



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

Date: September 28, 2006

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

Referral to: Zoning and Planning Committee

Subject: Appeal of the Board of Adjustment action denying an appeal of the Decision of the Zoning Administrator that the business at 30 West Lake Street has been determined to be a currency exchange business.

Recommendation: The Board of Adjustment adopted the staff recommendation and **denied** the appeal filed by Neighborhood Financial Services, Inc. of the Decision of the Zoning Administrator that the business at 30 West Lake Street has been determined to be a currency exchange business.

Previous Directives: N/A

Prepared or Submitted by: Molly McCartney, Senior Planner, 612-673-5811

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

Presenters in Committee: Molly McCartney, Senior 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: 6

Neighborhood Notification: The Whittier Alliance has been notified by CPED – Planning of the Board of Adjustment hearing and the Zoning and Planning Committee hearing. Notification

to the neighborhood groups by the applicant is not required for an Appeal of the Decision of the Zoning Administrator.

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: On August 30, 2006, the applicant was sent a letter by Planning staff extending the decision period to no later than November 2, 2006.

Other: Not applicable.

Background/Supporting Information Attached: Kimberly Potts Ourada has filed an appeal of the decision of the Zoning Board of Adjustment denying an appeal of the Decision of the Zoning Administrator that the business at 30 West Lake Street has been determined to be a currency exchange business. The Zoning Board of Adjustment voted 6-1 to deny the appeal at the August 17, 2006, meeting. The applicant filed an appeal on August 28, 2006. The applicant's statement is included in the staff report.

Department of Community Planning and Economic Development – Planning Division Report

Variance Request
BZZ-3108

Date: August 17, 2006

Applicant: Neighborhood Financial Services, Inc.

Address of Property: 30 West Lake Street

Contact Person and Phone: Eric Brever, 612-849-4962

Planning Staff and Phone: Molly McCartney, 612-673-5811

Date Application Deemed Complete: July 5, 2006

Public Hearing Date: August 17, 2006

Appeal Period Expiration: August 28, 2006

End of 60 Day Decision Period: September 3, 2006

Ward: 6 **Neighborhood Organization:** Whittier Alliance

Existing Zoning: C3S Community Shopping Center District

Appeal of the decision of the Zoning Administrator: Neighborhood Financial Services, Inc. has filed an appeal of the Decision of the Zoning Administrator that the business at 30 West Lake Street has been determined to be a currency exchange business. The Zoning Administrator has determined that Neighborhood Financial Services, Inc. is operating as a Currency Exchange which is a conditional use and is subject to a 1,000 ft. spacing requirement from all other currency exchanges, secondhand goods stores, pawnshops and missions.

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 is appealing the decision of the Zoning Administrator determining that the business operating at 30 West Lake Street, Neighborhood Financial Services, Inc., is a currency exchange. The Zoning Administrator has determined that this business is a currency exchange, defined in the zoning ordinance as:

Currency exchange. An establishment, except a bank, trust company, savings bank, savings and loan association, credit union or industrial loan and thrift company, engaged in the business of cashing checks, drafts, money orders or traveler's checks or exchanging currency for a fee, as defined in Minnesota Statutes section 53A.01.

Minnesota Statutes, section 53A.01 further defines what business activity would not be considered a Currency Exchange:

Currency exchange. "Currency exchange" means any person, except a bank, trust company, savings bank, savings association, credit union, or industrial loan and thrift company, engaged in the business of cashing checks, drafts, money orders, or travelers' checks for a fee. **"Currency exchange" does not include a person who provides these services incidental to the person's primary business if the charge for cashing a check or draft does not exceed \$1 or one percent of the value of the check or draft, whichever is greater.**

Based on site visits and telephone calls to the business staff confirms that the subject business cashes payroll and government check for a fee of 2.5 percent to 3 percent of the value of the check. Other services include issuing money orders, money transfers (Western Union), and title loans, usually secured by ownership of a vehicle or other property. The business has an Industrial Loan license from the Minnesota Department of Commerce. The Zoning Administrator has determined that the even with an industrial loan license from the state, the use is determined to be a currency exchange based on the check cashing activity of the business.

