



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

Date: December 16, 2004

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

Prepared by: Hilary Watson, Senior City Planner, (612) 673-2639

Approved by: Barbara Sporlein, Director, Planning

Subject: Appeal of the decision of the City Planning Commission by William Tippman, with Bear Creek Capital, on behalf of CVS Pharmacy

Previous Directives: At the November 22, 2004 City Planning Commission meeting, five of the Planning Commission members were present. All five of the Planning Commissioners voted to deny the site plan review application for a drug store with a drive-through facility located at 2426 West Broadway Avenue.

Financial Impact: Not applicable

Community Impact:

Ward: 4

Neighborhood Notification: The Board of Directors of the Jordan Area Community Council reviewed the development on October 13, 2004. At the meeting, the board voted to support the project.

City Goals: See staff report

Comprehensive Plan: See staff report

Zoning Code: See staff report

Living Wage/Job Linkage: Not applicable
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Other: Not applicable

Background/Supporting Information: William Tippman, with Bear Creek Capital, on behalf of CVS Pharmacy has filed an appeal of the decision of the City Planning Commission. The appeal is associated with the City Planning Commission's decision to deny the site plan review application for a drug store with a drive-through facility for the property located at 2426 West Broadway Avenue.

The original staff report and the minutes from the November 22, 2004 City Planning Commission meeting are attached.

The appellant's two areas of concern in regards to the site plan are the windows and the placement of the building on the site. The appellants' complete statement and reasons for the appeal are attached.

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

Conditional Use Permit, Variances and Site Plan Review
BZZ-1865

Date: November 22, 2004

Applicant: Bear Creek Capital on behalf of CVS Pharmacy

Address of Property: 2426 West Broadway Avenue

Project Name: CVS Pharmacy

Contact Person and Phone: Charles Schatz with DJR Architecture, Inc., (612) 676-2715

Planning Staff and Phone: Hilary Watson, (612) 673-2639

Date Application Deemed Complete: September 30, 2004

End of 60-Day Decision Period: November 29, 2004

End of 120-Day Decision Period: January 28, 2005

Ward: 4 Neighborhood Organization: **Jordan Area Community Council**

Existing Zoning: C2

Proposed Zoning: Not applicable for this application

Zoning Plate Number: 7

Legal Description: Not applicable for this application

Proposed Use: Drug store

Concurrent Review:
Major site plan review.

Applicable zoning code provisions: Chapter 530, Site Plan Review.

Background: This item was continued from the October 25, 2004 City Planning Commission hearing. Staff has not received a revised site plan or elevations. Therefore, the following report and recommendations are the same as the original staff report that was presented at the October 25, 2004 hearing.

An existing commercial building occupies the site. The applicant is proposing to demolish the existing building and construct a new 13,000 square foot building on the site. The building would be utilized by CVS Pharmacy and would have a drive-through.

The development would also include the reconfiguration of the surface parking lot on the site. The parking requirement for the development is one parking space per 300 square feet of gross floor area over 4,000 square feet, or 30 parking spaces. The applicant is providing a total of 73 parking spaces.

SITE PLAN REVIEW

Findings as Required by the Minneapolis Zoning Code:

- A. The site plan conforms to all applicable standards of Chapter 530, Site Plan Review. (See Section A Below for Evaluation.)**
- B. The site plan conforms to all applicable regulations of the zoning ordinance and is consistent with applicable policies of the comprehensive plan. (See Section B Below for Evaluation.)**
- C. The site plan is consistent with applicable development plans or development objectives adopted by the city council. (See Section C Below for Evaluation.)**

Section A: Conformance with Chapter 530 of Zoning Code

BUILDING PLACEMENT AND FAÇADE

- Placement of the building shall reinforce the street wall, maximize natural surveillance and visibility, and facilitate pedestrian access and circulation.
- First floor of the building shall be located not more than eight (8) feet from the front lot line (except in C3S District or where a greater yard is required by the zoning ordinance). If located on corner lot, the building wall abutting each street shall be subject to this requirement.
- The area between the building and the lot line shall include amenities.
- The building shall be oriented so that at least one (1) principal entrance faces the public street.
- Except in the C3S District, on-site accessory parking facilities shall be located to the rear or interior of the site, within the principal building served, or entirely below grade.
- For new construction, the building façade shall provide architectural detail and shall contain windows at the ground level or first floor.
- In larger buildings, architectural elements shall be emphasized.
- The exterior materials and appearance of the rear and side walls of any building shall be similar to and compatible with the front of the building.
- The use of plain face concrete block as an exterior material shall be prohibited where visible from a public street or a residence or office residence district.
- Entrances and windows:
 - Residential uses shall be subject to section 530.110 (b) (1).
 - Nonresidential uses shall be subject to section 530.110 (b) (2).
- Parking Garages: The exterior design shall ensure that sloped floors do not dominate the appearance of the façade and that vehicles are screened from view. At least thirty (30) percent of the first floor façade that faces a public street or sidewalk shall be occupied by commercial uses, or shall be designed with architectural detail or windows, including display windows, that create visual interest.

