



**Request for City Council Committee Action from the Department of Community
Planning & Economic Development – Planning Division**

Date: March 28, 2008

To: Council Member Gary Schiff, Chair, Zoning and Planning Committee
Members of the Committee

Referral to: Zoning and Planning Committee

Subject: Appeal of the Zoning Board of Adjustment action denying an appeal of the decision of the Zoning Administrator that the proposed horizontally hinged doors are substantially similar to exterior security barriers and therefore prohibited by section 535.40 of the Zoning Ordinance for a proposed non-residential building located at 1401 Central Avenue Northeast in the I1 Light Industrial District.

Recommendation: The Zoning Board of Adjustment adopted staff recommendation and denied the appeal of the decision of the Zoning Administrator that the proposed horizontally hinged doors are substantially similar to exterior security barriers and therefore prohibited by section 535.40 of the Zoning Ordinance for a proposed non-residential building located at 1401 Central Avenue Northeast in the I1 Light Industrial District.

Previous Directives: N/A

Prepared or Submitted by: Joe Bernard, Senior City Planner, 612-673-2422

Approved by: Jack Byers, Planning Supervisor, 612-673-2634

Presenters in Committee: Joe Bernard, Senior City Planner

Financial Impact (Check those that apply)

- No financial impact (If checked, go directly to Background/Supporting Information).
- Action requires an appropriation increase to the _____ Capital Budget or _____ Operating Budget.
- Action provides increased revenue for appropriation increase.
- Action requires use of contingency or reserves.
- Business Plan: _____ Action is within the plan. _____ Action requires a change to plan.
- Other financial impact (Explain):
- Request provided to department's finance contact when provided to the Committee Coordinator.

Community Impact (use any categories that apply)

Ward: 1

Neighborhood Notification: The Northeast Park and Logan Park Neighborhood Associations were notified of the appeal on March 28, 2008.

City Goals: See staff report.

Comprehensive Plan: See staff report.

Zoning Code: See staff report.

Living Wage/Job Linkage: Not applicable.

End of 60/120-day Decision Period: The end of the 60 day decision period is April 5, 2008. On March 19, 2008 Staff sent a letter extending the decision period another 60 days. The 120 day decision period expires June 5, 2008.

Other: Not applicable.

Background/Supporting Information Attached: Wynne G. Yelland, on behalf of Locus Development, filed an appeal of the Zoning Board of Adjustment decision denying an appeal of the decision of the Zoning Administrator that the proposed horizontally hinged doors are substantially similar to exterior security barriers and therefore prohibited by section 535.40 of the Zoning Ordinance for a proposed non-residential building located at 1401 Central Avenue Northeast in the I1 Light Industrial District.

The Zoning Board of Adjustment voted 5-2 to deny an appeal of the decision of the Zoning Administrator on March 6, 2008. The appellant filed an appeal on March 10, 2008. The appellant's statement is included in the attached supporting material.

Supporting Material

- A. Appellant statement of appeal
- B. February 7, 2008 ZBOA Meeting Minutes
- C. February 7, 2008 ZBOA Staff Report with attachments

Board of Adjustment Hearing Testimony and Actions

Thursday, March 6th, 2008
4:30 p.m., Room 317 City Hall

Board Membership: Mr. Matt Ditzler, Mr. John Finlayson, Mr. Paul Gates, Mr. Chris Koch, Ms. Marissa Lasky, Ms. Alissa Luepke Pier, Mr. Bruce Manning and Mr. Matt Perry

The Board of Adjustment of the City of Minneapolis will meet to consider requests for the following:

1. **1401 Central Avenue Northeast (BZZ-3947, Ward 1):**

Wynne G. Yelland, on behalf of Locus Development, is appealing the decision of the Zoning Administrator that horizontally-hinged doors are substantially similar to exterior security barriers at 1401 Central Avenue Northeast in the I1 Light Industrial District. Exterior security barriers are prohibited on the exterior of any portion of an enclosed principal non-residential building façade facing a public street by section 535.40(b) of the zoning code.

Mr. Finlayson moved and Mr. Perry seconded the motion to adopt staff recommendation and **deny** the appeal of the decision of the Zoning Administrator that the proposed horizontally hinged doors are substantially similar to exterior security barriers and therefore prohibited by section 535.40 of the Zoning Ordinance for a proposed non-residential building located at 1401 Central Avenue Northeast in the I1 Light Industrial District.

Roll Call Vote:

Yeas: Ditzler, Finlayson, Lasky, Luepke Pier and Perry

Nays: Koch and Manning

Recused: None

Absent: None

TESTIMONY

Mr. Gates: Thank you Mr. Bernard. Are there questions for staff?

