



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

Date: July 29, 2010

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

Referral to: Zoning & Planning Committee

Subject:

Name of Appellant: Edward Kodet

Name of Original Applicant: Carolyn Dunne of Open Field at the Walker Art Center

Property Address: 1750 Hennepin Avenue

Ward #: 7

Appeal of decision of the Zoning Board of Adjustment to approve a variance of the enclosed building requirement for a new restaurant, outdoor recreation area and other functions accessory to the museum located at 1750 Hennepin Avenue in the OR2 High Density Office Residence District.

Recommendation:

The Zoning Board of Adjustment and staff recommend concurrence with the action taken on July 1, 2010, for the property at 1750 Hennepin Avenue, Ward #7, as follows:

6. 1750 Hennepin Avenue (BZZ-4818, Ward 7)

Variance: Carolyn Dunne of Open Field, on behalf of The Walker Art Center, has applied for a variance of the enclosed building requirement for a new restaurant, outdoor recreation area and other functions accessory to the museum located at 1750 Hennepin Avenue in the OR2 High Density Office Residence District.

ACTIONS: The Board of Adjustment adopted the findings and approved the variance of the enclosed building requirement for a new restaurant, outdoor recreation area and other functions accessory to the museum located at 1750 Hennepin Avenue in the OR2 High Density Office Residence District, subject to the following conditions of approval:

1. Community Planning and Economic Development Department – Planning Division staff review and approval of the site and landscape plans.

Previous Directives: None

Prepared by: Shanna Sether, Senior City Planner, 612-673-2307 Approved by: Jason Wittenberg, Planning Manager, 612-673-2297 Presenters in Committee: Shanna Sether, Senior City Planner, 612-673-2307

Community Impact

- Neighborhood Notification: Lowry Hill and Loring Park neighborhood associations were notified of the appeal application.
- City Goals: See staff report
- Comprehensive Plan: See staff report
- Zoning Code: See staff report
- End of 60/120-day decision period: On July 12, 2010, staff sent a letter to the applicant extending the 60 day decision period to no later than October 4, 2010.

Background/Supporting Information

Edward Kodet has filed an appeal of the decision of the Board of Adjustment approving a variance of the enclosed building requirement for a new restaurant, outdoor recreation area and other functions accessory to the museum located at 1750 Hennepin Avenue in the OR2 High Density Office Residence District. The appellant believes there is no hardship or circumstances or conditions unique to this individual property and therefore the variance should be denied. At its meeting on July 1, 2010, the Board of Adjustment voted 8-0 to adopt staff findings and approve the variance on the consent agenda. The appeal (attached) was filed on July 12, 2010. The appellant's complete statement of the action being appealed and reasons for the appeal are attached. The Board of Adjustment minutes and Planning Division staff report are also attached.

Department of Community Planning and Economic Development – Planning Division
Variance
BZZ-4818

Date: July 1, 2010

Applicant: Open Field

Address of Property: 1750 Hennepin Avenue

Project Name: Open Field

Contact Person and Phone: Carolyn Dunne, (612) 729-5568

Planning Staff and Phone: Shanna Sether (612) 673-2307

Date Application Deemed Complete: June 6, 2009

End of 60-Day Decision Period: August 5, 2009

Ward: 7 **Neighborhood Organization:** Lowry Hill, adjacent to Loring Park

Existing Zoning: OR2 High Density Office Residence District

Proposed Zoning: Not applicable for this application.

Zoning Plate Number: 18

Legal Description: Not applicable

Proposed Use: New restaurant with an outdoor recreation area and other functions accessory to a museum

Variance: of the enclosed building requirement for a new restaurant, outdoor recreation area and other functions accessory to the museum

Applicable Code Provisions: Chapter 525, Article IX, Variances, Specifically Section 525.520(26) “to vary the enclosed building requirements of this zoning ordinance.”

Background: The subject property is the Walker Art Center, an existing museum, located on a lot approximately 2.75 acres, in the OR2 High-Density Office Residence District. The Walker Art Center was recently remodeled and expanded in 2004. There are three dining establishments associated with the Walker. The newest addition is Open Field Bar and Grill, an outdoor, sit-down restaurant located on the Vineland Plaza, on the north end of the site adjacent to Vineland Place. The outdoor grill associated with Open Field is intended to complement the new indoor Garden Café. The grill will operate during the summer months, June 5 through September 6 and be open the same hours as the museum, Tuesday-

Sunday, 11am to 5pm and Thursdays, 11am to 9pm. In addition to the proposed outdoor sit-down restaurant, Open Field is proposing to utilize the Walker's "backyard" by encouraging the use of their landscaped yards to the south as area for cultural and outdoor activities. Some of the activities include general classes, tai chi, yoga, badminton, drawing and book clubs. The area is available for use from 6am to 9pm, which can be scheduled through the use of their website.

All of the proposed outdoor business activity is not allowed by the zoning code per 547.190.

547.190. Enclosed building requirement. All production, processing, storage, sales, display or other business activity shall be conducted within a completely enclosed building, except as otherwise provided in this ordinance.

Therefore, the applicant is applying for a variance of the enclosed building requirement to allow for outdoor restaurant, recreation area and other functions accessory to a museum

Staff has received letters of support from both affected neighborhood organizations; copies of which are attached to this report. Staff will forward any additional comments received at the Board of Adjustment meeting.