- This development does not reinforce the street wall, does not maximize natural surveillance and does not facilitate pedestrian access.
 - The building is located 30 feet from the property line along Sheridan Avenue North, between two and 62 feet from the property line along West Broadway Avenue and 86 feet from the property line along 26th Avenue North. To meet the requirements of Chapter 530, Site Plan Review the building would be located within eight feet of all three property lines.
 - The windows that are located on the building do not allow views into and out of the building as the windows that are lower than seven feet nine inches are sandblasted and have interior shelving units in front of them that are seven feet high. The windows that have clear vision glass do not start until a height of seven feet nine inches.
 - The entrance to the building is located on the southeast corner of the building. The entrance is located 62 feet from the property line along West Broadway Avenue and 86 feet from the property line along 26th Avenue North.
- The exterior materials of the building include EFIS and brick veneer.
- The percentage of windows required on the Sheridan Avenue North, West Broadway Avenue and parking lot side of the building is 30 percent.
 - According to the submitted drawings there is a total of 36 percent windows located on the Sheridan Avenue North side of the building. Although the applicant meets the percentage of windows on this side of the building all of the windows are sandblasted which will not allow views into and out of the building. Even if the windows were clear vision glass there are seven foot high shelving units located in front of them.
 - According to the submitted drawings there is a total of 48 percent windows located on the West Broadway Avenue side of the building. Although the applicant meets the percentage of windows on this side of the building 34 percent of the windows are sandblasted which will not allow views into and out of the building. Even if the windows were clear vision glass there are five to seven foot high shelving units located in front of them. The remaining 14 percent of windows on this side of the building are made of clear vision glass and allow views into and out of the building. Please note that all of these windows are located at the entryway.
 - According to the submitted drawings there is a total of 55 percent windows located on the parking lot side of the building. Although the applicant meets the percentage of windows on this side of the building 28 percent of the windows are sandblasted which will not allow views into and out of the building. Even if the windows were clear vision glass there are seven foot high shelving units located in front of them. The remaining 27 percent of windows on this side of the building are made of clear vision glass. Of the 27 percent windows that are made of clear vision glass, only ten percent of them allow views into and out of the building. Please note that all of these windows are located at the entryway. The remaining 17 percent of the widows that are made of clear visions glass are located above a height of seven feet nine inches which do not allow views into and out of the building.

ACCESS AND CIRCULATION

- Clear and well-lighted walkways of at least four (4) feet in width shall connect building entrances to the adjacent public sidewalk and to any parking facilities located on the site.
- Transit shelters shall be well lighted, weather protected and shall be placed in locations that promote security.
- Vehicular access and circulation shall be designed to minimize conflicts with pedestrian traffic and surrounding residential uses.
- Traffic shall be directed to minimize impact upon residential properties and shall be subject to section 530.140 (b).
- Areas for snow storage shall be provided unless an acceptable snow removal plan is provided.
- Site plans shall minimize the use of impervious surfaces.

COMMUNITY PLANNING & ECONOMIC DEVELOPMENT DEPARTMENT – PLANNING DIVISION RESPONSE

- The principal entrance to the building is connected to the public sidewalk via a walkway. The walkway connects to both West Broadway Avenue and 26th Avenue North.
- **The Public Works Department has reviewed the vehicular access and circulation plan provided by the applicant. In order to be in compliance with the Public Works requirements, the drive-through facility would need to be moved further east to avoid conflicts with vehicles exiting the drive-through facility and entering the site through the driveway on Sheridan Avenue North.**
- **The applicant has indicated that snow will be stored in the landscape area on the east side of the site.**

LANDSCAPING AND SCREENING

- The composition and location of landscaped areas shall complement the scale of the development and its surroundings.
- Not less than twenty (20) percent of the site not occupied by buildings shall be landscaped as specified in section 530.150 (a).
- Where a landscaped yard is required, such requirement shall be landscaped as specified in section 530.150 (b).
- Required screening shall be six (6) feet in height, unless otherwise specified, except in required front yards where such screening shall be three (3) feet in height.
- Required screening shall be at least ninety-five (95) percent opaque throughout the year. Screening shall be satisfied by one or a combination of the following:
 - A decorative fence.
 - A masonry wall.
 - A hedge.
- Parking and loading facilities located along a public street, public sidewalk or public pathway shall comply with section 530.160 (b).
- Parking and loading facilities abutting a residence or office residence district or abutting a permitted or conditional residential use shall comply with section 530.160 (c).
- The corners of parking lots shall be landscaped as specified for a required landscaped yard. Such spaces may include architectural features such as benches, kiosks, or bicycle parking.
- Parking lots containing more than two hundred (200) parking spaces: an additional landscaped area not less than one hundred-fifty (150) square feet shall be provided for each twenty-five (25) parking spaces or fraction thereof, and shall be landscaped as specified for a required landscaped yard.
- All parking lots and driveways shall be defined by a six (6) inch by six (6) inch continuous concrete curb positioned two (2) feet from the boundary of the parking lot, except where the

parking lot perimeter is designed to provide on-site retention and filtration of stormwater. In such case the use of wheel stops or discontinuous curbing is permissible. The two (2) feet between the face of the curb and any parking lot boundary shall not be landscaped with plant material, but instead shall be covered with mulch or rock, or be paved.

- All other areas not governed by sections 530.150, 530.160 and 530.170 and not occupied by buildings, parking and loading facilities or driveways, shall be covered with turf grass, native grasses or other perennial flowering plants, vines, mulch, shrubs or trees.
- Installation and maintenance of all landscape materials shall comply with the standards outlined in section 530.220.
- The city planning commission may approve the substitution or reduction of landscaped plant materials, landscaped area or other landscaping or screening standards, subject to section 530.60, as provided in section 530.230.

