

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

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MEMORANDUM

DATE: April 27, 2010

TO: Steve Poor, Planning Supervisor – Zoning Administrator, Community Planning & Economic Development - Planning Division

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

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

SUBJECT: Planning Commission decisions of April 26, 2010

The following actions were taken by the Planning Commission on April 26, 2010. As you know, the Planning Commission's decisions on items other than rezonings, text amendments, vacations, 40 Acre studies and comprehensive plan amendments are final subject to a ten calendar day appeal period before permits can be issued:

Commissioners present: President Motzenbecker, Bates, Bourn, Carter, Cohen, Gorecki, Huynh, Luepke-Pier, and Tucker – 9

Not present: Schiff

Committee Clerk: Lisa Baldwin (612) 673-3710

4. Hawthorne Neighborhood Council Offices (BZZ-4756, Ward: 3 and 5), 2944 Emerson Ave N ([Becca Farrar](#)).

A. Rezoning: Application by Hawthorne Neighborhood Council for a petition to rezone the property located at 2944 Emerson Ave N from the R2B (Two-family) district to the OR1 (Neighborhood Office Residence) district in order to allow neighborhood offices to continue to operate within the existing structure.

Action: The City Planning Commission recommended that the City Council adopt the findings and **approve** the rezoning petition to change the zoning classification of the property located at 2944 Emerson Ave N from the R2B district to the OR1 district.

President Motzenbecker opened the public hearing.

No one was present to speak to the item.

President Motzenbecker closed the public hearing.

President Motzenbecker moved approval of the staff recommendation (Luepke-Pier seconded).

The motion carried 8-0.

5. Kamals Restaurant and Food (BZZ-4710, Ward: 8), 3025 5th Ave S ([Kimberly Holien](#)). This item was continued from the March 29 and April 12, 2010 meetings.

A. Rezoning: Application by Abdirahim Omar, on behalf of Bremer Bank, for a rezoning to apply the Transitional Parking (TP) Overlay District for property located at 3025 5th Ave S.

Action: Notwithstanding staff recommendation, the City Planning Commission recommended that the City Council **approve** the petition to rezone the property of 3025 5th Ave S to add the TP Transitional Parking Overlay District to allow for an accessory parking lot, based on the following findings:

1. The application is consistent with Policy 1.8 of the comprehensive plan in that it would help to preserve the stability of the neighborhood. The application is also consistent with Policy 1.7 of the comprehensive plan as this is not a new commercial use.
2. The rezoning is in the public interest and not solely for the interest of the property owner but would support the surrounding area.
3. The project would not change the character of the neighborhood, but would enhance the character by making improvements to the subject parcel. There has not been a change in the character or trend of development in the general area of the property because the use has existed on the property for an extended period of time.
4. The residential uses allowed in the R2B District are not reasonable uses for the property, as it is unlikely for a residential use to be established due to the width of the lot and the height of the adjacent building.
5. The zoning would be compatible with the character of the surrounding area, particularly the adjacent C2 zoning.

B. Conditional Use Permit: Application by Abdirahim Omar, on behalf of Bremer Bank, for a conditional use permit to allow a parking lot for property located at 3025 5th Ave S.

Action: Notwithstanding staff recommendation, based on the findings in the rezoning, the City Planning Commission **approved** the application for a conditional use permit to allow a parking lot for the property located at 3025 5th Ave S in the R2B Two-Family District, **subject to** the following conditions:

1. Approve 8 parking spaces. Stalls 10 and 19 shall be partially removed to allow for more green space, a maneuvering area towards the alley, and parking spaces that are of at least a standard width.

C. Variance: Application by Abdirahim Omar, on behalf of Bremer Bank, for a variance to reduce the north side yard setback from 5 feet to 0 feet to allow a parking lot for property located at 3025 5th Ave S.

Action: Notwithstanding staff recommendation, based on the findings in the rezoning, the City Planning Commission **approved** the application for a variance to reduce the north side yard setback from 5 feet to 0 feet to allow a parking lot for the property located at 3025 5th Ave S.

D. Variance: Application by Abdirahim Omar, on behalf of Bremer Bank, for a variance to the maximum impervious surface requirement for property located at 3025 5th Ave S.

Action: Notwithstanding staff recommendation, based on the findings in the rezoning, the City Planning Commission **approved** the application for variance to increase the maximum impervious surface requirement from 65 percent to 75.2 percent for the property located at 3025 5th Ave S.

E. Variance: Application by Abdirahim Omar, on behalf of Bremer Bank, for a variance of the Transitional Parking Overlay District standards requiring that the entrances and exits are located at least twenty (20) feet from any adjacent property located in a residence or office residence district to allow for a parking lot located at 3025 5th Ave S.

Action: The City Planning Commission adopted the findings and **denied** the application for a variance of the Transitional Parking Overlay District standards requiring that the entrances and exits are located at least twenty (20) feet from any adjacent property located in a residence or office residence district to allow for a parking lot located at 3025 5th Ave S.

F. Variance: Application by Abdirahim Omar, on behalf of Bremer Bank, for a variance to reduce the required 7-foot landscaped yard between the parking lot and the adjacent residential lot for property located at 3025 5th Ave S.

Action: Notwithstanding staff recommendation, based on the findings in the rezoning, the City Planning Commission **approved** the application for a variance to reduce the required landscaped yard from 7 feet to 0 feet for the property located at 3025 5th Ave S, subject to the following condition:

1. The landscaped buffer shall be continued to spaces 15 and 16, to the back of the home on the adjacent lot to the south.

G. Variance: Application by Abdirahim Omar, on behalf of Bremer Bank, for a variance to allow open parking spaces within 6 feet of a dwelling for property located at 3025 5th Ave S.

Action: Notwithstanding staff recommendation, based on the findings in the rezoning, the City Planning Commission **approved** the application for a variance to allow open parking less than 6 feet from a residential structure, for the property located at 3025 5th Ave S.

Staff Holien presented the staff report.

