



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

Date: February 15, 2007

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

Referral to: Zoning and Planning Committee

Subject: Greco Real Estate Development, on behalf of Lyn-Lake Development Partners LLC, has filed an appeal of the decision of the Zoning Board of Adjustment denying an appeal of the Decision of the Zoning Administrator that a ground level walkway connection between two buildings renders the buildings one structure.

Recommendation: The Board of Adjustment adopted the staff recommendation and **denied** the appeal of the Decision of the Zoning Administrator.

Previous Directives: N/A

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

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

Presenters in Committee: Molly McCartney, Senior Planner

Financial Impact (Check those that apply)

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

Community Impact (use any categories that apply)

Ward: 10

Neighborhood Notification: East Isles Neighborhood Association was notified on December 14, 2006.

City Goals: See staff report.

Comprehensive Plan: See staff report.

Zoning Code: See staff report.

Living Wage/Job Linkage: Not applicable.

End of 60/120-day Decision Period: On January 19, 2007 the applicant was sent a letter by Planning staff extending the decision period to no later than April 5, 2007.

Other: Not applicable.

Background/Supporting Information Attached: Brent Rogers of Greco Real Estate Development, on behalf of Lyn-Lake Development Partners has filed an appeal an appeal of the decision of the Zoning Board of Adjustment denying an appeal of the Decision of the Zoning Administrator that a ground level walkway connection between two buildings renders the buildings one structure. The Zoning Board of Adjustment voted 7-1 to deny the appeal at the January 4, 2007, meeting. The applicant filed an appeal on January 10, 2007. The applicant's statement is included in the staff report.

Department of Community Planning and Economic Development – Planning Division Report

Variance Request
BZZ-3370

Date: January 4, 2007

Applicant: Greco Real Estate Development, on behalf of Lyn-Lake Development Partners, LLC

Address of Property: 2900 Aldrich Avenue South

Contact Person and Phone: Brent Rogers, 612-630-2542

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

Date Application Deemed Complete: December 6, 2006

Public Hearing Date: January 4, 2007

Appeal Period Expiration: January 15, 2007

End of 60 Day Decision Period: February 4, 2007

Ward: 10 **Neighborhood Organization:** Lowry Hill East

Existing Zoning: R6 Multi-family District and C3A Community Activity Center District

Appeal of the decision of the Zoning Administrator: Greco Real Estate Development, on behalf of Lyn-Lake Development Partners LLC, is appealing of the decision of the Zoning Administrator that a ground level walkway connection between two buildings renders the buildings one structure.

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 site recently received City Planning Commission (CPC) approvals on November 27, 2006, for two new buildings, including a favorable recommendation to the City Council for rezonings. The project combines multiple parcels, 2900, 2924, 2928, 2932, and 2936 Aldrich Avenue South, into new subdivided two (2) parcels. The project includes a multi-family residential building located along the Midtown Greenway and Aldrich and a mixed use building located at the corner of Aldrich Avenue South and West Lake Street. The project does not have the required land area to be a planned unit development or cluster development.

The rezoning of the northern most parcel (2900 Aldrich) is from I1 Light Industrial District to R6 Multi-family District and the southern parcels from C2 Commercial Corridor District to C3A Community Activity Center District. This rezonings will be heard by the Zoning and Planning Committee of the City Council on January 4, 2007. Rezonings are changes to the Minneapolis Zoning Ordinance that requires approval by the full City Council. Changes to the project approved by the CPC on November 27, 2006, may result in a site plan amendment to be reviewed by the City Planning Commission, as well as other land use applications. Once approved by the City Council, the rezonings would remain in effect.

The applicant has received CPC approvals for two buildings, but had discussed with CPED-Planning staff the possibility of submitting the proposal with the two buildings connected by an above ground walkway. During preliminary meetings, staff determined that the walkway rendered the two buildings a single structure. From plans of the interior layout of the building, the walkway creates a connection so that residents can access, above ground, building amenities such as gathering rooms. The walkway was not proposed to connect separate uses, such as commercial space from residential space, nor would the walkway connect two separate residential buildings.

Staff also determined that because the project involved two separate parcels with different zoning, it did not meet the definition of a zoning lot.

Zoning lot. A single parcel of land under common ownership or control, occupied by one (1) or more principal buildings or uses, accessory buildings or uses, and all yards and open spaces, as required by the zoning ordinance. A zoning lot may consist of more than one (1) platted lot.

If the project was considered one zoning lot, a single building could span across a platted lot. However, in this case, the applicant is proposing that the project have different zoning districts. The project spans two zoning districts, the R6 and the C3A. A single building is not allowed to span across a zoning district or zoning lot.