COMMUNITY PLANNING & ECONOMIC DEVELOPMENT DEPARTMENT – PLANNING DIVISION RESPONSE

- **According to the submitted plans approximately 24 percent of the site not occupied by the building will be landscaped. The landscaping requirement for this development is 14 trees and 70 shrubs. According to the plant schedule there will be a total of 35 trees and 147 shrubs.**
- **There is an existing three-foot high chain link fence located along the north property line that the applicant is proposing to keep on the site after construction is complete.**

ADDITIONAL STANDARDS

- Lighting shall comply with the requirements of Chapter 535 and Chapter 541. A lighting diagram may be required.
- Parking and loading facilities and all other areas upon which vehicles may be located shall be screened to avoid headlights shining onto residential properties.
- Site plans shall minimize the blocking of views of important elements of the city.
- Buildings shall be located and arranged to minimize shadowing on public spaces and adjacent properties.
- Buildings shall be located and arranged to minimize the generation of wind currents at ground level.
- Site plans shall include crime prevention design elements as specified in section 530.260.
- Site plans shall include the rehabilitation and integration of locally designated historic structures or structures that have been determined to be eligible to be locally designated. Where rehabilitation is not feasible, the development shall include the reuse of significant features of historic buildings.

COMMUNITY PLANNING & ECONOMIC DEVELOPMENT DEPARTMENT – PLANNING DIVISION RESPONSE

- **A lighting plan showing footcandles was not submitted as part of the application.**
- **This development should not block views of important elements within the city.**
- **This development should not cast shadows on public spaces and adjacent properties.**
- **This development should not contribute to the wind tunnel effect.**
- **The Crime Prevention Specialist has reviewed the project in regards to crime prevention design elements. In order to be in compliance with the CPTED requirements, there would be no pay phone on the site, there would be no benches located on the patio, there would be a fence located along the entire length of the north property line to prevent cut-through foot traffic and a camera plan would be submitted for review by the Police Department.**
- The existing building is not historic nor is the site.

Section B: Conformance with All Applicable Zoning Code Provisions and Consistency with the Comprehensive Plan

ZONING CODE

See conditional use permit finding number six above.

THE MINNEAPOLIS PLAN

The site is designated as retail-commercial in the comprehensive plan. The site is located on West Broadway Avenue which is a designated Commercial Corridor. According to the principles and policies outlined in *The Minneapolis Plan*, the following apply to this proposal:

- Infill development standards must reflect the setbacks, orientation, pattern, materials, height and scale of surrounding one and two family dwellings.
- Support efforts that recognize the increased visibility and importance of corner properties.
- Enhance unique characteristics of the city's commercial districts by encouraging appropriate building forms and designs, historic preservation objectives, site plans that enhance the pedestrian environment and by maintaining high quality public spaces and infrastructure.
- Require the landscaping of parking lots.
- Protect residential areas from the negative impact of non-residential uses by providing appropriate transitions between different land uses.
- Require screening and buffering for new developments next to residential areas.
- Use the site plan review process to ensure that lighting and signage associated with non-residential uses do not create negative impacts for residentially zoned property.
- Integrate "eyes on the street" design principles into site plan review to foster safer and more successful commercial areas in the city.
- Support development in Commercial Corridors where it enhances the street's character, improves its ability to accommodate automobile traffic and foster pedestrian movement and expands the range of goods and services.

The proposed site plan and elevations are not in conformance with the foregoing policies of the comprehensive plan. The orientation of the building does not take advantage of being located on a corner property or along a Commercial Corridor. In addition, the walls of the building are located more than eight feet from the property lines as well as the entrance. Besides the clear glass windows located in the entryway, there are no other windows located on this building that would allow views into or out of the building. The drive-through facility and the loading zone are located on the north side of the property without an appropriate transition area between them and the adjacent single-family dwellings. The amount of signage, including the wall signs and the free-standing sign, are more than two and three times the amount allowed by the zoning code.

Section C: Conformance with Applicable Development Plans or Objectives Adopted by the City Council

There are no small area plans adopted by the city for this particular location.

ALTERNATIVE COMPLIANCE

The Planning Commission may approve alternatives to any major site plan review requirement upon finding any of the following:

- The alternative meets the intent of the site plan chapter and the site plan includes amenities or improvements that address any adverse effects of the alternative. Site amenities may include but are not limited to additional open space, additional landscaping and screening, transit facilities, bicycle facilities, preservation of natural resources, restoration of previously damaged natural environment, rehabilitation of existing structures that have been locally designated or have been determined to be eligible to be locally designated as historic structures, and design which is similar in form, scale and materials to existing structures on the site and to surrounding development.
- Strict adherence to the requirements is impractical because of site location or conditions and the proposed alternative meets the intent of this chapter.
- The proposed alternative is consistent with applicable development plans or development objectives adopted by the city council and meets the intent of this chapter.

COMMUNITY PLANNING & ECONOMIC DEVELOPMENT DEPARTMENT – PLANNING DIVISION RESPONSE

- Alternative compliance is not warranted for this development.

RECOMMENDATIONS

Recommendation of the Department of Community Planning and Economic Development – Planning Division for the site plan review:

The Department of Community Planning and Economic Development – Planning Division recommends that the City Planning Commission adopt the findings above and **deny** the site plan review application for CVS Pharmacy located at 2426 West Broadway.

Attachments:

1. Statement of proposed use
2. E-mail to CM Johnson
3. Correspondence between the applicant and staff regarding contact with the Jordan Area Community Council
4. Correspondence from adjacent property owners
5. Zoning Map
6. Site plan, floor plans and elevations
7. Sign information
8. Photographs of the site and surrounding area

**Excerpt from the
CITY PLANNING COMMISSION
MINUTES – *October 25, 2004 and November 22, 2004*
Minneapolis Community Planning & Economic Development (CPED)
Planning Division
350 South Fifth Street, Room 210
Minneapolis, MN 55415-1385
(612) 673-2597 Phone
(612) 673-2728 Fax
(612) 673-2157 TDD**

The following actions were taken by the Planning Commission on **October 25, 2004**. 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:

ATTENDANCE

President Martin, Vice President Hohmann, G. Johnson, Krause, Krueger, Kummer, LaShomb, MacKenzie, and Schiff – 9

INTRODUCTION TO PUBLIC HEARING

PUBLIC HEARING

**REPORT
of the**

**CITY PLANNING COMMISSION
of the City of Minneapolis**

The attached report summarizes the actions taken at the City Planning Commission meeting held on October 25, 2004. The findings and recommendations are respectfully submitted for the consideration of your Committee.

