

**Excerpt from the
CITY PLANNING COMMISSION MINUTES
Minneapolis Community Planning & Economic Development (CPED)**

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MEMORANDUM

DATE: February 13, 2014

TO: Zoning and Planning Committee

FROM: Jason Wittenberg, Manager, Community Planning & Economic Development – Land Use, Design and Preservation

SUBJECT: Planning Commission decisions of January 13, 2014

The following actions were taken by the Planning Commission on January 13, 2014. As you know, the Planning Commission's decisions on items other than rezonings, text amendments, vacations, 40 Acre studies and comprehensive plan amendments are final subject to a ten calendar day appeal period before permits can be issued.

Commissioners present: President Tucker, Bender, Brown, Cohen, Forney, Huynh, Kronzer and Slack – 8

Not present: Gagnon (excused) and Luepke-Pier (excused)

Committee Clerk: Lisa Kusz (612) 673-3710

3. 716-718 W 34th St (BZZ-6367, Ward: 10), (Mei-Ling Anderson).

A. Rezoning: Application by Pat Fitzgerald to rezone the property located at 716-718 W 34th St from the R2B Two-family District to the C1 Neighborhood Commercial District to allow the use of a sports and health facility.

Action: The City Planning Commission recommends that the City Council adopt the findings and **approve** the rezoning petition to change the zoning classification of the property located at 716-718 W 34th St from the R2B Two-family District to the C1 Neighborhood Commercial District.

Aye: Bender, Brown, Huynh, Kronzer and Slack

Nay: Cohen and Forney

Absent: Gagnon and Luepke-Pier

Staff Anderson presented.

Commissioner Kronzer: Can you explain why in 2010 it lost its nonconforming use when it changed from one commercial use to another commercial use?

Staff Anderson: At that time it was already R2B and the motorcycle shop was legally nonconforming when the property was downzoned and then after the bicycle repair shop went in that was conforming with the R2B but not with the C1 so they were not able to... since the legal nonconforming status had been expired for more than a year, that's why it lost its nonconforming rights for that use.

Commissioner Kronzer: Was the bike shop operating illegally based on its zoning?

Staff Anderson: It was legal because when it was downzoned it was already in existence so it was legally nonconforming, but then then when the use changed over into 2010 to a bicycle repair shop, then it was no longer a legally nonconforming building.

Commissioner Kronzer: Is the bike shop legal in an R2B district?

Staff Anderson: No, it is not. The bicycle repair shop would not have been allowed in R2B, but the bicycle apparel shop would have been allowed in R2B.

Staff Wittenberg: Just one point of clarification, any commercial use that would have moved into the building should have gone through a change of nonconforming use application and that didn't happen. I think that's what it comes down to, that technically they lost their nonconforming rights.

President Tucker opened the public hearing.

Edwin Balcos (3349 Aldrich Ave S): I've lived in this area for 50 years. The uses have changed over the years. I'd like to show a photo here. The wall is actually the edge of my back yard. You can see that it's on the same side of the alley and it's even closer than many neighboring garages to my house. There is no buffer whatsoever. The edge of this vine here, that's the end of my yard and that is the wall of the adjacent property. We are here because of the discovery of a nonconforming use so the applicant wishes to rezone. The current tenant runs a Cross Fit gym; that's who is in there now. There are some serious vibration and noise issues occurring because they drop free weights from overhead, some in excess of 300 pounds. The applicant has been very nice to help us work through that, but it still occurs and is very disturbing. For the first 20 years, that property had a single occupant who painted motorcycle parts. There was little foot traffic and just one guy. It became the bike apparel warehouse office with four to six employees. They all drove their own cars for the most part and they had client interaction as well. There has been an increase in foot traffic, a reduction in parking and noise complaints. I believe that's what led to the discovery of the nonconforming use. I understand there was a mapping study done in 1999 and there must have been a reason that the city chose to rezone that as R2B. I believe the decision was made because our residential property abuts the next property and there is no buffer. I believe it's often an alley that separates residents and business. The current classification of 716-718 is R2B does not inhibit future use. Requiring an application for a change of nonconforming use would help ensure that future and current property owner's proposals would be given some level of scrutiny and that appropriate and reasonable conditions of use can be examined and/or applied. If rezoned to C1 there could be livability issues that are not addressed. Nearby residents should have a say in a future development that might affect their property values and even their quality of life. It seems that rezoning to C1 would be a bit of a reward for noncompliance. I would argue that given the circumstances there should be more scrutiny by the City in the future, not less. My wife and I oppose the rezoning of 716-718 W 34th St from R2B to C1.

Commissioner Cohen: If there was some way to eliminate the vibrations and noise caused by people dropping 300 pound free weights from over their heads on to their feet area...if there was some way to

eliminate that noise and eliminate those vibrations in your house would you have any real objection to the rezoning?

Edwin Balcos: Absolutely. It could still be used for nonresidential purposes, but if it's rezoned C1 there is a laundry list of things people could put in there, including a restaurant that serves alcohol.