Mr. Perry: I thank you Mr. Chair, I would, as with these things I recognize we're not looking at this as a variance, but the argument here by staff, is that the City Council has indicated through a variety of means, primarily in the Comprehensive Plan, why this is important to them. It seems to me that there is maybe, just to sort of underscore that, do you have on record whether the City Council re-

affirmed this policy, it might have been in 2006, 2005, sometime in that time frame?

Mr. Bernard (staff): Chair Gates, Board Member Perry, I believe that the adopted policy that was used to support this zoning code section has been in existence since the adoption of the Minneapolis Plan. We do have on record an action from 2005 for a similar application, for a property on West Broadway, 901 West Broadway, where this type of request was also denied by the Board of Adjustment, however, I'm not familiar with when exactly this portion of the zoning code was adopted. I would defer to the Zoning Administrator. He seems to have stepped out.

Mr. Gates: We will take that up later.

Mr. Perry: Okay.

Mr. Gates: Any further questions? Mr. Bernard, I do have one. When you presented, it looked like you were indicating that the doors ... the awnings, security doors or whatever, were on all three of the major windows on that street façade. When I look at the elevation they're only on the two larger windows, leaving the one window on the corner and two doors uncovered, unprotected. Is that correct?

Mr. Bernard (staff): Chair Gates, that is correct. There will be two bays of windows that will be covered by these doors.

Mr. Gates: So seemingly, if the intent of these apparatus were to provide security, they would do it for all of the windows and doors on that elevation.

Mr. Bernard (staff): Chair Gates, part of the determination is that while some windows are being left uncovered, still, the amount of windows being supplied with the doors closed does not meet the façade design requirements of the zoning code and therefore the doors are seen as exterior security barriers. Staff has taken the position that if they were able to supply enough windows with the doors that closed that it then would meet the intent of the ordinance.

Mr. Gates: Yes, I understand, and you made the point about what the intent of the ordinance is...I'm also interested in hearing what the intent of these devices is and perhaps the applicant can speak to that some more. Thanks very much.

Mr. Bernard (staff): Thank you.

Mr. Gates: Is the applicant here?

Wynne Yelland: 1500 Jackson Street NE, Minneapolis, that's my business address. This is the site plan...

Mr. Gates: Mr. Yelland, before we get into it further, I'll just remind you that its ... we're looking at an appeal of that decision, so, it's a pretty narrow reading that we're...focus that we have to have.

Mr. Yelland: I understand that.

Mr. Gates: So let's not look at broader issues about site or whatever.

Mr. Yelland: No, I was just trying to give you an idea where it was. That's it. That's all I had to say about that. So, I guess I'll respond to just the horizontally hinged insulated doors versus exterior security doors, and here you can see a rendered image of the doors up. What are they and why are we using them? As all of you know, today it is freezing cold outside, the power of the sun is significant. In short the doors are there for energy purposes. In our climate and our latitude we really feel we should use the power of the sun, both to shade it in the summer and to prevent heat loss to the environment in the winter time. Our design takes full advantage of that, using the doors as two very simple diagrams, but we basically, if the doors on the upper right ... as most of you I'm sure know already, the sun in the summer is high in the sky, in the winter its low in the sky. Our awnings come up, they shade the sun in the summer and in the winter they still allow the heat to come through and at night when glass is...I'm sure you all know, it's drafty, it's cold, the heat loss radiates to the outdoor environment and in the winter time if we can close these doors over some of the units and still provide a pedestrian friendly environment in the other ones, we can prevent some of our heat loss. It's probably important to note how much. We want to absorb as much energy as possible in the winter while losing as little as we can at night. South facing glass, that's unprotected, loses 160% of the energy that it receives. So the unprotected glass that would meet the 30% side design criteria would result in a seasonal heat loss of 17 million btu's. Our doors if we can close them over these windows reverse that trend and the net gain with thermal storage and a concrete slab is 5 million btu's over a heating season. That's a net savings of 22 million btu's which equals 8400 lbs of carbon dioxide in heating, providing the fuel to do that or the equivalent of 175 mature trees. In the summer, we want to shade as much energy as possible coming through those doors and we can do that with twice the required glass. We have about 50% at eye level when the doors are open and almost that when the doors are shut. With less heat gain than if we had just the required glass, with absolutely no shading. Now you see in the closed position, this is a 3D model, unfortunately, the windows that you see on your elevation are not, we didn't model those because we had to use the roof to make it work the way it was supposed to, but there would be windows in the doors even when they are shut. This overall reduction saves...it saves us on energy and dollars; the energy consumption of about 20% over an annual cycle. We really are attempting to gain these large energy savings by installing essentially what is an affective night insulation system. Here we see the doors going from open to shut. I think that if...so, what are these? We feel that they are not exterior security barriers. They are a sustainable ...they are a piece of a sustainable building. There are a lot of ways to go about sustainability. But controlling heat gain from the sun is a very crucial factor in that and if we can allow more of it to come in in the winter and less in the summer we get ahead of the game. Sustainable buildings will look and operate differently than your typical building. These will present strategies and ideas that are not easily defined under our current codes and ordinances. There is something else that the City of Minneapolis has adopted and there is sustainable initiative to preserve and

