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Title: Memorializing the City Council decision granting an appeal by the Hamline Midway Coalition from a decision of the planning commission to approve a conditional use permit for a fast food restaurant rebuild with a drive-through service window at 565 Snelling Avenue North.

Sponsors: Mitra Jalali

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12/28/2020	1	Mayor's Office	Signed	
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Memorializing the City Council decision granting an appeal by the Hamline Midway Coalition from a decision of the planning commission to approve a conditional use permit for a fast food restaurant rebuild with a drive-through service window at 565 Snelling Avenue North.

WHEREAS, On June 25, 2020, Border Foods Inc. ("Applicant") duly filed with the Saint Paul Planning Commission ("Commission") under Commission File No. 20-047-173, an application relating to the following provisions of the Saint Paul Zoning Code: Leg. Code §§ 61.501 (conditional use general standards), 61.503(d) (change in conditional use permit for demolished and rebuilt buildings) and 65.513(standards and conditions applicable to drive-through sales and services) for the purpose of reconstructing a restaurant building and constructing a drive-thru window at property commonly known as 565 Snelling Avenue North, legally described as 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 [Parcel Identification No. 33.29.23.14.0031]; and

WHEREAS, on July 16, 2020, the Commission's Zoning Committee ("Committee"), pursuant to Admin. Code § 107.03 and Leg. Code § 61.303, duly conducted a public hearing on the said zoning applications, the hearing being conducted remotely pursuant to Executive and Emergency Orders in effect at the time as it had been deemed, due to the Covid-19 pandemic, neither practical nor prudent to conduct "in-person" public hearings and, accordingly, members of the Committee and the Committee's staff in attendance, together with the Applicant, participated remotely while members of the public were afforded the opportunity to submit, no later than noon of the said hearing date, written testimony for the Committee's consideration and inclusion in the hearing record and, further, were also afforded the opportunity to audibly monitor the hearing which was also recorded as required by law; and

WHEREAS, prior to the said public hearing, the Committee was provided with the following materials which are also incorporated herein by reference: (1) written materials submitted by the Applicant; (2) a staff report dated July 10, 2020 containing a recommendation to approve the Applicant's conditional use permit application for the reasons stated therein; and, (3) written materials duly submitted by the public either favoring or opposing the said application; and

WHEREAS, following the close of the public hearing, the matter was discussed by the Committee and, having considered the record noted above together with the oral testimony submitted by the Applicant during the public hearing, the Committee, upon a 3-1 vote, moved to recommend that the Applicant's zoning application be denied as the application did not meet the findings necessary for approving conditional uses under Leg. Code §§ 61.501(a), .501(d), and .501(c) based upon the reasons articulated and set forth in the Committee's July 16, 2020 meeting minutes which are incorporated herein by reference; and

WHEREAS, on August 7, 2020, the Commission received the Committee's July 16, 2020 recommendation and, following deliberations over the matter, the Commission upon a 10-3 vote, moved to approve the Applicant's zoning application, subject to three conditions that had been recommended in the July 10, 2020 staff report, based upon the following findings of fact as set forth in Commission Resolution No. 20-38 which is incorporated by reference:

"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 17 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 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 approximately 61 feet away from the closest point of residentially zoned property. The drive-through window is more than 60 feet from the adjacent residential zone.

(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 can be installed along the west side of the property to further minimize noise impacts from the speaker box. Conformance with this condition can be a specific condition of approval.

(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 7 stacking spaces, and there is room for stacking 3 additional vehicles in parking area maneuvering lanes. This is more stacking space than the current site configuration, which provides stacking for only 2 vehicles in the drive-through lane, and has room for 5-6 additional vehicles in parking area maneuvering lanes.

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. § 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 met. Policy LU 5 of the Hamline Midway Community Pan (HMCP) is to "Encourage appropriate transitions between disparate land uses." The proposed use is allowed as a conditional use in the T2 zoning district, and the proposed site configuration complies with zoning code requirements regarding the location of drive-through lane, order menu/speaker board, and service window. Provided limitations on late-night hours of operation, the proposed use is consistent with HMCP Policy LU 5.

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 autooriented 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 will 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 appears to be met. 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.

(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 drivethrough use, which is a reconstruction 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. This condition is met.”

WHEREAS, on August 17, 2020, pursuant to Leg. Code § 61.702(a), the Hamline Midway Coalition (“Appellant”), duly filed an appeal from the Commission’s August 7, 2020 decision alleging that the Commission erred in approving the Applicant’s conditional use application and requested a public hearing before the City Council to consider the Commission’s decision; and

WHEREAS, Appellant’s appeal was assigned Council File No. APC 20-6 and set on for a public hearing before the Council on September 16, 2020;

WHEREAS, on September 16, 2020, the City Council, pursuant to Leg. Code § 61.702(b), duly conducted a public hearing on Appellant’s appeal which, again pursuant to Executive and Emergency Orders in effect at the time due to the Covid-19 pandemic, was conducted remotely as it had also been deemed neither practical nor prudent to conduct “in-person” city council hearings: accordingly, as provided by law, Council members and City staff attending the hearing did so remotely with Commission staff presenting the matter to the Council and the Appellant and all members of the public desiring to do so being afforded the opportunity to submit, no later than noon the day before the said hearing date, written testimony for the hearing record and for the Council’s consideration, in addition to also being afforded the opportunity to audibly monitor the Council’s hearing proceedings which was duly recorded and retained as required by law by the City Clerk; and

