxes to repair the streets and overlay. UST pays no taxes to repair streets. She knows that her feet would be held to the fire if she didn't abide to an agreement she had with the city and she would expect that UST be treated the same as residents.

Jerome Abrams, 151 Woodlawn Avenue, Saint Paul, spoke in opposition. Read a letter submitted for the record (see attached).

Lynette Sikora, 173 Montrose Place, Saint Paul, spoke in opposition. The CUP is a City Council mediated agreement between five parties and no single party can nullify the terms of a nuanced agreement. If a city grants UST's wish to reopen the CUP before it comes into compliance with the existing CUP the decision will make a mockery of all codes and regulations. It will erode public trust and the process of the St. Paul city government.

Tamera Diehm, Winthrop & Weinstine, responded to testimony. Contrary to what was said, UST did not defy the order that was issued by DSI in July. While UST disagreed with the definition of remodel or whether the remodeling that has occurred rises to the level that would require the removal of the Goodrich drive, we also acknowledged that the city has the authority to interpret that provision and that phrase remodel. It is the same authority that gives the city the right to interpret the CUP. Upon receipt of that letter St. Thomas requested an opportunity to meet with the Planning Commission and DSI scheduled a meeting, and in doing so also stay enforcement of their order to give the Planning Commission an opportunity to consider a modification to that provision of the CUP. As noted in the staff report, city zoning code Section 61.108 gives the Planning Commission authority to delete or modify conditions attached to the CUP. Specifically, the code states that the Planning Commission may, at a public hearing, following notice and upon determination that the conditions imposed by any approval are not being complied with, they may revoke the approval and require that such use be discontinued. The commission, in lieu of revoking the permission, may impose additional conditions, modify existing conditions, or delete conditions which are deemed by the commission to be unnecessary, unreasonable or impossible of compliance. St. Thomas is asking the city to consider clarifying the condition that requires the removal of Goodrich Avenue and tie it to something more significant than the remodeling that has occurred. However, in the alternative, St. Thomas is also asking the city to exercise its authority and delete or modify the removal of Goodrich drive because it is unnecessary and unreasonable. Staff has concluded that the removal of Goodrich Avenue as a condition of the CUP is not necessary. In making this finding staff identified several reasons to support the position including the fact that the current use of the drive is consistent with the objectives of the city's Comprehensive Plan, does not interfere with adequate ingress and egress, or contribute to traffic congestion, is not detrimental to the character of the neighborhood and does not endanger public welfare and does not impede the normal uses that are allowed within the district. The intent of Goodrich drive condition to the CUP was originally put in place to minimize disruption to the surrounding neighborhood that was cause of concern to the potential expansion of a residential village that never came to fruition. The use of Goodrich drive today is less than it was in 2004. St. Thomas believes that the removal is unreasonable too. The loading drive serves as an important access point for campus deliveries. The Binz Refectory is still used for food service. The loading drive provides important access for emergency vehicles and have submitted written materials showing that the drive is used for emergency events at south campus. It has been argued that the city somehow forfeited its right to exercise its zoning authority when it signed a settlement agreement in 2004 and St. Thomas disagrees. 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 governing a city. Part of the governance is not only the authority, but also the responsibility to make decisions regarding zoning of land. City Officials would be abdicating their duties if they were to refuse changes based on a 20 year old private settlement agreement. The city has the authority, obligation, and responsibility to consider modifications to the CUP. They respectfully request if the Committee is inclined to adopt the staff recommendation that they consider modifications. Specifically, by expanding staff's recommended language to include pick up as well as well as deliveries at the Binz Refectory and the Brady Education Center loading dock. In addition, we would like flexibility in the use of the drive for Campus operations during the remainder of the arena construction.

In response to Chair Taghioff, Ms. Diehm said there are two separate documents. There is a private settlement agreement which is a contract amongst a number of parties one of which is the city and one is St. Thomas as well as some neighborhood groups. Apart from that there is a conditional use permit that was granted by the city. The conditions in the CUP mirror the items that were in the settlement agreement, but they exist independently of each other. Your role as part of the Planning Commission is to consider the conditional use permit and consider the conditions that were attached 20 years ago and whether or not those conditions should be modified. She said that the Committee should consult with their own legal counsel, but she believes this should be considered independently of the settlement agreement.

The public hearing was closed.

The Chair stated that given there is a violation of condition 16 in the 2004 CUP, the remedies that we can act on are leaving the CUP as is and have St. Thomas comply with condition 16, revoke the CUP, or add modifications.

In response Commissioner Grill, Mr. Dermody provided language adding the requests that Ms. Diehm provided in her testimony to the staff-recommended conditions for committee consideration.

Commissioner Grill moved approval of staff recommendation, with the language added in response to Ms. Diehm's requests, to delete Condition 16 and replace it with the following condition: Goodrich Ave. Access. The loading drive which currently exists between Goodrich Ave. and the Binz Refectory shall be used only for materials deliveries to and pickups from the Binz Refectory and Brady Education Center, maintenance vehicles, and emergency vehicles. It may not be used for student, employee, or visitor vehicle traffic and it may not be connected to parking spaces accessed by those users, except that the drive may be maintained for current purposes for an interim period during construction of the multipurpose arena and associated access infrastructure, for a period not to exceed two (2) years. Commissioner Syed seconded the motion.

Commissioner Ochoa said he would not be in favor of adding the two year extension for use during the construction of the stadium. It would be adding more than what is currently allowed in the existing CUP.

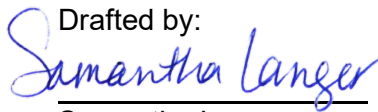
Chair Taghioff said the CUP is a result of a lot of negotiation where it seems it was agreed that if there was a remodel on south campus St. Thomas would make the necessary investment necessary to reconfigure the loading bay. The residential village didn't happen, but now the stadium is happening. It seems there was a clear reason to try and divert traffic from this residential street if more traffic is expected in the area with new construction. He also stated his concerns regarding how to enforce the limitation of use for the driveway once the stadium construction is complete.


Commissioner Grill said for discussion purposes if the language to extend the use for two years is too extreme, she would consider withdrawing that addition. She visited the area and observed it is set up as a loading and delivery dock area. This area was not changed when they did the remodel. If they still need access for deliveries to those buildings with a truck they would have to reconfigure the buildings. It doesn't connect to the other areas further into the campus. The


emergency access was also important and that is still a viable argument. It has also been noted that there are fewer large trucks coming to the buildings than when the Condition was originally added to the CUP.

Commissioner Ochoa voiced his concerns on why there was a remodel done at the Binz building and they didn't comply with Condition 16 during the time of construction. We should enforce what was agreed upon in the CUP.

The motion passed by a roll call vote of 2 – 1 - 2 (Ochoa) (Taghioff and Hood abstained)

Drafted by:

Samantha Langer
Recording Secretary

Submitted by:

Bill Dermody
City Planner

Approved by:

[Simon Taghioff \(Dec 23, 2024 17:58 CST\)](#)
Simon Taghioff
Chair