



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

Date: June 26, 2008

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

Referral to: Zoning and Planning Committee

Subject: Appeal of the Zoning Board of Adjustment action approving a variance to the enclosed building requirements to allow for outdoor storage of aircraft parts located at 2825 13th Avenue South in the I1 Light Industrial District.

Recommendation: The Zoning Board of Adjustment, notwithstanding staff recommendation approved a variance to the enclosed building requirements to allow for outdoor storage of aircraft parts located at 2825 13th Avenue South in the I1 Light Industrial District.

Previous Directives: N/A

Prepared or Submitted by: Brian Schaffer, Senior City Planner, 612-673-2670

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

Presenters in Committee: Brian Schaffer, Senior City 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: 9

Neighborhood Notification: The Midtown Phillips Neighborhood Association was notified of the appeal application on June 16, 2008.

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: The end of the 60 day decision period is June 21, 2008. On June 17, 2008 staff sent a letter extending the decision period another 60 days. The 120 day decision period expires August 20, 2008.

Other: Not applicable.

Background/Supporting Information Attached: Joseph Spangler filed an appeal of the Zoning Board of Adjustment decision approving a variance to the enclosed building requirements to allow for outdoor storage of aircraft parts located at 2825 13th Avenue South in the I1 Light Industrial District.

The Zoning Board of Adjustment voted 6-1 to approve the variance to allow for outdoor storage of aircraft parts on May 22, 2008. The appellant filed an appeal on June 2, 2008. The appellant's statement is included in the attached supporting material.

Supporting Material

- A. Appellant statement of appeal
- B. May 22, 2008 ZBOA Meeting Minutes
- C. May 22, 2008 ZBOA Staff Report with attachments

Board of Adjustment Hearing Testimony and Actions

Thursday, May 22nd, 2008
4:30 p.m., Room 317 City Hall

Board Membership: Mr. Matt Ditzler, Mr. John Finlayson, Mr. Paul Gates, Mr. Chris Koch, Ms. Marissa Lasky, Ms. Alissa Luepke Pier, Mr. Bruce Manning, Mr. Matt Perry, Mr. Dick Sandberg

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

2. **2825 13th Avenue South (BZZ-4036, Ward 9):**

Cindy King, on behalf of Charles and Steven Wentworth, has applied for a variance to vary the enclosed building requirements to allow for outdoor storage of aircraft parts located at 2825 13th Avenue South in the I1 Light Industrial District.

CPED Department Planning Division Recommendation by Mr. Schaffer:

Notwithstanding staff recommendation and citing the uniqueness of the business as the hardship, Mr. Manning moved and Mr. Koch seconded the motion to motion to **grant** the variance as requested by the applicant to vary the enclosed building requirements to allow for outdoor storage of aircraft parts located at 2825 13th Avenue South in the I1 Light Industrial District, subject to the following conditions:

1. No after hours lighting
2. No alternative use
3. Nothing to be visible over the height of the fence.

Roll Call Vote:

Yeas: Finlayson, Koch, Lasky, Luepke Pier, Manning, and Sandberg

Nays: Perry

Recused:

Absent: Ditzler

TESTIMONY

Mr. Gates: Thank you Mr. Schaffer. Questions for staff? Mr. Koch.

Mr. Koch: So you do believe that the outdoor storage of this stuff is going to produce noise, odor, vibration, glare or other objectionable influences?

Mr. Schaffer (staff): It has a potential to do that, I'm sure the applicant will speak to how they do their work and how they try to mitigate those issues, but it is still outdoor storage for sales and there is noise that comes from that.

Mr. Manning: A couple of quick questions Mr. Schaffer. The issue as I understand it then is not this particular type of business nor is it the fence that we are looking at on the screen at the moment. The issue is merely how they store it?

Mr. Schaffer (staff): Chair Gates, Board Member Manning, that is correct, it is how they store it.

Mr. Manning: And then, the Cities interpretation is that this is more similar to a technology based light industry use? Which produces noise or odor or vibration ... that a building material sales site or a u-haul rental site or a gas station would all meet that intent which would be permitted uses in this district?

Mr. Schaffer: Chair Gates, Board Member Manning, I would rephrase what you stated, and maybe authorize it better, or offer it back to you and have that discussion. The City does allow as explicitly stated what is allowed to have as outdoor sales and display and as you said it is building materials and sales and you could argue that there are some differences between the purpose of what you see and the technology based issue...

Mr. Manning: I guess that is my concern Mr. Schaffer.

Mr. Schaffer (staff): And that's what I think you're referring to, I think you could draw those conclusions as you have. I would still offer that that is meant to be a part of a accessory...it doesn't state accessory, but building materials and sales is typically an accessory to enclosed building structures as well. But that aside, I would still draw your attention to that this is outdoor storage more or less and less sales and display. I'm sure we can split the hairs upon the use and how this use came into play which is something that staff and the zoning administrator has determined that we are not going to get involved with at this point, but... I hope that answers the question, or have I raised more questions?

Mr. Manning: It does. I think the issues is that I see a disagreement between the stated intent of the area, or of the zoning type and the uses that are accepted in it and that is what I wanted to address and I think you have answered that. Thank you.

Mr. Schaffer (staff): Chair Gates and Board Member Manning: I think what you see is some of the outdoor sales and display may also be a particular of those uses and what can be enclosed in a building and what can not be.

Ms. Luepke Pier: I have a question, earlier you mentioned something about the zoning of an I2 and how that physically would allow something...could you just quickly rehash what you were referring to.