17. CVS Pharmacy (BZZ-1865, Ward 4), 2426 West Broadway (Hilary Watson).

A. Conditional Use Permit: Application by Charles Schatz with DJR Architecture, Inc., on behalf of CVS Pharmacy/Bear Creek Capital, for a conditional use permit to allow CVS Pharmacy, located at 2426 West Broadway, to have extended hours; Sunday through Thursday 6 am to 1 am and Friday through Saturday 6 am to 2 am.

Action: Notwithstanding staff recommendation, the City Planning Commission adopted the findings and **approved** the conditional use permit application to allow CVS Pharmacy to have extended hours; Sunday through Thursday 6 am to 1 am and Friday through Saturday 6 am to 2 am located at 2426 West Broadway, based on the findings:

1. To be consistent with other approvals.
2. Condition that the drive-through facility closes at 11 p.m. Sunday through Saturday.

B. Variance: Application by Charles Schatz with DJR Architecture, Inc., on behalf of CVS Pharmacy/Bear Creek Capital, for a variance to increase the amount of signage on the south building wall from 97 square feet to 207 square feet for property located at 2426 West Broadway.

Action: The City Planning Commission adopted the findings and **denied** the variance application to increase the amount of signage on the south building wall from 97 square feet to 207 square feet for the property located at 2426 West Broadway.

C. Variance: Application by Charles Schatz with DJR Architecture, Inc., on behalf of CVS Pharmacy/Bear Creek Capital, for a variance to increase the amount of signage on the east building wall from 137 square feet to 260.25 square feet for property located at 2426 West Broadway.

Action: The City Planning Commission adopted the findings and **denied** the variance application to increase the amount of signage on the east building wall from 137 square feet to 260.25 square feet for the property located at 2426 West Broadway.

D. Variance: Application by Charles Schatz with DJR Architecture, Inc., on behalf of CVS Pharmacy/Bear Creek Capital, for a variance to increase the size of the free-standing sign from 80 square feet to approximately 284 square feet for property located at 2426 West Broadway.

Action: The City Planning Commission adopted the findings and **denied** the variance application to increase the size of the free-standing sign from 80 square feet to approximately 284 square feet for the property located at 2426 West Broadway.

E. Variance: Application by Charles Schatz with DJR Architecture, Inc., on behalf of CVS Pharmacy/Bear Creek Capital, for a variance to reduce the distance between a free-standing back-lighted sign and a residential district boundary from 300 feet to approximately 100 feet for property located at 2426 West Broadway.

Action: City Planning Commission adopted the findings and **denied** the variance application to reduce the distance between a free-standing back-lighted sign and a residential district boundary from 300 feet to approximately 190 feet for the property located at 2426 West Broadway.

F. Site Plan Review: Application by Charles Schatz with DJR Architecture, Inc., on behalf of CVS Pharmacy/Bear Creek Capital, for a site plan review of property located at 2426 West Broadway.

Action: The City Planning Commission continued the site plan review application for CVS Pharmacy located at 2426 West Broadway to the November 22, 2004 Planning Commission meeting.

Staff Hilary Watson presented the staff report. She noted that she had received a petition that day signed by nine people opposed to the conditional use permit for extended hours.

President Martin: WBAC, on the other hand, did approve the recommendation for extended hours.

Staff Watson: They did.

Commissioner Krause: Ms. Watson, I had a question about how much of this information, and some of the classic planning approaches to this project and this site, is presented to these business associations when they are considering their support for these projects? Does any of that get through to them? I'm sure there aren't enough staff in the department to go to all of those meetings to present, but...?

Staff Watson: I don't know. I don't know if Tom Leighton who is the staff community planner for our department was at those meetings. He's not here. He had a neighborhood meeting at 6 tonight so he's already left. I know he was downstairs waiting to listen, but I'm sure he had to leave before we started. I guess the applicant could address that, unless...

Director Sporlein: We have held section forums on the *Minneapolis Plan* and the policies in those plans for each sector of the city and invited the neighborhood groups and the business associations and those new tools that we've developed which we'll be talking much more about at the retreat. Just today were mailed out – the electronic notice mailed out to all the neighborhood groups and business associations about the zoning code and land use in the city and also a neighborhood guide for developing plans and some of these issues and policies are referenced.

Staff Watson: I told the applicant prior to even sending out my staff report that we were recommending denial. I didn't receive a phone call from the applicant wanting to sit down and talk about this in further detail. Can I say? We are meeting with representatives of CVS themselves, not their representatives, but actual CVS on Wednesday to tell them what our rules are, so maybe they can start with the rules instead of their prototypical building.

President Martin: I will open the public hearing for item 17, I know there are folks here who want to speak to it, so come on up.