enhance environmental economic social realms to promote a sustainable City. I suppose that is more where we are headed with these than the...

Mr. Finlayson: Excuse me Mr. Chair; these are more variance arguments than they are directed toward the appearance.

Mr. Gates: I disagree; I think that the intention of the doors or whatever devices these are is real essential to the whole issue here, so I want to hear it. Thanks. Go ahead.

Mr. Yelland: We had written a letter to the Zoning Administrator talking about ... could we define these as an awning, and he suggested that when they are closed it's not really an awning. I guess I would agree with that, so, something that is important in this is that they would really be closed five, six months out of the year in the winter time, in the night time hours and in the summer days. When its at 10:00 at night and it's 85 degrees outside, its very humid they might be closed in the evenings on those nights, but they would be open for all working hours and I think for the most part they would operate as awnings. In those times when they are closed, maybe we define them as walls instead of awnings. According to the ordinance, the barriers add to the sense of insecurity because pedestrians are left to assume that the building needs to be protected. I think in our closed position, the walls do not really broadcast that they are doors because they have windows in them and the siding is intended to look flush. So when they are closed it is intended really...it just looks like a wall. It doesn't look like a security...the cheap security doors that we are used to seeing in places like Manhattan. Sidewalk surveillance is still there, the elevation on your upper right still shows the windows where they would be even when the doors are closed ... seeing examples of these doors in the photographs. The other argument about promoting a pedestrian friendly environment, that the exterior security doors don't do ...we absolutely agree. That shouldn't be something that we should promote in the City of Minneapolis and with our building, and we feel that when pedestrians are likely present, the summer months, spring months, autumn months, winter months during the day, those days will be open and there will be an open feeling to the building. I think at the times when those doors are shut there's not likely to be many pedestrians on 14th Avenue NE., at least not in that location. There is a picture on the lower left that looks across the street. There's not much pedestrian traffic essentially at that building right now, we would like to see it happen and there is a representative here from Hillcrest tonight that is doing a development behind us and I'm sure with their plans, that we'll continue to get better there. In the end I just feel that the doors are measures that we feel optimal for a sustainable building. We really feel that they're not exterior security barriers in the way that we plan to use them, the way that they will feel, or the perception by the public.

Mr. Gates: Thank you Mr. Yelland. If the intention of the doors is to shield the glass, why not do it across all the windows on that south façade?

Mr. Yelland: Well, the corner space ... if we thought we could, we probably would. We felt that that was a gesture that we would give back to the corner and the City of Minneapolis and Northeast that, it's a retail space, it would be a little

friendlier if those were open even at night and while that would be thermally counter productive, That was a gesture we were making back to the City. I think if we felt that we could put those doors on every opening that we would.

Mr. Gates: All right, and are you aware of what the percentage of window area is when the doors are down?

Mr. Yelland: It's less than 30, we felt that ... the answer to your question, I think it's 15, but I don't remember exactly.

Mr. Gates: Mr. Bernard do you have that?

Mr. Bernard (staff): Chair Gates, I do not have that exact calculation with me, but if I remember correctly I believe Mr. Yelland's approximation is what I calculated previously.

Mr. Gates: Okay, thank you. Are there further questions for Mr. Yelland?

Mr. Perry: Thank you Mr. Chair, Mr. Yelland, again, I think your argument is these are more awnings than they are security. Is there a reason why they have to go down over the entire set of...of all the glass, is there a reason that they can't go down half way?

Mr. Yelland: It's a thermal equation, they are better...if we can insulate over as much glass as possible, we save more energy, so...it certainly is something we could do, but we felt that it's better if we can cover more.

Mr. Perry: Because it seems to me that feels more like an awning than when that entire side of the building is not able to be seen in or out of when those are down.