The subject business is also in violation of a spacing requirement of the zoning code that requires a new currency exchange be at least 1,000 ft. from all existing currency exchanges, secondhand goods stores, pawnshops and missions.

536.20. Specific development standards. The uses listed below are subject to the following specific development standards, in addition to all other applicable regulations:

Currency Exchange.

The use shall be located at least one thousand (1,000) feet from all existing currency exchanges, secondhand goods stores, pawnshops and missions.

There is a currency exchange business, The New Money Express, located at 106 East Lake Street, approximately 675 ft. to the east of the subject business. This distance is less than the required 1,000 ft. distance requirement. This business was established in 1992 when the zoning code classified the use as a permitted use. Due to changes with the ordinance, The New Money Express is now located in the C2, Neighborhood Corridor Commercial District and is deemed to have a conditional use permit. The New Money Express was issued a check cashing license in 1992 and has renewed that license every year since.

The spacing requirement can only be varied to allowed for an existing currency exchange to relocate when the spacing between it and the use from which is it nonconforming is increasing. The subject business can not operate in its current location because the spacing requirement can not be varied.

In addition to the spacing requirement, a currency exchange requires additional land use and licensing approvals. The use requires a conditional use permit in the C3S Community Shopping Center District which has not been applied for by the business. The City also requires that a currency exchange obtain a check cashing license through the Department of Regulatory Services, Licenses and Consumer Services. The business has not received a check cashing license from the City. The business is operating without the proper land use and licensing approvals from the City.

The applicant is appealing the decision of the Zoning Administrator stating that the business is an industrial loan and thrift company, and is a permitted use exempt from the spacing requirements of a currency exchange. The applicant's statement is included in the staff report.

Recommendation of the CPED Department Planning Division:

The Department of Community Planning and Economic Development Planning Division recommends that the Board of Adjustment adopt the findings and **deny** of the appeal of the Decision of the Zoning Administrator that the business at 30 West Lake Street has been determined to be a currency exchange business.

Board of Adjustment Hearing Testimony and Actions

Thursday, August 17, 2006
2:00 p.m., Room 317 City Hall

Board Membership: Mr. Matt Ditzler, Mr. David Fields, Mr. John Finlayson, Mr. Paul Gates, Ms. Marissa Lasky, Mr. Matt Perry, Mr. Peter Rand

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

3. **30 West Lake Street (BZZ-3108, Ward 6)**

Neighborhood Financial Services, Inc. has filed an appeal of the Decision of the Zoning Administrator that the business at 30 West Lake Street has been determined to be a currency exchange business.

CPED Department Planning Division Recommendation by Ms. McCartney:

The Department of Community Planning and Economic Development Planning Division recommends that the Board of Adjustment adopt the findings and **deny** of the appeal of the Decision of the Zoning Administrator that the business at 30 West Lake Street has been determined to be a currency exchange business.

TESTIMONY

Finlayson: Does the city have a definition of a currency exchange that is precise?

Molly McCartney (staff): Yes. It is on the second page of the staff report. A currency exchange is any establishment except a bank, trust company, savings and loan association, credit union or industrial loan and thrift company, engaged in the business of cashing checks, drafts, money orders, or traveler's checks or exchanging currency for a fee. As defined in Minnesota Statute. I have also included that statute in the staff report, which has very similar language in the first sentence of that definition. It goes on to say that a currency exchange does not include a person who provides these services, which would be the services not defined as a currency exchange, incidental to the persons primary business, if the charge for cashing a check or a draft does not exceed one dollar or one percent of the value of the check or draft which ever is greater. So, basically it is saying you can do all these services yet still be a currency exchange if the primary business is cashing a check for a fee, which in fact this business does.

Finalyson: Mr. Ditzler

Ditzler: Just for a little clarification here, and forgive me if you have already gone over this and I just don't quite understand. If the business that you are operating is an industrial loan and thrift company, what you are saying is if that is your primary business, that you can cash checks, but the only way that you are allowed to do so is if you charge a dollar or one percent of the fee. Is that what you are saying? Or you can not cash checks at all?