President Motzenbecker opened the public hearing.

Abdirahim Omar (7057 Woodland Drive, Eden Prairie): I'm not going to read the handout to you, I will try to highlight the bolded areas. This is basically requesting to rectify an error by the City of Minneapolis many years ago. This property has been a parking lot since at least 1978, with the City's permission. This property has been owned in common with the adjacent commercial building and parking lot (3017 and 3021 5th Ave) since 1974. This property has been a paved parking lot continuously since at least 1978. The City of Minneapolis apparently issued a demolition permit sometime between 1974 and 1978 as well as a permit for paving and a

commercial size curb cut for a driveway. If permits were not issued, City ordinance required them to have been issued. The adjacent property owners and the neighborhood organization support the rezoning, conditional use permits and the variances. The repeated staff assertion that this application would allow an encroachment of commercial use into a residential neighborhood is totally untrue. I did not find that the zoning code defines encroachment. The Merriam-Webster dictionary defines encroachment as the noun form of the verb encroach, which is defined as to enter by gradual steps or by stealth into the possessions or rights of another or to advance beyond the usual or proper limits. No gradual steps or stealth was involved here. All of the activities that created this parking lot were done openly. The usual or proper limit of the commercial area on this block face is this property and has been for over 32 years. There have been no adverse effects of this parking lot on the adjacent residential properties, as evidenced by the support of the property owners and the values of the adjacent properties and comparable properties not adjacent to this lot. If you could see the estimated market values from 1988 to present, you can see the price of the properties almost tripled. It is equally unreasonable to assume that the other permitted non-residential uses could be built on this lot, The width of the lot in conjunction with the city's requirements make it impossible to provide any on-site parking on this lot, therefore there is no permitted use that could be built. All the previous businesses use this lot as a parking lot since 1978. Contrary to what the staff report says, this applicant is providing the minimum number of parking spaces required by the City of Minneapolis. In addition, there are many statements in the findings of the staff report that are not correct or are inconsistent with findings made in similar situations where the staff recommended approval with regard to the required findings for the rezoning. There are no other reasonable uses for the property other than our plan which is to use it for a parking lot. Contrary to the staff report, we are only requesting the minimum parking spots for that lot and all the previous businesses that have used the lot have used it for parking. I'm very confident that we have the support of the adjacent building, the owner of the adjacent building and the neighborhood in general for this plan. The alternative is for the building to be vacant as it is and you heard that it looks pretty ugly. The plan that we have is way better than what the condition of the property was for the past five years. We are not asking...if we open a restaurant without using that parking lot and we use the street, that will have a more negative impact to the neighbors and the property owner. We would like you to reconsider the staff recommendation in the staff report. I have some of the neighbors here in support of our plan. I also have someone from the Bremer Bank in support of the plan.

President Motzenbecker: Is the immediate adjacent neighbor here?

Abdirahim Omar: No, but we do have his approval.

President Motzenbecker: So you've been working with that neighbor and they seem to be fine with having a parking lot next to them.

Abdirahim Omar: We have their signatures and they are fine with it. Both the adjacent and the neighbor in front of it are in support.

Commissioner Tucker: You assert that there is no reasonable other use, why is that?

Abdirahim Omar: The size of the lot is about 2028 square feet and the buildings around it. It's too narrow. I'm sure there is a computer calculation of the sunlight. The property is too small for that. In addition, they would probably require a parking lot for an apartment so it's unlikely. In

terms of cost, it's going to be costly and I'm sure the City of Minneapolis will not be able to subsidize any of that.

Commissioner Tucker: Let me ask staff, is that considered an unbuildable lot for a single family house? It's perfectly buildable, thank you. My second question, did you consider asking for a variance in the parking requirement so you can depend on the parking that you already legally have?

Abdirahim Omar: Yes we do but we wouldn't be able to use for that lot. We have no intention to use it, we have no intention to build a house in there. In case we do that and open a restaurant with the existing parking lots, then we have this property sitting there and in case we have traffic overflow they would be parking on the street. That's a situation for us and the neighbors. I just want to clarify, we are not asking for a permanent zoning change, we are only asking for a transitional parking overlay so in that case, someone else can not come in and demolish the whole building and building a new commercial building. We are only asking to have a parking permit for transitional parking overlay.

Ron Pentz (1200 Nicollet Mall #802): I'm the manager and I'm assisting the owner in selling the property right now. Bremer Bank has owned the property for a little over a year, since about March of last year. A little more background, White Castle purchased this particular lot when they bought the building at 321 back in 1969 and it was their intention not to have a house there so in the 1970s that house was torn down. The question was asked, is there a reasonable use. I would ask if you would look at those pictures, if you notice the wall of the two story commercial, I would not build a house there. I would ask you if you would build a house there. It's existing conditions and it's very difficult for any applicant to deal with this. I have another picture. I don't think it shows it very well, but across the street there is a parking lot that encroaches farther south than our lot does. I know there is concern about encroachment but that lot there encroaches probably about 30-40 feet farther south. This lot is directly across the street from the property. There is a retail building on the corner and this parking lot goes with that. I would contend that the encroachment took place over 30 years ago. What the applicant is proposing is quite an improvement over what's been there. You can see it's been a vacant parking lot. I have pictures where you can see the trucks parked on there and there's no landscaping, there's never been landscaping over that duration of time. I know there are some variances associated with it, but this is a big improvement and I believe that's why the neighbors and the neighborhood group approve. I think they understand what have been the existing conditions with this property. I believe it is unique to the property. These are conditions that have been there for a long time. The previous owners, not only White Castle, all along have used that parking lot. I believe that lot, if it's not used for parking, is going to sit there non-productive.

Commissioner Luepke-Pier: I had a question regarding the curb cut. Is it being moved?

Ron Pentz: That curb cut is being moved. It's been there ever since that house was torn down and now it's considered a variance, but it is being moved. Now that we're here asking for parking, now it's considered a variance for that curb cut.

