

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

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MEMORANDUM

DATE: March 3, 2016

TO: Zoning and Planning Committee

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

SUBJECT: Planning Commission decisions of February 8, 2016

The following actions were taken by the Planning Commission on February 8, 2016. 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.

Committee Clerk

Lisa Kusz - 612.673.3710

Commissioners present

Matthew Brown, President | John Slack, Vice President | Alissa Luepke Pier, Secretary
Lisa Bender | Rebecca Gagnon | Ryan Kronzer | Nick Magrino | Sam Rockwell | Scott Vreeland

Commissioners absent

Ben Gisselman

3. 1701 44th Ave N, Ward 4

Staff report by [Aaron Hanauer](#), BZZ-7515.

The City Planning Commission adopted staff findings for the application by Kevin Aldwaik.

A. Rezoning.

Action: The City Planning Commission recommended that the City Council **deny** the application for a rezoning from the C1/Neighborhood Commercial District to the C2/Neighborhood Corridor Commercial District.

Aye: Bender, Gagnon, Kronzer, Luepke-Pier and Slack

Nay: Magrino, Rockwell and Vreeland

Absent: Gisselman

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Staff Hanauer presented the staff report.

Commissioner Rockwell: In the background section of the staff report, it mentions that the Camden Market convenience store operated at the location from 2010-2014 and then there's a letter from the applicant's attorney stating that a convenience store doesn't seem to be feasible without tobacco sales at this location. My question is, did this former Webber Camden market, did that have tobacco sales?

Staff Hanauer: I can look at the records once I get a chance to look at my computer. I believe there was a convenience store pre-dating the Camden Market that did have tobacco sales, but that was prior to 2008. That market went out of business.

Commissioner Magrino: Looking at the finding here, the first two sentences are: "The proposed rezoning from the C1/Neighborhood Commercial District to the C2/Neighborhood Corridor Commercial District would not be consistent with the applicable policies of The *Minneapolis Plan for Sustainable Growth*. The property is designated as a community corridor on the future land use map." Could you explain the inconsistency in those two sentences?

Staff Hanauer: Yes. Community corridor is different than the commercial corridor and the community corridor has more small scale uses. In summarizing two big parts of the two big parts of the community corridor description, residential uses with intermittent commercial uses and then wanting small scale commercial uses. What the applicant is proposing would still be that small scale use, it's just that when you go to C2 zoning that we feel opens up the door for greater intensive uses that aren't appropriate for community corridors, more appropriate for commercial corridors.

President Brown opened the public hearing.

Mark Thieroff (100 Washington Ave S): I'm here on behalf of the applicant. My client purchased this property in 2008. Before he purchased it, he met with City staff to ask about his intended use of the property which was grocery with a tobacco license. He was told, accurately, that at time that was a permitted use of the property and he could apply for that license. However, by the time he closed after getting his financing, which was at the height of the economic crisis, he came in to apply and was told that a moratorium had been put in place and he could no longer apply for a tobacco license. By the time the moratorium was lifted the ordinance had been amended and C2 is now required for that intended use. He was disappointed, but he decided to try to make a go of it and did open up a convenience store which he operated from 2010 to 2014. He did discover that without the ability to sell tobacco he wasn't able to succeed and was forced to close the business, it just wasn't successful. My client has put a lot into this property and this project. When he purchased it, it had been vacant for some time. It was previously an office and plumbing business, it's windows were eliminated, it was boarded up, it was unsightly and was in no way an asset to this neighborhood. He since opened it all back up, restored the eyes on the street and would like to move forward with something that would be a neighborhood asset. The reason I mentioned this is you might have the impression from the staff report that if this project doesn't move forward that there's any number of other retail businesses that could be viable in this location. The track record of the property is such that that simply isn't the case. Someone did try in the early 2000s to run a convenience store there and it's my understanding they withdrew their application without even opening. This property has seen little in terms of successful economic activity in many years. It's my understanding the neighborhood organization met late last week. Its board voted unanimously to support the rezoning of this property. I'll read two sentences from the letter: The specified use of this location is in keeping with the neighborhood organization goals for the economic investment that benefits residents in the neighborhood and along the corridor. Residents in the single family homes on the blocks surrounding this

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location have no access to grocery products and leave the area to destinations in Brooklyn Center and elsewhere.” My client has also circulated a petition in the neighborhood and collected 300 signatures from folks living right around the store who would like to see a store in this location. I understand that didn’t make it into the packet, but I’ll provide a copy of those signatures to Mr. Hanauer. I’ll touch on the issue about compatibility with the Comprehensive Plan. The entire analysis in the staff report focuses on uses that could happen if this rezoning is permitted and there’s no analysis of whether my client’s intended use of the property would be compatible. It’s highly consistent with the goals of increasing walkability, livability and so forth in the neighborhood. My client would be willing to limit the rezoning simply to allow this specific use and if some future owner wanted to conduct some other use that requires C2 zoning they’d have to come in and seek additional approvals. I don’t see a mechanism in the zoning ordinance to do that, but he would if it were possible. One thing that might be possible is there is a pedestrian overlay district five blocks to the west, if that were extended to his property, that would eliminate the possibility of all these automotive uses that the staff report is concerned about.