Mr. Yelland: Well, that's not entirely true. The ... if I can just go back. The photo on the upper right shows it with the doors in the fully closed position and it is a three bay building, the most western side is completely open, the doors don't close over that at all and even where the doors close over the central bay and the eastern bay there is a strip of windows in there at eye level where people can see in and people can see out, even when the doors are shut. Thank you Mr. Chair.

Mr. Gates: Any further questions?

Mr. Koch: How far out from the building will the awnings project in their open position?

Mr. Yelland: Mr. Bernard might have that; can I look at that elevation? They are really small; I want to say they are 10 feet. They cantilever off the building about eight feet.

Mr. Gates: Mr. Koch, is that all you want?

Mr. Koch: that's it, yes, thanks.

Mr. Perry: Is there a chance I could get a follow up from Mr. Poor.

Mr. Gates: Sure, why don't you go ahead and re-state.

Mr. Perry: Again, the staff has argued that there is this Council policy push, both in the comprehensive plan primarily, but I think they re-affirmed that more recently as a result of another person seeking a variance and I wanted to get clarification on that just to understand the importance of this to the Council as well as to really ... I think that particular item also clarified the intend of what the Council was trying to get at with prohibiting these security doors. Not the same ... these security doors...security doors in general. So I'm wondering if Mr. Poor can address that.

Mr. Poor: Chairman Gates, Mr. Perry, I think this body had an appeal in 2003 at 901 West Broadway on some security gates on the front of a building that were more akin to what you might see in Chicago or some other cities or even at the mall where they pull down...and this Board found they sided with the Zoning Administrator that those were not permitted. I didn't get a chance to review the exact file... of these particular circumstances, but I think what you're referring to is what stemmed from that is an ordinance change that was adopted on April 2nd 2004 that is this ordinance. So the City since 2004 has said that we don't want security barriers, and that's since they re-affirmed this. I've looked at a number of high bred types of security apparatus above and beyond this one that we also didn't allow. I did signs for many years, and I and know awnings, and he could put awnings on the building. There is nothing here we didn't put awnings, he wants a door that functions as an awning, but he ... there's no reason he couldn't put awnings on to gain that beneficial affect when the doors are up. They're not mutually exclusive. Staff, and particularly development services staff that took this site to the planning commission struggled with this. We felt that it was an entirely reasonable request of theirs given the energy efficiencies they were trying to achieve on the building, however, as it was pointed out these are not sustainability issues that we are looking at per say, they're really design issues that have to do with 30% windows on façades facing streets on the ground floor, which we have rigorously defended in many different manners before this body. So we thought it was not unreasonable to request...find middle ground, if you can find a way to get the windows in the doors so that when they are closed we still visually have that aesthetic that the planning commission approved, then we would go along with it. That seemed entirely reasonable. And again, there's nothing, we've not been asked or I don't believe they requested putting awnings on it, but I can tell you there's no reason they couldn't put awnings over these doors. So they're not mutually exclusive. We appreciate the efforts of the appellant in trying to be certainly a leader in this area of sustainability and efficiency, and maybe what this calls for here is maybe looking at the Cities Zoning Code and some of the designer elements in a little more fuller context given some of the conversations around sustainability and in the policies the city is crafting. But I suggest that's not the matter before you today.

Mr. Gates: Thank you Mr. Poor.

Ms. Lasky: Could you put something on the inside (inaudible).

Mr. Poor: Chairman Gates, Board Member Lasky, are you talking about some type of window treatment on the glazing itself?

Ms. Lasky: Inaudible.

Mr. Poor: We have not allowed those in the past on interior in either. Even in troubled... some distressed parts of town where there seemed to be a legitimate need for it we have not allowed those. There may also be fire code issues in some cases for access, but we have not allowed those on some retail businesses in spite of them, we acknowledge them suffering damage.

Ms. Lasky: Inaudible.

Mr. Poor: I don't think I'm grasping exactly what you're asking about thermal.

Ms. Lasky: Inaudible.

Mr. Poor: I'd prefer not to negotiate those lines in a public hearing session, but what I would say is this. We've had our arguments about window treatments, about shelving on a CVS store for instance blocking windows, we want clear views through windows and notwithstanding the appellant saying there is not a lot of foot traffic, he acknowledges that one of the policies behind it is seeing in and out of structures, so. I guess again, we've had this before, I'd rather not hazard ... that's speculation, but, we've fought pretty vigorously to defend open windows, 30% open windows, 30% of windows.

Ms. Lasky: Inaudible.

Mr. Byers: Mr. Chair, if I could help, the issue here is passive solar energy, and there's a number of different ways that you can actually mitigate the heat effects into a property, some of them are through the interior of the projects, some of them are through the exterior of a project, but really there are a number of design solutions that work and those are really not what this particular item is about as much as it is about this specific proposal.