Molly McCartney (staff): If you are cashing checks for a fee that does not exceed a dollar or one percent, then it would not be considered a currency exchange, if that is not your primary business. The Neighborhood Financial Services, from telephone and site visits, indicates that they cash checks for a two percent to three percent fee.

Ditzler: which is in excess of what is allowed? The allowed being one percent or less?

Molly McCartney (staff): Correct.

Finlayson: Before we go any further, I would like to remind the Board and everyone else that this is not a variance, this is merely an appeal of the Zoning Administrator's decision, so it is a matter of definition. Did the Zoning Administrator correctly define what this business is? It's not about whether it's a worth while business or whether it should exist, it's merely about whether he had the right to make the ruling and I don't really want to go into any variance type issues or anything else related to that. It is just whether or not he made the correct ruling and that's based on definition. Alright, continue. Mr. Gates.

Gates: Currency exchanges are licensed and regulated by some entity, correct?

Molly McCartney (staff): Correct. The city has a license, a money transmitter license. This business does not have that license. The business that I referred to, the New Money Express on Lake Street and First, does have that license and renews it yearly, or has been paying the yearly fee for that.

Gates: So would the City be alleging that this business is operating illegally, without a license?

Molly McCartney (staff): It is operating without the proper city approvals from planning and licensing. It does not have the money transmitter license and it does not have the conditional use permit that is required to allow for the establishment of the business.

Gates: So it's the City's position that there are issues beyond the one before us. That there are licensing issues also?

Molly McCartney (staff): In addition to the appeal of the Zoning Administrator, the decision of the Zoning Administrator, it would need to go through and have the proper licensing and the approvals for the conditional use permit, yes.

Gates: Okay. Thank you.

Finlayson: Again, we are not here about whether or not they have correct licensure or not, we are here about whether the Zoning Administrator made the correct definition of what this business is and by extension then made the correct decision. I don't want to go anywhere about other licenses. I'm not interested.

Any other questions? I see none. Is the applicant present?

Applicant: Yes, Mr. Chair. My name is Eric Brevor. I represent the applicant, Neighborhood Financial Services. I'm with Kimberly Potts who's the principle of the ...

Finlayson: Your address please sir.

Eric Brevor: My address is 1137 Montana Avenue West, St. Paul, MN 55108.

Finlayson: Thank you.

Eric Brevor: We respectfully disagree with the decision of the Zoning Administrator in regards to this matter at hand and the reasoning being, is defined in the report of the Zoning Administrator. In that definition that was just read off here, a currency exchange under the Minneapolis City Zoning Ordinances specifically excludes an industrial loan and thrift company. An industrial loan and thrift

company is defined under Minnesota Statutes chapter 53. MSS 53(a) gives separate and absolutely independent license to a currency exchange. That is defined below also in the definition under MSS 53(a) .01: A currency exchange under Minnesota law is not the same thing as an industrial loan and thrift. The portion here that is highlighted here is in addition to anybody else. In addition to the ones that were already named above. It does not apply to those same entities back and forth. Minnesota law has never held that the highlighted portion here is to be held independently or is to be applied to a savings bank, a trust company, a savings association, a credit union or industrial loan and thrift company. So what that means is industrial loan and thrift companies operate separately under their licensing in chapter 53 of the state statutes. Neighborhood Financial Services as mentioned is an industrial thrift and loan. They're licensed by the Department of Commerce; they're subject to annual reviews by the Department of Commerce. They make loans as part of their business. Incidental or part of their business is cashing checks; part of it is making loans. That is allowed by industrial thrift and loan. And if it's not allowed the Department of Commerce revokes their license, and they can revoke it at any point. I'm not sure if you have a copy of that license in your packets or not, but I'll put it up on the screen here. I don't know if you can read it here entirely, but it's fully authorized unless the authority be suspended, revoked, or otherwise legally terminated. It doesn't give a date or necessarily a way for that to happen. Leaving the presumption that it could happen at any point in time, today, tomorrow, the next day if the Department of Commerce decides that that's the case. So with that in mind we don't believe the Zoning Administrator's decision was applicable to the law in that regard. As it's independently regulated it's specifically excluded by the Minneapolis Zoning Ordinances as it stands. Because the City of Minneapolis or because all cities are held to strict construction of their zoning statutes and their zoning ordinances, therefore the Zoning Administrator's decision here we believe is in error.