Mr. Schaffer (staff): Chair Gates, Board Member Luepke Pier, in the I2 zoning district outdoor storage would be allowed, there are some conditions about spacing or about how you keep the setbacks and how you try to keep that from affecting neighboring residential properties. Often I can't speak to how often that we have medium industrial uses bordering residential uses. I think the intent of our zoning ordinance and zoning map and land use is to separate that and keep that somewhat of a buffer between the residential uses, but there maybe situations ...

Ms. Luepke Pier: It is explicitly spelled out in I2 and omitted in I1?

Mr. Schaffer (staff): it is spelled out, yes, that is correct, it is spelled out in the I2 and not listed in the I1. And when it is not listed in the I1 it is considered not allowed.

Mr. Gates: Thank you Mr. Schaffer. Is the applicant here, care to speak?

Mr. Wentworth: Good afternoon, Chairman and members of the Board, my name is Steve Wentworth, I am the CEO of Wentworth Aircraft Inc., co-owner of the building and the applicant. The building location is 2825 13th Ave South as we've already stated. The reason I restate that is because we've had four locations in South Minneapolis. We are a South Minneapolis business. We've been in business for 22 years, all of it in south Minneapolis, all of it within eight square blocks of where we are right now. Our most previous location to this was at Cedar Avenue just off

of Lake Street. We owned that location for approximately...Old 10,000 Auto Parts, if you're familiar with south Minneapolis. We bought it from the 10,000 Auto Parts people. We were at that location for 10 years, had outside storage in the yard beside that building of the same items that we have outside storage of now, wings, control surfaces, doors. These are the large components of an airplane. The smaller components, the engines, the radios, instruments, things like that, landing gear, those are all kept inside. As we've expanded our business, we've expanded in South Minneapolis. We've always been in South Minneapolis. We have a...I was born and raised in South Minneapolis, three blocks from our current site and so, there was no reason to move out. We have a good work force, we have a lot of long term employees and the south Minneapolis location is convenient. When we needed to expand from the Cedar Avenue and Lake Street location, we looked for a location that had more inside space as well as more outside space because as I said the wings and some of the surfaces are quite large. Those items are for sale ... the storage, the semantics of the storage that's come up I think just today I think is kind of an interesting one. Those items are for display and sale. They are not used in some other...we don't store I-beams there to build bridges somewhere else. That's outdoor storage. Our items are used to sell. They are on display for a customer to come and look, so if you ... when they talk about a hardship of not having the stuff outside, I'd ask whether Menards would have a hardship if they weren't able to store 2 x 4's outside, if everything had to be inside. We have addressed many zoning violations or ordinance violations since this whole thing started in 2007. We have recently just passed a site plan evaluation and a PDR for the City. I believe we are up 100% to code, 100% to the Cities satisfaction. I think Mr. Schaffer just acknowledged with the exception of this one item. To mitigate the outdoor display and sales of those items, we have erected an eight foot fence inside the existing chain link fence. It shrunk our space just slightly. It's made that fence more graffiti resistant, which in our neighborhood is a very serious concern. We often will clean up graffiti one day and when they come back the next morning the guys have to clean it up again the next day. I noticed that the Neighborhood Association said that one of the things that we had a problem with was graffiti, but not for not wanting to take care of it. We absolutely take care of graffiti, because graffiti just begets more graffiti. So we try to be able to take care of that and that's a thing that we are proud of trying to take care of. On the other hand we can not possible stay ahead of the people with the spray cans. We have added this eight foot fence which approximates a wall as if we were building an enclosed building. The enclosed building requirement would not work in this particular location, we've already had a problem in our PDR with... if we disturbed more than 2000...maybe that's a wrong number...there was a number 2000 square feet or some such number like that, if we do that then we have to be able to go back and re-submit everything as if we were building the building from scratch, so just adding enough indoor space, by adding a building as the City staff has made one comment about, is not likely to be able to be approved on that site, so that's not a viable option as we see it. It's not just an economic hardship, it's an unfeasible situation. The big focus here is that the parts that we have outside are required as part of our business. They are for sale, we display them and we ship them for anybody that doesn't want to take them with them. We have approximately one third of our space inside, two thirds of the space that we own at that property is outside. That property was bought specifically for this business. It's not something we just ran into and said well let's move this business into it. We moved there because we had absolutely no problem at our other South Minneapolis location in the ten years we were there we had no violations, no problems with outdoor storage or sales at that location, that was zoned commercial by the way. This one is zoned I1. If we take a look at the packet that you were given as far as the I1 zoning it gives you expectations to the strict who can you...is there any outdoor storage allowed...and one of those exceptions is building materials as Mr. Schaffer brought up. Menards or some such lumber yard like that. Our items that are outside are non flammable, they are aluminum components. They are not...they do not create noise, vibration, glare or any other objectionable property. Our operation runs Monday through Friday from 8:30 to 5:00. We have no second or third shift. We are not an industrial type of an operation. We are not a junk yard. We do not create scrap, we do not process scrap, we take any of our excess material to the junk yard and have them dispose of it. That's what they do. We are a parts yard. That's what we do. So I hope I have addressed some of the unique parts about what we do. Our site is not unique. I would agree with Mr. Schaffer. It's just a building and an outdoor space. Our