Also affected by the building status is the number of dwelling units allowed and side yard setbacks. As approved by CPC, both buildings received density bonuses to increase the number of dwelling units as well as variances to reduce the minimum lot area to allow for increased additional dwelling units. Both buildings received bonuses for underground parking, but the commercially zoned property received an additional density bonus for a mixed commercial-residential building. Projects in residentially zoned districts are not eligible for this bonus. Setback variances would also be needed for the building with the walkway. The R6 District has required setbacks for multi-family dwellings and the C3A Districts has

required setbacks when adjacent to residential districts and structures. After preliminary project discussions with staff, the applicants proceeded with submitting plans for two structures for CPC approvals.

The applicant is now appealing the Decision of the Zoning Administrator that the walkway renders the two buildings one structure. The applicant has submitted a statement that includes excerpts from the International Building Code (IBC) in regards to pedestrian walkways and tunnels. While CPED-Planning staff uses the IBC to inform zoning related decisions, the IBC does not supercede or take precedent in interpreting the Minneapolis Zoning Code.

CPED-Planning staff agrees that the Zoning Administrator has correctly interpreted the zoning code that the proposed walkway for the project at 2900 Aldrich Avenue would render the project a single building because the walkway is interior to the multi-family residential use. Further, the project could not go forward as a single building because it would span two zoning lots.

Recommendation of the CPED Department Planning Division:

The Department of Community Planning and Economic Development Planning Division recommends **denial** of the appeal of the Decision of the Zoning Administrator that a ground level walkway connection between two buildings renders the buildings one structure.

Board of Adjustment Hearing Testimony and Actions

Thursday, January 4, 2007
2:00 p.m., Room 317 City Hall

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

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

10. **2900 Aldrich Avenue South; (BZZ-3370, Ward 10)**

Greco Real Estate Development, on behalf of Lyn-Lake Development Partners LLC, is appealing the decision of the Zoning Administrator that a ground level walkway connection between two buildings renders the buildings one structure.

Mr. Perry moved and Mr. Gates seconded the motion to adopt staff recommendation and **deny** the appeal of the Decision of the Zoning Administrator that a ground level walkway connection between two buildings renders the buildings one structure.

Roll Call Vote:

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

Nays: Rand

Recused: None

Absent: None

TESTIMONY

Finlayson: I would just like to interject at this point that this is not a variance that we are hearing. It is an opinion of the Zoning Administrator, it is whether he made the right call or not. So I don't want to hear anything about international building codes, out of city precedence or anything of its nature. I don't want to hear about hardships, I don't want to hear anything about the convenience, weather, or anything of that nature. It's just whether or not Mr. Poor had the right to make the call. Mr. Gates.

Gates: Thank you Mr. Chair. Ms. McCartney, you mentioned the word skyway, and that touches on a question that has been running through my head as I evaluated this. There are portions of the skyway system downtown where a person can walk between without crossing a public right-of-way when moving from building to building. I presume then from zoning lot to zoning lot, and yet they are very clearly different buildings, different owners, different architecture, built in different periods. So how would that differ from this?

Ms. McCartney (staff): I think one of the main reasons it differs is that it is connecting two buildings. It is really functioning as an external walkway whereas this is internal to the residential features. From what you can tell from the floor plans, it wouldn't be a public hallway. It is not accessible by the patrons of the commercial spaces. It is really internal to that residential use. It is only used to access another room or another unit. The amenity room such as an exercise room or a gathering space. So that was one of the things that staff looked at - was how does it function. What is it used for as opposed to a skyway, which is a public space. They are privately owned, but you are accessing different buildings. You are going from use to use, building to building. You are, most of the time, crossing the right-of-way.

Gates: Okay, thank you.

Finlayson: Any further questions? I see none at this point. Mr. Poor did you care to make a statement?

Steve Poor (Zoning Administrator): Chairman Finlayson, I have nothing to add at this point to Molly's presentation. The applicant of course is going to have their own take on their appeal and I guess I would reserve the right to maybe come back, but I don't have any comments to add at this time. Except to say this has been a long standing policy the zoning office has had. You have seen many variances here before about connecting garages to houses. So, it's really not a departure from anything that we haven't implemented as a policy for some time. If you have further questions I'm available.

Finlayson: Mr. Ditzler.

Ditzler: Molly, just a clarification and maybe the applicant will speak to this. The original plan did not have the connecting corridor? There was nothing there, it was just open? Or what was it?

Molly McCartney (staff): Chair Finlayson, Board Member Ditzler, the original plan that had been approved by the Planning Commission and the re-zoning that has been approved by the Z & P Committee of City Council, it was open. It functions like a courtyard.

Ditzler: Okay.

Molly McCartney (staff): Open space, so there is no connection there.

Ditzler: And that was approved today by Z & P?

