



**Request for City Council Committee Action
From the Department of Community Planning & Economic Development**

Date: September 29, 2005

To: Council Member Gary Schiff, Zoning and Planning Committee

Prepared by: Jim Voll, City Planner 612-673-3887

Presenter in Committee: Jim Voll, City Planner

Approved by: Jason Wittenberg, Supervisor, CPED Planning-Development Services

Subject: Appeal of the decision of the Zoning Board of Adjustment by WCCO-TV

90 South 11th Street (BZZ-2503, Ward 7) Ann Ouellette, on behalf of WCCO-TV, has filed an application to appeal the zoning administrator's decision that a jumbotron/monitor is a freestanding sign as well as a traffic hazard, and that the programming on the sign is not off-premise advertising, which is prohibited by the zoning code at the property of 90 South 11th Street in the B4-1 Downtown Business District.

RECOMMENDATION: The Zoning Board of Adjustment adopt the staff recommendation and **denied** the appeal of the decision of the Zoning Administrator.

Previous Directives: N/A

Financial Impact: (Check those that apply)
 No financial impact - or - Action is within current department budget.

Community Impact: Other: See attached.

End of 60/120 Day Decision Period: On September 14, 2005, staff sent a letter to the applicant extending the 60 day decision period to no later than November 19, 2005.

Background/Supporting Information

Ann Ouellette, on behalf of WCCO-TV, has filed an appeal of the decision of the Board of Adjustment denying the appeal of the decision of the Zoning Administrator. Planning Division

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staff recommended denial of the appeal. At the September 1, 2005, Zoning Board of Adjustment meeting, seven (7) Zoning Board of Adjustment members were present. Six (6) members voted to adopt the staff recommendation and denied the variance. The September 1, 2005, Board of Adjustment minutes, actions, and Planning Division staff report are attached.

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Department of Community Planning and Economic Development - Planning Division Report

Appeal of the Decision of the Zoning Administrator
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Date: September 1, 2005

Appellant: WCCO-TV

Address of Property: 90 11th Street South

Contact Person and Phone: Ann Ouellette – WCCO TV 612-330-2668

Planning Staff and Phone: Jim Voll 612-673-3887

Date Application Deemed Complete: July 22, 2005

End of 60 Day Decision Period: September 20, 2005

Appeal Period Expiration: September 12, 2005

Ward: 7 **Neighborhood Organization:** Downtown

Existing Zoning: B4-1 Downtown Business District

Appeal of the decision of the Zoning Administrator: Ann Ouellette, on behalf of WCCO-TV, has filed an application to appeal the zoning administrator’s decision that a video display device (jumbotron/monitor) is a freestanding sign as well as a traffic hazard, and that the programming on the sign is not off-premise advertising, which is prohibited by the zoning code at the property of 90 South 11th Street in the B4-1 Downtown Business District.

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 subject property is located at 90 11th Street South and is zoned B4-1 Downtown Business District. WCCO-TV is remodeling and expanding their studios. As a part of this remodeling there will be a studio expansion at the Marquette side of the building that will also include a new exterior plaza at the corner of Marquette Avenue South and 11th Street South. WCCO proposes a central video display device (essentially a large TV screen) that would display network, syndicated, and local programming throughout the day beginning at 5 a.m. and running continuously until the end of regularly scheduled late newscasts, Monday through Sunday. The televised programming will contain advertisement commercials, but will not display separate commercial advertising programming. In addition, the video display will be mounted on a newly constructed 8 foot high by 23 feet wide wall.

In reviewing the proposed project, staff made the following determinations. WCCO has appealed all three determinations/decisions of the Zoning Administrator (please see the attached letter from the project architect, particularly items 2, 3, and 5).

1) The video display device attached to the wall is a freestanding flashing sign.