Commissioner Magrino: I have a question for the applicant. So without the tobacco sales, what is the viability of your proposed business?

Kevin Aldwaik: Historically, tobacco sales account for about 40% of the convenience store income. When I first approached the City about this around last May, I’m aware that we have a high school there so I asked for a restricted license. I’m not carrying lose tobacco or other products, it’s just the basic line. Based on it, they said that would be viable.

Jim Cane (5151 Russell Ave N): I’m here as a character witness for Kevin. I’m involved in a lot of community organizations and Kevin’s been a member of our organization for quite some time. He’s on the Webber Camden board. You couldn’t find a better guy to run a business in your community. The community backs this because Kevin is well known. He cleans up the neighborhood and is good for the neighborhood. I’d like you to approve this for him. Thank you.

Commissioner Luepke-Pier: It’s great Kevin’s a nice guy, but what happens to the next owner when it’s zoned C2 and an automobile use goes in because the zoning is forever? There are any number of things that can be allowed under C2.

Jim Cane: It’s not Kevin’s interest. I realize in 20 years from now, who knows? I can attest to Kevin’s intentions.

Commissioner Luepke-Pier: My question is, if it ended up being any number of other things that are permitted, we can’t just single handedly strike out the ones you guys don’t want, once it’s zoned C2 anything allowed under C2 is allowed. Are you, as a resident, fine with whatever might happen?

Jim Cane: Knowing the space, I don’t think you’re ever going to put in anything heavy. The space isn’t conducive to fit in a garage or something heavy duty industrial like that that would be offensive to the neighborhood. There just isn’t a big enough plot there for anything like that. I don’t think it’s a major concern.

Laura Ross (4315 Irving Ave N): I live a block from this property. I reiterate what the last speaker said and I understand your concern about future zoning and how the neighborhood might react, but the neighborhood right now is reacting to the needs that we have. People between Brooklyn Center and Broadway wholeheartedly welcome any retailer who is going to be providing jobs, things that we need. We don’t want to go to Brooklyn Center to spend our money. We want to spend it with a good guy

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who helps out the neighborhood. We trust him, he runs great security, we think he'll run a great business and I hope you consider all of that. We'd like to see this business come in.

Commissioner Luepke-Pier: What is the type of business you're referring to that you need?

Laura Ross: To be able to get something you need without driving or walking 12 miles. We have a high bus rider population so to have a place where you can stop over and pick up bread or whatever. I know everyone talks about tobacco sales and how high they are and how they're important to a retailer, but I also know that at his other store people buy everything, they aren't just hoarding in there to get cigarettes.

Commissioner Luepke-Pier: His other store only being three blocks away doesn't change the fact that you still have this need for this store here?

Laura Ross: I don't think so. I think a convenience store is a great option for our neighborhood.

President Brown closed the public hearing.

Staff Hanauer: To Commissioner Rockwell's question about the licensing history, in 2003 there was a tobacco license that was applied for but it was withdrawn. In the history I found there was not a tobacco license at this property.

Commissioner Kronzer: I'm assuming the PO district does have to be contiguous?

Staff Wittenberg: It's not required that a pedestrian oriented overlay district be part of a broader district, however I can't think of a situation off the top of my head where a similarly situated property to this one commercially zoned property has a pedestrian oriented overlay district and nothing nearby does.

Commissioner Bender: I will move staff recommendation to deny the rezoning (Slack seconded). I appreciate that people came to testify. It sounds like this is a great business owner. Rezoning is pretty significant decisions and I think in this case the point that Commissioner Luepke-Pier made is really important which is that to rezone for just one use here it's a rezoning that sticks with the property over time. There are lots of commercial uses allowed in C1 so I think the case that staff made in their staff report is sound.

President Brown: I'll just add, I have similar concerns. This is a designated community corridor. Our precedent has not been to allow changes to higher, more intense C zoning on those types of corridors since it is intended for smaller scale commercial uses and more residential uses. I would have some concerns. That said, I don't personally think tobacco sales is that problematic at that location, that's maybe more a City licensing issue, but I would have some concerns going to C2.

Aye: Bender, Gagnon, Kronzer, Luepke-Pier and Slack

Nay: Magrino, Rockwell and Vreeland

Absent: Gisselman