business is very unique, as he did address. We are the only such operation in Minnesota. We are one of 10 major such operations in the United States. The other operations I visited all of them in turn. They are either out in the country where they have things hap-hazard or they are like we are, in the city. Very seldom are they at an airport. This is not an item that usually happens at the airport. To tell you the truth, we are better off in the city than we are at the airport. Those people want what we have and would probably steal for it. The requests of the City have been forces to be able to remove the barbed wire from the top of our fencing. That was there previous to our purchasing of the thing, but we have gone along with it. We would like to be able to be a good neighbor. We would like to be a good neighbor to not only the neighbors; we would like to take care of the City and any of its requests. I think we have done so in every way except we have a problem with semantics, with whether or not we are storing or displaying and selling and we have a problem with whether or not our unique business is listed in the building materials, truck, trailer, recreational vehicle sales...as soon as I read that somebody said it's like well, a small airplane is a recreational vehicle therefore we should be there, but all of those include repair, so its not, there is no noise. The intent is to allow those businesses, including a gas station or a fast food, I think you missed the fast food, a fast food restaurant is approved also...drive through for a fast food. All of those things are much more objectionable than anything we do. We have no outside lights, we have no outside speakers. That stuff is stored there and it is brought in by hand. We do not use a truck or a forklift in most cases in those outside yards, it is not required. The parts are quite light. We have to store them on racks that will protect them so that they don't rub into the other ones and rub each other, so it's a unique business and a unique use of that site, but I don't believe it is an objectionable use for the neighborhood. One of the neighborhood concerns was that we use public right of ways to be able to unload. I totally disagree with that. As you can see from one of the pictures that Mr. Schaffer had, we had ... previously we had trailers stored in this area, which is owned by us...the gentleman that wrote in said that we were using a City parking area to be able to unload and store our trailers. That's owned by us. It's not a City owned piece, it's not owned by anybody else, it is owned by us. We've removed at the request of the City those storage trailers and that is used for employee parking. Also when we unload a trailer load of parts we unload in that area and bring the parts either to the two outdoor storage yards or directly inside the building. Inside the building is where any disassembly of the air planes takes place. We bring them already broken down inside on our semi-trailers so we're not tearing them apart outside in the grass. We're disassembling anything we bring in inside the building. I believe we are meeting the intent of the I1 zoning. If anybody has any questions I'd be happy to answer them.

Mr. Gates: Thank you Mr. Wentworth.

Ms. Luepke Pier: What is that across 13th?

Mr. Wentworth: Across 13th? Oh, that is the former Dayton Rogers building which was an industrial building, they were a manufacturer. It is now particularly used by an Islamic Mosque...But is also in the I1 District.

Ms. Luepke Pier: My second question was how do you get from that parking lot where the trucks are all the way to the other bigger outdoor storage?

Mr. Wentworth: We do use the alley for that transportation. We have special dollies constructed that the parts go onto the dolly and then they are hand carried down to that other...the area that she is talking about I believe is when we unload from here ... this is an alley through here we do use the alley but there is no blockage of that alley at any time. If there is a neighbor or car in that area we would not take a chance of bringing the part down at that time. Where these trailers are in this picture are actually closer to the alley than where we would unload now. Our new system unloads farther in so that we can unload the part stage it onto its dollies and move it into whichever outdoor yard it should go in.

Ms. Luepke Pier: inaudible.

Mr. Wentworth: No, no, this is just all a person with... its all very light stuff everything is aluminum. So, two men and the dolly allow the wing to move around.

Ms. Luepke Pier: So you're saying there is not a lot of noise.

Mr. Wentworth: We use a forklift to be able to unload out of the trailer. That takes place like I said, right in this area, but, we don't need the forklift very often, because the truck actually has a hydraulic lift on the back of it. So, that usually will bring the part down.

Ms. Luepke Pier: Inaudible

Mr. Wentworth: That is done inside. Our primary disassembly area is inside the building, not outside. We have a section of the building that is literally called disassembly. That's where when the airplane first comes in the individual parts are removed inside. And we're not taking a whole airplane and breaking it down outside. That's already been done in the field before we get it.

Ms. Lasky: inaudible.

Mr. Schaffer (staff): Chair Gates, Board Member Lasky, I don't believe there is, I think it's the use of the space as long as it doesn't monopolize the space.

Mr. Perry: Who are your customers? Is it a guy like me?

Mr. Wentworth: Yes, if you own a small airplane, you're my customer. I sell to the end user about 50% of the time. The other 50% would be to the actual repair shop that is going to do the work for the end user.

Mr. Perry: Okay, so when I go in and you're going to... you sell me a part?

Mr. Wentworth: Correct. You come in and you need a wing for your Cessna 150. We would show you to the area that has Cessna 150 wings that are the proper one for your airplane. You would choose the used wing that you want. You can take it with you on a truck. We get trucks in there from all over the country that take the part with them. We have a lot of times when a mechanic will fly in from some other part of the country or some other country...we do a lot of international business, they will identify the part that they want. We then crate it up inside the building and send it out by truck freight.

Mr. Perry: So I walk...you send me out into either that back area or the side...

Mr. Wentworth: You are not free to wander, but yes, we would bring you out there to that area. You are not free to wander that area, you would only be there supervised with one of my employees.

Mr. Perry: I see.

Mr. Wentworth: You are browsing.

Mr. Perry: I thought you took me to the part that I wanted.

Mr. Wentworth: Yes, we take you to that area and then we show you the ones that will fit your airplane.

Mr. Perry: Okay. One other quick question, there's no lights outside you said?

Mr. Wentworth: Not required. We close at five o'clock.

Mr. Perry: So, what do I do when I come at four o'clock in December? I know this sounds odd, but I'm just trying to figure out...

Mr. Wentworth: We don't have a provision for that. If you come at four o'clock in December and can't see what you want to see, we'll bring you back the next day. We don't have a flood, portable flood light situation. We work within what there is. There's just really never been a need. We would probably tell you if we knew you were coming from out of town that we close at four o'clock so that we didn't have that at the end.

Mr. Manning: I don't mean to play my hand, but, if I were an avant-garde builder and there are builders and architects on this panel, but if I were an avant-garde builder, could I build things out of your wings?