The zoning code (Section 520.160) defines a *sign* as “a structure, fixture, placard, announcement, declaration, image, device, demonstration, logo, or insignia used for direction, information, identification, attraction, or to advertise or promote any business, product, activity, service, interest or entertainment.” The zoning code (Section 520.160) defines a *freestanding sign* as “a sign which has supporting framework that is placed on, or anchored in, the ground and which is independent of any building or other structure.” Staff has determined that the video display is a flashing sign and that attaching it to a freestanding wall classifies the video display and the wall it is mounted to as a freestanding sign.

The proposed freestanding sign exceeds the maximum allowable area of 32 square feet and the limit of one freestanding sign per zoning lot. Both of these items can be varied under Section 525.520(21) of the zoning ordinance, which allows a variance of “the number, type, height, area or location of allowed signs...”

WCCO states (see item number 2 in their appeal letter) that the wall the monitor is mounted to is part of the primary structure of both the addition and to the building and the plaza and therefore, it should not be classified as a freestanding or monument sign. WCCO is not appealing that the video display device is a flashing sign.

2) The sign is off-premise advertising and off-premise advertising is prohibited on this property.

The zoning code (Section 520.160) defines an *off-premise advertising sign or billboard* as “a sign which directs attention to a business, establishment, product, service, interest, activity or entertainment not exclusively related to the premises where the sign is located.” Staff has determined that the network, syndicated, or local television programming qualify as off-premise advertising. The site is not located in the opportunity billboard districts, which allow off-premise advertising.

WCCO states (see item number 3 in their appeal letter) that they are committed to showing only their regularly broadcasted signal and no other unique advertising on the monitor. WCCO did not address staff's determination that the programming is off-premise advertng.

3) The sign is a traffic hazard and signs are prohibited from being traffic hazards.

Section 543.390 of the zoning code states that "...no sign, other than a public sign, which makes use of the words "Stop," "Look," "Danger," or any other word, phrase, symbol, or character which may interfere with, mislead, or confuse persons shall be visible from a public street. In addition, a sign in direct line of vision of any traffic signal, from any point in the traffic lane from a position opposite the near sidewalk line to a position one hundred fifty (150) feet before said sidewalk line, shall not have red, green or amber illumination." Staff has determined that written messages on a color monitor visible from the street can confuse persons and therefore, is a traffic hazard.

WCCO states (see item number 5 in their appeal letter) that the monitor is not the direct line of vision of any traffic signal and that trees will screen the monitor from the street. Staff would not classify the sign as a traffic hazard if it were not visible from the street. Staff does not believe that the appellant has demonstrated that the monitor will not be visible form the street.

The appellant has appealed this decision of the Zoning Administrator and staff makes the following findings:

- 1) Staff has determined that the video display device attached to the wall is a freestanding sign. While the appellant claims that it is part of the primary structure, the appellant's site plan shows that the wall that the video monitor is attached to is not attached to the principal structure.
- 2) Staff has determined that the sign is off-premise advertising and off-premise advertising is prohibited on this property. The appellant has not provided information refuting this determination.
- 3) Staff has determined that the sign is a traffic hazard. The appellant has not provided sufficient information that the sign will not be visible from a public street.

Based on the above findings planning staff agrees that the Zoning Administrator has correctly interpreted the zoning code.

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 adopt the findings above and **deny** of the appeal of the decision of the Zoning Administrator.

Board of Adjustment

HEARING ACTIONS/MINUTES

Thursday, September 1, 2005
2:00 p.m., Room 317 City Hall

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

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

5. 90 South 11th Street (BZZ-2503, Ward 7)

Ann Ouellette, on behalf of WCCO-TV, has filed an application to appeal the zoning administrator's decision that a jumbotron/monitor is a freestanding sign as well as a traffic hazard, and that the programming on the sign is not off-premise advertising, which is prohibited by the zoning code at the property of 90 South 11th Street in the B4-1 Downtown Business District.

CPED Department Planning Division Recommendation by Mr. Voll:

The Department of Community Planning and Economic Development Planning Division recommends that the Board of Adjustment adopt the findings above and deny of the appeal of the decision of the Zoning Administrator.

TESTIMONY

Staff presented their report and recommendation to the Board of Adjustment.

