

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

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**MEMORANDUM**

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DATE: September 21, 2006

TO: Steve Poor, Manager, Community Planning & Economic Development -  
Planning Division

FROM: Jason Wittenberg, Supervisor, Community Planning & Economic Development -  
Planning Division, Development Services

CC: Barbara Sporlein, Director, Community Planning & Economic Development  
Planning Division

SUBJECT: Planning Commission decisions of September 18, 2006

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The following actions were taken by the Planning Commission on September 18 2006. 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 Motzenbecker, El-Hindi, Henry-Blythe, Huynh, LaShomb, Nordyke, Norkus-Crampton, Schiff and Tucker – 9

Not Present: Krueger

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**2. Wells Fargo Bank (Vac-1454 a,b,c, Ward 6), 2701 Wells Fargo Way (Michael Orange).**

**A. Vacation:** Application by Wells Fargo Bank to vacate three storm and sewer easements on the Wells Fargo Bank campus at 2701 Wells Fargo Way.

**Action:** The City Planning Commission recommended that the City Council **approve** the proposed vacations of the three storm sewer and sanitary sewer easements on the Wells Fargo Bank campus at 2701 Wells Fargo Way, subject to the legal documents and descriptions and the acceptance of newly deeded easements as listed in Attachment 3.

President Motzenbecker opened the public hearing.

No one was present to speak to the item.

President Motzenbecker closed the public hearing.

Commissioner LaShomb moved approval of the staff recommendation (Tucker seconded).

The motion carried 8 – 0.

**8. The Minneapolis Institute of Arts (BZZ-3064 and Vac-1483, Ward 6), 2509 3<sup>rd</sup> Ave S, 321 25<sup>th</sup> St E and 2516 Clinton Ave S (Jim Voll).**

**A. Rezoning:** Application by The Minneapolis Society of Fine Arts for a rezoning from the R2B and R4 Residential Districts to the OR3 Institutional Office-Residential District for property located at 2509 3rd Ave S; 321 25th St E; and 2516 Clinton Ave S.

**Action:** The City Planning Commission recommended that the City Council adopt the findings and **approve** the rezoning application from R2B Two-family and R4 Multiple-family Residential Districts to the OR3 Institutional Office Residence District for property located at 2509 3rd Ave S, 321 25th St E, and 2516 Clinton Ave S.

**B. Conditional Use Permit:** Application by The Minneapolis Society of Fine Arts for a conditional use permit to amend a Planned Unit Development for property located at 2509 3rd Ave S; 321 25th St E; and 2516 Clinton Ave S.

**Action:** The City Planning Commission adopted the findings and **approved** the conditional use permit to amend a Planned Unit Development to add properties located at 321 25th St E and 2516 Clinton Ave S subject to the following condition:

1. Removal of all outdoor storage and provision of the required landscape screen for the parking lot.

**C. Vacation:** Application by The Minneapolis Society of Fine Arts for a vacation for property located at 2509 3rd Ave S; 321 25th St E; and 2516 Clinton Ave S.

**Action:** The City Planning Commission recommended that the City Council accept the findings and **approve** the vacation.

President Motzenbecker opened the public hearing.

No one was present to speak to the item.

President Motzenbecker closed the public hearing.

Commissioner LaShomb moved approval of the staff recommendation (Tucker seconded).

The motion carried 8 – 0.

**16. Jimmy's Auto Repair (BZZ-3184, Ward 9), 2841 and 2845 16th Ave S (Tara Beard).**

**A. Rezoning:** Application by Luis Caire, on behalf of Bertha Ruiz, for a rezoning to add a Transitional Parking Overlay District to the existing R2B zoning district at 2841 16th Ave S

**Action:** The City Planning Commission and City Council adopted the findings and **approved** the application for a zoning amendment to add a Transitional Parking Overlay to the existing R2B zoning at 2841 16th Ave S.

**B. Conditional Use Permit:** Application by Luis Caire, on behalf of Bertha Ruiz, for a conditional use permit to allow a parking lot at 2841 16th Ave S.

**Action:** The City Planning Commission adopted the findings and **approved** the application for a conditional use permit to allow a parking lot at 2841 16th Ave S.

**C. Conditional Use Permit:** Application by Luis Caire, on behalf of Bertha Ruiz, for a conditional use permit to allow a minor automobile repair facility located at 2841 and 2845 16th Ave S.

