



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

Date: May 22, 2008

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

Referral to: Zoning and Planning Committee

Subject: Appeal of the decision of the City Planning Commission for the Porky's project located at 1851 Central Ave NE.

Recommendation: The following actions were taken by the Planning Commission on April 28, 2008 (BZZ-3998):

A. Site Plan Review: Application by Brian Flakne, on behalf of Trygve Truelson and Truco, Inc., to amend the site plan review application for approval of the as built conditions. The existing fast food restaurant located at 1851 Central Ave NE was not constructed in compliance with the City Council conditions of approval.

Action: The City Planning Commission adopted the findings and **approved** the application to amend the approved site plan review for property located at 1851 Central Ave NE subject to the following conditions:

1. All site improvements shall be completed by May 31, 2008 unless extended by the Zoning Administrator, or the permit may be revoked for non-compliance.
2. Planning Staff review and approval of the final site plan.
3. The curb cut on Central Avenue NE shall be modified so that the north side of the curb cut is altered to align with the drive isle which would narrow the curb cut by roughly 3 feet from what the as built site plan shows.
4. The existing wood fence along the public alley shall be replaced with a masonry wall in order to buffer noise from the residential properties to the east.
5. The applicant is strongly encouraged to consider marking the driving lanes with a painted arrow directing vehicles to turn left on to 19th Ave NE.
6. Compliance with all conditions of approval as adopted by the City Council for the previous land use application, BZZ-3251.

Ward: 1

Prepared by: Becca Farrar, Senior Planner, 612-673-3594 Approved by: Jason Wittenberg, Development Services Supervisor Presenters in Committee: Becca Farrar, Senior Planner
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Community Impact

- Neighborhood Notification: The applicant notified the Windom Park Citizens in Action as required on March 31, 2008, informing them of the amended site plan review application. Staff has not received official correspondence from the Windom Park Citizens in Action stating a position prior to the printing of this report.
- City Goals: See staff report
- Comprehensive Plan: See staff report
- Zoning Code: See staff report
- End of 120-day decision period: July 28, 2008
- Other: Not applicable

Background/Supporting Information: Trygve Truelson has filed an appeal of the decision of the City Planning Commission. The appeal is regarding the decision of the City Planning Commission on April 28, 2008, to approve the amended site plan review application subject to specific conditions of approval for the development known as Porky's located at 1851 Central Avenue NE. The applicant is appealing one specific condition of approval on the amended site plan which is Condition #4. This condition states: "The existing wood fence along the public alley shall be replaced with a masonry wall in order to buffer noise from the residential properties to the east." The minutes from the April 28, 2008, City Planning Commission meeting are attached.

The appellant has stated that the specific condition of approval outlined above is an unacceptable condition. The appellant requests that he be allowed to meet the noise buffering expectations by adapting the existing wood fence with additional baffling which, he suggests, would achieve the same noise attenuation as the proposed masonry wall, at a substantially reduced cost. The appellant specifically requests approval of the amended site plan without Condition #4. The appellant's complete statement of the action being appealed and reasons for the appeal are attached.

Department of Community Planning and Economic Development – Planning Division
Site Plan Review
BZZ-3998

Date: April 28, 2008

Applicant: Trygve Truelson, 3118 West Lake Street, Minneapolis, MN 55416, (612)810-5428

Address of Property: 1851 Central Ave NE

Project Name: Porky's

Contact Person and Phone: Aaron Roseth, 1072 Ruggles St, Roseville MN 55113, (612) 205-7231 and Flakne Law Offices, Attn: Brian Flakne, 9301 Bryant Avenue South, Suite 200, Bloomington, MN 55420, (952)888- 9304

Planning Staff and Phone: Becca Farrar, (612) 673-3594

Date Application Deemed Complete: March 31, 2008

End of 60-Day Decision Period: May 29, 2008

End of 120-Day Decision Period: Not applicable for this application.