Commissioner Luepke-Pier: If it wasn't being moved would you need a variance? Ok.

President Motzenbecker: I just need a clarification, Kimberly. What are the property lines for this lot? It's really hard to tell on our packet, we have the really little one and the site plan. Are

they the building to the north and the residence to the south or is there something else in there? I'm confused from what people are saying that just the parking lot between the proposed restaurant and the house is buildable, I would argue that too. Is it the whole lot?

Staff Holien: What we're looking at here, the transitional parking overlay district would be applied just to the lot to the south...

President Motzenbecker: That is an existing single lot. There's a separate lot which the building and other parking lot sit on?

Staff Holien: Right. There is a trio of lots here that are all affiliated with the proposed restaurant.

Commissioner Gorecki: If we can continue with that line, if we can put the site plan back up...from the building to the parking to the north, that is a separate site?

Staff Holien: Yes. Because it's under common ownership with the property at 3021 5th Ave S, it would be considered one zoning lot. They have the same zoning designation. The lot in question, the lot here to the south at 3025 5th Ave S has the residential zoning.

Commissioner Gorecki: When you look at 3021, 3017 and 3009, what is the zoning classification for those parcels?

Staff Holien: 3025 is R2B, these lots there are zoned C2.

Commissioner Luepke-Pier: Is there a particular reason why there is two-way traffic on this parking lot and why it doesn't just continue to the alley for one-way transit so they can narrow the drive aisle?

Staff Holien: I don't know what the conversations were that the applicant had with Public Works, but I don't know that they would support any connection to the alley there since that alley does serve a lot of residential uses also.

President Motzenbecker: Just a quick calculation Commissioners, the lot to the south is about 4720 square feet.

Mark Larson (3040 5th Ave S): I support Mr. Omar's intended use of the parking lot and the building. Have any of you driven down the street and looked at this particular lot? It's a mess. There is drug activity, gang activity and prostitution. I think any good use is an improvement. We're working very hard on our block to improve the area as well as with the neighborhood. Mr. Omar's application, I had the opportunity to speak with him as well as the architect at one of the neighborhood meetings and the neighbors are in agreement that the lot be used for parking. If you look at the lot right now it's very unproductive. As far as building a house on this lot, are you kidding? You can maybe back a single wide trailer in there and drive through with a bicycle. It's not large enough to build a house or any type of building unless you had...I lived in New York and moved back here, our buildings were all up against each other where you can't even walk between the buildings, there's nothing, that would be the only kind of use you could use for the building. The restaurant, we have a terrible problem with parking on the street so to use this as a parking lot is going to alleviate some of the parking problems and congestion on the street.

There is not really any place for people to park if he doesn't have a parking lot for the restaurant. As for the green spaces, there is nothing there but a bunch of trash right now. If you look at the picture, in all four corners of the lot he has plans for a rain garden, trees as well as flowers and other plants. I was very impressed by the architectural plans to use the runoff from the building to water these green areas. It's a well thought out plan and I fully support it and ask that you support his plan as well. Thank you.

President Motzenbecker closed the public hearing.

Commissioner Tucker: I have a few more questions for staff. Have we approved any 40 foot wide parking lots?

Staff Holien: I did quite a bit of checking before today's meeting and wasn't able to find any. I know staff has been approached with requests from people to potentially put the TP on lots that were only 40 feet wide but I think we've done a good job of discouraging those applications due to the lack of space available for landscaping. I don't know that we've had any that have come before the Planning Commission at least in the last 10 years or so.

Commissioner Tucker: So we've haven't either approved or denied any as far as you know?

Staff Holien: Not recently. There may be one I didn't come across.

Commissioner Tucker: My next question, what would be the minimum curb cut for the parking lot if it were to go in? I think it's 22 feet right now.

Staff Holien: They could get by with a smaller curb cut but they need a 22 foot drive aisle to provide two-way traffic.

Commissioner Tucker: If they reduced the curb cut to 20 feet would that eliminate one variance if they pushed it all to one side? Would that give them their 20 feet from the residential property?

Staff Holien: Yes, I believe it would. I believe, right now, that's an 18 foot setback so they would be able to reduce the curb cut to 20 feet.

Commissioner Tucker: If the property were sold or if the adjacent commercial building were raised, what would happen to that overlay permission on this piece of property?

Staff Holien: It would remain with the property.

Staff Wittenberg: Just one point of clarification on Commissioner Tucker's first question, there may be instances where the city has approved 40 foot wide parking lots, but I think how we interpreted your question was whether there are instances of 40 foot wide lots on which we've approved this particular overlay district and as Ms. Holien referenced, she could not find any cases of recent applications.

Commissioner Bates: If I understand it properly, the property at 3021 and 3025 have been owned by the same people for a long time, can you tell me why there would have been a zoning decision to split those two properties?

Staff Holien: I don't know if there was ever a zoning decision to split those two. The property at 3021 has been zoned commercial for quite some time, I believe back to our 1963 zoning code and the property at 3025 5th Ave S has been zoned residentially back to about the same period of time. If they were bought under common ownership in the 60s or even the 70s, the split zoning or different zoning districts would have existed at that time.

Commissioner Bates: So the split zoning for it has never really come up because there's just been this sort of common use of it as a parking lot or vacant parking lot on an ongoing basis.

Staff Holien: It's not technically split zoning because they are two separate parcels.

Commissioner Luepke-Pier: Have you had any conversations with Public Works regarding this with the curb cut width and moving it and whatnot?

Abdirahim Omar: We did have the conversation with allowing a drive-thru and other residential parking and that's not allowed they said because of the alley.

Commissioner Luepke-Pier: Did they think about moving the curb cut over or whose idea was that?

Abdirahim Omar: That was from the architects.

Commissioner Luepke-Pier: The residents adjacent to 3029, do they have an opinion on the curb cut?

Abdirahim Omar: They fully support the idea. They request us to have a fence right behind. We gave them a choice to move the parking towards facing the building or backing up to the lot and they approved the final plan of backing up as long as we have a long fence on the wall.