**Action:** The City Planning Commission adopted the findings and **approved** the application for a conditional use permit to allow a minor automobile repair use at 2841 and 2845 16th Ave S, subject to the following condition:

1. The applicant will meet the specific development standard in section 536.20 of the zoning code.

**D. Variance:** Application by Luis Caire, on behalf of Bertha Ruiz, for a variance to reduce the number of required parking stalls from 14 to 11 located at 2841 and 2845 16th Ave S.

**Action:** The City Planning Commission adopted the findings and **approved** the application for a variance to reduce the number of required parking stalls from 14 to 11 spaces at 2941 and 2945 16th Ave S.

**E. Variance:** Application by Luis Caire, on behalf of Bertha Ruiz, for a variance to reduce the front yard setback from 17 to 5 feet at 2841 16th Ave S.

**Action:** The City Planning Commission adopted the findings and **approved** the application for a variance to reduce the front yard setback from 17 to 12 feet.

**F. Variance:** Application by Luis Caire, on behalf of Bertha Ruiz, for a variance to reduce a two-way drive aisle from 22 to 19 feet at 2841 16th Ave S.

**Action:** The City Planning Commission adopted the findings and **approved** the application for a variance to reduce the drive aisle width from 22 to 19 feet.

**G. Site Plan Review:** Application by Luis Caire, on behalf of Bertha Ruiz, for a site plan review of property located at 2841 and 2845 16th Ave S.

**Action:** The City Planning Commission adopted the findings and **approved** the application for a site plan review at 2841 and 2845 16th Ave S, subject to the following conditions:

1. Any changes to site plan as a result of Preliminary Development Review may result in another public hearing by the City Planning Commission if the Zoning Administrator deems such changes significant under sections 525.360 and 530.100 of the zoning code.
2. The four large openings facing the alley will be more permanently covered in a durable material that is compatible with the existing building's exterior.
3. Landscaping will be provided for 12 feet between the parking lot and the public right of way facing 16th Ave S.
4. A minimum of 13% of the net site will be landscaped.
5. At least one tree will be located between the parking lot and the public street as required by section 530.170(b)(3).
6. Shrubs will be located between the parking lot and the residential property to the north as required in section 530.160(c) of the code.
7. A new 6 foot wooden fence will be provided between the parking lot and the residential property to the north up to the required front yard setback, which is 17 feet. The western 17 feet of such fence must be no more than 3 feet high.
8. A minimum of 13 shrubs will be provided on site.
9. Wheel stops or discontinuous curbing will be used to provide on-site filtration of stormwater.
10. The existing mural facing the Midtown Greenway will be repaired or a new mural will be created. The applicant will maintain the mural.
11. CPED Planning staff review and approval of the final site and landscaping plans.
12. All site improvements shall be completed by October 20, 2007, unless extended by the Zoning Administrator, or the permit may be revoked for noncompliance.
13. Park Board shall be contacted regarding missing boulevard trees.
14. Vertical evergreens on 16<sup>th</sup> Avenue should be no less than five feet in height.
15. The material used to replace the former garage doors at the rear of the building shall be reviewed by staff and shall consider sound attenuation.

Staff Beard presented the staff report.

President Motzenbecker opened the public hearing.

Bertha Ruiz (1108 E Lake St): I have a hair salon business and I own 2845 16<sup>th</sup> Avenue. I have been doing business for 10 years and I follow the rules and I would like to keep doing it.

Luis Caire (1616 E 25<sup>th</sup>): I have helped a lot of businesses on Lake Street. Some of the concerns for this building were brought up and I just want to share with you that when she purchased this property, she wanted everything to be fine so she also complied with a request to do a complete code review of an existing building and the building passed. It's got septic tanks for the separation of oil. I know there have been issues brought up because of parking, but if anybody knows South Phillips, there's a garage that was just terrible years ago for parking, double-parking, and I just want to tell you that I have know Ms. Ruiz and her family for over 10 years and I have helped them with about four businesses that she's established and if she tells you that she's going to comply with parking, she's going to fix the building, she's the type of woman that will do it. Her word is good. She's a good business woman and she knows that by complying with the law that she will make more money.

Commissioner Norkus-Crampton: Can you tell me what hours this business will be open?

Bertha Ruiz: 8:00 to 6:00.

Commissioner Norkus-Crampton: Ok, great. You'll be using pneumatic tools, I assume, that make noise.

Bertha Ruiz: Yeah but they're small, they're not big.

Luis Caire: It's a small minor repair garage.

Commissioner Norkus-Crampton: Will you be open on weekends as well?