Mr. Wentworth: Yes, actually, I have...the real common thing is a DC3 wing is a real popular item to make a table out of if that's what you're thinking. We've supplied parts to Broadway plays, to a magician in Las Vegas, to Paramount Pictures for movies, so...more than just...the Paramount guy came to our location previously, the one at Cedar Avenue and Lake Street and wanted to know where this part came from and where this part came from and picked out the parts that he wanted that turned out to be able to be in the movie "A Simple Plan", so yeah, they come there to be able to buy from us, so that's the whole thing with storage I didn't see it as clearly until just today that some of the semantics is whether or not that's storage. I call that the same display and sales as Menards uses for their lumber yard or as a Toro dealer would use for their tractor which is an approved use for an I1 exception, so I don't see that we are any different than those types of uses. But of course, we're not going to be listed. We're a very unique business. I'd be pretty surprised if the City of Minneapolis had ever run into an aircraft parts dealer before. I'm sure that we're the first one...the only one. I don't think that excludes us.

Mr. Sandberg: I was wondering if both the lots are subject to this enforcement issue or is it just the one to the north?

Mr. Schaffer (staff): Chair Gates, Board Member Sandberg, the whole parcel, so the whole zoning lot which would encompass...the whole business would be subjected to the situation.

Mr. Wentworth: I would like to bring up one more thing, if we could look at one of the other pictures here. The fencing that we've installed it's probably for you to see on your screens, but if you look closely, you may see that there are some items that show above the level of the fence, we have as of this week, as we promised, before it went before this Board, we have removed all items that are above the fence. From no angle, including the street across the street, can you see over the fence and see any items that we have. Everything has been reduced down to try to be below that fence below that visibility. We are not trying to be able to show the neighbors anything obtrusive and show them even what there is. I'm just...our company name is Wentworth Aircraft Incorporated, on the front of the building, the large sign that we have says Wentworth Air Incorporated. I'm not trying to make it obvious to anybody in the neighborhood or not what it is that we do there. It's not necessary. The customers that come to us don't necessarily just wander across us as they are on their way to the Greenway, so they come there for a reason. So we have tried our best to be able to disguise our purpose to the neighborhood, mostly so that there is no question about whether or not they want to look inside there. They don't have any need right now. For that same reason, it does not endear us to the neighborhood, they don't need us, so I understand the neighborhood group not...given the choice, I'm sure that they would prefer to be able to have it be a park, but, as a business use, in the zoning that it's in, I think we are meeting the needs of that zoning, and the intent of that zoning. That's what my push is.

Mr. Gate: Mr. Wentworth, in a letter from one of the neighbors, there's allegations of the routine use of grinders, welders and hydraulic equipment. Do you want to speak to that?

Mr. Wentworth: I have no idea what the hydraulic equipment is, other than the forklift, as far as I know it is the only piece of hydraulic equipment there. So I don't know what he might have meant. I really can't address that unless you consider the forklift, which is also motorized. The grinding equipment I would suspect more what he is implying is the...what we call a hot saw. The aluminum structure does not cut with a cutting torch, or weld with a welding torch. So the welding that he is talking about again, does not really apply. What it does cut with is an abrasive saw. Similar what you might see a big gasoline powered saw out cutting a sidewalk, they have an abrasive blade on it. Ours are not gasoline though, ours are electric, which are much quieter and we use those inside the building to break the parts apart. When we get a fuselage and its about 20 feet long, we can handle about four of those inside the building, so when we bring the fuselage in if we are going to be able to section a piece of it we use an abrasive saw to do it...an electric abrasive saw. That's done inside the building which I believe is perfectly legal within the use that we're intended. It's less than an industrial use I believe.

Mr. Gates: So there's never any outdoor disassembly?

Mr. Wentworth: I can't imagine where there would be any mechanized outdoor disassembly. There is no provision for that. Our primary disassembly is inside. That's where we do our disassembly. And that's the intent, that's the plan, that's the way it should be, I can't imagine a circumstance that would lead to something outside. That's not what we do. I'm not saying you couldn't hear it, but it would be through an open door from the inside. Not an outside yard.

Mr. Gates: Okay, thank you. Any further questions? I see none, thank you very much. Is there anyone else here to speak in favor of the application?

Dennis Nelson: I have worked for Steve Wentworth for 9 years now; I lived in that neighborhood and the other neighborhoods around there. I'm currently the foreman and we haven't had issues like this and we've spent a lot of time over the last year and a half trying to improve everything that we've had complaints about, so I just wanted to stand up for him and let you know that I believe that it's a good company and that I'm also in constant communication with a lot of the neighbors around there. I'm the foreman, we deal with a lot, like he said when we do unload a plane to bring into the yards, we're friends with the neighbor's right there in the alley. They appreciate us, we keep a lot of riffraff out of there, a lot of the graffiti down, chase away a lot of people that used to hang out in the alley that don't any more.

Mr. Gates: Okay, thank you very much.

Brett Williams: I live at 5856 44th Avenue South, I have been a long time resident of Minneapolis since I was a child I have grown up in the neighborhood that this building is located in. Also in the neighborhoods that Wentworth Aircraft has been in. I can tell you now that in the amount of time that we've been in the building that we are in now we have done nothing but 100% improvement for the neighborhood and for the area. As Mr. Nelson has said we have made sure that the illegal activity that has happened in the neighborhood does no longer happen in our section of the neighborhood. We do help our neighbors clean up their yards; make sure that things are not happening in their yards, we have one neighbor that is very close that we are in constant contact with. She is an elderly woman; she has had massive problems with prostitution in her driveway. Since her driveway backs up to our property, we take a purpose to make sure that we know which vehicles are hers so we make sure that we take care of her to make sure that the illegal activity is not happening on her property and some of the other properties that are in the vicinity of the place. I believe that we have done nothing but help the neighborhood from the position that it was before we got there. When the Sears building was there and they abandoned and walked away from the building, when we moved in it was deplorable conditions inside the building, outside the building and the Greenway that they have just now finished was the railroad tracks and the corridor of 29th Avenue and if anybody that the Board has ever know in South Minneapolis, that was an attractant for a lot of nuisance people and that is no longer in our area, so I believe that Wentworth Aircraft has actually helped the neighborhood a little bit more than the

neighborhood committee is admitting. I just wanted to make sure that I've been an employee for Wentworth Aircraft for over 11 years. Thank you.