Molly McCartney (staff): The re-zonings were approved, the Planning Commission recommended that the rezoning was approved and that the other land use applications including the CUPs for units and other land use applications, and it hasn't been appealed. Those approvals were not appealed. If the applicant does go back with this type of design, it would have to go back to the Planning Commission for review, site plan review as well as additional variances if needed.

Finlayson: Mr. Fields.

Fields: Ms. McCartney, one more question. I mean the real issue here is this interior connection between two different zonings. If this were in a downtown B4S and it were connecting primarily a commercial building, but mixed use with a condo residential would a B4S allow this sort of thing? A more flexible type multiple use zoning?

Molly McCartney (staff): There are many cases where the walkway, if it was on the same zoning lot would be allowed. In fact, there are probably examples of projects that had to have a walkway in order to connect the two buildings. In residential districts you can't have more than one primary building. So in that case if the project was for two structures, each project is looked at individually, and all these issues go into play with the staff decision. The zoning issues, the ownership issues, the...

Fields: The point I am getting to is simply that our zoning codes can not accommodate a new generation of mixed use development - that seems to be happening. I'm not questioning, I'm just saying, it reflects. I think that Mr. Poor made the right call, but my first question was why was it rezoned this way? Because they had no other zoning but to put together a jigsaw puzzle to C3A and R6, which doesn't make any sense. In downtown now, we would probably do a B4S that would accommodate both. So I'm sympathetic with their dilemma, but I think that Mr. Poor made the right call. I know that I am jumping ahead.

Steve Poor (Zoning Administrator): Chair Finlayson, if I may, Board Member Fields, the Hospital Site next to Loring presented many of the same conundrums we hear with OR zoning with the heavier downtown zoning. The whole business that we're talking about when you have split zoning, and in this case, I don't believe they had the two acres, so they couldn't do the PUD on this project. So your right, there are larger policy discussions which you raise here, which is not the matter before us as you also correctly stated, Mr. Finlayson has reminded us, but, there are two issues really. The connection of general principals when you have these above ground connections, skyways notwithstanding, those are a different animal, there are different iterations of the zoning code that actually specifically talk about skyways, and they're in the B4 district generally. That notwithstanding, when we have these above ground connections, not subterranean, but above ground, we generally look at these to be lines in the sand that we pay attention to and we have been fairly consistent. The added background to this, as staff has suggested, is that it did influence what the land use approvals were at the Planning Commission it has to do with density, bonuses, setbacks, etc. So there are a few more moving parts here, but simply boiled down to is this - the long standing policy of the zoning office has been these above ground connections on these types of buildings or residential with garages really constitutes forming one structure. I will leave it at that.

Finlayson: Any further questions? Mr. Rand.

Rand: I would just add the comment again, we want to be supportive of our staff, and our Zoning Administrator, but really, does anybody sitting in this room not think that the logic connecting these buildings with a bridge or a skyway is a reasonable, rational thing to do? It has nothing to do with zoning; it is just a practical, reasonable thing to do. So, the question is - does this Zoning Board lead by forcing the issue or do we force the issue upstairs because of appeals? That's the trouble to me.

Finlayson: We weren't asked to deal with logic. We weren't asked to revise the zoning code. We have a simple item here. We have a busy schedule, and I don't want to poor any more time down a black hole. I hope everyone understands that. The Board, non-board, everyone, staff. I'm tired of these conversations. They are just a big waste of time. Is the applicant present?

Applicant: Yes.

Finlayson: Would you care to make a statement?

Applicant: Yes, my name is Jack Borman, I am President of Borman, Cross, Vogel Group Architects and we are the culprit of this problem I suppose, but what I would like to do is put this up here. These are the two buildings; this is Lake Street, Greenway, Aldrich. This is the C3A, this is the property line and that is the problem. I would like to...sorry Brent...

Brent: I'd just like to introduce myself, Chair Finlayson and Board; I'm Brent Rogers with Greco representing the developer. I respect all of your time, so with that I'll reintroduce Jack.

Mr. Borman: Basically the condition of why we are here today has a little history that I'll quickly go through. I think the point was made earlier, that we have two adjoining lots. We definitely do. It is not what we originally asked for when we met with Planning Staff. We asked for all C3A. Their review of the overall zoning the Greenway, the residential zoning north of the Greenway, the Commercial District characteristics of zoning along Lake Street and Lyndale as opposed to Aldrich. Their advice to us was that the most appropriate zoning of these two parcels is to maintain a purely residential non-commercial R6 on the northern half of the parcel which is more in line with their view of how the Greenway was to be developed as a residential corridor and that the C3A was clearly a commercial street related mixed use kind of zoning. So we went ahead with that only to discover as we evolved - we were approved on