Mr. Perry: Thank you Mr. Chair, I'm going to get back to what I think we've been asked here today, which is whether the Zoning Administrator has properly interpreted the code. It seems to me, when I look at 535.40...

Mr. Gates: is this a question or is this a statement?

Mr. Perry: it's a question ... that they use the word security barriers, but then they mention grills and so forth. It seems that it's, again, I'm getting back to the intent, it seems that if these things had windows in them that met the 30% then they are not security barriers or grills. Is that true Mr. Poor?

Mr. Poor: I'm sorry Mr. Perry, could you restate the last part of your question again.

Mr. Perry: If these apparatus had windows in them that would meet the 30% window requirement, would you consider them metal security gates or grills that would fall under 353.40.

Mr. Poor: Chairman Gates, Board Member Perry I guess what I would suggest is that understanding that this is a relatively new product. I've not seen this on a lot of design issues, so it's that tired saw you hear me say, pounding square pegs into round holes, we have to do a substantially similar use analysis. Clearly this type of device, whatever its purpose, is to me, the Zoning Administrator made the determination ... it's more substantially similar to a security barrier than an awning, although it may function...it may block sun light much like an awning may when it's retracted up. So my exercise of going through this is what is it most like. If you put 30% windows in it so that when it's down with the windows the lay person couldn't tell, by all accounts, the design is such that it is hard to differentiate, is that a wall or is it a security barrier, is it an energy barrier of some type, because the windows keep true to the integrity of the façade which is what we are looking for. I mean I think I would look a little thin quite frankly if the guy had all the windows, 30% windows when it was down and the lay person walks by and can't tell which one it is...and I did not think that that was an unreasonable position for staff to take saying that if you give us the windows we'll except that it's not a security barrier, but absent windows, seems to function both as an energy barrier, possibly a security barrier, I would note that the appellant said that he didn't put them on the corner because it looked more friendly to not have them, what is somewhat of an indicting statement I would suggest. But again, we do substantially similar analysis ... use analysis. It seems more substantially similar to anything defined in the code that retracts and covers entry ways is a security barrier.

Mr. Perry: I think you answered my question.

Mr. Poor: I just want to give to the Board. That's the methodology by which we're required to go through and come to that conclusion.

Mr. Perry: Thank you Mr. Poor.

Mr. Gates: Mr. Poor, while you're still here. Does the zoning code address any sort of sun shading devices at all? They're becoming more and more popular. There's a French term "breca", referring to devices that can shield the sun...any mention at all in the code for that kind of thing?

Mr. Poor: It's very limited. We have awnings, I mean we have other...forgive my architectural vocabulary is lacking, but we have certain architectural things that serve at certain angles of the sun to create shade to project off from a building, they're not strictly in numerated in the zoning code, I mean we really don't, but we recognize them in the review process to some degree. But really we just have awnings. We don't have a lot in there, and again, I'm not suggesting the code can not be improved as is...in response to developments and technology in the market place...but it is more or less a static document.

Mr. Gates: All right, thank you. Is there anyone else here to speak in favor of the application?

Charlie Nester: I'm the development manager for Hillcrest Development who is the ... and I'm also speaking on behalf of east 7th POS LLC which is the fee simple owner in a related party to Hillcrest of 1331 Tyler, 1229 Tyler Street, 1308 Fillmore, 1361 Tyler Street, 915 13th Ave N and we'll also be acquiring that lovely linseed oil factory just down the street at 1209 Tyler. These are all properties that are at least within 350 feet or slightly outside of the circle if you will.

Mr. Gates: Mr. Nester, can I ask you again if you can just restrict your comments to the very narrow issue about the doors.

Mr. Nester: Absolutely. Our take on the door ... we have been a proponent of Red Square, the larger project. The 20,000 square foot, I don't recall seeing these doors or this awning system on the larger project that has been approved in the development agreement, we are ... as this look ... this, whatever you want to call it, awning or security gate, is stated, we are not in favor of blocking more windows ... even if its six months out of the year at night. The Central Avenue Corridor plan that's going through the process, that's about 100 pages long that everyone's worked very hard at is ... we're driving for a street friendly, people friendly, arts community, arts area. Now ... they're wonderful advocates of all that. I believe there must be another way in which to get what they are looking for which I am assuming is sustainability and energy efficiency. As it reads to us right now, it reads as security. We have a building that is a brick and timber building that we're replacing all the windows in that will be adjacent to this and we're taking out old windows and security structures and putting in brand new energy efficient windows. We're doing the opposite in terms of getting light in windows and view-scapes into the neighborhood, so we are opposed to ... and we support the deny.