Mr. Gates: Thank you very much. Anyone else here to speak in favor? I see no one. Anyone to speak in opposition?

Ms. Quezada: Thank you Chair Gates and Board Members my name is Heidi Quezada and I'm from Council Member Schiff's office, the Council Member for Ward 9. Council Member Schiff had a previously scheduled meeting, so he couldn't be here today and asked that I attend on his behalf to ask that you deny the variance request. As you have seen in the staff report, the Midtown Phillips Neighborhood voted unanimously to oppose the variance at their May 13th meeting. I would echo their position that the outdoor storage of airplane parts does not add to the beauty of the neighborhood. This use is not consistent with the predominantly residential neighborhood that surrounds it and in fact when Wentworth moved to this location from Cedar and Lake, the zoning and surrounding neighborhood were as they are now, not appropriate for this use. Wentworth Air has been fined \$6,400 for non-compliance with outdoor storage requirements of which \$4,000 is still outstanding, Wentworth Air needs to play by the rules and either comply with the existing zoning and make the proper investment in the property by enclosing the building or move the outdoor storage. Please deny this variance request. Thank you.

Mr. Gates: Thank you very much.

Mr. Wentworth: Can I make another statement.

Mr. Gates: We will hold off. I see no other further requests to oppose. We'll close the public hearing and hear from the Board.

Mr. Perry: I'll make one comment to start the discussion. One of the things that I...about storage or display items and I've been thinking about that is that...everybody has been talking, and it seems that the I1 has a very specific purpose. It doesn't call out a lot of other things, because I think that wasn't ever the intent. Where as the I2 District sort of, it's broader, it's not as constrained and I think there is a reason for that. They want to be specific about what is in I1 and whether it is airplane parts or some other item that's not here, not listed; I think it's not there for a reason. So, just, I put that out for consideration.

Mr. Gates: Staff is not questioning the validity of the use of the property though for the aircraft storage, right, or the aircraft business, it's a question of the aircraft storage. Is that correct Mr. Schaffer?

Mr. Schaffer (staff): Chair Gates, Board Members, the issue is not the use it's the enclosed building requirement and how that plays in either as addresses through outdoor storage or through outdoor sales and display. But the use in question was allowed when the property owner went in in 1999.

Mr. Perry: My point was to be more clear, is when I look at 550.210, it's very explicit of what is permitted and that same sort of explicit nature is not in the I2 Medium Industrial District and as I said I think there is a reason for that.

Mr. Koch: Which is?

Mr. Perry: The reason being is they want, there are specific things that they think are appropriate for where a business is industrial and they want to call those out knowing that I1 may be near by a residential properties, and so I think that's the purpose.

Mr. Manning: If I may, Mr. Chair...I guess, I would suggest that it's at least as plausible that the reason its not specifically called out is a failure of the imagination and that makes me look at the broader purposes and the intent of the I1 as stated in the Code and as explained by Mr. Schaffer and I have to say that I find the stated goals of the I1 to be inconsistent with the exceptional uses. Which is not necessarily a problem, but it means that it's of limited guidance to me, and so I find that I'm comfortable giving the...I don't know if its ambiguity...but given that the other things are unsettled...the stated purpose is unsettled with the written nature of the Code, I'm comfortable analogizing and saying that as this business is conducted, it's less disruptive than a whole bunch of permissive uses, and it's fairly similar to building materials. My inclination at this point would be to grant the variance as requested. It's not a motion, but my inclination would be to grant the variance as requested, but explicitly say that they don't have any other rights that might be found in an I2 District and they don't have the rights to outdoor lighting. That's where I lean. I feel a tremendous amount of sympathy for the applicant who is trying to conduct a very unique business in the City. I'm always respectful of neighborhood organizations, but it doesn't make our neighborhood beautiful and there's some graffiti there that maybe they are not cleaning up are not...they are just grounds that lead to whether or not I'm going to grant a variance. So with respect to the neighborhood that's where I'm sitting at the moment.

Mr. Gates: Thank you for holding off on that motion Mr. Manning, I hope we can give this item a fair hearing before we actually get to a motion.

Mr. Finlayson: I mirror Mr. Manning's concerns and if you look at 550.201 it says you can't, you can't, you can't and then it's got (c) item 1 building material and (c) item 5 lawn and garden sales and for instance if you had building materials and throughout the day you'd be having all sorts of home owners and contractors showing up and if you've got lawn and garden sales there would be floods of people all over the place with activity and parking going on...where this is actually somewhat benign and limited use and there aren't a whole lot of customers and I think I know two people that actually own airplanes. Again my empathies at this point. Again this is not a motion, but I'm inclined to grant.

Mr. Gates: It seems to me that the question is not so much about the use of the property. Staff is not questioning that at all, but rather what's going on outside, whether that is sales or whether that is storage. Staff is alleging storage and the applicant says it's actually sales going on.

Mr. Finlayson: My feeling is that if I was buying something...I'm assuming that they don't give away airplane parts. I wouldn't be inclined to do a mail order, I'd kind of want to look at it since it's used.