President Motzenbecker: I'm struggling and I'd like to get commissioners thoughts on this. I understand both sides of the dilemma and I'm kind of torn a little bit. I see that on one hand the neighbors and neighborhood wants this and it would be a help for the neighborhood with not having blank, unused space here. As was pointed out, there's C2 immediately surrounding and across the street and extending it one more I don't think would be a huge detriment. Then comes the whole...even though it was not supposed to be there, there's been a parking lot there for 40 something years or so. The use really wouldn't be any different. I'm struggling a little. I know the city, as part of our stewardship, we're trying to support the comp plan and move towards that. At the same time, I'm struggling a little with both sides of the coin so I'd be eager to hear from other commissioners on what you think.

Commissioner Gorecki: I agree wholeheartedly with your comment. Staff has done an excellent job of kind of laying this out for us. We had a case before us not that long ago that was similar, it didn't have parking but it was similar in the way of its adjacency to a commercial district both next door with the residential to the south and how it fit across the street with the other commercial. This is very much with keeping with that, the parking is the known difference here but I do have to agree with one of the neighbors that spoke, in this particular point in time, housing really isn't a reality. I do think there is a hardship here and I think it's clear that the use has been a parking lot as has been pointed out. My thought right now is to move the rezoning for

approval and then go through this point by point to potentially make some adjustments on some of the other issues but I will move rezoning of this due to hardship (Bates seconded).

Commissioner Tucker: I wonder if Commissioner Gorecki would expand on the findings we might be making for this. I mostly agree with everything you say, but this is a precedent we seem to be setting here and we want to be careful of what we do if we do something like that.

Commissioner Cohen: What standards for criteria do we have at our disposal to determine whether or not this is a hardship situation? We don't have the authority that I'm aware of to go into things like financing and these other kinds of questions so I don't know really how to define that or why that should be a part of the findings if we cannot do an adequate job of inquiring about it. I'm sympathetic to the applicant but the process has me stumped and I need some help here to see how this can be done.

President Motzenbecker: I don't think hardship is fitting in our first five for the rezoning. I have comp plan consistency, public interest, not solely for the property owner's interest, if it's within the same zoning classification compatible with others nearby, whether there are other reasonable uses and if there's been a change in character or trend in development.

Commissioner Huynh: In addition to all the comments I've heard, this is a really tough application just from the evidence that we have from the neighborhood but also looking at the existing conditions having been there for 30-something years, but also the concern from the City side of not setting a precedent of having developers come in and put a parking lot wherever they want near commercial spaces in Minneapolis. I think that a lot of the information what was given towards this, I would be in support of the rezoning, not for the same issue with it being a hardship. I could see a single family house if needed. Given the condition of the economy, I don't think it's a given something in the next five years, but with item number five with the condition of the rezoning, I do feel that there is...it would not change the character of the neighborhood. I feel that because of the existing conditions of having a parking lot and having it be kind of an eyesore for the neighborhood, having the adoption of the rezoning would enhance the neighborhood and also the area for the neighbors.

Commissioner Bates: I think that another finding would be for Policy 1.8 when it says "preserve the stability and diversity of the City's neighborhood." I think it's definitely clear from the resident's testimony that they consider addressing the lot as part of the stability of the neighborhood and it's not a fast-food restaurant or chain or auto oriented use and that, in terms of maintaining and supporting the diversity of the neighborhood, I think is really significant there. I'd also think that it would address that I don't think that this change is solely in the benefit of the property owner but rather that there is an argument here to be made about the community and about supporting this particular area. Even about five, whether there has been a change in the character or trend of development, that there hasn't been any zoning changes here is more testimony to the lack of development probably than anything else and I think that's sort of a sad statement rather than a reason not to rezone it.

President Motzenbecker: I would also add that if we should decide to carry forward with Commissioner Gorecki's motion, another finding was mentioned with item three under this about zoning, existing uses in zoning compatible with proposed zoning and nearby. Being that there's C2 almost immediately surrounding this whole thing, I think that it would be compatible should it extend one more lot. I just want to say as well that since this is a unique situation, that's why

we're here. Often times we're called upon to do these unique situations, sometimes there is a little gray area and I appreciate everyone's comments.

Commissioner Carter: I would agree that this would be a case of a unique situation. I was torn, but I think a fair argument has been made for consideration and I wanted to point out Policy 1.7 that if we're looking in terms of policy that I don't necessarily consider this a new use. Thank you.

Commissioner Tucker: I think we'd like to have findings for all five just to set this one apart.

President Motzenbecker: The motion on the floor is to approve the rezoning and the transitional parking overlay district. All those in favor? Opposed?

The motion carried 8-0.

Staff Wittenberg: I think the commissioners did a pretty good job of covering all or almost all of the findings, including the references to the comp plan policies. The one that may not have been real explicit is number four whether there are reasonable uses for the property in question and even that there were some references to perhaps being unlikely that we will see any residential development on the property. Otherwise I think the commission has spoken to each of the five findings.

Commissioner Luepke-Pier: I cannot imagine any single family home wanting to be next to a 27 foot tall commercial structure when the lot is 40 feet wide. You put a house on there and you're staring at a continuous expanse of masonry wall. It doesn't seem feasible from any sort of enjoyment for a single family home, regardless of whether there was a privacy fence. I would say that a single family home, you'd be crazy to build it.

Commissioner Tucker: I would suggest we look at the applicant's comments for finding number one, the many references to the Comprehensive Plan policies that this might meet.

President Motzenbecker: I think we mentioned about the auto oriented use that this really isn't a new or expanded auto oriented use and we talked about strengthening the neighborhood character so I think we covered some of those in that.