Bertha Ruiz: Monday through Saturday.

Commissioner Norkus-Crampton: Monday through Saturday from 8:00 to 6:00, thank you.

Commissioner Tucker: Are you agreeable to the conditions that staff suggests?

Bertha Ruiz: Yes and I have the funds too.

Richard Bauer (441 Newton Ave S): I am the realtor who sold Ms. Ruiz the building. I have been very familiar with the building and I was also acquainted with the previous occupant. As a resident in Bryn Mawr, I also have a gas station, Bobby and Steve's, and truly understand what the concerns would be of the neighborhood. However, much like the neighborhood here in East Phillips, I think it's going to be important that the neighborhood feel that they have a willing partner in maintaining the quality of life and maintaining the conditions that have been identified by the group. I know that to be the case by Ms. Ruiz because she's been a long-time client of ours so I hope the Commission sees it as such. She's been an active community member as well as business person on Lake Street so I am hoping for your support in her efforts. Thank you.

President Motzenbecker closed the public hearing.

Commissioner Schiff: I will move approval of all of the items with minor amendments to the site plan. I just want to make sure the Park Board is contacted for the replacement of missing boulevard trees and the landscaping wasn't specified in the site plan in front of us so the vertical evergreens that are covering up on 16<sup>th</sup> Avenue should be no less than five feet in height.

President Motzenbecker: Can we pull off the site plan because I did have some...

Commissioner Schiff: Sure, we can do that.

President Motzenbecker: Do we have a second? (Commissioner El-Hindi seconded)

Commissioner Norkus-Crampton: One of my concerns is, obviously there is a lot of residential housing that goes right up against this one industrially zoned site and I am concerned a little bit because there were no hours listed and the possibilities for hours were very early in the morning to very late in the evening. It's great that we have a business there; I just want to make sure they're good neighbors. Those back doors, if they're just covered with plywood or some kind of temporary thing, that's not really going to contain the noise for all the neighbors facing the back of the building... would that be more for the site plan? Ok. Thank you.

President Motzenbecker: Do we have any comments on the motion as it stands? All those in favor? Opposed?

The motion carried 8-0.

President Motzenbecker: Ok. Site plan review.

Commissioner Schiff: I'll move approval of the site plan and make the statements about the missing boulevard trees as well as making sure the plantings that are supposed to cover up the fence on the front of the property be vertical in nature; evergreens no less than five feet in height.

Commissioner Norkus-Crampton: I would also like to add that the back door areas that are going to be blocked and made more permanent structures, that the material is thick enough that there will actually be some sound abatement. At this point the only opening will be at the front of the building and there really isn't any other place for sound to travel into the surrounding areas except for that back door area so if we could add some language in there that would be appropriate as far as making sure there are thick walls blocking off those doors.

President Motzenbecker: Ok so if we added a condition that the back doors be closed up with brick or concrete masonry units... I'm looking for insight from other commissioners too if that would work or if that's something we can do as a condition.

Commissioner Tucker: I would suggest you leave it to staff to work with the applicant to make the permanent covering have some sound attenuation capacity.

Commissioner Norkus-Crampton: Ok, thank you.

President Motzenbecker: Anyone else? All those in favor? Opposed?

The motion carried 8-0.

**19. 38<sup>th</sup> Street Station Area Plan (Wards 9 and 12) (Michael Larson).**

**A. Station Area Plan:** Consideration of adoption of the 38<sup>th</sup> Street Station Area Plan.

**Action:** The City Planning Commission recommended that the City Council **adopt** the 38<sup>th</sup> Street Station Area Plan as amended by the documents entitled "Recommended Changes to the 38<sup>th</sup> Street Station Area Plan" and "38<sup>th</sup> Street Station Area Plan supplemental changes", dated July 8<sup>th</sup> and September 18<sup>th</sup>, 2006, respectively.

President Motzenbecker opened the public hearing.

No one was present to speak to the item.

President Motzenbecker closed the public hearing.

Commissioner LaShomb moved approval of the staff recommendation (Tucker seconded).

The motion carried 8 – 0.

**20. Zoning Code Text Amendment (Title 20, Chapter 549; Ward: Citywide) (Michael Wee).**  
**This item was continued from the August 28, 2006 meeting.**

**A. Text Amendment:** Amending Title 20, Chapter 549 of the Minneapolis Code of Ordinances related to the Zoning Code: Downtown Districts.