Mr. Koch: If the nature of things is they all have inventory that moves, and the applicant himself said we're not storing I-beams that we build bridges with and then come back and store more material. It is inventory that moves and I would even argue that if it was a rental facility that would be...that doesn't belong in that exception because that's inventory that stays, that really is storage. But, I look at the purposes of these approved uses, yes, they buy stuff and do something to it and then they re-sell it and that's exactly what Wentworth Air is doing, so I'm inclined to agree with Mr. Manning.

Mr. Luepke Pier: I likewise have to agree. I was looking at 550.210 (c) outdoor sales and display and the part I had to over come here was I could buy that its outdoor sales, because why would they just want to store airplane parts. Who would want to pay the taxes on a piece of land to store airplane parts? The thing that I didn't understand was whether or not they were on display, because from the photo they look just crammed in there, but when I was looking at it up on the screen it's a little clearer than the one in our packet and you can see that at that scale that if I were in the market for a Cessna wing you can kind of see there are isles and there are certainly divisions of different types of airplane parts that seem to be categorized somewhat so I guess it was a two part thing for me ... is it sales and display or just sales and I am convinced that its

sales and display, so I think it meets the criteria set under (c) so I agree with Mr. Manning and Mr. Koch.

Mr. Gates: Thank you Ms. Luepke Pier.

Mr. Manning: Mr. Chair, will you take a motion?

Mr. Gates: I want to hear from Ms. Lasky first.

Ms. Lasky: I'm going to agree with Mr. Manning, Ms. Luepke Pier and everyone else, I don't see any difference between the airplane parts and daffodils crammed in there and 2 x 4's crammed in for display and it's unfortunate that I can't agree with the Council person. The only thing that I'm concerned about is that we've looked at some of the other storage facilities and we requested some landscaping and so here we're not asking for any kind of trees to be planted or any thing that would soften some of that fencing with some tree tops here and there and I don't know if anyone cares or if we're just not going to get into it.

Mr. Gates: Thank you Ms. Lasky.

Mr. Sandberg: I guess I also would be sympathetic to the operation of this particular business, I'm wondering if by granting this variance or relief here would be setting a precedent that would stay with the property that might also apply to a business of scrap parts from automobiles or appliances or whatever in the future?

Mr. Gates: I'll let staff speak to that?

Mr. Schaffer (staff): Chair Gates, Board Members, variances do stay with the property, however, the findings for the variance as you are mentioning are based upon this use and so you could argue ... you could argue either way that the variance would stay with it or you could argue that since a new use would come in that would be different. A scrap yard wouldn't be allowed in the I1 district anyway, so we wouldn't see that, we would only see allowed uses and we have pretty stringent requirements now going forward, so if a new use came in and had work that was outdoor sales or display it would likely have to go through all the review processes and to answer your question probably it couldn't be used for something else, ... but, maybe it could be. It gets down to trying to figure out another creative use...maybe another...that staff doesn't have the creativity or the imagination to come across it this time.

Mr. Gates: Thank you Mr. Schaffer.

Mr. Perry: I have question of staff, I just want to explore this, and I'm using it as a hyperbole, I'm not making any statement about the product at Wentworth by any means. Would a junkyard of cars, and my cars are not new, so I've been wandering around looking at parts in junkyards, would that be a permitted use in I1?

Mr. Schaffer (staff): Chair Gates, Board Members, I do not have my Code in front of me, but I'm 99% positive that that would come under some sort of junkyard of scrap materials and that would be not an allowed use in I1 and that would also have to be within an enclosed building as well.

Mr. Perry: So why would it have to be enclosed? If it's a junkyard, and junk is...they're used parts that are still attached to cars, so why enclose that?

Mr. Schaffer (staff): Chair Gates, Board Member Perry, I'll do two things, I'll answer your question but I'll offer another comment as well. Junkyards often have a disassembly a scrap yard material with them - they aren't just a used parts dealer, which the applicant is making himself synonymous with. So that would be...usually if we see a used car parts dealer that would be a

warehouse and wholesaling, something to that affect which would still have an enclosed building requirement. Could you please repeat the question?

Mr. Perry: There is a reason why these used auto parts still attached to autos are not...they have to be enclosed, can you tell me again why they have to be enclosed? And if it is just ... there is no... it's sitting, there's no smells coming from used cars, so... why would it have to be enclosed?

Mr. Schaffer (staff): Chair Gates, Board Member Perry, I guess there would be two pieces, if it were attached to a car and you were going to go out there and take that part off that car, you would have to use some tools, maybe materials such as lifts or other stuff that would require a fair amount of noise, if you're cutting body parts off a car you would have grinders or some other type of torch that would cut that off so I think those are some of the reasons. That kind of issue also gets into again scrap yard is what that is usually under and I'd have to go back and look at our zoning ordinance about where that would be typically allowed but I can guarantee that would not be allowed as you're stating in an I1. I1 I think ... used car sales I believe is a conditional use permit in the I1 district I believe a conditional use has a lot of items that go with it, and again that's used cars, that's actually something that has to roll; you're not disassembling or taking pieces off a vehicle.

Mr. Perry: (Inaudible) a little bit more of the intent for a unique product that's being sold. Thank you.

Mr. Byers: I should weigh in that the I2 also has an enclosed building requirement and it's very similar to the I1, so it's not just something that is in the I1 and is not there in the I2.

Mr. Gates: I believe that we've heard from the majority and there is a fair amount of sentiment towards granting a variance here if there is a motion to that affect I'd ask that we have findings that might speak to the specific nature of this use.