Commissioner Tucker: For number two, I think we have said that this would enhance the neighborhood by improving a parcel that otherwise would likely not be improved. Three, we note that there is commercial across the way even if across the alley it is residential. Four, we talked about the unlikeliness of one of the permitted uses actually going in there. Five, the zoning changes sort of defacto because for 42 years it has been thought of in the neighborhood as a commercial parking lot. It doesn't represent a change by putting a temporary parking overlay on this. For the conditional use permit for the parking lot, we may want to hold back on this one before we see if there are any design changes that we might suggest, it might be for fewer than 10 spaces, for instance, if one were to add a backup space at that last lot or more green space.

President Motzenbecker: I'm comfortable with that if folks want to take variances first.

Commissioner Luepke-Pier: It seems to me there are a lot of greenery with these rain gardens towards the alley, but with moving the curb cut over it seems to be where...if you cut down on

spaces, kept it where it was, swerved it over and removed spaces 10 through 12, arched it over, kept 13 through 18 and then got rid of the back and just had a curb cut so there's still greenery in that back corner only there is more greenery against the building if they wanted to have outdoor seating near the entrance. It would mean keeping the curb cut where it is, but if the adjacent neighbor is already used to it and doesn't mind it he mind appreciate the amenity of seating and trees up front and keeping a deeper greenery in the back toward his lot. We'd only lose two or three spaces. Does that make sense?

President Motzenbecker: Which variance are you addressing?

Commissioner Luepke-Pier: It involves the curb cut request and the number of parking spaces and it'd have an impact on the south side yard setback as well.

President Motzenbecker: I think we may have strayed into the redesigning. I think we should just take them one by one and see if there is an item in each of those that we want to address.

Commissioner Tucker: I would suggest a couple of changes, maybe we can eliminate a variance if the curb cut went to 20 feet then we would just get rid of that, deny that and force them to use a 20 foot curb cut. I forgot which number that is.

President Motzenbecker: That is E.

Commissioner Tucker: It seems to me that space number 19 where you have to come in and out on that one aisle, it's very difficult to maneuver there, that will need a space to back into, I would eliminate space 19. The parking requirement is for 15 and they are proposing 19 so there is room to work with. We could eliminate a couple of them or make them standard spaces rather than compact spaces and maybe that would make maneuvering in this tight space a little easier. I will suggest that we allow eight spaces rather than 10 here and use the space thus gained to have a back out space where space 19 is.

President Motzenbecker: Is this still under the same 20 foot variance?

Commissioner Tucker: No this would be another one, I'm trying to get a general scheme and then we'll go and figure out some variances. We can eliminate most of space 10 for a little more greenery and widen the other spaces, 11 through 18, so none of them need to be compact. This would then be an eight space so the CUP would be for eight spaces. It would increase the amount of greenery both at the street side and alley side and eliminate the compact spaces.

Staff Wittenberg: Just to clarify, some of those spaces will be compact in terms of depth.

Commissioner Tucker: Maybe staff can help me with this, I think variance C from five to zero, we're not changing that. I will move that we approve that variance C (Gorecki seconded).

President Motzenbecker: Moved and seconded, further discussion? All those in favor? Opposed?

The motion carried 8-0.

Commissioner Tucker: With item D, by eliminating most of two spots I think we're probably eliminating the need for that variance for the impervious surface.

Staff Holien: They need 484 square feet of additional pervious surface to meet the 65 percent so if they eliminated three standard stalls and one compact I believe that would get them there.

Commissioner Tucker: Wouldn't we be shortening the drive aisle as well so we would be, at least on the units towards the alley, so not just the area of the stall itself but the excess drive would be...

Staff Holien: This is about 30 feet in this location so if they move this two feet back that would give them another 60 square feet or so of green space in this location.

Commissioner Tucker: If they eliminated some of the ones by the alley they would get the full 40 feet times 8.6, 17 times 40, whatever that is. That gets us pretty close there.

Staff Holien: If you want to deny the application for the impervious surface [tape ended] [Tucker moved/Gorecki seconded]

President Motzenbecker: Moved and seconded. Further discussion?

Commissioner Huynh: In this calculation looking at variance D, the request is from 65 percent to the 75.2 and the reason is because the city doesn't include pervious pavers as part of the calculation overall. I'm not sure if I agree with the existing zoning language because I think that with pervious pavers they do allow for the runoff and site water to be able to be retained on site so I guess I'm not sure there is a necessity for us eliminating the number of stalls just to meet the site pervious calculation just because I think it's already being met.

President Motzenbecker: I'd like to hear more on that, Jason can you clarify for us?

Staff Wittenberg: There are multiple reasons why we have the impervious surface requirement beyond just allowing water infiltration, one is an aesthetic reason. Essentially, the only place that impervious surface standards apply are in the residence and office residence districts and the notion is that if someone were to completely pave over their residential lot with a permeable paving system that would not be consistent with our intent of the permeable surface requirement, there is an aesthetic component to it as well. Not to mention that some surfaces that start out to be permeable when they're compacted enough water just runs off of them and really doesn't become an impervious surface eventually.

Commissioner Cohen: I find the seat of the pants architectural redesign here a bit more than we should be involved with at this point. In my opinion that's the work of the Committee of the Whole not the work of this full body. The larger strategic question is whether we're going to let this place be built. They have an architectural design here, we have these variances and my inclination would be to give them the variances, we've given them the zoning and not to deal with these issues of redesigning parking lots. This is not the place to do it in my opinion.

Commissioner Tucker: I am very reluctant to do the rezoning plus many variances, I think that sets much more of a precedent for allowing parking anywhere. I am doing my best not to architecturally redesign it but simply to grant the minimum number of variances that might make

this work as a parking. I think when we get to variance E we will also eliminate another request for a variance. We will do just what is needed to make this into a parking lot, an enhancement of the neighborhood and to let an existing business grow and we will still have enough parking as is required by the code. I don't think we're going to get it below that.

President Motzenbecker: We are still on D. The motion has been made for staff recommendation of denial. Any further discussion on D? All those in favor? Opposed?

The motion carried 7-1.

Commissioner Tucker: I will move staff recommendation to deny item E because I think it can be designed with a 20 foot curb cut even if it gets to be a 22 foot aisle.