Mr. Gates: Thank you very much. Is there anyone else here to speak again in favor of the application? No one. Any one else to speak in opposition to the application? I see no one. We'll close the public hearing and take comment from the Board.

Mr. Finlayson: Thank you Chair Gates. I heard a lot of arguments and most of them had to do with energy efficiency, and occasionally the word cost came into play. I did not hear anything; any arguments that indicated that this was somehow...did not have the appearance of a security device, so therefore I move to support the position of the Zoning Administrator.

Mr. Perry: Mr. Chair, I will second that motion and for the same reasons that Mr. Finlayson did and also to add, as I have been trying to get across, I think there is an intent here that the Council has been, not only in the Comprehensive Plan in 2000, but re-affirmation in 2004 ... the reason that this is in the code, so I would second that motion.

Mr. Manning: On the very narrow issue before us, the staffs' argument has relied on intent in determining if these are substantially similar to awnings or to

security barriers. They have also relied on the visual esthetic. I find the visual esthetic argument flawed, because grills are viewable, you can see through them. That would meet the 30% threshold, but they're carved out under the code and that's because they form a security function. You have the mouth style grill you can see through, so they're carved out because of their security function which leaves, I think the staff relying on no retractable metal security gates. These can't be used that way. They're security affect is incidental given the presence of the large glass opening that covers both the 14th Avenue side and the Central Avenue side. They do have a security affect. You can't deny that, but it seems incidental since the analysis is supposed to be on the substantially similar use to use Mr. Poor's term. I don't think these meet that. So I would actually in this very narrow issue as it applies to this particular property, where in there is an open space on public streets on two sides, would not support the motion and would in fact support overturning the staff conclusion here.

Mr. Gates: Thank you Mr. Manning.

Ms. Luepke Pier: Mr. Poor, I have a question for you. If, given when these are down they're meant to look as part of the façade, as if they're walls. If these were just walls, would this even be an issue, or would this...would they still need 30% glass?

Mr. Poor: If they were walls?

Ms. Luepke Pier: Yes, if these didn't move at all. If when they were down that's what they look like, would this...

Mr. Poor: Well, if they're down, they'd have to have the 30% windows.

Ms. Luepke Pier: Okay, so if they're ...

Mr. Poor: On the first floor facing the street, the façade that does.

Ms. Luepke Pier: Okay so...

Mr. Poor: Which is why staff suggested that if you find a way to meet that intent when they are down, and you have the windows for all intents and purposes it wouldn't necessarily be a visual difference. I would like...May I respond to Mr. Manning if I may. I'm just curious as to how, if we were overturned, you would craft it narrow enough that if somebody put up something they claimed was better than the leaky doors that were on the repair garage, had an R value of 1, but claimed it was better than letting the air in...I just don't understand ... I understand that the ... the intent of these. I'm just wondering, what standard by which you say these are really good and energy efficient. They hold back all this, versus somebody that puts up something that's a door that says it's better than the drafty doors we had, these are my energy doors. I would just challenge you that if you do think you want to over turn it that you...you need to think very carefully about how staff would separate out a very poor performing energy efficient barrier from a very efficient one. And how those standards would change over time and what direction they could give staff. I offer just to please, to give

you an insight into some of the depth by which we thought through these questions, because we did try to find a way to accommodate the goal.

Mr. Gates: Thanks Mr. Poor, we'll take that question as rhetorical and we'll stick to the question before us now, or the motion that's before us now. If for any reason that doesn't pass then we'll come back and take up your question again.

Ms. Lasky: Inaudible.

Mr. Poor: Chairman Gates, Board Member Lasky, yes, if they were...when the doors were closed at 30% of those of the façade of the building facing the street met the window requirement, then staff would have approved them.

Ms. Lasky: Inaudible.

Mr. Poor: Well, we think it was around 15%.

Ms. Lasky: Inaudible.

Mr. Poor: Yes, I think it's double the area. I mean... my understanding is there was pretty in depth conversations with planning staff and the development services section on this, so... I would imagine...I'm a little surprised the applicant doesn't have the hard numbers since this was a pointed discussion.

Ms. Lasky: Inaudible.

Mr. Yelland: The doors, we actually went back and we started to redesign the doors and to get the 30% and the size of the openings got to be such that we felt that the thermal performance of them was being severely hindered and so we thought, well, why don't we at least attempt an appeal and we'll see whether it's here or at the next step to see if there's a... I actually don't disagree that the Zoning Administrator is saying, and it's a tough...he's saying where do I define this in what I have in front of me. It's not an easy decision. But I also think that adding a bunch of windows into those doors kind of negates what they are there for in the first place.