Finlayson: Does anyone have any questions of staff? Mr. Gates?

Gates: Off-premise advertising, is that something which is variable? If we find that we agree with staff on that, is that something that the applicant can come back later and request a variance for?

Jim Voll (staff): I'll let Steve address that, but no it is not something that you can get a variance for.

Finlayson: Please bare in mind everyone if you would. We do not have a variance before us, what we have is an appeal of the decision by the Zoning Administrator, the only question that is pertinent, is did he have the right to make that determination. It is very narrow. I don't want a lot of conversation going on about signs, various signs, it is whether his call on this that is correct.

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Steve Poor: This was an unusual proposal, but the city has visited this issue before. When you have broadcasts that are showing television commercials on these types of screens, it is construed as off-premise advertising. And again that doesn't mean that they can't work out a way, or the signals can't be blocked during certain portions of the broadcast, it is not the broadcast of the programming per se, but the commercials that they would choose to show on these monitors that present us a problem and we construe that as off-premise advertising. There is no variance for it and the deeper issue is that in the downtown opportunity district there is a prohibition on advertising signs within 300 feet on either side of Nicollet Mall and the site is within 300 feet of Nicollet Mall as well and that was a change made in 1999 with the new code. So, it comes down to, and I would suggest to find a way to block the signal during the advertising and replace it with something else, we really would not have an issue with the broadcasting, it is the commercials being broadcasted that present the off-premise advertisement.

Finlayson: That is a separate issue is it not from being a free-standing sign?

Steve Poor: Yes, the free standing sign is a separate issue. We have had, this is a monument sign. We call free-standing signs, churches would have them, and some other uses, where they have free standing walls that were not attached to a building and we call them free standing signs. That is a separate issue from the content of the broadcast but I think it is clear that our office has had a long standing policy that signs mounted on the free standing walls are considered free standing monument signs of type.

Finlayson: Thank you. Any other questions? Is the applicant present? Do you care to make a statement? Please, name and address for the record.

I am **Ann Ouellette**, on behalf of WCCO-TV, 90 South 11th Street, Minneapolis. And I am **Trey Fabacher**, also with WCCO-TV, I am the station manager there and we have brought along, **Lyle Beecher** our architect and **Gary Kroger** one of our engineers. I would like to take a few seconds to let everyone know what the purpose our intent of what we are doing. Our entire reconstruction has been basically phased around bringing the outside in and the inside out. Many of you know our building is made out of Kasota stone and we will bring some of that in to our newsroom and as well as our new studio on the Nicollet side, there is going to be a huge studio inviting the people to partake in what we are doing in the newsroom. In the back portion our entire back wall is going to be enclosed with a bubble glass to where our main news cast will be seen by the public. The whole purpose of the atrium and the grassy knoll in the back is to allow people to come in and experience more of what we do at WCCO-TV and the purpose of the monitor, not only in sharing programming and possibly putting up Amber Alerts or public service announcements and things like that, but during our news cast especially when people can sit out on the grassy knoll and watch the newscast and see it from there backs, they can also see the monitor on the right to get an idea of what it is they are seeing from the camera's in the front and enhancing that experience. I just wanted to share that vision of what we are doing on both sides of the building on Nicollet Mall as well as with the Plaza, and to address some of the technical issues with the code, here is Lyle Beecher our architect. Thank you!

My name is **Lyle Beecher**, my address is 3115 East Lion Lane, Salt Lake City, Utah. First off I'd like to mention that staff has been extremely helpful on this issue, it is an issue that we bring before you and I know that as under the variance, which we will eventually get to as needs be, it talks about the following findings that need to be addressed.

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Finlayson: We are not dealing with a variance here. I do not want to hear about variances. If you had filed for a variance, we would hear about your variance. I do not want to sit here and waste everyone's time talking about something that is not germane, please stick to the issue.