VARIANCE

Findings Required by the Minneapolis Zoning Code:

- 1. The property cannot be put to a reasonable use under the conditions allowed by the official controls and strict adherence to the regulations of this zoning ordinance would cause undue hardship.**

The applicant is seeking a variance to enclosed building requirement to allow for outdoor restaurant, recreation area and other functions accessory to a museum. Strict adherence to the regulations would not allow for any business activity to occur outside of an enclosed building. The subject property is approximately 2.75 acres and the proposed activities will be located at least 300 feet to the closest residential structures to the west. Staff believes that the proposed use of the property to allow for an outdoor restaurant, recreation area and other functions accessory to a museum is a reasonable use of the property.

- 2. The circumstances are unique to the parcel of land for which the variance is sought and have not been created by any persons presently having an interest in the property. Economic considerations alone shall not constitute an undue hardship if reasonable use for the property exists under the terms of the ordinance.**

While the applicant is contributing to the need for a variance by requesting a variance to the enclosed building requirement, the circumstances upon which the variance is requested are unique to the parcel of land due the size of the parcel and distance to adjacent uses. The applicant's goal for the proposed use is to utilize the vast open space directly adjacent to the buildings on the property. Staff believes that the proposed use of the property to allow for an outdoor restaurant, recreation area and other functions accessory to a museum is a reasonable use of the property and that the alternative to the variance would cause a hardship to the property, by not allowing the use of the majority of the property as it exists.

3. The granting of the variance will be in keeping with the spirit and intent of the ordinance and will not alter the essential character of the locality or be injurious to the use or enjoyment of other property in the vicinity.

Staff believes that the outdoor use of the property will not substantially alter the essential character of the surrounding neighborhood, due to the size of the parcel and the distance to adjacent uses. Hennepin Avenue is a commercial corridor, and is located across the street from designated park and open space, according to *The Minneapolis Plan for Sustainable Growth*. Design and development along these streets have historically been prominent destinations in the City and are characteristic of higher traffic volumes. Staff believes that by allowing the outdoor use of the property of will not be injurious to the use or enjoyment of other property in the vicinity.

4. The proposed variance will not substantially increase the congestion of the public streets, or increase the danger of fire, or be detrimental to the public welfare or endanger the public safety.

Granting the variance would likely have no impact on the congestion of area streets or fire safety, nor would the proposed outdoor use be detrimental to the public welfare or endanger the public safety.

RECOMMENDATION:

Recommendation of the Community Planning and Economic Development Department – Planning Division for the variance:

The Community Planning and Economic Development Department – Planning Division recommends that the Board of Adjustment adopt the above findings and **approve** the variance of the enclosed building requirement for a new restaurant, outdoor recreation area and other functions accessory to the museum located at 1750 Hennepin Avenue in the OR2 High Density Office Residence District, subject to the following conditions of approval:

1. Community Planning and Economic Development Department – Planning Division staff review and approval of the site and landscape plans.

Attachments:

- 1) Statement and findings from applicant
- 2) June 7, 2010, e-mails to neighborhood organizations and CM Goodman
- 3) Correspondence from neighbors, neighborhood organizations, etc.
- 4) Zoning map
- 5) Site plans
- 6) Photos

Minutes of July 15, 2010 Board of Adjustment 1750 Hennepin Avenue BZZ-4818

Matt Perry: Agenda item number 6 is 1750 Hennepin Avenue and it's being recommended for consent. Is there anyone here to speak against this item? I see no one. Let's review the items on the Agenda for consent. I have one and that is 1750 Hennepin Avenue. Is there a motion to adopt this item as a consent item on our agenda?

Matt Ditzler: So moved.

Matt Perry: Is there a second?

Dick Sandberg: Chair, did you bring up item number 4? I sorry, I believe I may have missed that.

Matt Perry: Yes, item number 4 has been pulled and will be heard for discussion.

Dick Sandberg: Okay.

Matt Perry: So again, is there a motion to adopt the item that is on, the one item that we have for consent, item number 6?

Matt Ditzler: So moved.

Matt Perry: And there's a second?

Bruce Manning: Second.

Matt Perry: Alright. All in favor indicate by saying aye.

All Board Members: Aye (in unison)

Matt Perry: Against?

No response

Matt Perry: Abstentions?

No response.

Matt Perry: That motion passes. For those of you who are here for item number 6 your requests are approved. Good luck with your project.

July 12, 2010

Minneapolis Zoning Board of Adjustment

Appeal BZZ- 7818
Walker Art Center Open Field

The basis, as outlined in the notice, is that if not granted it would "cause an undue hardship because of conditions or circumstances unique to the individual property."

For the Walker Art Center, there is no hardship, and there are no circumstances or conditions unique to this individual property. The Walker Art Center does not have a basis to request a variance. It should be denied outright.

The Walker Art Center Grilling, under a temporary license, is sufficient for meeting their purposes. There is no reason that temporary permits should not be obtained on a routine basis so that this activity does not become a nuisance.

Providing a variance allows the activity of outdoor grilling or other food preparation to continue into perpetuity, including the same activity in a sculpture garden, when and if it is funded and constructed. Outdoor grilling and food preparation is an undesirable activity and an unnecessary addition, considering the capacity for abundant food preparation which has been incorporated into the design of the Walker Art Center.

The other part of the Variance is for Outdoor Educational classes, such as yoga; however, there is no assurance those classes will be confined to quiet and meditative activities. Further, there is no limit to the number of people that can attend the classes, and the open space is a very large area. Since the activity is outside, there is no way to control the imposition of class activities on neighboring properties.

Other than for convenience, all the activities contemplated can take place indoors. Thus, granting a variance to eliminate the enclosed building requirement is strictly for convenience, and not due to any hardship.

A variance, by definition in the State of Minnesota, is for unforeseen hardship; not to accommodate conducting activities outside, when more than adequate space is available inside.

Sincerely,

Edward Kodet
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