Ms. Lasky: Inaudible.

Mr. Yelland: Absolutely, but there is still heat loss through those windows if they are not covered, then we haven't really gained anything. It doesn't really matter, I guess what I'm saying is...it doesn't really matter if they're in the doors or they're next to the doors, the heat loss is still larger than it would have been.

Ms. Lasky: Inaudible.

Mr. Yelland: I suppose yes, it would still be better than having no cover at all, yes.

Mr. Gates: Thank you.

Mr. Koch: I'm a little bit confused, I still can't tell whether the staff doesn't like the fact that there's not enough windows when they're closed or that it's an awning itself, because, if it's a matter of it...if they're saying add more windows and we'll be fine with it. Well, if it was a wire mess thing, then it wouldn't be okay, because it would be more like a security gate, but they would be completely transparent, so it would open the views to the street, so it would be...I just don't buy, I think the zoning code here is inadequate. It doesn't reflect the new technologies and new methodologies that architecture and design ... that we're going to be seeing with green buildings. They said that green buildings will look different, they will function different and here is an example of how, the code doesn't really address what we are trying to do here. It doesn't address the intent of these things and that's why this Board is here.

Mr. Gates: Thank you Mr. Koch.

Mr. Ditzler: I will be reluctantly supporting the motion that is on the floor. I do like the design a lot. I think it is actually something that we could use a lot, but, thermal loss and energy efficiency seems to be at odds with the City requirement for 30% window coverage and that seems to me to be more of a policy change. If City Council wants sustainability in their housing and their buildings, then I think they need to also follow that up with maybe some more examinations on how to make policy a little more acceptable and to deal with some of these new materials and new designs as opposed to just make that statement out there and force the architect to figure it out. So I like the design, but right now, the biggest problem that I have is 30% window covering and I know that since I've been on the Board, which hasn't been long, that has been defended to the hilt by the Zoning Administrator and us as well, so I'm going to reluctantly support the motion on the floor.

Mr. Gates: Thank you Mr. Ditzler. We have a motion to approve the staff recommendation and deny the appeal. Please call the roll.

Ditzler: Yes

Finlayson: Yes

Koch: No

Lasky: Yes

Manning: No

Perry: Yes

Mr. Gates: That motion carries, the appeal is denied. Mr. Yelland you can speak to staff about your options from this point. We applaud your efforts to make the building sustainable and we hope that in future years we will see modifications to the code which would at least address what you are trying to do and provide some avenue for doing that. Good luck to you.

**Department of Community Planning and Economic Development – Planning
Division**

Appeal of the Zoning Administrator
BZZ-3947

Applicant: Wynne Yelland, on behalf of Locus Development

Address of Property: 1401 Central Avenue Northeast

Contact Person and Phone: Wynne Yelland, (612) 706-5600

Planning Staff and Phone: Joe Bernard, (612) 673-2422

Date Application Deemed Complete: February 5, 2008

Publication of Staff Report: February 29, 2008

Public Hearing: March 6, 2008

Appeal Period Expiration: March 17, 2008

End of 60 Day Decision Period: April 5, 2008

Ward: 1

Neighborhood Organization: Northeast Park, Adjacent to Logan Park

Existing Zoning: I1 Light Industrial District

Appeal of the decision of the Zoning Administrator: Wynne G. Yelland, on behalf of Locus Development, is appealing the decision of the Zoning Administrator that horizontally-hinged doors are substantially similar to exterior security barriers at 1401 Central Avenue Northeast in the I1 Light Industrial District. Exterior security barriers are prohibited on the exterior of any portion of an enclosed principal non-residential building façade facing a public street by section 535.40(b) of the zoning code.

525.170. Appeals of decisions of the zoning administrator. All findings and decisions of the zoning administrator, planning director or other official involved in the administration or the enforcement of this zoning ordinance shall be final subject to appeal to the board of adjustment, except as otherwise provided by this zoning ordinance. Appeals may be initiated by any affected person by filing the appeal with the zoning administrator on a form approved by the zoning administrator. All appeals shall be filed within ten (10) calendar days of the date of the decision. Timely filing of an appeal shall stay all proceedings in the action appealed, unless the zoning administrator certifies to the board of adjustment, with service of a copy to the applicant, that a stay would cause imminent peril to life or property, in which case the proceedings shall not be stayed. The board of adjustment shall hold a public hearing on each complete application for an appeal

as provided in section 525.150. All findings and decisions of the board of adjustment concerning appeals shall be final, subject to appeal to the city council as specified in section 525.180.