WHEREAS, the Council, following the conclusion of the public hearing, deliberated on the Applicant’s appeal and, based upon the file records, reports, and the written testimony submitted, the Council of the City of Saint Paul DOES HEREBY

RESOLVE, that the Appellant has met its burden under Leg. Code § 61.702(a) of demonstrating that the Commission’s findings, set forth in Commission Resolution No. 20-38 granting the Applicant’s conditional use permit application, were in error based upon the following reasons:

The Applicant’s application failed to meet two of the required standards necessary for approving a conditional use permit application, Leg. Code §§ 601.501(a) and 601.501(c), based upon the following reasons:

(1). Sec. 61.501(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; and

The Applicant’s site is within a mixed-use corridor and neighborhood center as identified under the 2030 Comprehensive Plan (“2030 Plan”). In addition, Goal 1.52 of the 2030 Plan’s Land Use chapter calls for prioritizing development of compact commercial areas accessible by pedestrian

and transit users over commercial areas more readily accessed by automobiles.

The record demonstrates that the Applicant's lobby hours of operation and the overall accessibility of its drive-thru to be inconsistent with the 2030 Plan's Land Use Goal 1.52 of prioritizing pedestrian and transit uses over automobile access. The record shows that after 10 p.m., the Applicant's lobby is closed to pedestrians and that pedestrians and bicyclists will not be allowed to order at the drive-through window. The Applicant's site is nearby the transit-rich intersection of Snelling and University where pedestrian usage is prioritized under the Comprehensive Plan. The Applicant's operations after 10:00 p.m. bar pedestrian and bicyclist access to the Applicant's restaurant and drive-through window. This results in prioritizing automobile access over pedestrian and transit users which is not in substantial compliance with 2030 Plan.

The record also demonstrates that the Applicant's design for the site is not in keeping with Land Use Goal 1.53 of the 2030 Plan. Goal 1.53 calls for encouraging changes in the design of existing auto-oriented areas with elements of traditional urban form to minimize impacts on the pedestrian realm. The Applicant's plan falls short of this goal on two grounds: Floor Area Ratio ("FAR") and Parking Maximums.

The required FAR for the site is 0.5. The Applicant's proposed FAR was 0.11. A development proposal with a FAR of .11 does not provide the level of compact commercial development necessary to comply with either the 2030 or the 2040 Comprehensive Plan. The Applicant's development proposal with a FAR of .11 remains auto-oriented and does not provide elements of traditional urban form which would minimize impacts on the pedestrian realm.

The Applicant's development plan also does not meet Leg. Code 63.207(c)'s parking maximum standards. Under the code, the maximum number of spaces for the Applicant's development is 15 spaces. The Applicant's parking lot plan contains 17 spaces which exceeds the parking maximum standard under Leg. Code 63.207(c). By exceeding the parking maximum standards, the Applicant's plan continues the existing auto-orientation of the site. This is not in keeping with Land Use Goal 1.53 calling for encouraging changes in the design of existing auto-oriented areas with elements of traditional urban form to minimize impacts on the pedestrian realm.

For these reasons, the extent, location and intensity of the Applicant's overall proposal is not in substantial compliance with the 2030 Comprehensive Plan's land use goals 1.52 and 1.53 regarding compact commercial development, prioritizing transit and pedestrian friendly uses and changing the design of auto-oriented buildings to minimize impacts on the pedestrian realm and therefore does not meet the standard for approval under Leg. Code § 61.501(a); and

(2) Sec. 61.501(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 Applicant's plan also does not meet Leg. Code § 61.501(c)'s standard. As noted in the Snelling Station Area Plan at Figure 1.8, drive-through facilities do not enhance pedestrian oriented development because auto-oriented development, like the Applicant's drive-through service, will not enhance the existing pedestrian-oriented development in the Snelling Station area. The Applicant's drive-through service should not be detrimental to the existing character of development in the

immediate area. This area is already frequently experiencing vehicular traffic at speeds the City is unable to regulate, and a drive-through window accessed from a state highway at this location adds to the range of challenges in the area. For these reasons, the drive-through operation as proposed will be detrimental to the public health, safety and general welfare of the immediate neighborhood.

AND, BE IT FURTHER RESOLVED, for the above stated reasons, the Council finds that the Applicant's plan did not meet the standards under Leg. Code §§ 61.501(a) and 61.501(c) for approving the Applicant's zoning application and, for these reasons, the Planning Commission erred in approving the Applicant's zoning request. The reasons stated above demonstrate that the Applicant's proposal does not meet the goals of the 2030 or the pending 2040 Comprehensive Plans. The Commission's decision was also contrary to the standards for approving a conditional use application that would not be detrimental to the existing character of the development in the immediate neighborhood and will not endanger the public health, safety and general welfare of the immediate neighborhood in the future. The Taco Bell on the site can continue in its current configuration. Development in the immediate neighborhood should expect development that balances sustainable and equitable goals and comply with the broader vision of development called for under the Comprehensive Plan; and

BE IT FURTHER RESOLVED, in granting the said appeal, the application of Border Foods Inc. under Planning Commission File No. 20-047-173 property commonly known as 565 Snelling Avenue North is hereby denied; and

BE IT FINALLY RESOLVED, that a copy of this adopted Memorialization Resolution shall be provided to the Appellant, the Applicant, the Zoning and Planning Administrators and to the Planning Commission.