The purpose of the amendment is to maintain the City's existing regulations related to sexually-oriented businesses, as defined under the code of ordinances, by not replacing Article IV of Chapter 549 of the code with Minnesota Statute Section 617.242.

**Action:** The City Planning Commission recommended that the City Council adopt the findings and **approve** the zoning code text amendment.

President Motzenbecker opened the public hearing.

No one was present to speak to the item.

President Motzenbecker closed the public hearing.

Commissioner LaShomb moved approval of the staff recommendation (Tucker seconded).

The motion carried 8 – 0.

**21. Zoning Code Text Amendment (Title 20, Chapters 521 and 549; Ward: Citywide) (Jack Byers).**

**A. Text Amendment:** Amending Title 20, Chapter 521 of the Minneapolis Code of Ordinances related to the Zoning Code: Zoning Districts and Maps, and amending Title 20, Chapter 549 of the Minneapolis Code of Ordinances related to the Zoning Code: Downtown Districts

The purpose of these amendments are to rezone portions of existing commercial, residential, office-residential, industrial, and downtown districts, their purpose, uses, associated regulations, and maps to comply with the policies adopted and set forth by the Minneapolis City Council in the *Downtown East/North Loop Master Plan*.

**Action:** The City Planning Commission found that it would be impractical to obtain written consent from the owners of all property proposed for rezoning and recommended the City Council adopt the findings and **approve** the zoning code text and map amendment.

Staff Byers presented the staff report.

Commissioner Tucker: On your map of the proposed rezoning, the block bounded by 4<sup>th</sup> Avenue and 5<sup>th</sup> Avenue and 9<sup>th</sup> Street and 10<sup>th</sup> Street looks like it ought to have a label, but it doesn't.

Staff Byers: Very good eye. This block here is currently B4S2 and the proposal is that it will remain B4S2.

President Motzenbecker opened the public hearing.

Tom Dolphin (1010 Mt. Curve Ave) [not on sign-in sheet]: We're the owners of 17 Washington, 240 Hennepin and through a company that my family controls we own 258 Hennepin so we are effectively the Eclipse Project which is being developed by

Shamrock Development Company. Twenty-four stories, 33 stories, 2 towers essentially with a bank as it's premiere tenant on their retail level with a drive up facility. I just got notice by accident that you were acting on this today. This would severely affect our project because we have a drive up facility planned. I haven't had a chance to study the thing, I don't know how it's going to affect us, but if it is, I need time to react to this. I don't know why property owners were not notified ahead of time, I guess that's what my biggest concern is.

Commissioner Schiff: Previous approvals, unless they've expired, would not be changed by this, but maybe Mr. Wittenberg could clarify. I don't think your project would be affected by these changes today.

Staff Wittenberg: My understanding is that, that project does not have an approved building permit at this time and I don't know what their timeline is for obtaining one. We would have to judge the project based on the rules that are in place at the time the actual building permit is sought.

Commissioner Schiff: I thought site plan already went through on that.

Staff Wittenberg: The project itself has been approved by this body.

Commissioner Schiff: So those approvals, though, are active until they expire. You get 12 months and then you have a 12 month extension period.

Staff Wittenberg: Let me try to explain somewhat differently, if the applicant's approvals are one year or have been extended to two years or perhaps even more in the case of a planned unit development, that essentially becomes somewhat irrelevant if there is a rule change during that time that affects the project. If the applicant had proposed a use that was permitted at the time that it was approved, that use would no longer be allowed upon the adoption and publication of a rule change if the applicant hasn't obtained a permit for that use in the interim time.

Commissioner Schiff: Ok, thanks for the clarification.

Tom Dolphin: Also, 17 Washington, it would affect us. We are starting our bank in that particular location and moving it several times while the project goes. We would be coming in, probably within the next week we are prepared to apply for a drive-thru underneath that particular facility. We just spent a lot of money going through the planning process and so forth and I don't know what the B4S2 zoning, how it could be adopted to help us here, but it seems to me we need some time to at least react if you're going to vote on such a thing. Thank you.

President Motzenbecker closed the public hearing.

Staff Wittenberg: If the amendments go through as proposed under sort of a normal timeline, I think we would expect publication of the ordinance on October 28<sup>th</sup>.

Commissioner Schiff: Do you expect your client to come in and pull building permits by October 28<sup>th</sup>? Are there other timely issues in here with regards to adult uses? We're also solving that problem with these changes or am I reading two zoning code text amendments at once?