Ward: 1 **Neighborhood Organization:** Windom Park Citizens in Action, adjacent to Holland Neighborhood Improvement Association and Logan Park Neighborhood Association

Existing Zoning: C2 (Neighborhood Corridor Commercial) District

Proposed Zoning: Not applicable for this application.

Zoning Plate Number: 10

Legal Description of Property: Not applicable for this application

Lot area: 14,040 square feet or .32 acres

Proposed Use: Amend the approved site plan for a fast food restaurant.

Concurrent Review:

- Amend the Site Plan Review application for approval of the as built conditions. The existing fast food restaurant was not constructed in compliance with the City Council conditions of approval.

Applicable zoning code provisions: Chapter 530 Site Plan Review.

Background: The applicant received approvals for land use applications (BZZ-3251) on December 1, 2006, by the City Council which allowed the construction of a new fast food restaurant on the property located at 1851 Central Avenue NE. The land use applications included: a rezoning from the C1 to C2 zoning district; a conditional use permit to allow a fast food restaurant; and site plan review.

A letter dated December 20, 2007, was sent to the applicant upon inspection of the property which listed several specific conditions of approval that had not been met and that there had also been a misunderstanding about the applicability of fencing and screening requirements reflected in the public record. The letter is attached for reference. The applicant has submitted an application to amend the approved site plan in order to receive approval for the as built conditions currently on site.

It is Planning Staff's understanding that there are three outstanding issues that need to be addressed with the amendment to the site plan. One is related to the curb cut on Central Avenue NE. The curb cut was not constructed as approved and Public Works will require modifications to the as built conditions. Public Works has stated that they will allow the south side of the existing curb cut to remain in place as long as the north side of the curb cut is altered to align with their drive isle. This would narrow the curb cut by roughly 3 feet from what the as built site plan shows. The second compliance issue is related to the curb cut on 19th Avenue NE. The condition of approval for this specific item stated the following: *The applicant will work with Public Works on measures to structurally direct traffic exiting from the site to turn left onto 19th Ave NE and will post signage prohibiting right turns onto 19th. The applicant shall pay the cost of any necessary improvements;*. At the time of the letter, the required signage had not been installed. This has now been done. Further, Planning Staff strongly encouraged the applicant to consider marking the driving lanes with a painted arrow directing vehicles to turn left. To Staff's knowledge, this has not been done and as such Planning Staff will encourage this again. The site inspection indicated that the width of the exit (approximately 15') did not meet the approved dimensions indicated on the PDR-approved site plan (13'). Public Works has reviewed the curb cut on the 19th Avenue NE side, and has no problem with the additional width of 2 feet. The last issue that must be addressed by the amendment is the condition related to the masonry wall which stated: *"A masonry wall along the public alley shall be installed in order to buffer noise from the residential properties to the east."* Although City staff previously agreed with the project architect that this condition had not been adopted, the City Clerk has confirmed that the public record is correct; that the condition was adopted by the City Council. While there was discussion of this condition at the public hearing, this condition was neither amended nor withdrawn by Council Member Schiff. Thus, the condition remained as stated and was approved. The applicant constructed a 6 foot tall wood fence along the east property line adjacent to the alley instead of the required masonry wall. Planning Staff will recommend that the Planning Commission require compliance with this previous condition of approval. The applicant has submitted an email from a consultant regarding the acoustical performance of the constructed wood fence versus the required masonry fence. It has been attached for reference.

Multiple land use applications were submitted in 2005 in order to construct a new Porky's restaurant on the site. At that time, C4 zoning was needed to allow the proposed fast food use as a stand-alone fast food restaurant is permitted as a conditional use in C2 zoning only if 660 feet of linear C2 zoning exists. At the time of the application, the site was surrounded by C1 zoning. The application was then withdrawn to allow an adjacent property (1911 Central Ave NE) to be considered for rezoning from C1 to C2. That rezoning was approved de facto; as a result the rezoning of 1851 Central Ave NE to C2 then provided the required linear feet of C2 zoning to allow the conditional use of a fast food restaurant. The

subsequent land use applications were those that were approved on December 1, 2006 by the City Council.