Susan Liesch (3325 Aldrich Ave S): It seems that an alley is typically what divides and being that we are so close to Lyndale, it's really that alley that is the marker. On that side of the alley there is commercial and on our side of the alley it's residential. It's as if this property would have at one point been the garage to their property, but I don't know if that's accurate or not, but it's literally like where our driveway and garage is. I am opposed to this.

Commissioner Huynh: Can you elaborate on your reasons? Is it the reasons the previous person stated?

Susan Liesch: I understand the problems that he has, but I don't hear that noise because my property does not butt up against that property, but going forward if the ownership of that property should change, if there could be any change going forward, it then being that it would now be a commercial space...as Edwin says, anything could go in there. Being that it really is on the residential side of the alley and has been residential...I don't know if there is anything in the city charter or whatever that says the alley is any kind of division point, but it really seems like we're really encroaching into our neighborhood with retail .

Commissioner Forney: Has this been presented to the neighborhood association? If so, did they weigh in on it?

Staff Anderson: I spoke with CARAG today and they haven't had a chance to meet about it, but I encouraged them to provide their comments before the City Council meeting.

Steve Petermeier (3329 Aldrich Ave S): I'm here to support Edwin's position. I don't feel the noise because I live in the middle of the block. I think the character of the business that's currently there is different than the previous businesses that have occupied the space. It's bizarre because there is no signage and no posting about what hours are at the gym or if it's a private club or if people could join. They have large glass doors and when it's warm out they open those up. They are there every day of the week from early until late. Traffic has gotten worse in the area. A property should enhance traffic flow. When people turn on to 34th from Lyndale, it's really tight spaces.

Pat Fitzgerald (owner) [not on sign-in sheet]: I am concerned about weights being dropped in my building. We have been working with the tenant to try to mitigate the noise, but there might still be some being dropped. The tenant has been notified that their lease is terminating. They had a three year lease, but they are moving out this spring. I will be looking for a new tenant. I would like a photographer, an architect's office or perhaps a yoga studio to go in, but each one would require a nonconforming use certificate from what I understand, but each one would be different. This is why we are pursuing C1 status.

Commissioner Bender: [not on microphone]

Staff Wittenberg: In order to rezoning from residence district to commercial district, in order to even have your application deemed complete you need to obtain signatures of approval from at least two-thirds of the property owners within 100 feet of the property in question. The applicant was able to obtain those signatures.

Commissioner Huynh: I know of another Cross Fit location on Nicollet that had to close because they had a residential neighbor that had also complained about the weights being dropped. I'm wondering what measures you're planning on implementing for future tenants.

Pat Fitzgerald: The current tenant is a long term tenant of mine. The Balance Fitness Studio used to occupy the building that I won adjacent. When they came to me looking for space, I thought it'd be great to have them come back to the neighborhood but I didn't know that this use would be more aggressive than the former use. It's been an unfortunate learning experience for all of us. We've tried lifting platforms, but the tenant has agreed to lift the heavy weights and drop them elsewhere, but I understand that isn't consistent. They will be leaving May 1st.

President Tucker closed the public hearing.

Commissioner Huynh: I'd like to move staff recommendation to approve the rezoning from R2B to C1 (Kronzer seconded). Just because of the location and adjacent zoning to C1, I feel that the proposed C1 use would be compatible in a residential area and I would encourage that the building owner would enforce some standards or policies for future tenants to look at parking, hours of operation and also noise mitigation between the people that operate the building so it helps make a better neighborhood. I do feel that the zoning, C1, is compatible.

Commissioner Brown: One of the findings we need to make when considering a rezoning is that there aren't reasonable uses of the property under the current zoning. In this instance I think that is true, especially due to the small size of the lot. Residential uses wouldn't really work there. Because of that, I support the motion.

Commissioner Cohen: Do I understand that they have the petition with two-thirds signatures on it for the rezoning?

Staff Wittenberg: That is correct. The City Attorney's office verified that.

Commissioner Cohen: Do I understand correctly that the neighborhood association has not yet voice their opinion on this?

Staff Wittenberg: That is correct as well.

Commissioner Cohen: I can't support this at this time. The major change that you make in a rezoning going from residential to commercial...rezoning is forever. I think this is premature, particularly since this tenant is going to be gone and there will be another tenant and who knows what they will be, but within a C1 group there is a wide range of possibilities. I think it's premature of us to act on this. I am not comfortable supporting it at this time.

Commissioner Kronzer: I think C1 is appropriate here. It's a very small building; it's under 2000 square feet. There aren't a lot of uses that could use this building successfully as a business. It is a small space that small businesses could use and afford. If you look at the economics behind new construction and existing buildings, existing buildings are needed for small businesses to start. There is a long history of this property being a commercial use and I can support the rezoning.

Commissioner Bender: This will go to the Zoning and Planning Committee and the City Council. I support the rezoning. I don't want to see vacant buildings. I think it'd be very difficult to use this for residential. I'm

interested to hear what the neighborhood has to say and that will happen before it does go to the City Council.
With that reservation I will be supporting the rezoning.

Aye: Bender, Brown, Huynh, Kronzer and Slack

Nay: Cohen and Forney

Absent: Gagnon and Luepke-Pier