Mr. Manning: Mr. Chair, I'll make an attempt. I'll put the motion first. The proposed motion would be to grant the variance as requested, no after hours lighting, no other rights that would go with a higher use, and nothing visible over the fence, but otherwise grant as requested. The proposed finding I think is going to relate to the unique nature of the business and the unanticipated ... I don't mean this critically, ... but the lack of imagination in the City Code in anticipating this particular use and so in fact the hardship is not created by the applicant but by the Code itself and its application to this particular long standing use.

Mr. Gates: Thank you Mr. Manning.

Mr. Koch: I second the motion.

Mr. Gates: We have a motion and a second to approve the variance. With what I heard were three conditions, the first being that there is no after hours lighting the second being that there be no higher use, can you clarify that?

Mr. Manning: Yes, I think I can, and maybe I haven't stated it well, and I would welcome any help from any other Members of the Board or even Mr. Byers, I wouldn't want the granting of this variance to be any indication to any future land owner or to the current land owner that we have somehow upped the zoning that somehow by permitting a use the City initially thought might be appropriate in an I2 in an I1 suddenly all the other rights that might come with an I2 have showed up.

Mr. Gates: Perhaps you might consider that the term higher use might be stricken and use the word alternative use to really narrow it to the specific aircraft parts.

Mr. Manning: I will take the amendment.

Mr. Gates: And then the third condition was that there be nothing stored over the height of the fence, is that correct?

Mr. Manning: That's right.

Mr. Gates: Thank you Mr. Manning:

Mr. Finlayson: I would like to additionally offer that the use is analogous to 550.201(c)1 and (c)5.

Mr. Gates: All right, thank you. Mr. Perry I know that you keep tabs on things pretty well, I believe that we have addressed the required findings adequately.

Mr. Perry: I was just going to say that, I heard hardship, Mr. Manning said Code, the Code was the hardship. I did not hear the findings for the other three items.

Mr. Manning: I think we determined that we are required that we ...I apologize are we required to find all four...I think we're in agreement with the City on item four that granting the variance would not likely increase the congestion or be detrimental to welfare and safety, I haven't heard anyone say anything to the contrary. In fact we have heard things from the applicant that suggests their presence in the neighborhood is a bonus. I think in terms of spirit and intent we have explicitly stated that we find this use, some of us find this use analogous to other uses permitted in the I1 use and so that we find it consistent with that. I think no body disputes that the property is not...the property is not unique in other words its fairly similar to other properties although I think that we will find that a reasonable use for the property is to do exactly what will be permitted in the I1 as we see this business properly falling in the I1. The property is a flat piece of square land, but the use as we have...as I have construed it and perhaps Mr. Finlayson and Mr. Koch mean that the use is typical for what we think should be permitted in the I1. In other words the use is what gets us to the uniqueness finding on item 2.

Mr. Perry: Okay. I'll make...I'm going to vote against the motion, so I'll make that comment. I do, to me it comes, I've stated something else about what the intent I think of the Code so I'm not going to...that's already been ... that's on the record. I think I'm totally unconvinced that there is anything unique about this. They can put up a building around it, and it's. They can put a building around these parts, just like anybody else could. I don't see anything that's unique about the property and so I don't think finding number two has been...is sufficient.

Mr. Gates: Thank you Mr. Perry. Any further comments? We have a motion to approve the variance as requested with the three conditions previously stated. Did the clerk record those conditions adequately?

Ms. Phillips (clerk): Yes I did.

Mr. Gates: Thank you very much.

Finlayson: Yes

Koch: Yes

Lasky: Yes

Luepke Pier: Yes

Manning: Yes

Perry: No

Sandberg: Yes

Mr. Gates: Motion carries, the variances are approved.

**Department of Community Planning and Economic Development – Planning
Division**

Variance Request
BZZ-4036

Applicant: Cindy King, on behalf of Charles and Steven Wentworth

Address of Property: 2825 13th Avenue South

Contact Person and Phone: Cindy King, (612) 722-0065

Planning Staff and Phone: Brian Schaffer, (612) 673-2670

Date Application Deemed Complete: April 22, 2008

Publication of Staff Report: May 15, 2008

Public Hearing: May 22, 2008

Appeal Period Expiration: June 2, 2008

End of 60 Day Decision Period: June 21, 2008

Ward: 9 **Neighborhood Organization:** Midtown Phillips

Existing Zoning: I1 Light Industrial District

Proposed Use: Outdoor storage for aircraft parts

Proposed Variance: A variance to vary the enclosed building requirements to allow for outdoor storage of aircraft parts located at 2825 13th Avenue South

Zoning code section authorizing the requested variance: 525.520 (26)

Background: The subject site addresses at 2825 13th Avenue South, however the site occupies 2815, 2817, 2821, 2825, and 2833 13th Avenue South. The subject site encompasses approximately 58,220 square feet. The property contains approximately 18,000 square feet of buildings and is zoned I1 Light Industrial District.

In 1999 the applicant received a business license for a secondhand goods dealer for the sale of aircraft parts. The applicant took over what appeared to be an appliance repair business. To the north of the buildings was an asphalt parking lot that was enclosed by a chain link fence. The chain link fence still exists on the site and the former asphalt parking lot is currently used for the storage of aircraft parts.

Zoning Enforcement has been working with the property owner for the past few years to bring the subject site into conformance with Zoning Ordinance. The attached site plan represents the applicant bringing the site into compliance. The remaining item the applicant has to resolve is the outdoor storage of the aircraft parts.

In the I1 Light Industrial District there is an enclosed building requirement which requires all production, processing, storage, sales and display be conducted in a completely enclosed building. This is stated in section 550.210 of the Zoning Ordinance.