The project site was formerly a gas station and had been vacant for some time prior to the construction of the fast food restaurant. The site is adjacent to residential dwellings, a police station, and other commercial uses.

Staff has not received an official response from Windom Park Citizens in Action. prior to the printing of this report. Any letters received shall be forward on to the Planning Commission for consideration.

SITE PLAN REVIEW

Required Findings for Site Plan Review

- 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 and applicable small area plans adopted by the city council. (See Section B Below for Evaluation.)**

Section A: Conformance with Chapter 530 of Zoning Code

BUILDING PLACEMENT AND DESIGN:

- **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. In the case of a corner lot, the principal entrance shall face the front lot line.**
- **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 walls shall provide architectural detail and shall contain windows as required by Chapter 530 in order to create visual interest and to increase security of adjacent outdoor spaces by maximizing natural surveillance and visibility.**
- **In larger buildings, architectural elements, including recesses or projections, windows and entries, shall be emphasized to divide the building into smaller identifiable sections.**
- **Blank, uninterrupted walls that do not include windows, entries, recesses or projections, or other architectural elements, shall not exceed twenty five (25) feet in length.**
- **Exterior materials shall be durable, including but not limited to masonry, brick, stone, stucco, wood, metal, and glass.**
- **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 fronting along a public street, public sidewalk, public pathway, or adjacent to a residence or office residence district.**
- **Entrances and windows:**

- **Residential uses:**
 - **Principal entrances shall be clearly defined and emphasized through the use of architectural features such as porches and roofs or other details that express the importance of the entrance. Multiple entrances shall be encouraged. Twenty (20) percent of the walls on the first floor and ten (10) percent of the walls on each floor above the first that face a public street, public sidewalk, public pathway, or on-site parking lot, shall be windows as follows:**
 - a. **Windows shall be vertical in proportion.**
 - b. **Windows shall be distributed in a more or less even manner.**
 - **Nonresidential uses:**

Principal entrances shall be clearly defined and emphasized through the use of architectural features such as roofs or other details that express the importance of the entrance. Multiple entrances shall be encouraged. Thirty (30) percent of the walls on the first floor and ten (10) percent of the walls on each floor above the first that face a public street, public sidewalk, public pathway, or on-site parking lot, shall be windows as follows:

 - a. **Windows shall be vertical in proportion.**
 - b. **Windows shall be distributed in a more or less even manner.**
 - c. **The bottom of any window used to satisfy the ground floor window requirement may not be more than four (4) feet above the adjacent grade.**
 - d. **First floor or ground floor windows shall have clear or lightly tinted glass with a visible light transmittance ratio of 0.6 or higher.**
 - e. **First floor or ground floor windows shall allow views into and out of the building at eye level. Shelving, mechanical equipment or other similar fixtures shall not block views into and out of the building in the area between four (4) and seven (7) feet above the adjacent grade. However, window area in excess of the minimum required area shall not be required to allow views into and out of the building.**
 - f. **Industrial uses in Table 550-1, Principal Industrial Uses in the Industrial Districts, may provide less than thirty (30) percent windows on the walls that face an on-site parking lot, provided the parking lot is not located between the building and a public street, public sidewalk or public pathway.**

Minimum window area shall be measured as indicated in section 531.20 of the zoning code.

- **The form and pitch of roof lines shall be similar to surrounding buildings.**
- **Parking Garages: The exterior design shall ensure that sloped floors do not dominate the appearance of the walls and that vehicles are screened from view. At least thirty (30) percent of the first floor building wall that faces a public street, public sidewalk or public pathway shall be occupied by active uses, or shall be designed with architectural detail or windows, including display windows, that create visual interest.**

The approved building has been constructed on the subject site. There are no outstanding issues with the building as constructed. Please see the staff report for file BZZ-3251 for specific details related to this section of Chapter 530.