Rand: Is there any date on that document?

Eric Brevor: The document here in front of me is dated the 30th day of August 2005.

Rand: Where do I see that?

Eric Brevor: it's down here at the bottom.

Rand: Oh yeah, okay, thank you.

Finlayson: Any further questions? I see none at this point. Thank you

Eric Brevor: Thank you.

Lasky: Is there a restriction on the fee or interest that you can charge?

Eric Brevor: Under Minnesota law or a currency exchange, under Minnesota law 53(a) .0 something, there is a certain set of restrictions that currency exchanges can charge. Under the industrial thrift and loan statute there is nothing. But by the same token, there is nothing for what a bank can charge, a savings union, a credit association, anything they can charge for cashing checks as well.

Lasky: But I'm under the assumption that the city restricts you to what you can charge and you are changing over the city's restriction.

Eric Brevor: I think you have I think it's backwards, I think you have...

Finlayson: I don't think this is an area where we need to go. Interest rate violations are nothing that we...

Lasky: But it goes to the definition of currency exchange.

Finlayson: I stand corrected, please continue.

Lasky: According to staff the definition of currency exchange is based on the interest rate that this particular company is charging. So if you are charging over one percent, then you become a currency exchange, would that be correct?

Eric Brevor: What I'm saying is that the currency exchange under Minnesota law, 53(1) .01 which is what I think the city ordinance refers to looking at the front page of that report that's in your packet, I believe, refers to first of all currency exchange, means any person except a bank, trust company, savings bank, savings association, credit union, or industrial loan and thrift. Currency exchange does not include a person. We believe an "also" could go into that sentence.

Lasky: That's the underlying definition, now we go to the city's definition of currency exchange vs. industrial bank and that's based on the interest you charge, so the interest you charge is what?

Eric Brevor: The interest that Neighborhood Financial Services charges?

Lasky: yes.

Eric Brevor: 2 ½ %.

Lasky: The city defines that as a currency exchange business, so that drops you out of your definition of an industrial bank.

Eric Brevor: What I'm saying is the city's definition here is as follows on that page. It's the top of the two statues here. The top says nothing about fee portion of it. What appears to me the Zoning Administrator is saying that the second portion, the highlighted portion here which is found in Minnesota Statute, which we believe has an "also" attached to it, so, if I'm cashing a check from my brother and I'm not charging a fee it doesn't make me a currency exchange. That's the distinction that I'm trying to get at. Does that make some sense?

Field: So you're saying that your primary business is industrial loan and thrift?

Eric Brevor: Our operational business is an industrial loan and thrift. It's our licensing and our right to be.

Fields: I'm still not getting clear then, why the highlighted, it is a currency exchange does not include a person who provides these services incidental to the person's primary business i.e.: you as an industrial loan and thrift if the charge, IF the charge for cashing a check or draft does not exceed a dollar or one percent. That's the condition and, but you're admitting you do charge more than that.

Eric Brevor: Yes.

Fields: So it's excluding you from the exclusion.

Eric Brevor: What I'm saying the exclusion actually happens above.

Fields: No.

Eric Brevor: From principles of Minnesota law...

Fields: That's sophistic reading of something. Anyone who reads anything says that conditions can come after a statement above.

Eric Brevor: I understand that, but under principles of legislative construction of the statutes, in statutes, that the exclusion above applies toward the rest of the statute. So that if you exclude it here. You can then further then un-exclude it back here.

Fields: I'm not reading it the same way, but then I'm open to clarification.

Eric Brevor: And we can disagree.

Fields: Particularly if the Zoning Administrator...

Finlayson: I think we'll hear from him. Perhaps not right this moment, but soon. Any further questions? I see none at this point. Thank you.

Eric Brevor: Thank you.

Finlayson: Anyone else to speak in favor? Anyone to speak against? Let's close the public portion of this item. Mr. Poor if you would, a clarification or two. Mr. Fields, did you have a question?

Fields: Did you see where I was going with the question Mr. Poor? I'm interested in how you're interpreting the exclusionary or conditional interpretations of these two sentences?