Staff Wittenberg: I think in the staff report for this variance it sort of referenced the fact that if the conditional use permit, if the conditional use permit were to be approved that we sort of acknowledge that the two foot difference in the location of the curb cut wouldn't have substantial impact so just for discussion purposes I think we thought that if their applications were approved that this two foot variance of the curb cut wouldn't be...

Commissioner Tucker: Not a big one, but I'd like to reduce the number of variances associated with this.

President Motzenbecker: Any further discussion? All those in favor? Opposed?

The motion carried 7-1.

Commissioner Bates: I'd like to have a roll call vote for item D.

President Motzenbecker: The motion was to deny, all those in favor? Opposed?

The motion failed 3-4.

Commissioner Tucker: In that case I would move that we approve that variance request (Gorecki seconded).

President Motzenbecker: All those in favor? Opposed?

The motion carried 7-1.

President Motzenbecker: Next is item F.

Commissioner Tucker: I will move that we approve that (Gorecki seconded).

Staff Wittenberg: You might want to consider a condition that will require a landscape buffer for a portion of that parking lot as shown on the applicant's plan for consideration.

President Motzenbecker: I was going to move adding that condition. The landscape buffer is shown from the beginning to stall 14, I would also add it to 15 and 16 so it matches up with the

end of the house and is giving that buffer whatever that spacing is, I would guess it's four feet or so.

Commissioner Tucker: I will be happy to add that as a condition. I might add as a second condition that additional landscaping be added on the street end which is eliminating most of space 10 so other spaces can get wider.

President Motzenbecker: I don't think we eliminated space 10 yet.

Commissioner Tucker: No, because we were coming back to the conditional use for the number of spaces.

President Motzenbecker: Why don't we reserve that condition for the conditional use permit. I don't feel comfortable doing that at this point. We have a variance to approve the reduction from seven to zero adding extra landscape buffer in the location of 15 and 16 parking spots as well as the proposed from the front to back of the lot. All those in favor? Opposed?

The motion carried 8-0.

Commissioner Tucker: With G, I move to approve that since it's part of the basic parking lot layout (Gorecki seconded).

President Motzenbecker: All those in favor? Opposed?

The motion carried 8-0.

Commissioner Tucker: I will move that we approve eight spots for the CUP. The elimination of the two allowing for more green space, maneuver space towards the alley and wider parking places eliminate the need for the eight foot width (Luepke-Pier seconded).

President Motzenbecker: Moved and seconded with the conditions that stall 10 and 19 be removed. I agree with stall 19 because you do need space for a car to back out and get out and that currently does not exist and then just taking out stall 10 and widening all the rest would be helpful in this tight space. Any other comments?

Commissioner Tucker: We will probably reduce the impervious space but we've allowed them more than this would result in I believe.

Staff Wittenberg: So the remaining spaces would all be of at least the standard parking space width.

President Motzenbecker: All those in favor? Opposed?

The motion carried 7-0 (Cohen abstained).

7. Golden Nest (BZZ-4736, Ward: 1), 1918 19th Ave NE (Hilary Dvorak).

A. Rezoning: Application by Hongjoo Lee with Golden Nest, for a rezoning of the property located at 1918 19th Ave NE from the R3 zoning district to the R4 zoning district.

Action: The City Planning Commission recommended that the City Council adopt the findings and **approve** the rezoning of the property located at 1918 19th Ave NE from the R3 zoning district to the R4 zoning district.

B. Conditional Use Permit: Application by Hongjoo Lee with Golden Nest, for a conditional use permit for an assisted living facility for the property located at 1918 19th Ave NE.

Action: The City Planning Commission adopted the findings and **approved** the conditional use permit for an assisted living facility located at 1918 19th Ave NE subject to the following condition:

1. The conditional use permit shall be recorded with Hennepin County as required by Minn. Stat. 462.3595, subd. 4 before building permits may be issued or before the use or activity requiring a conditional use permit may commence. Unless extended by the zoning administrator, the conditional use permit shall expire if it is not recorded within one year of approval.

C. Site Plan Review: Application by Hongjoo Lee with Golden Nest, for a site plan review for the property located at 1918 19th Ave NE.

Action: The City Planning Commission adopted the findings and **approved** the site plan review application for the property located at 1918 19th Ave NE subject to the following conditions:

1. Changes cannot be made to the building that would reduce the amount of window openings.
2. The ground floor of the building must adhere to the active functions requirement of the zoning code.
3. The surface parking area shall be restriped as required by section 541.330 of the zoning code.
4. There shall be at least 14 trees and 68 shrubs provided on the site as required by section 530.160 of the zoning code.
5. The existing asphalt located between the public sidewalk and the parking area shall be removed and landscaping shall be installed as required by section 530.170 of the zoning code. The landscaped area shall extend 35 feet back from the public sidewalk.
6. Screening three feet in height and equal to 60 percent opacity shall be installed in the landscape area located between the public sidewalk and the parking area as required by section 530.170 of the zoning code.
7. There shall be a minimum of two canopy trees planted in the landscaped yard between the public sidewalk and the parking area as required by section 530.170 of the zoning code.
8. The landscape area that will be installed between the public sidewalk and the parking area shall be designed to allow runoff from the parking area to drain into it.
9. There shall be at least two bicycle parking spaces provided in the garage.
10. The refuse and recycling containers shall be enclosed on all four sides by screening compatible with the principal structure not less than two feet higher than the refuse container or shall be otherwise effectively screened from the street, adjacent

residential uses located in a residence or office residence district and adjacent permitted or conditional residential uses as required by section 535.80 of the zoning code.

11. Approval of the final site, elevation, landscaping and lighting plans by the Department of Community Planning and Economic Development – Planning Division.
12. All site improvements shall be completed by May 28, 2011, unless extended by the Zoning Administrator, or the permit may be revoked for non-compliance.

Staff Dvorak presented the staff report.