Lyle Beecher: What we are trying to do is accomplish a unique sign and I am going to address specifically number one, which is the display device being attached to wall as a free-flashing sign and the issue of being a monument sign. The reason that it doesn't work in this case as a monument sign is because the issue is, is that monument signs can be 8 feet high. At 8 feet high a video monitor at that height would be susceptible to vandalism, someone could easily walk up to a very expensive piece of equipment and place a screw driver into it or any sort of vandalism, so therefore that is the reason we disputed the idea of this as a monument sign. We understand that the typical use of a monument sign is to display what a facility actually is, what the function of a facility and is usually a static sign where there is lettering applied to a wall as discussed in a church situation, as given by example by staff. Therefore that is the reason we stated that we do not see this as a monument sign. The wall is a substantial wall within the Plaza that is defining space and does interact with the other walls of the building. So that is the first item.

The second item being that the sign and the advertising on the property has already been addressed. It is something that we would continue to negotiate with the city as far as the outside premise advertising.

The third item, as far as the traffic hazard, we would like to address that and the technical issues of that have been researched by Gary Kroger with the station and there are some actual limitations on distances and so forth and we have some diagrams and we would like to show that. Also, Board, we have on disk an actual 3-D model fly-through the plaza if you would like to view that and if we have the means of slipping that into the monitor. If you would like to better understand the plaza.

Finlayson: Staff do we have that capability?

Staff: No – that would have needed special arrangements prior to the meeting.

Finlayson: Just for clarification points for staff or anyone. Is this attached to the building in any particular way other than by sidewalk?

Jim Voll: I can let the applicants clarify it, but as I understand it, the sign is going on a wall that is part of this plaza but is a nonstructural part of the building.

Finlayson: Please continue.

Lyle Beecher: In response to that, is it part of the structure that is holding up the roof? No. But is as you can see there is an additional wall curving off of the building and it is inter-planing with that wall.

I will introduce myself, my name is **Gary Kroger**, with WCCO-TV.

Finlayson: One minute sir. Ms. Lasky?

Lasky: I have a question, a design question. Is there a reason why the wall could not be attached or a part of the building, was there a hardship for the topography or something that made it impossible to do so?

Lyle Beecher: No, that is a good question. The issue is, is that we are creating an urban plaza, and one of the more utility doors to the facility is behind that wall. It is acting as a screen wall, it is one of the more used entries by the employees and so forth, so we are therefore screening that utility area as well as the ramp that goes down for all the parking and so it is acting as a screen wall.

Lasky: We usually look at hardships that are not created by the applicant.

Finlayson: To the point, we are not dealing with a hardship here, this is not a variance. Please continue.

Gary Kroger: We took a look at some of the issues relating to the traffic and the site lines and to orient you, this will be 11th Street flowing this way, and this is Marquette flowing this way. The screen has a maximum viewing angle of about 140 degrees, so the farther you get off access, it is not viewable.

Rand: If you rotate it 180 degrees? Okay, now we are all in viewing.

Gary Kroger: With the current landscape plan that is in the works the trees in that landscape plan would block a fairly good percentage of the view of that sign from the street level. The only areas that I calculated where the sign would be directly viewable are the areas that are highlighted here and again this area is going to be awfully close to the off access, end of the limit, so the brilliance of the sign will be significantly reduced. The traffic that is on 11th Street, headed down and who are stopped at that light in my calculations will not be able to see that sign. The two lanes of traffic that are headed North on Marquette will be in a position where it is possible to view the sign but it will be an angle that is quite far from the actual traffic lights. At a distance from this corner to approximately 180 feet and from this corner at a distance of 140 feet.

Perry: Chair, I have a question. What kind of trees are those that are planted or will be planted? Are they pine trees, will they have leaves on them only part of the year?

Gary Kroger: As stated now and proposed they are a deciduous. We took some photograph to give you an idea of what we may see the camera see here. It is just a standard digital camera but it is a zoomed all the way back to its wide position. The shot is from the farthest right hand lane of Marquette looking North and when we took this picture, we had a white sign board approximately the same size as the screen being discussed located in the position where it would be at. So in this view it is not really visible, this is a view from the center lane and if you look way out on the edge you are just barely starting to see the edge of that screen.