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 530.150 (b) related to alley access.**
- **Site plans shall minimize the use of impervious surfaces.**

As mentioned in the background section of the staff report, there are two outstanding issues related to access and circulation. One is related to the curb cut on Central Avenue NE. The curb cut was not constructed as approved and Public Works will require modifications to the as built conditions. Public Works has stated that they will allow the south side of the existing curb cut to remain in place as long as the north side of the curb cut is altered to align with their drive isle. This would narrow the curb cut by roughly 3 feet from what the as built site plan shows.

The second compliance issue is related to the curb cut on 19th Avenue NE. The condition of approval for this specific item stated the following: *The applicant will work with Public Works on measures to structurally direct traffic exiting from the site to turn left onto 19th Ave NE and will post signage prohibiting right turns onto 19th. The applicant shall pay the cost of any necessary improvements;*. At the time of the letter, the required signage had not been installed. This has now been done. Further, Planning Staff strongly encouraged the applicant to consider marking the driving lanes with a painted arrow directing vehicles to turn left. To Staff's knowledge, this has not been done and as such Planning Staff will encourage this again. The site inspection indicated that the width of the exit (approximately 15') did not meet the approved dimensions indicated on the PDR-approved site plan (13'). Public Works has reviewed the curb cut on the 19th Avenue NE side, and has no problem with the additional width of 2 feet.

The site is in conformance with the approvals for the rest of the items within this Section of the Chapter 530 standards.

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, including all required landscaped yards, shall be landscaped as specified in section 530.160 (a).
- **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.**
- **Except as otherwise provided, 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 530.170 (b), including providing landscape yards along a public street, public sidewalk or public pathway and abutting or across an alley from a residence or office residence district, or any permitted or conditional residential use.**
- **The corners of parking lots where rows of parking spaces leave areas unavailable for parking or vehicular circulation shall be landscaped as specified for a required landscaped yard. Such spaces may include architectural features such as benches, kiosks or bicycle parking.**
- **In parking lots of ten (10) spaces or more, no parking space shall be located more than fifty (50) feet from the center of an on-site deciduous tree. Tree islands located within the interior of a parking lot shall have a minimum width of seven (7) feet in any direction.**
- **All other areas not governed by sections 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 530.210.**
- **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 530.80, as provided in section 530.220.**

The project will be required to be in compliance with the approved landscape plan. Please see the staff report for file BZZ-3251 for specific details related to this section of Chapter 530.

As mentioned in the background section of the staff report, the last issue that must be addressed by the amendment is the condition related to the masonry wall which stated: “*A masonry wall along the public alley shall be installed in order to buffer noise from the residential properties to the east.*” Although City staff previously agreed with the project architect that this condition had not been adopted, the City Clerk has confirmed that the public record is correct; that the condition was adopted by the City Council. While there was discussion of this condition by your architect and Committee members at the public hearing, this condition was neither amended nor withdrawn by Council Member Schiff. Thus, the condition remained as stated and was approved. The applicant constructed a 6 foot tall wood fence along the east property line adjacent to the alley instead of the required masonry wall. Planning Staff will recommend that the Planning Commission require compliance with this previous condition of approval. The applicant has submitted an email from a consultant regarding the acoustical performance of the constructed wood fence versus the required masonry fence. It has been attached for reference.