Bill Tipman (Vice President, Bear Creek Capital and designated CVS developer): As Hilary alluded, we do have a meeting, and I will be in attendance at that meeting on Wednesday with Hilary, Mr. Anderson, and I think some other members of Planning staff and I would like to vision that meeting as being a bit more of a...each side understanding the other's constraints and limitations as opposed to us being lectured to by Planning staff as to what the regulations are. I think we understand fully what the

regulations are. There is, however, quite...and I think we're really down to one issue between ourselves and Planning staff... and that is the issue of compliance with the 30 percent glass requirement and quite honestly, I don't know anybody that really fully understands the interpretation of that provision of the code. Case in point, on this particular project, this application that we have in front of you, it was modeled after a project that was approved by this body at Central and 37th. There's a building permit [that] has been issued for that project that has virtually an exact clone of the conditions that are illustrated on this application as well as another application we've made at 50th and Chowen. I know for a fact that that is not CVS's position on that matter. We met with Hilary and Neil, when was that, last week sometime? And we are bringing the CVS people in who can describe what their issues are and their true limitations on what they can and cannot do in their stores and hopefully there is some way to meld the objective of that provision of the code, which I think is admirable and I think the objective is very clear, and that is to provide a visual connection from the outside of the store and inside. And I think CVS is sincerely willing to accomplish that, but I don't believe that there has been a consistent interpretation from the City to CVS on how that policy is enforced, how it's... I mean, at 12th and Hennepin, we have a situation there, granted it's in an HPC, but because it's in an HPC, it's virtually solid glass on one wall on 12th Street. And in that particular instance, the City Planning staff has taken the position that all the windows need to be non-obstructed. At the same time, a building permit is being issued by the City to CVS at 37th and Central with sandblasted glass. There is...I think we need a cooling off period and a sincere effort in this meeting that we're going to have on Wednesday to get a consistent interpretation. CVS is investing a huge amount of money not only in their physical real estate that they want to bring to the City, in Planning time, my time, engineer's time, architectural time and to be given an inconsistent message doesn't serve anybody's purposes. So I think we're going to sit down in that meeting and we're going to work things out. That would be my statement on that matter. With respect to this project...I almost put that on upside-down, no I got it right this time...Wait, the other...my objective in this meeting that we're going to have on Wednesday is to try to invent what I'm calling a Minneapolis Prototype and the Minneapolis Prototype is arranged very similar to this, the difference being that a prototypical site that CVS will typically look at is a rectangle. This site, as you can see, is not a rectangle. If this were a rectangular site, like 37th and Central, like 50th and Chowen, like Nicollet and Franklin, we wouldn't be having the site plan discussion on this one. The dominant traffic movement on this particular site is Broadway. Naturally, we want our store fronting on Broadway. If we had our preference, it would be a rectangle, which it's not. If we attempted to take the building and rotate it parallel to Broadway, the parking winds up in the rear of the building where our customers don't want it. I mean the City may want it, City Planning staff may want it in the rear, but quite honestly it doesn't function for CVS. That issue aside, we have support from both the Jordan Area Community Council and the West Broadway Area Coalition who both feel that this amenity, this alternative compliance amenity would be an asset to the community. Granted it shouldn't have benches, granted it should be welded at night so the wrong element doesn't collect there when the store is closed, but we really think it could be an attractive amenity to the City which is chapter and verse per your code which addresses alternative compliance in a situation like this where the site just doesn't fit. With respect to signage, as Charles Schatz and I with DJR have long lamented, we are soldiers in this war and we are required to make application for our merchant client who can... quite honestly there isn't a merchant out there who can't

have too much signage. I'll let it rest at that. There is, however, I believe a genuine need for some type of a ground mounted sign in this location because there is no signage on this face of the building and I think it would identify the facility to customers on Sheridan Avenue. Whether it needs to be that large, I leave to your discretion. The extended hours application, the hours that we're requesting, are the same as those that were approved by this body at Nicollet and Franklin, the project we're doing there. We however did amend our extended hours in the case at 12th and Hennepin where we had in fact received an approval for 24-hour operation on that store. We did agree to limit the drive-through hours, which I think might be a reasonable compromise in this situation if the concern is the speakers, and quite honestly, I don't...well, there has to be a speaker for the outside lane, but its proximity to the residents, I think a reasonable compromise would be to limit the hours on the drive-through. With respect to the fence that's being discussed, yes we would desire to keep that fence in place and I think the City would desire as well. I believe that concludes my presentation. Are there any questions?

Staff Neil Anderson: I don't have a question, but I just wanted to let the Commissioners know that on the window requirement for 37th and Central, when Planning staff stamped off on that, the Planning Commission approved that as clear glass. It was stamped off as clear glass. My understanding is that what went to plan review was a construction drawing that showed it as frosted glass and it was issued based on that. There's been now a hold put on the permits and I've been working with the supervisor in the plan review section to try to make sure that this doesn't happen again with this or other projects, where one gets stamped off on and then a different project (in effect) comes in and then a permit gets approved. So the frosted glass was not one that came out of the Planning Commission or staff and somehow that got through, but we're working to rectify that piece.

Charles Schatz (DJR Architecture): I just wanted to... I presented this project to the West Broadway Area Coalition and also to the Jordan Neighborhood and I just wanted to apprise you of those two meetings. At the West Area Coalition, Tom Leighton was in attendance at that meeting. He was not at the Jordan Neighborhood. And we did discuss some of the issues regarding the site plan specifically more so than the signage issues. And I just wanted to say that at those two meetings we did have, I would say a fairly comprehensive and intelligent conversation about the pros and cons of this particular site plan and configuration. I think that the residents and the people at these two meetings understood some of the issues that this client has in terms of what they do for a building, how it's configured, how it's merchandised, et cetera. And they felt that because of the amount of landscape and because of this plaza that we were creating in the front of the store on West Broadway, there was actually some very positive comment and reaction to that. They did feel that it was an opportunity to provide, for instance, on the existing building right now, there's a very large-scale mural that is part of the community and they felt that that plaza and requested that as part of that, that they be able to incorporate some public art as a replacement for that mural. They also, I think, had a good reaction to the 30 foot setback from Sheridan of the building because they felt that we could provide landscape buffer that would buffer the neighborhood from the store on that side because it is more residential in nature on Sheridan. And then we also talked about and agreed that actually we would replace that chain-link fence with a residential board on board wood fence to provide additional

buffer and protection plus the sort of solid wall of coniferous trees that is shown on the site plan. And there was also a lot of positive reaction to the use and the need in the neighborhood for that use. So I just mainly wanted to let you know since I'm the only one here that was there that had that response and obviously they wrote letters in support.

