



## Legislation Details (With Text)

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**Title:** Memorializing City Council action taken February 17, 2016 to deny the appeal by Velmeir Companies of a decision of the Planning Commission denying a conditional use permit application, with requested modifications, for a drive-through service at 30 South Fairview Avenue.

**Sponsors:** Chris Tolbert

**Indexes:**

**Code sections:**

**Attachments:**

Date	Ver.	Action By	Action	Result
3/11/2016	1	Mayor's Office	Signed	
3/9/2016	1	City Council	Adopted	

Memorializing City Council action taken February 17, 2016 to deny the appeal by Velmeir Companies of a decision of the Planning Commission denying a conditional use permit application, with requested modifications, for a drive-through service at 30 South Fairview Avenue.

WHEREAS, Velmeir Companies, on November 16, 2015, in Planning Commission File No. 15-180-427, duly applied to the Commission pursuant to Leg. Code § 61.501 for a conditional use permit for a drive-through service, together with a request pursuant to Leg. Code § 61.502 to modify special conditions imposed on drive-through services under Leg. Code § 65.513(a) which require drive through lanes and service windows to be at least 60- feet from a residential property and prohibits drive-through lanes between the principal structure and a public street, on property commonly known as 30 Fairview Ave S, [Parcel Identification Number 042823420027], and legally described as Elmer & Morrison's RE Lots 11 Thru Lot 16 Block 3; and

WHEREAS, on December 10, 2015, the Zoning Committee of Planning Commission, in accordance with the requirements of Leg. Code § 61.303, duly conducted a public hearing on the said application where all persons present were given an opportunity to be heard and, upon closing the hearing and based upon all the files, reports, and testimony, the Committee duly moved that the deliberations on the matter be continued to December 29, 2015 and in doing so urged Velmeir to consider submitting a modified plan during this period which responded to concerns expressed during the December 10, 2015 hearing; and

WHEREAS, on December 29, 2015, having been advised by Planning Staff that Velmeir had in fact modified its site plan given the December 10, 2015 testimony, the Zoning Committee reopened the public hearing in regard to the modified plans submitted by Velmeir and, upon the conclusion of testimony, the Committee duly closed the public hearing and, following debate on the application, moved to recommend to the Planning Commission that Velmeir's application be denied for the reasons set forth in the Revised Staff Report dated December 21, 2015; and

WHEREAS, on January 8, 2016, the Planning Commission received the report and recommendation of the Zoning Committee regarding Velmeir's application and the Commission, based upon all the facts, files and

records in the matter including the Revised Staff Report and the minutes of the evidence presented to the Zoning Committee, as substantially reflected in the minutes, duly moved to deny Velmeir's permit application based upon the following findings of fact which were set forth and provided to Velmeir in Planning Commission Resolution 16-02, dated January 8, 2016 as follows:

"1. Velmeir Companies is proposing to renovate an existing Whole Foods grocery store at 30 Fairview Avenue S for a CVS pharmacy and second retail user. The applicant is proposing to demolish part of the south side of the building facing Grand Avenue to construct a drive-through. The addition of a drive-through to the site requires a conditional use permit. The applicant is requesting modification of the conditions of the CUP to accommodate existing site conditions. The requested modifications relate to the proximity of drive-through elements to residential property and the location of the drive-through as it relates to the building and the street.

2. Leg. Code § 65.513 lists five standards and conditions for all drive-through sales and services and two that are specific to T2 districts:

(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 condition is not met. The proposed drive-through is located between the south side of the building and Grand Avenue. The eastern edge of the drive-through lane is eight (8) feet from the lot line of the multifamily residential property to the east. The applicant has requested a modification of this condition.

(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 condition is not met. While the westernmost curb cut on the Grand Avenue side is approximately eighty (80) feet from the intersection, the eastern curb cut of the drive-through lane is eight (8) feet from abutting residentially zoned property to the east. The applicant has requested a modification of this condition.

(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 condition is met. While there will be a microphone and speaker system, customers would conduct their business directly in front of the service window. The volume of the speaker would be minimal, as medically sensitive information could be shared during the transaction.

(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 condition is met. The site plan shows an eight (8) foot planted buffer adjacent to the residentially zoned property to the east.

(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 condition is met. The zoning administrator's office has reviewed the plan and determined that stacking spaces are sufficient.

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. The site plan shows one (1) drive-through lane and one (1) 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. The entry curb cut serves both the drive-through and the parking lot, and there is a single curb cut for the drive-through exit. The site plan shows that an existing curb cut on Grand Avenue closer to the intersection will be eliminated, resulting in two total curb cuts.