Steve Poor: I do, and I'd rather not address that question at this point.

Fields: Okay.

Steve Poor: Let me make some general comments maybe that would be helpful from where we're coming from on this. I think that the appellant suggests that they're mutually exclusive. That if you are an industrial thrift you can not be a currency exchange. When in fact by their own admissions they're saying that primarily they actually function what looks to be a currency exchange, and I would question how many loans have you written this year vs. how many transactions that you've done for check cashing? So without even answering I would suggest that what our position is, notwithstanding licensure, licensure helps inform us what the use may or may not be. I don't believe it's the case here that the fact they're licensed as an industrial thrift precludes that they're not also, they shouldn't also be licensed as a check cashing. In the list that they obtained from the state in fact there... I noticed one of the addresses on here 2600 Nicollet, which has a check cashing license, the Butler drug site which has had it for many, many years, and yet they're also licensed as an industrial loan and thrift. They are not mutually exclusive and I would suggest that the reason that the appeal is filed is because they weren't able to actually overcome the requirements for the spacing on the conditional use. Our position is not that they are not an industrial thrift, that they shouldn't be able to continue to operate as such, but if they are going to operate as such, they should be primarily, first and foremost an industrial loan and thrift and not primarily functioning as a check cashing facility, a currency exchange. The city has the right to define uses under the land use. They're referring to licensure. We're talking about the use of the land. There are many uses as we know that have many types of licenses. I've given this speech on some other substantially similar use arguments, but one of the examples I gave was Mary's Place, it's a shelter. They have a state automobile license from the state of Minnesota, because they take in cars as donations and then they give them out or sell them at a nominal fee afterwards, that doesn't necessarily make them a car dealer, but they have that license. Conversely here, they have an industrial loan and thrift license, but they seem to function primarily as a check cashing facility. All we're asking that they would come into compliance with those rules that we have for that or function more primarily as an industrial loan and thrift and not operate as what looks to be like a currency exchange. So we're not

suggesting that they can't be an industrial loan and thrift, but we are suggesting that if they're going to operate primarily as a currency exchange that they meet that regulatory scheme. That's the position that we take. That's how we approached the question. We're not trying to say they can't be an industrial loan and thrift. So I guess that's the matter before you. That's how we look at it. I'm open to any other questions that you have at this time. I would just say it's the use. We're really looking primarily at how they're functioning.

Fields: You actually did answer what I was trying to get at with the question. I wasn't trying to pick at just language, but you presented a very clear explanation for me

Finlayson: Mr. Rand.

Rand: I move support of the staff recommendation.

Perry: I'll second that.

Gates: I respectfully disagree. I don't see how it could be clearer that currency exchange means any person except an industrial loan and thrift. And they are that. And yes, we can try to apply layers of nuisance and interpretation to this, but the text is very, very clear, to disregard that is willfully applying logic which is falling into the cracks of the ordinance here and we need to just step back and look at the very clear text and say they've met the standard of the industrial loan and thrift, which I take to be a higher standard than the currency exchange. They've met that standard. They do provide those services to some degree, they're legally an industrial loan and thrift and to deny them the right to be that when they have that license, I think is just wrong. So I respectfully disagree.

Perry: I'd like to reply to Mr. Gates if I could.

Finlayson: Please.

Perry: I think Mr. Poor's comments that have swayed me is that it's not either one or the other, that you can be licensed as one and still need to be licensed as the other. So that's why I'm going to be supporting the motion.

Finlayson: I think it's all together an interesting argument on both sides, and the applicant has taken, it appears they have taken this approach in terms of the licensure they have obtained to define themselves, but I think that the city also within the context of the zoning regulations has the right to define what something is and what it isn't. I don't personally agree with this particular set of regulations, but having said all of that I think that the Zoning Administrator has every right to make the ruling that he did, that he was correct in his definition, that part of this business is a currency exchange and that the city has correctly defined it, so I'll be supporting the motion.

Finlayson: please call a roll.

Ditzler: Yes

Fields: Yes

Finlayson: Yes

Gates: No

Lasky: Yes

Perry: Yes

Rand: Yes

Pass.