Lyle Beecher: Could I just mention, any position where the vehicle is sitting waiting for traffic sign or light to change, is greater than the 150 feet outlined in the ordinance. When I say that, I say facing the and has the ability to see the sign even if the leaves are off the tree. The idea is to be greater than the 150 feet and we feel we meet that.

Gary Kroger: One other thing from a technical stand point, is that this sign is designed to automatically compensate between daylight and night, it has 32 different levels of brightness that are automatically controlled by a photo sensor, so it would not be blasting at anyone during the night time hours. One last reference, as far as the size comparison, the two panels that I have whited-out here, in comparison to what we have on the side of Orchestra Hall, directly across the street, kind of gives you an idea, size wise of the difference.

Finlayson: Any questions? I see none. Anyone else to speak. Mr. Rand, do you have a question, the Public hearing is still open. I see nothing further, we will close the public portion of this item. Mr. Rand, please.

Rand: I move approval of the staff decision, but I am a very loyal WCCO viewer all the time. This is a wimpy screen, you need it 10 times bigger and what you should be doing is lobbying the Council to give you permission to do something big there. And what we have to do now, we can't do it, but I would encourage you to completely make this a kinetic corner, and that wimpy little sign is not a kinetic sign.

Ditzler: Seconded the motion

Fields: Getting back to and this happens all the time, we are just discussing the issues around did the Zoning Administrator make the right call within the bounds to make this call. If I had been you, I would have gone for a variance. All the issues that could be debated here are variance issues and we could have had a creative discussion about you creating a very new, needed urban plaza downtown. But I am seeing interpretations of language, like free-standing sign and Mr. Poor, I think interpreted this correctly and about advertising for services exclusively on site, you even have an argument you can make. That in a sense you are doing an on site advertising, because even when you are showing your shows you are advertising WCCO and not the product in the commercial. But these can be argued creatively in a variance process and I think Mr. Poor made a right call, in rejecting your appeal of this call, so I will have to support the Zoning Administrator, but I would urge you to pursue this as Mr. Rand has suggested.

Perry: I would agree with Mr. Fields, there could be some very compelling arguments for a variance, but that is not why you are here before us to discuss and instead you are here to appeal the Zoning Administrator and I have not heard any compelling arguments to make me change my mind from supporting Mr. Rand's motion.

Gates: I am going to disagree a little bit here. I think that there is a reasonable case for the first item that it is not a free-standing sign, but indeed is part of the architecture of the building. If you look at the site plan there, there is a number of canted walls and they directly reflect the canting of the primary building addition. And the angle that this monitor would be on is the same angle that the broadcaster would be sitting at facing out toward the public. So, that relationship between the monitor and the actual activity on the inside is seamless. To me this is so far and away from what we typically construe to be a monument sign that there is a good argument that this is not a monument sign. I also think there is an argument that this is not a traffic hazard based on the testimony that we have heard. I don't see an argument in favor of the second item, having to do with the advertising, I think it is an advertising form, so I won't support the motion as stated. I will concur with my colleagues that coming back as a variance I think it might have some merit.

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Finlayson: I agree. If it comes back as a variance, we can have an argument over whether television is relevant or ought to be 24 hours in our face. Please call the roll.

Roll Call Vote:

Yeas: Ditzler, Fields, Finlayson, Lasky, Perry, Rand

Nays: Gates

Recused: None

Absent: Bloom, Flo

90 South 11th Street (BZZ-2503, Ward 7)

Ann Ouellette, on behalf of WCCO-TV, has filed an application to appeal the zoning administrator's decision that a jumbotron/monitor is a freestanding sign as well as a traffic hazard, and that the programming on the sign is not off-premise advertising, which is prohibited by the zoning code at the property of 90 South 11th Street in the B4-1 Downtown Business District.

Mr. Rand moved to adopt staff recommendation and deny the appeal of the Zoning Administrator.

Mr. Ditzler seconded the motion. Motion passed.

The motion denied the appeal of the decision of the Zoning Administrator.