President Motzenbecker opened the public hearing.

Lyndsey Carlson-Ruhland (1909 19th Ave NE): We live across the street from the facility. We have enjoyed living across the street. It's been a quiet group. I don't recall in the past 10 years that there's been 24 people living there so that is a big concern for us that it's being requested to have such a large number because as I recall it's had maybe 10-12 residents there at the time we've been in the house. My other concern about the rezoning is future use. If something would happen with this current applicant, this rezoning would be allowed to go to R4 which seems it would be open for other types of communal living which the neighborhood has said it does not want it to be increased it for the types of zoned properties that could be there. I think the other concern we have is with the increased number of residents, what the traffic would be like. I understand that Golden Nest did make a presentation to the neighborhood council. I have since spoken to our neighborhood council and explained to them that they failed to notify any of the neighbors on the blocks between Arthur and Garfield that the street lies on. None of the neighbors were notified that the hearing was occurring of they were giving a presentation. There might be questions that neighbors have that were answered but we did not hear them because we were not properly notified of the presentation. A number of us say we would be welcoming of the type of assisted living, we'd welcome it to be home for elderly care but we have concerns about the increased volume of people that are going to be living in the residence because it's not that large of a facility in my mind and we'd also be concerned about the increased traffic that would be on our street. Right now, while it is an urban street, it is fairly quiet.

Lief Erickson (1919 19th Ave NE): I am directly across the street. I have lived in my house for eight years and I really can't add anything to what Lyndsey just said before you other than I'm going to second everything she said. I'm pretty uninformed of what was being planned for this building and I'd like some more information before I can make an informed decision of whether I support it or not. Based on the limited information I do have, it does sound like a good idea, but I'd like some more information. Thank you.

Don Anderson (1918 Johnson St): I've been a resident here for 44 years and I'm walking distance to this facility. I'm also on the Board of Directors for the Windom Park Citizen's in Action. I consider this facility to be A-1 as far being a neighborly concern and a facility that's been used in the past. It's been excellent as far as our neighborhood is concerned. I fully approve of the use of this facility by this applicant.

President Motzenbecker closed the public hearing.

President Motzenbecker: I worked and lived in an assisted living facility at 26th and 1st Ave S, which held about 70 people and we had a parking lot that held almost the same amount of cars and the amount of traffic that came in and out of there on a daily basis was very negligible. It was mostly the employees who came and parked. A lot of the residents, almost 99 percent of them, did not have cars and were kind of staying in the facility. The visitors that came, came mostly on the weekends and they were very respectful. Just as maybe a similarity to let you know that that was my personal experience and that might be something with this being much smaller that it will probably be alright. I don't know, that's just what I've experienced.

Commissioner Huynh: I live about a block and a half from Mt. Olivet and it's not assisted living but there is a large amount of elderly living units in that area and the benefit of having the elderly population in a community is that you have a lot eyes on the streets and it's actually great for the community to have a diverse amount of people and generations being able to enjoy the street and walking up and down. I enjoy the company and I haven't had any bad experiences with the employees or occupants of that facility.

Commissioner Gorecki: I grew up in this neighborhood and know this building. I want to thank the residents along 19th St for coming along and staying as long as they have to offer their thoughts. The building has been run extremely well for many years and I do think the balancing from R3 to R4 is very much in keeping with the type of program that they run their. I'm going to move approval of the rezoning as submitted by staff (Huynh seconded).

President Motzenbecker: Any further discussion? All those in favor? Opposed?

The motion carried 8-0.

Commissioner Gorecki: I will move item B for approval (Huynh seconded).

President Motzenbecker: Any further discussion? All those in favor? Opposed?

The motion carried 8-0.

Commissioner Gorecki: I think staff did an excellent job of making some wonderful improvements to the overall site, the counting of trees and shrubs, the enclosure. I think this is going to be a great improvement not only to the particular site but also to the neighborhood. I will move site plan review as well (Huynh seconded).

Commissioner Bates: It does sound like the neighbors need some information and outreach and it sure would be great if the applicants would take that on to do some of that before this change takes place because perhaps some of those questions could be cleared up.

Commissioner Carter: I would echo Commissioner Bates' comments on some outreach and to thank you for waiting this long to speak to us. I appreciate the participation in the civic process and what we're doing up here is specific to the findings of staff.

President Motzenbecker: Any further discussion? All those in favor? Opposed?

The motion carried 8-0.

9. Zoning Code Text Amendment (Ward: All), (Janelle Widmeier).

A. Text Amendment: Amending Title 20 of the Minneapolis Code of Ordinances related to the Zoning Code, as follows:

Amending Chapter 520 related to Zoning Code: *Introductory Provisions*
Amending Chapter 546 related to Zoning Code: *Residence Districts*
Amending Chapter 547 related to Zoning Code: *Office Residence Districts*
Amending Chapter 548 related to Zoning Code: *Commercial Districts*
Amending Chapter 549 related to Zoning Code: *Downtown Districts*
Amending Chapter 550 related to Zoning Code: *Industrial Districts*

The purpose of the amendment is to revise existing zoning code definitions, establish new definitions, amend provisions referencing revised definitions accordingly, and amend the tables of permitted and conditional uses accordingly.

Action: The City Planning Commission recommended that the City Council adopt the findings and **approve** the zoning code text amendment, with the following changes:

1. *Lot coverage.* The area covered by principal and accessory structures. Lot coverage shall not include awnings, canopies, balconies, eaves and signs that meet the standards for permitted obstructions in required yards ~~and cantilevers that extend not more than two (2) feet from a structure.~~
2. *Parking space.* A space of definite length and width designed for parking of motor vehicles within a parking area that is directly accessible to a parking aisle or driveway ~~and clear of obstructions including curbing and bicycle parking.~~ Said space shall be exclusive of such drives, aisles or entrances giving access thereto, and curbing.

Staff Widmeier presented the staff report.