3. Leg. Code § 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. Land Use Policy 1.47 calls for streets in compact commercial areas to conform to certain criteria, including increased streetscape amenities. While the site plan shows the addition of elements that would increase streetscape amenities, the drive-through has the potential to introduce pedestrian-vehicular conflicts. Land Use Policy 1.45 identifies safety for pedestrians as an important part of vital and attractive commercial areas. In the current Macalester-Groveland Community Plan, Public Utilities Policy #2 is to maintain and enhance public ways to ensure safe and effective public usage. The proposed Macalester-Groveland Community Plan Update encourages reinvestment in rehabilitation of existing buildings (LU3.3). The use can be in substantial compliance with the Comprehensive Plan, subject to site plan approval by the City Traffic Engineer as it relates to traffic and pedestrian safety during the site plan review process, and any conditions added to the site plan approval to ensure this.

(b) The use will provide adequate ingress and egress to minimize traffic congestion in the public streets. This condition is met. The site plan shows the closure of the curb cut closest to the intersection. The drive-through exit would be one way to the street and would not negatively impact the flow of traffic within the public street.

(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 not met. While the use of the building itself as proposed would be consistent with the character of the immediate neighborhood, the addition of a drive-through in the proposed location would not. Based on a visual survey of Grand Avenue between Snelling to the east and Cleveland to the west, the only drive-through is at the bank at 1827 Grand Avenue. This drive-through is located to the side and rear of the property, is set back approximately 80' from the curb cut, and is not located between the building and the street. Therefore, the proposed drive-through would be unique within the neighboring corridor. While the site plan shows additional landscaping near the drive-through and the removal of a compactor, loading dock, and screen wall, the addition of drive-through circulation could result in increased vehicular-pedestrian conflicts at the south end of the building.

(d) The use will not impede the normal and orderly development and improvement of the surrounding property for uses permitted in the district. This condition is met. The Land Use Chapter of the Comprehensive Plan identifies the Fairview and Grand intersection as a commercial node at the west end of a Mixed Use Corridor. Considering this designation and the surrounding zoning districts, the addition of a drive-through would not prevent normal and orderly development of the surrounding property.

(e) The use shall, in all other respects, conform to the applicable regulations of the district in which it is located. This condition can be met. If conditions noted in findings 2(a) and 2(b) are modified, the use will

conform to the applicable regulations of the district in which it is located.

4. The planning commission may approve modifications of special conditions when specific criteria of Leg. Code § 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. Three modifications are requested: 1) placing the drive-through between the building and Grand Avenue; 2) placing the drive-through lane eight (8) feet from the residentially zoned property to the east; 3) placing vehicle ingress and egress eight (8) feet from the residentially zoned property to the east.

The criteria in Leg. Code § 61.502 for modification of these special conditions are not met. The existing building introduces constraints within which the applicant must work. Due to spatial limitations on other sides of the building, the location of the drive-through on the site plan is the only possible location where one could be located. The applicant has demonstrated a good effort to design the landscaping and vehicular ingress and egress to reduce the impact on the adjacent residential property. However, while a drive-through is a common accessory use for the operation of a pharmacy, it can operate without a drive-through. For example, the CVS pharmacy at the corner of Grand Avenue and Oxford Street and the Walgreens at Grand Avenue and Grotto Street do not have drive-through lanes. Therefore, strict application of the special conditions would not unreasonably limit or prevent otherwise lawful use of the property and existing structure, and would not result in exceptional undue hardship to the owner of the property. There is also a potential safety hazard introduced when drive-through circulation is crossed with pedestrian movement on the sidewalk. “

WHEREAS, on January 19, 2016 and pursuant to Leg. Code § 61.702 (a), Velmeir Companies duly filed an appeal from the Planning Commission’s determination and requested a hearing before the City Council for the purpose of considering the Commission’s action; and

WHEREAS, on February 17, 2016, the City Council, pursuant to Leg. Code § 61.702(b) and having provided notice to the affected parties, duly conducted a public hearing on Velmeir’s appeal where all interested parties were given an opportunity to be heard; and

WHEREAS, the Council, having heard the testimony presented to it and having considered the application, the report of staff and all the records including the minutes, the recommendation of the Zoning Committee and Planning Commission's Resolution No.16-02, does hereby

RESOLVE, that the Council of the City of Saint Paul hereby affirms the decision of the Planning Commission in this matter. The Council finds that Velmeir failed to demonstrate any error in the facts, findings or procedures relied upon by the Planning Commission in reaching its decision to deny Velmeir’s conditional use permit application for a drive-through service at 30 South Fairview together with Velmeir’s accompanying requests to modify special conditions imposed on drive-through services under Leg. Code § 65.513(a). The Council therefore adopts as its own, the facts and findings of the Planning Commission set forth in Planning Commission Resolution No. 16-02 as the basis for this decision; and

BE IT FURTHER RESOLVED, for the above stated reasons, the appeal of Velmeir Companies be and is hereby denied; and, be it

FINALLY RESOLVED, that the City Clerk shall immediately mail a copy of this resolution to Velmeir Companies, the Zoning Administrator and the Planning Commission.