ADDITIONAL STANDARDS:

- **All parking lots and driveways shall be designed with wheel stops or discontinuous curbing to provide on-site retention and filtration of stormwater. Where on-site retention and filtration is not practical, the parking lot shall be defined by six (6) inch by six (6) inch continuous concrete curb.**
- **To the extent practical, site plans shall minimize the blocking of views of important elements of the city.**
- **To the extent practical, buildings shall be located and arranged to minimize shadowing on public spaces and adjacent properties.**
- **To the extent practical, 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 related to:**
 - **Natural surveillance and visibility**
 - **Lighting levels**
 - **Territorial reinforcement and space delineation**
 - **Natural access control**
- **To the extent practical, 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.**

The development appears to have been constructed in compliance with these approvals as applicable to this Section of Chapter 530.

Section B: Conformance with All Applicable Zoning Code Provisions and Consistency with the Comprehensive Plan and Applicable Small Area Plans Adopted by the City Council

The proposed development is in conformance with these standards as approved (BZZ-3251). Please see the staff report for further details.

MINNEAPOLIS PLAN

The proposed development is in conformance with these standards as approved (BZZ-3251). Please see the staff report for further details.

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

No small area plans for this area of Minneapolis have been adopted by the City Council.

Alternative Compliance: The Planning Commission or zoning administrator may approve alternatives to any 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, green roof, decorative pavers, ornamental metal fencing, architectural enhancements, 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.**

Not applicable for this application.

RECOMMENDATIONS:

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

The Department of Community Planning and Economic Development – Planning Division recommends that the City Planning Commission adopt the above findings and **approve** the application to amend the

approved site plan review for property located at 1851 Central Ave NE subject to the following conditions:

1. All site improvements shall be completed by May 31, 2008 unless extended by the Zoning Administrator, or the permit may be revoked for non-compliance.
2. Planning Staff review and approval of the final site plan.
3. The curb cut on Central Avenue NE shall be modified so that the north side of the curb cut is altered to align with the drive isle which would narrow the curb cut by roughly 3 feet from what the as built site plan shows.
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5. The applicant is strongly encouraged to consider marking the driving lanes with a painted arrow directing vehicles to turn left on to 19th Avenue NE.
6. Compliance with all conditions of approval as adopted by the City Council for the previous land use application, BZZ-3251.

Attachments:

1. Copy of City non-compliance letter
2. Statement of use / description of request
3. Correspondence
4. Zoning Map
5. As-built conditions
6. Approved plans -Site Plan, Floor Plans, Elevations
7. Site Photos

**Excerpt from the
CITY PLANNING COMMISSION
MINUTES**

**Minneapolis Community Planning & Economic Development (CPED)
Planning Division**

250 South Fourth Street, Room 300
Minneapolis, MN 55415-1385
(612) 673-2597 Phone
(612) 673-2526 Fax
(612) 673-2157 TDD

MEMORANDUM

DATE: May 5, 2008

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

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

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

SUBJECT: Planning Commission decisions of April 28, 2008

The following actions were taken by the Planning Commission on April 28, 2008. As you know, the Planning Commission's decisions on items other than rezonings, text amendments, vacations, 40 Acre studies and comprehensive plan amendments are final subject to a ten calendar day appeal period before permits can be issued:

Commissioners present: President Motzenbecker, Huynh, LaShomb, Nordyke, Schiff, Tucker and Williams – 7

Not present: Norkus-Crampton

Committee Clerk: Lisa Baldwin (612) 673-3710

4. Porky's (BZZ-3998, Ward: 1), 1851 Central Ave NE ([Becca Farrar](#)).

A. Site Plan Review: Application by Brian Flakne, on behalf of Trygve Truelson and Truco, Inc., to amend the site plan review application for approval of the as built conditions. The existing fast food restaurant located at 1851 Central Ave NE was not constructed in compliance with the City Council conditions of approval.

Action: The City Planning Commission adopted the findings and **approved** the application to amend the approved site plan review for property located at 1851 Central Ave NE subject to the following conditions:

1. All site improvements shall be completed by May 31, 2008 unless extended by the Zoning Administrator, or the permit may be revoked for non-compliance.
2. Planning Staff review and approval of the final site plan.
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5. The applicant is strongly encouraged to consider marking the driving lanes with a painted arrow directing vehicles to turn left on to 19th Ave NE.
6. Compliance with all conditions of approval as adopted by the City Council for the previous land use application, BZZ-3251.