Background and Analysis:

The applicant recently started discussions with city planning staff regarding a new building on the property. These plans will require site plan review. As part of this project, the applicant has proposed horizontally hinged doors as a window covering designed to regulate building temperature; they are to be opened and closed at the discretion of the tenant.

The Zoning Administrator determined that the horizontally hinged doors do not meet the requirements of section 535.40(b) of the Zoning Ordinance, which prohibits exterior security barriers. This requirement cannot be varied. The doors as proposed are substantially similar to exterior security barriers in that they are designed to cover the exterior of the building that faces a public street, retracting at the discretion of the building tenant.

535.40. Enclosed building requirement.

- (a) In general. All production, processing, storage, sales, display or other business activity shall be conducted within a completely enclosed building, except as otherwise provided in this zoning ordinance.
- (b) Exterior security barriers. No retractable metal security gates or grilles shall be placed on the exterior of any portion of an enclosed principal non-residential building facade facing a public street.

In the attached statement, the applicant proposes that the horizontally hinged doors are also substantially similar to awnings. While staff agrees that certain attributes of the proposed doors can be found in the Zoning Ordinance definition of an awning, the retractable nature of the doors and their ability to cover the building façade that faces 14th Avenue Northeast make them more substantially similar to exterior security barriers. The intent of prohibiting exterior security barriers through the Zoning Ordinance is to enhance the pedestrian experience in the public realm. Prohibiting unfavorable design features ensures that an inviting pedestrian environment is created in the construction of new buildings and improvement of existing buildings.

The Zoning Administrator determined that the doors would be allowed if the window requirement for the building was met while the doors were in the closed position, thereby making the doors less substantially similar to exterior security barriers and more substantially similar to a building wall. Providing the required windows would serve to ensure a pedestrian friendly environment along 14th Avenue Northeast and thereby meet the intent of the exterior security barrier ordinance. This interpretation of the zoning ordinance is directly related to policy set forth in the Minneapolis Comprehensive Plan.

In Chapter 4 Marketplaces: Neighborhoods of the 2000 Comprehensive plan, Community Corridors are discussed: *They support limited commercial uses, which are measured against their impacts on residential character, such as the production of fumes or noise*

or negative aesthetics. Design and development along these streets is oriented towards the pedestrian experience. As a Community Corridor from 18th Avenue Northeast to the Mississippi River, buildings on Central Avenue Northeast are encouraged to have design elements that address impact on the pedestrian experience. Exterior security barriers are considered to be a negative contributor to the pedestrian experience. While the proposed doors do not front on 14th Avenue Northeast, they would be very visible from Central Avenue Northeast.

Chapter 9.11 of the 2000 Comprehensive Plan states: Minneapolis will support urban design standards that emphasize *a traditional urban form in commercial areas*. This policy has the following implementation step regarding building facades: *Require storefront transparency to assure both natural surveillance and an inviting pedestrian experience*. Exterior security barriers are in direct conflict with this policy and implementation step in that they preclude storefront transparency.

Chapter 9.17 of the 2000 Comprehensive Plan states: *Minneapolis will build on recent initiatives to use Crime Prevention Through Environmental Design (CPTED) principles when designing all projects that impact the public realm, including open spaces and parks, on publicly owned and private land*. A key issue addressed by CPTED principles is the perception of safety. Exterior security barriers actually add to a sense of insecurity from the public realm in that a pedestrian is left to assume that the building needs to be protected from criminal activity. Section 535.40(b) of the Zoning Ordinance is a key tool designed to ensure the perception of safety from the public realm and addresses a recommended implementation step attached to policy 9.17 of the 2000 Comprehensive Plan: *Encourage private developers to incorporate CPTED-oriented open spaces in new developments to facilitate the creation of spaces that maximize positive behavior from users*.

Recommendation of the Department of Community Planning and Economic Development -Planning Division:

The Department of Community Planning and Economic Development Planning Division recommends that the Board of Adjustment **deny** the appeal of the decision of the Zoning Administrator that the proposed horizontally hinged doors are substantially similar to exterior security barriers and therefore prohibited by section 535.40 of the Zoning Ordinance for a proposed non-residential building located at 1401 Central Avenue Northeast in the I1 Light Industrial District.

Attachments

1. Map of Area
2. Determination from the Zoning Administrator
3. Applicant's Statement
4. Applicant's Renderings, Elevations, and Site Plan