Council Member Barbara Johnson (Ward 4): I want you to know that when I read the article in the paper that CVS drugstores was coming to Minnesota and was going to open a number of facilities here, I contacted them and I said, 'You really need to be in North Minneapolis'. And I showed them my Lowry and Penn site which continues to remain vacant and then I showed them this site in my ward which is a Super Valu store that was Super Valu and then an unsuccessful food market for 6 months or so. I think when Mr. Schatz talks about the neighborhood's excitement, he's not exaggerating. I appreciate the work that staff has done on this, but I think that one of the things West Broadway needs are some viable businesses. This is an opportunity for this community. And I'm aware that you folks aren't going to approve everything that they ask for, but I would hope that we could come to some accommodation with a project that will give a boost in the arm for West Broadway and provide citizens that live in the area with a national retailer that has a product that apparently is in great demand. They have a sign in the parking lot right now that says 'America's Number One Drug Store'. I think it would be a shame to let this opportunity go by and it would be a shame and a disservice to the community to take a site that is really a very strangely configured site with West Broadway at an angle there and be so stringent in our requirements that we make an angled building go up against the West Broadway front. That just does not make sense to me. It seems to me that it would make for a very inefficient parking also, although I'm not a Planner and I appreciate the work Planning staff does. But I think that this really is a very unique site so I would hope that we can work with CVS and come to some accommodation that lets them go forward with a much needed amenity in North Minneapolis. Thank you.

President Martin: Thanks Council Member Johnson. Anyone else? OK, I'm going to close the public hearing. Commissioner Schiff.

Commissioner Schiff: Well, I want to thank Council Member Johnson for coming down here. We've seen CVS before, many other parcels. And I know they're looking for innovative, out of the box, kind of ways to meet the demands of inner city areas that just have a lot of demands on them. So I think...and I know also they're looking for consistency in the way they're treated...They've come through with sign variance applications in the past and I think, to be consistent, these applications again don't meet the findings for a variance. Everybody wants a larger sign. As the applicant said, everybody out there wants and feels they need larger signs. I'm going to suggest that we listen to the neighborhood and deny the CUP for 24 hour use and deny the sign variances and then lets continue the site plan and hope that something comes about this meeting and that CVS can show their flexibility and meet with Planning staff and come up with a site plan that meets the corridor's needs.

President Martin: OK, just so I understand Commissioner Schiff, you just moved staff recommendation on A, B, C, D, and E?

Commissioner Schiff: Yep.

President Martin: OK, alright.

Commissioner Schiff: And then on F, I would suggest we continue it.

President Martin: OK, well let's leave that aside for the moment.

Bill Tipman: Can I request a clarification. I believe your motion, Gary was to deny the 24 hour, I don't believe we're applying for 24-hour operation. It's extended hours.

Commissioner Schiff: Thank you for that clarification. So deny the application until 2 a.m.

Commissioner Hohmann: It's hard for me to believe all the parties have been talking prior to this. And it's hard for me to figure out where to start here. I guess I'll start with the idea that this is a Minneapolis prototype. I wouldn't characterize it as that. And if there has been any inconsistencies I guess from what you're reading from what we've been doing so far, I hope we can make it all more consistent tonight and more clear. That remains to be seen. I'd like to thank Hilary for a great presentation. She laid it out really clearly, virtually everything on here, which is all recommended denied is contrary to what our goals are in the Plan, what we've tried to do in the past with you, and I think we're trying to be consistent and go down that road and I think the neighborhood organizations and whatnot, they may support what you've got on the table, but if you had something with what we're looking for, they'd support that even more. Is there a motion on the table now...?

President Martin: The motion that is on the table is to approve staff recommendation for items A through E.

Commissioner Hohmann: OK, I'll let it go for that.

Commissioner LaShomb: Well, I guess that would be the way to do it in some ways. I guess my kind of reaction is that I think in a couple of the other CVS Pharmacies, we have agreed that they could have extended hours if the window hours were limited. Am I wrong about that, Hilary? It seems to me there are other drug stores in Minneapolis where the hours are even later than 2 a.m.

Staff Watson: I can't even recall the two...We extended the hours for the one on 12th and Hennepin. I believe it's 24-hours, but the drive-through I believe is closed at 10 or 11... Can I get into KIVA on those things?

Commissioner Schiff: No, not loaded, sorry.

Staff Watson: And then the one on Nicollet and Franklin, I don't recall what hours we went to. If I could get into KIVA, I could tell you.

Commissioner Schiff: Madame Chair, actually, I'm going to withdraw...

Commissioner LaShomb: Well, I guess all I'm asking is I would like to push a sub amendment and approve the conditional use permit but place a limitation of 11 p.m. for the use of the drive-through. And the reason I'm going to propose that because I'm very sensitive to the fact that there's a neighborhood back here and we ought to be sensitive to that but 3 sides of this project, if you can find sides on this property, 3 sides of this property are in commercial uses and so it seems to me (I wish the drive-through weren't in the back) I think we ought to try to be a little consistent about what we do with these kinds of facilities in Minneapolis. I'm trying to remember what the Walgreen's does on Hiawatha and 46th...

President Martin: It's 24-hour.

Commissioner LaShomb: It's 24-hour and I don't know about the drive-through, but they have some residential behind them.

President Martin: They have residential on the east side.