Staff Farrar presented the staff report.

President Motzenbecker opened the public hearing.

Brian Flakne (9301 Bryant Ave, Bloomington): I assisted the owner of this project in preparing the application that's currently in front of you. We have some additional individuals associated with the project that would like to provide limited bits of information for you, but I'm going to sort of summarize what our specific position is. We want to thank the city staff for making the recommendations. We agree to all of the items of the recommendations and do not protest any of them with the exception of number four which relates specifically to the fence. If you go ahead and approve the other recommendations we anticipate that we would be able to meet the May 31st deadline or be awful close to it. It involves some re-curbings on the Central Ave area which is the major issue and we certainly think we can accomplish and we're not objecting to that recommendation. I want to limit my comments then to the fence question. The fence question relates to what was approved and what wasn't approved. I think it's safe to say that there was certainly some confusion about what the approval was and what the requirements were and we appreciate going back and getting the tape. I brought the project architect here today to talk about what the confusion was from our perspective and he'll address it. What I wanted to show you for a moment was that the plan in this matter was an approved plan.

President Motzenbecker: We have that version in our packet.

Brian Flakne: I know you have the reduced version, but the point of my wanting to show you this one was to show you the file stamped copy in which the plan was approved by CPED-Planning, 210 City Hall, date and etc. and signed off by one of the city planning authorized agents. The approved plan, before we built, was with a wooden fence shown clearly along the line that we're now requesting that there be a masonry fence on. From the applicant's perspective, he did what he believed he was supposed to do the first time through and then in fact constructed based upon

approved plans that the city did approve. I'd like to ask the project architect to come forward for a moment and talk a little bit about the project, the wooden fence versus the masonry fence in terms of some of the issues that have been raised.

Aaron Roseth (1072 Ruggles St): Just a little bit of history how we got to this point and why the drawings say six foot high wood fence and the reason we went in for the building permit with that. We went to your Planning staff and asked the question because during the initial hearing when Commissioner Schiff made the motion for the recommendation with the series of items that had to be followed in order to approve this, it was the owner's understanding and my understanding when we walked away that the masonry fence wasn't necessarily part of that recommendation. We asked the staff member to look back on the tape and she listened to it and watched it and it was her interpretation back to us that said "ok, I understood the same thing." Later, in the course of this project, I don't know exactly, I think it was Mr. Wittenberg, asked the clerk to go back and do the same thing and it was her understanding that it was specific to Commissioner Schiff's motion that it was to be masonry. The confusion was that when we went in for the building permit, who we felt we needed to ask the question to was the staff member and the staff member gave us her interpretation that it was ok to go with a wooden fence. With that said, that's the history, what the owner would like to do is if it's an acoustic concern, there is a letter from John LoVerde, an acoustician out of California that is included in your packets, that says there is a way to make a wooden fence as equally acoustically capable as a masonry fence. Because of the way that the current fence is constructed with the two by four in the center and the boards staggered back and forth with each other, the current state of the fence wouldn't act the way that he would like it to in order to justify an equivalency, however, because of the cost, timing and that this is already in place and it was probably an honest mistake on the staff's part that we would like the opportunity to work with the fence that he has and modify it to work with any acoustic requirements. What the owner would like to suggest to you is that if you're willing to allow him to keep that fence, that we could prove back that the same decibel rating could be met with a wooden fence that any masonry fence would provide.

Brian Flakne: From our perspective, to not allow us to meet the decibel requirements with using the wood fence, represents a spoliation of the existing costs that my client has incurred in trying to meet the city approval that was granted. Because the report and recommendation indicates that the objections here are solely from an acoustical perspective, if we can meet the acoustical requirements with the wooden fence, we should be allowed to do that because there is an economic advantage to being able to do that as opposed to tearing down the existing fence and doing the masonry fence. We specifically ask for your approval to allow the wooden fence provided it met the acoustical specifications of the masonry fence, if we can prove that out that that would then be an approved site plan.