Staff Wittenberg: Part of the sexually oriented uses amendment that is reflected in this staff report was adopted earlier this evening and will proceed concurrently with this and that is the timely issue of opting out of the new state regulations that run contrary to the city of Minneapolis' policies related to those uses. Regardless to the timing of this, the amendment that you adopted earlier tonight will move forward in a timely manner.

Commissioner Schiff: Can we set an implementation date for these changes if we were to adopt this today? Could we set the date to December 31, 2006?

Staff Wittenberg: That's probably an issue that we would have to discuss with the City Attorney's office. Off the top of my head I can't see why that would be a problem to make an effective date at some point.

Commissioner Schiff: Taking the Eclipse Project or messing that up is not all the interest of moving these changes forward so I want to help accommodate and I'm surprised, I didn't think that once we granted zoning approvals that changes to portions of the zoning code text or map amendment would be retroactive on things that had not yet pulled their building permits. I'm surprised at how this would trigger some active applications out there.

Staff Wittenberg: Per our zoning ordinance regulations regarding city initiated amendments to the zoning code, it would be appropriate if the Planning Commission would actually, should it choose to presumably adopt the changes, make the finding that it would be impractical to obtain the consent of every property owner whose property is being rezoned as a part of this process.

Commissioner Tucker: I was going to say something along those line. Anytime you do have a zoning code text amendment or map amendment, somebody has something in process and you can't capture all of that. With that in mind...I would move the staff findings and approve the zoning code text and map amendment as corrected.

Commissioner Schiff: I'll second that and "as amended" means the implementation date? Oh, correcting the map from your corrections. I'll suggest two ways we can handle the affect on the Eclipse, this also needs to go through the full City Council so we can delay it at the Council after considering the affects of the permits that are out there that still need to be pulled or we could set an implementation date at this point in time.

Commissioner Tucker: I would prefer not setting an implementation date at this body and let Z&P, after some research, figure out what's best and let the Council handle it since it's a zoning matter anyway.

Commissioner El-Hindi: I want to ask a question to the comment that I heard about that the city isn't able to, or it's impractical to notify property owners of such an owner. If I am a property owner and there is a zoning change, I think that it would be very unfair that the city is not letting me know at least of what is going to be happening to my property. I guess I maybe disagree with that. I feel like as a property owner that it's the least the city should do is notify the residents of a zoning change. I mean that's a major change to the property.

Staff Wittenberg: One point for clarification, Mr. Byers has worked with the city attorney's office to work on ensuring we are in compliance with our statutory requirements. One clarification to the finding that I would ask that you make prior to adopting what's before you is that it's impractical to obtain the consent from all property owners of the rezoning that's before you. You need not make the finding that's it's impractical to notify all those property owners.

Commissioner Tucker: May I amend my motion with the finding that it is impractical to notify and gain approval of all property owners affected?

Commissioner LaShomb: I thought I heard somebody say that there was notification through Finance and Commerce so it's not like people didn't get notified. I suppose we could have a policy in Minneapolis that said every time we have a zoning change we have to send a first class letter or certified letter to every property owner. That gets to be pretty stiff. I don't want people viewing us on tv-land to believe that there wasn't an effort made to notify people. The question is what is appropriate notification on a zoning change. I'm a little nervous about getting into this language discussion about notification because the city has standards about notification. The city attorney gave them advice about notification. You did something to notify people and no matter how much you notify people there's going to be somebody who can come along and say they were never notified. I'm not saying that... it's a facetious comment, I mean, I think fundamentally the problem is that unless you're going to do certified registered or some sort of process that gets people to sign things, there's always going to be somebody who misses it in the loop. I'm nervous about getting into this discussion about adequate notification and documents that go forward. If the City Council wants to address that, that's a whole different problem because it's a larger city issue.

Commissioner El-Hindi: I certainly understand, Commissioner LaShomb, where you're coming from and what you're talking about, but if the city wants to change the zoning for the sake of the city and to improve the density or support the transit corridor system... we have the best mail system in the world; a first class mailing to each property owner would be a very simple thing to do. It is going to cost money, but I think that's just what needs to happen. It would be really unfair to put it in the Finance and Commerce and expect that everybody's reading Finance and Commerce.

President Motzenbecker: I think this issue could be one we can bring up at the Committee of the Whole and decide what type of notification and have some discussion

on it there. I think the issue before us tonight, we just have to, as a finding for this, just agree that it's impractical to gain consent of every single property owner in that area. So, are there any other questions or concerns on this item? All in favor? Opposed?

The motion carried 8-0.