Commissioner LaShomb: So anyway, I just think that's a more appropriate approach. The rest of it, everyone is totally right, we should deny all of these.

President Martin: OK, so Commissioner Schiff withdrew?

Commissioner Schiff: I'm going to withdraw my denial.

President Martin: So is there a second for Commissioner LaShomb's motion.

Staff Watson: Can you repeat the hours for me?

Commissioner LaShomb: 11 p.m.

Staff Watson: I just want to remind you, just Sunday through Thursday, the hours of operation in this district are 6 to 10. And then Friday and Saturday, 6 to 11, so the one hour is for the whole week? I just want to know, that's all.

Commissioner LaShomb: Yes, I guess my kind of reaction that this isn't a liquor store or a bar. This is a drug store and people go there 7 days a week more than the rotisserie.

Staff Watson: Just wanted to be clear.

Commissioner LaShomb: But I'm troubled a little bit by the fact that we're not sure whether it's 10 or 11, so I'm going to set it at 11.

Staff Watson: The hours of operation in the zoning code are Sunday through Thursday, 6 a.m. to 10 p.m. and then Friday and Saturday, 6 a.m. to 11 p.m.

Commissioner LaShomb: That's fine with me.

President Martin: So you make it consistent with the code...

Commissioner LaShomb: Sure, I don't want to violate the code.

President Martin: So Commissioner LaShomb, your moving an approval of the CUP with a limit on the hours. And Hilary, you were saying that the limited hours are for the entire use?

Staff Watson: The C2 district, which the site is located in, it's allowed hours are 6 a.m. to 10 p.m. Sunday through Thursday, and then 6 a.m. to 11 p.m. Friday and Saturday.

Commissioner Schiff: So if I could clarify, and the application is for extended hours. We don't need a CUP if we're going to just require consistency with the zoning code. So I think one additional hour Sunday through Thursday is appropriate and one additional hour Friday and Saturday is appropriate and that's what I would suggest.

President Martin: So you're saying 6 a.m. to 11 p.m. Sunday through Thursday and 6 a.m. to 12 Friday and Saturday.

Commissioner Schiff: That's what I would suggest. It's just for the point of discussion.

President Martin: Commissioner LaShomb, what you're missing, what they're asking for is an approval for extended hours until 1 a.m. weekdays and until 2 a.m. on weekends and what you were saying is that the drive through should only be open until 11?

Commissioner LaShomb: Right, what I was trying to do was to allow them Sunday through Thursday until 1 a.m. and Friday through Saturday, be open until 2 a.m. with a restriction of 11 p.m. on the drive-through.

President Martin: OK. Is there a second for that.

Commissioner Hohmann seconded.

Commissioner LaShomb: Well, I mean my logic to this is that I understand the problems with drive-through's at night and this drive-through happens to be on the residential side. However, there are a lot of folks who work second shifts and maybe starting third shifts, and we're a 24-hour society and a lot of the drug stores in Minneapolis we allow 24-hours and we're now doing that with McDonald's and everybody else. Maybe in 5 years this will be 24-hours. I just think that going to 11 p.m. would mitigate a lot of the residential problem because it would eliminate the drive through. But I think the drug store has a functional use that reflects the kind of flexibility people have in our society today. I don't run to the Walgreen's on Hiawatha and 46th at 2 in the morning myself because by then I'm dead out there, but I think there are a lot of folks who live in a very different world. I won't say they need something for their headaches when the bars close, I don't think that's the point, I just think it's the way our society functions and I think 2 a.m. is reasonable on weekends and 1 a.m. is reasonable during the week for a drug store. Inside operation.

President Martin: OK, so you're moving an approval of the conditional use permit for extended hours with the condition of the 11 p.m. closure on the drive through.

Commissioner LaShomb: Yes.

The motion carried 4 – 3 (MacKenzie, Schiff, G. Johnson opposed; Kummer not present for the vote)

Commissioner LaShomb: Well, since Commissioner Schiff had withdrawn his motion, I will move the staff recommendations on all the variances.

Commissioner Schiff: Right, I just withdrew the CUP.

President Martin: So the motion that's now on the floor is approval of the staff recommendation for items B through E. OK, all in favor please signify by saying aye.

The motion carried 7 – 0 (Kummer not present for the vote).

President Martin: OK, that brings us to site plan.

Commissioner Schiff: I'll move continuation for two cycles (Hohmann seconded).

President Martin: Hopefully the big pow wow on Wednesday will help sort some of this out.

Commissioner Hohmann: Yes, I guess I would go along with the concurrence. Somebody referenced meeting the needs of the client. Well I would suggest that folks are in the middle. You've got a client on both ends. And when you go to the meeting as a result of this continuance, I would keep that in mind that you're working with more than one client.

Commissioner LaShomb: I don't want to get preachy about this either, but I seem to recall when we were having the first discussion about a CVS Pharmacy in my time on the Planning Commission, we had a packet that showed a bunch of wonderful, innovative uses of sites and other things and I'm kind of getting the impression that was all kind of water under the bridge and now we're going back to some standard box. And I think we've made it clear on this Planning Commission a long time ago, we're not terribly interested in standard boxes for the City of Minneapolis, so maybe that's an overstatement of the problem. I just think that we need to recognize that West Broadway is an important part of the community and what you do there with this project may have a very serious impact on how other projects look up there too. Frankly, there are a lot of projects presently on Broadway that are not in my opinion the kind of stuff I'd want to have in Minneapolis if I had my way.

President Martin: OK, the motion is to continue the site plan review for two cycles. Neil?