- 550.210. Enclosed building requirement. (a) In general. All production, processing, storage, sales, display or other business activity in the I1 District shall be conducted within a completely enclosed building, except as otherwise provided in sections (b) through (d) below.
- (b) Outdoor dining. Outdoor dining shall be allowed, provided the following conditions are met:
- (1) The outdoor dining area shall be no closer than twenty (20) feet from an adjacent residence or office residence district boundary or from an adjacent ground floor permitted or conditional residential use, and shall be screened from such district boundary or residential use, as specified in Chapter 530, Site Plan Review.
 - (2) Sidewalk cafes shall comply with the requirements contained in Chapter 265 of the Minneapolis Code of Ordinances, Special Permits for Specific Businesses and Uses.
- (c) Outdoor sales and display. The following uses may include outdoor sales and display provided such outdoor sales and display area shall be no closer than twenty (20) feet from an adjacent residence or office residence district boundary or from an adjacent ground floor permitted or conditional residential use, and shall be screened from such district boundary or residential use as specified in Chapter 530, Site Plan Review:
- (1) Building materials sales.
 - (2) Direct refueling of motor vehicles.
 - (3) Permitted drive-through facilities.
 - (4) Truck, trailer, boat, or recreational vehicle, sales, service or rental, subject to the regulations of this chapter governing the outdoor parking of trucks and other commercial vehicles.
 - (5) Lawn and garden sales.
- (d) Outdoor speakers. Outdoor speakers shall not be audible from a residence or office residence district boundary or a permitted or conditional residential use. (2002-Or-092, § 1, 9-13-02; 2006-Or-091, § 2, 7-21-06)

In the I2 Medium Industrial District outdoor storage is allowed, providing the following conditions are met:

- (1) Areas fronting along or visible from public streets or sidewalks. A landscaped yard at least five (5) feet wide and screening not less than six (6) feet in height and not less than ninety-five (95) percent opaque

shall be provided along the public street or sidewalk, as specified in Chapter 530, Site Plan Review.

- (2) Areas within three hundred (300) feet of a residence or office residence district or adjacent to any zoning district other than an I2 or I3 District. Screening not less than six (6) feet in height and not less than ninety-five (95) percent opaque shall be provided along the property line, as specified in Chapter 530, Site Plan Review.

The subject site is not listed as one of the uses that is allowed outdoor sales and display in the I1 Light Industrial District. A variance is required to the enclosed building requirement to allow for the outdoor storage of aircraft parts.

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 has requested a variance of the enclosed building requirement to allow for the outdoor storage, sales, and display of aircraft parts. The applicant states that “Wentworth aircraft could not operate its business at this location without the ability to display and sell these items, the business would be forced to move or close, possibly eliminating the 25 employees currently working there.” Strict interpretation of the Zoning Ordinance does not require that the business move; it requires that the storage, sales and display of the aircraft parts be entirely within an enclosed building. The applicant has the option to construct a building or place the materials in the existing buildings on the site. Staff does not believe there is undue hardship caused by the Zoning Ordinance.

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.**

The conditions upon which the variance is sought are not unique to the site. The site has no unusual physical characteristics. It borders residential property which is common in Minneapolis. When the site was purchased it had a fenced-off asphalt parking lot, which the applicant later used for the storage of aircraft parts.

The use of the property as a secondhand dealer of aircraft parts is a unique business; however that use can be continued if it was within an enclosed building. The applicant’s reluctance to store the aircraft parts in an enclosed building is creating the need for the variance. Staff believes that this reluctance is rooted in the economic consideration of constructing a building to enclose the aircraft parts.

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.

The applicant states that the subject site does not have additional outdoor lighting nor does it have outdoor speakers. The outdoor storage area is screened by 8 foot tall wall and enclosed with a chain link fence. The applicant states that aircraft storage as detailed and conditioned by the applicant would have similar or less negative impacts as a building material sales use, which is permitted to have outdoor sales and display in the I1 Light Industrial District.

The spirit and intent of the enclosed building requirement in the I1 Light Industrial District is to mitigate the negative externalities of outdoor storage, sales and display. Outdoor storage is first allowed in the I2 Medium Industrial District. The reason for this can be found in the purpose of the two zoning districts

- The purpose of the I1 Light Industrial District is to provide clean, attractive locations for low impact and technology-based light industrial uses, research and development, and similar uses which produce little or no noise, odor, vibration, glare or other objectionable influences, and have little or no adverse effect on surrounding properties.
- The purpose of the I2 Medium Industrial District is to provide locations for medium industrial uses and other specific uses which have the potential to produce greater amounts of noise, odor, vibration, glare or other objectionable influences than uses allowed in the I1 District and which may have an adverse effect on surrounding properties.

By allowing outdoor storage in the I2 Medium Industrial District and not allowing it in the I1 Light Industrial District the ordinance recognizes that outdoor storage may have an adverse effect on surrounding property. Staff believes that not allowing outdoor storage of aircraft parts is in keeping with the spirit and intent of the ordinance. Despite the applicant's best efforts and intentions of being a good neighbor staff believes that the outdoor storage may have adverse impacts on the surrounding properties.

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 not likely increase congestion in the area or increase the danger of fire safety, nor would the variance be detrimental to welfare or public safety.

Recommendation of the Department of Community Planning and Economic Development -Planning Division:

The Department of Community Planning and Economic Development Planning Division recommends that the Board of Adjustment adopt the findings above and **deny** a variance to the enclosed building requirements to allow for outdoor storage of aircraft parts located at 2825 13th Avenue South in the I1 Light Industrial District.

Attachments

1. Applicant's statement
2. Map of the area
3. Site Plan
4. Pictures
5. Letter from Midtown Phillips Neighborhood Association, Inc