Kevin Reich (1018 22nd Ave NE): I'm with the Windom Park Citizens in Action. We were involved with this project from the beginning, starting with your commission and going all the way through Council at least a couple times. It's our position that the conditions put forward by City Council to meet the issues raised by the community. There were many issues, but a lot of them went right to the heart of traffic flow, sound mitigation and built form. We very much believe that the brick fence was a way to meet the concerns. It was our understanding that that was an agreement that the Council was making with the project builders. Three of the conditions that we felt were significant; two of them have already been dismissed. There was a bump-out that would be at the corner of Central that we felt would help mitigate some of the traffic flow created by a drive-thru use. The physical redirection of the drive-thru traffic at 19th Ave,

redirecting it back on to the major street away from the residential street. We thought that was a significant way to mitigate the traffic concerns. That has also been taken out. Of those three significant ways to mitigate community concerns, we have the fence, which we feel not only acoustically helps meet and mitigate some of the concerns from the noise perspective; it also helps meet the built-form that you would find on a traditional commercial corridor as it interfaces with a low residential use that's right adjacent to it. We, of course, wish that the city and the Planning Commission continue to recommend and insist that that's part of what they're required to do. Thank you.

Lilly Bubster (1027 20th Ave NE): I'm on a board member on Windom Park's neighborhood organization. I'm here to say that of the 16 conditions that the City Council put with Porky's going forward, they aren't all being met. We're here just to ask that the city look out for the neighborhood's interest in keeping it with trying to be neighborhood friendly and it's right on an alley right next to residents. We just want to make sure that Porky's can be welcomed to the neighborhood. We also want to add that in order to be neighborhood friendly, they might want to add some high chairs. They don't currently have seating for my little ones. Kids don't sit well on bar stools. Porky's is here, it's good food. People like fast food. I just want the city to follow through with what we've asked in the past.

President Motzenbecker closed the public hearing.

Commissioner LaShomb: Was the masonry wall issue part of the Planning Commission's decision or was this a decision that was made at Zoning and Planning? Did this go to Zoning and Planning the first time through?

President Motzenbecker: Yes.

Commissioner Schiff: That was going to be my question and if Mr. Wittenberg could clarify that, I think that'd be best.

Staff Wittenberg: This body denied the zoning applications that were before it so it moved on to the City Council on appeal.

Commissioner LaShomb: There's a long history to Porky's and it's not, in my opinion, a very nice issue. I have some personal opinions about the process. I think the issue that's important here is to simply recognize that making this decision about Porky's was a decision that was made with a bunch of compromises and that was that if this was going to be built that every step would be made to provide the proper barriers and other things for the neighbors who are going to have to live through this experience of having Porky's there, either good or bad. Given that, I think if it was a condition of approval and the builder did not do it, I don't feel sorry for the city, I feel sorry for the builder. On the other hand, the city makes mistakes too. I'm going to move approval of the staff position on this (Tucker seconded).

Commissioner Huynh: I'd just like to take this opportunity to recuse myself from item four. Thank you.

President Motzenbecker: I would have to second that comment, Commissioner LaShomb. It seems that while we can appreciate the mistake...the information that were given in our packets was not really extensive enough for us to make a clear decision, we have to take you at your word

that it can be done. A letter saying one thing, but seeing designs, seeing decibel ratings, seeing all that kind of stuff for the new fence would have helped. With the lack of accomplishing the initial desires, it's a little hard for us to say that you're going to do the fence too. I think I'm going to agree with Commissioner LaShomb on this. I think it just needs to go forward as it was approved. Any other comments? All those in favor? Opposed?

The motion carried 5-0, Huynh recused.