Staff Neil Anderson: The only comment that I wanted to make is we're getting close to the end of the year. And if we go two cycles out, we're November 22nd. With the appeal period of 10 days, the only Z & P meeting that I'm aware of in December is December the 6th, we're going to end up in January. And at this point in time, I don't have a schedule for January and I think the 120 days are up sometime around the 28th or the 29th of January. I don't know if we're going to have enough time in there to deal with it.

I suggest we go one cycle out and then next time if it turns out that it needs to be continued again, we can at least check the schedule and have that information for you. I just don't want it to go out and lose by default on this.

President Martin: OK, is that acceptable?

Commissioner Schiff: Discussion. There is a Z & P scheduled for January 6 of 2005, so I think we're plenty safe.

Staff Watson: We haven't extended the 60 days to the 120. My report would be due Thursday and if our meeting is tomorrow, I don't know if this can be worked out in two days for a staff report to be completed for the November 8th meeting.

President Martin: So we'll leave it at two cycles and see what all gets worked out in your big discussion. All those in favor of that motion, please signify by saying aye.

The motion carried 7 – 0 (Kummer not present for the vote).

Director Sporlein: I just want to say that this is the sixth or seventh project that we've been working with CVS and their representatives and as we stated to them before, we welcome new businesses in the city, and especially with new construction, there's a real opportunity for win-win here. We have spent significant time with them and their staff. I think the issues are more than windows. It comes down to signage, windows and building and drive-through location, so that's what we're really going to focus on. Understanding that each site is unique, so having one size fits all doesn't necessarily work, but I think we could come to some better understanding of what the policies and codes are and when we bury them. So we're looking forward to it.

The following actions were taken by the Planning Commission on November 22, 2004. 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:

ATTENDANCE

President Martin, Vice President Hohmann, G. Johnson, Krause, Kummer, and LaShomb – 6

INTRODUCTION TO PUBLIC HEARING

PUBLIC HEARING

**REPORT
of the**

**CITY PLANNING COMMISSION
of the City of Minneapolis**

The attached report summarizes the actions taken at the City Planning Commission meeting held on November 22, 2004. The findings and recommendations are respectfully submitted for the consideration of your Committee.

19. CVS Pharmacy (BZZ-1865, Ward 4), 2426 West Broadway ([Hilary Watson](#)).
This item was continued from the October 25, 2004 meeting.

A. Site Plan Review: Application by Charles Schatz with DJR Architecture, Inc., on behalf of CVS Pharmacy/Bear Creek Capital, for a site plan review of property located at 2426 West Broadway.

Action: The City Planning Commission adopted the findings and **denied** the site plan review application for CVS Pharmacy located at 2426 West Broadway.

Staff Hilary Watson: This is an item that was continued from our October 25th Planning Commission meeting. This is a CVS application by Bear Creek Capital on behalf of CVS for the property at 2426 West Broadway. As noted in the staff report, staff did not receive any revised site plans or elevations since our last meeting, so the staff report and the recommendation to deny the site plan review is the same. I will say that after our meeting, on the 25th, we did have a meeting with CVS representatives and also Bill Tipman from Bear Creek Capital and Charles Schatz from DJR Architecture where we talked about CVS site plan issues in general. Nothing has come forward to staff to look at and we have not had any other further contact regarding that meeting since then. I haven't had contact with Bill Tipman since the 8th of November where I received an e-mail from him that said he was asking CVS to develop alternative proposal for glass fixture configuration, that they are calling 'Minneapolis Urban Model'. We haven't seen that, I'm not prepared to review that today here at a meeting today if that is something that they're bringing forward. I don't know if he is bringing that forward or not. As I said, I haven't spoken to him about it. So I wanted to point those things out to you. If I need to go through the reasons why we're recommending denial, I can, but we did have a pretty good discussion I think the last time.

President Martin: Yes we did.

Staff Watson: So I will save that in case we need that, I can do that, but I am going to end my part of this discussion tonight and let the Commission deliberate about it.

Commissioner LaShomb: Well I've got a question for the President of the Commission. Is the public hearing closed on this?

President Martin: I think we did close the public hearing, yes. You could vote to reopen it.

Commissioner LaShomb: I do not intend to do that.

President Martin: Neil? I believe we did, right. Commissioner LaShomb?

Commissioner LaShomb: Well, this is an interesting issue and I think that we made it very clear in the previous discussion of this site that we wanted a site plan that was consistent with policies of the City of Minneapolis and I think it's regrettable that apparently they didn't get that message. So I'm going to move that we deny, that we support the staff recommendation to make the denial (Hohmann seconded).

Commissioner Hohmann: I support the staff recommendation and at the same time I want it to be evident that the Commission supports CVS putting this facility on this site, it's just a question of design - altering a standardized design to fit the site consistent with the City's comprehensive plan and there has evidently been no effort to do that, which is why it was continued in the first place. So I support staff recommendation.

Commissioner Krause: Madame Chair, my feelings on this issue is that we have a fairly narrow planning approach to this. And from a planning approach and a land use approach and all the guidelines in the city and all the standards we're supposed to apply, it doesn't work. The city as a whole has to look at this in a somewhat broader context. And you might even argue that West Broadway is a special case because it really does need this kind of an investment. So at the other levels of government, where people have to look at it more broadly and look at it in a bigger context and look at the job creation and what it leverages in terms of other kinds of economic development, rebuilding that once very vibrant commercial street, they may come to a different conclusion than we do, but I do feel that it's important for us - we're given standards that have been approved and we do have to kind of support them and say that from a planning standpoint, this project as it was presented today doesn't work. So more work needs to be done on it if it's going to happen.

President Martin: OK, the motion then is to approve the staff recommendation to deny the current and former site plan. All those in favor of that motion please signify by saying aye.

Motion carried 5-0.