that basis. We did look at a PUD. We did not have 2 acres. It is truly a mixed use development. Clearly two buildings - I don't think that anyone would argue that it is not two buildings. We do have that conundrum over the zoning. So the issue is – we did meet with Planning Staff. We did review their recommendations on how to rezone it. We did move ahead. I am a little confused by the staff's comments about if it were zoned one or the other that it would change the setbacks and the variances. We did explore that and I don't think that's necessarily the case. But it is really not pertinent. Clearly there is a reason why it is two separate buildings. There is a reason why it's zoned two separate ways. That was clearly influenced and directed by the planning staff as the way that they saw the development needed to be rezoned in the best interest of the overall plan. We followed that and now we are here today with the issue of trying to resolve a common sense issue of we think it's an important reason to have the two buildings connected in this modest way that doesn't impact the realization of it being two clearly – one residential and one mixed use building. I think it is very important to us to think of this as a mixed use urban development that is a new type of development on an extended number of lots in Minneapolis and I am understanding and I certainly feel the reality of the complication of doing that – that you here weigh today. Thank you.

Finlayson: Do you have a question Mr. Gates?

Gates: Yes I do Mr. Chair. Mr. Borman, can you tell us why this link between the two buildings was not reviewed by the Planning Commission?

Mr. Borman: Well, I think in our original discussions with our development client and with our design efforts and with the Planning Commission, or the Planning staff, the concept of having a convenience connector like this represents just simply didn't come up. We weren't that far along with the overall thinking of how the buildings would communicate with each other and the fact that it's really...there is residential units in both and clearly, this issue came up afterwards. I can guarantee you; there is no advantage to us to not purposefully present it earlier. Clearly there is not. It was simply a matter of evolution.

Finlayson: Anyone else to testify in favor? I see no one. Any in opposition? I see no one. We will close the public portion of this item. Board comment please. Please stick to the point. Mr. Ditzler.

Ditzler: Right now I'm leaning towards supporting the staff recommendation. It seems like a very complicated issue. It seems that while I would agree I don't think our current zoning law appears to be able to handle a situation that is this complex and this unique. I also don't think that that is our responsibility to leverage such a great exception in this case since it obviously will have fairly significant consequences. It needs to be dealt with in another department of the City. I also have not been satisfied to the point where if this was such a key component to this project why it was not on the original site plan. And that question has not been answered for me. I like to see what everyone else says, but I'm inclined to support the decision.

Finlayson: Mr. Fields.

Fields: I agree with Mr. Ditzler. My previous comments I sympathize with the dilemma, I want to make clear that I agree with Chair Finlayson that we're just here making the call that the zoning administrator correctly interpreted the existing zoning code, and he did. If the zoning code makes sense for building ... that's another matter. I do want to emphasize and take some exception that some of this discussion may be irrelevant to our decision - is relevant. I think we are a very savvy group, I think we should go on record, even if we are supporting the Zoning Administrator, so when it gets kicked upstairs, that this Board is aware that there is an incongruity between a lot of current zoning/planning practices and this

new generation of mixed use development. That's why I want that on record, while recognizing I'm supporting the Zoning Administrator's decision.

Finlayson: I would say that I'm also supporting the Zoning Administrator's decision. It's just the nature of the beast that the zoning code is as current as the day it was written assuming it was correct in the first place. And life is a kaleidoscope that keeps moving on and that's what we have. Further comment. Mr. Perry.

Perry: Thank you, I think my fellow Board Members have raised all the pertinent points that I would have made, so I'm not going to add to that. Simply to say that if this was a variance discussion; it would be a different discussion. It's not, so I'm going to move to adopt staff findings.

Finlayson: Is there a second.

Gates: Second.

Finlayson: Further comment? Mr. Gates.

Gates: This interpretation is entirely consistent with what we've seen in the four or five years I've been on the Board. Typically we don't see it as scale like this. Typically we see it more in terms of a house being connected to a garage. I echo Mr. Fields' comments that perhaps at this level of this scale that perhaps there ought to be a new look at the code as this particular provision might apply to something like this, but we don't have that in front of us. I think it should go back to the Planning Commission or Z & P so they can review the thing in its totality. It's a nice project and it makes eminent sense to me, but the Administrator made the right call.

Finlayson: Mr. Rand.

Rand: A very brief comment. I'm going to vote no, because I think that we ought to have the guts to challenge the Zoning Administrator. Simply because sometimes things don't work out right for the betterment of the urban environment and well, we ought to make the decision here, rather than there. So, I'm voting no.

Finlayson: Please call a roll.

Ditzler: Yes

Fields: Yes

Finlayson: Yes

Gates: Yes

Lasky: Yes

Luepke Pier: Yes

Perry: Yes

Rand: No

Motion passed, 7 to 1

Finlayson: Thank you.