Commissioner Huynh: My confusion in reading into the lot area coverage and also how you have impervious surface, is how do you separate one from another? When I read this and the last part of the definition says “and cantilevers that extend not more than two feet” would then be included in the lot area coverage and therefore penalizing the applicant for having an eave or parapet that may be three or five feet. I think it’s unfair for penalizing someone for having a structure that may benefit the project and have that be included as maybe impervious area but can you help clear up some of the confusion on what I’m not understanding between the two?

Staff Widmeier: Just for background, impervious surface is also similarly regulated but R1 through R3 districts are allowed to be up to 65 percent of the lot as impervious coverage. Lot coverage is included in that impervious surface calculation but we also don’t include certain things such as the eave overhangs so this was really a way to clarify what, when you’re doing calculations, would be included in that and what would not be. Impervious surface is more what’s at the ground.

Commissioner Huynh: My confusion is that when you’re saying if you have an awning or some kind of larger canopy that projects beyond the two feet is that you’re saying from that point on that that’s included in the lot area coverage and therefore it would kind of infringe on the impervious surface area or am I not seeing this correctly?

Staff Widmeier: Yes, that would be a way to put it, yes. If it's included in the lot coverage it would also be included in the pervious surface.

Commissioner Huynh: I think that's how I initially read it and I guess I would like to hear from other commissioners too because my proposal was to strike the last part of that definition where you have "and cantilevers that extend not more than two feet from a structure" from the definition and just add "and cantilevers." Let me read the whole definition as I would propose: The lot area covered by principal and accessory structures. Lot coverage shall not include awnings, canopies, balconies, eaves, cantilevers and signs that meet the standards for permitted obstructions in required yards. The intent behind that is that if you have a one foot extension or three foot, that whatever stormwater or rainfall would still be filtered on to site and be filtered on to the vegetated pervious area so then to say that the area below the areas that are cantilevered for more than two feet would be impervious I think would be an incorrect statement.

President Motzenbecker: Part of what we were talking about was that, is it going to make that big of a difference if it's three feet? Janelle mentioned that there really hasn't been any instance where they've addressed this, they just wanted to have something in there to cover themselves which we appreciate. The two, three, four feet, you can still get underneath that and infiltrate. So the question is if we need it. I think we'd be willing to hear from commissioners because we pulled this and were curious because it was getting a little more detailed. If anyone has insights that would help we'd like to hear it.

Commissioner Luepke-Pier: I concur with Commissioner Huynh. If someone wants to add a public benefit by pushing their building in on the first level or for an artistic element having a cantilever coming out more than two feet they shouldn't be penalized because two feet isn't much of a shadow line or isn't going to make much of an impact. I like the way Commissioner Huynh rewrote it, I think it allows for design flexibility while still achieving the intent which is something I appreciate as someone who would use this definition in my everyday life.

President Motzenbecker: I think it'd help with sustainability. If you're going to do an overhang that helps protect from the sun, oftentimes those are longer than two feet and that wouldn't go towards the City's goals of sustainable design as well.

Staff Wittenberg: Just one point of clarification, to make sure we get at Commissioner Huynh's intent, Ms. Widmeier, are cantilevers ever actually considered a permitted obstruction?

Staff Widmeier: Someone could look at a bay window as a cantilever so that would be one example, but otherwise, for the most part they are not specifically called out as a permitted obstruction.

Staff Wittenberg: So these other things on the list are listed specifically as permitted obstructions in required setback areas, yards, in residence and office residence districts but I think cantilevers other than bay windows are not so somehow in the reworking of that we may have to reword that so it doesn't say "cantilevers" that meet the standards for permitted obstructions because they aren't permitted obstructions because they aren't permitted obstructions.

Commissioner Huynh: Then can I just propose leaving it as is and striking anything after "required yards"?

Staff Wittenberg: So it says "...balconies, eaves and signs that meet the standards for permitted obstructions in required yards." Essentially we'll end up having to interpret that whether or not cantilevers are included and if the commission wants to weigh in on what that interpretation should be, that might be helpful. That seems like it works.

Commissioner Luepke-Pier: If they're not permitted would it matter if they're in there? If they're not permitted they're not permitted but at least they wouldn't be penalized from the lot area coverage for not being in there so would it matter if the cantilevers stay if they're not permitted in the required setbacks?

Staff Wittenberg: The reason it's separated from the rest of the list is that it never is a permitted obstruction but we still have to, on administering the zoning code at the front counter, make a determination of whether we consider a cantilever as part of the lot coverage. Regardless of whether it meets the required setback we still have that other sort of calculation.

Commissioner Luepke-Pier: My personal opinion is that it shouldn't affect lot coverage.

President Motzenbecker: We are all in agreement. Any further comments? For the parking space definition, Janelle do you want to clarify the change there?

Staff Widmeier: The memo that you received basically removed "and clear of obstructions including curbing and bicycle parking" the only thing that was added in there and then just added "and curbing" at the very end of the definition to say that parking spaces are exclusive of curbing but we're taking out the bicycle parking piece of it and that's to allow developers to have more options for installing required bike parking.

President Motzenbecker: So to allow if you wanted to hang a bike at the end of your parking spot as you went head-in you could do that. As it's written it would not allow that.

Commissioner Luepke-Pier: My question is about the Early Childhood Learning Center definition on page five. I don't know if this is my reading of it, but does this mean if there's a child that eligible to start kindergarten in September but this seems there is a four month gap where they would be in limbo.

Staff Widmeier: This was based off the state's definition.

Commissioner Luepke-Pier: Where are they the last four months of daycare?

Staff Widmeier: It's really referencing what the state regulates and how they apply it. The kindergarten age children would not be allowed.

Commissioner Luepke-Pier: It sounds like a mistake.

Staff Widmeier: The state wouldn't call it an Early Childhood Learning Center, that's what it comes down to.

President Motzenbecker: I will move staff recommendation for the text amendment (Huynh seconded) with the changes added by Commissioner Huynh. All those in favor? Opposed?

The motion carried 8-0.