



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

Date: April 8, 2010

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 associated with the extended hours request for the Olympic Café located at 923 West Broadway (921 West Broadway).

**Recommendation:** The following actions were taken by the Planning Commission on March 8, 2010 (BZZ-4713):

**Conditional Use Permit:** Application by Mark Thieroff, on behalf of Nora, Inc., and Olympic Café, for a conditional use permit to extend the hours of operation for the Olympic Café located at 923 W Broadway (921 W Broadway) to 3 a.m. daily. Typically, the hours of operation allowed in the C1 district are 6:00 a.m. to 10:00 p.m., Sunday thru Thursday and 6:00 a.m. to 11:00 p.m., Friday and Saturday.

**Action:** The City Planning Commission adopted the findings and **denied** the conditional use permit to allow the existing restaurant to operate until 3 a.m. daily for the property located at 923 West Broadway (921 West Broadway).

**Ward:** 5 & 3

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: Notice of the Planning Commission hearing was mailed on February 19, 2010, and notice of the appeal was mailed on March 30, 2010.

- City Goals: See staff report
- Comprehensive Plan: See staff report
- Zoning Code: See staff report
- End of 120-day decision period: June 4, 2010
- Other: Not applicable

**Background/Supporting Information:** Mark Thieroff, on behalf of Nora, Inc., and Olympic Café, has filed an appeal of the decision of the City Planning Commission. The appeal is regarding the decision of the City Planning Commission on March 8, 2010, to deny the following land use application for the Olympic Café located at 923 West Broadway (921 West Broadway): Conditional use permit to extend the hours of operation for the Olympic Café to 3 a.m. daily. The minutes from the March 8, 2010, City Planning Commission meeting are attached. The Planning Commission voted 8 – 0 to deny the conditional use permit request.

The appellant's statement outlines the following reasons why the appeal should be granted: 1) the finding regarding complaints about the Café is flawed and not a proper basis for denying the application; 2) the finding regarding detriment to the public health, safety, comfort or general welfare is unsupported and speculative and not a proper basis for denying the application; 3) the findings regarding injury to the use and enjoyment of property in the vicinity and impediment to the development and improvement of surrounding property are unsupported and speculative and not a proper basis for denying the application; 4) the finding regarding potential noise is speculative and unsupported by any facts; 5) the neighborhood group submissions. 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**

Conditional Use Permit

BZZ-4713

**Date:** March 8, 2010

**Applicant:** Nora, Inc. Attn: Abed el Aziz el Sayed, 923 W. Broadway,  
Minneapolis, MN 55414, (612)203-6727

**Addresses of Property:** 923 West Broadway (921 West Broadway)

**Project Name:** Olympic Café

**Contact Person and Phone:** Siegel, Brill, Greupner, Duffy &  
Foster, P.A., Attn: Mark Thieroff, 100 Washington Avenue South,  
Suite 1300, Minneapolis, MN 55401, (612)337-6102

**Planning Staff and Phone:** Becca Farrar, Senior City Planner, (612)673-  
3594

**Date Application Deemed Complete:** February 5, 2010

**End of 60-Day Decision Period:** April 5, 2010

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

**Ward:** 5 & 3      **Neighborhood Organization:** Northside Residents  
Redevelopment Council and Hawthorne Area Community Council

**Existing Zoning:** C1 (Neighborhood Commercial District) and WB (West Broadway) Overlay District

**Proposed Zoning:** Not applicable for this application.

**Zoning Plate Number:** 8

**Lot area:** 7,260 square feet or approximately .17 acres

**Legal Description:** Not applicable for this application.

**Proposed Use:** Extend the operational hours of an existing business.

**Concurrent Review:** Mark Thieroff, on behalf of Nora, Inc., and Olympic Café, has applied for a Conditional Use Permit to extend the hours of operation for the Olympic Café located at 923 West Broadway (921 West Broadway) to 3 a.m. daily. Typically, the hours of operation allowed in the C1 district are 6:00 a.m. to 10:00 p.m., Sunday thru Thursday and 6:00 a.m. to 11:00 p.m., Friday and Saturday.

**Applicable zoning code provisions:** Chapter 525, Article VII, Conditional Use Permits.

**Background:** The applicant proposes to extend the hours of operation for an existing business located on the property at 923 West Broadway (921 West Broadway). The property is zoned C1 and is located in the WB Overlay District. The WB Overlay District was established to preserve and encourage a high-density, transit-supportive and pedestrian oriented environment in the West Broadway commercial core, to attract destination goods and services, and to promote street life and activity by regulating building orientation and design and accessory parking facilities, and by prohibiting certain high impact and automobile-oriented uses. The Olympic Café is categorized as a delicatessen restaurant which is a permitted use in the C1 district; Olympic Café shares the multi-tenant building with two other tenants (Flora's Hair Design and the other tenant space is currently vacant). The Olympic Café is approximately 2,000 square feet in size. The standard hours of operation in the C1 district are typically Sunday through Thursday from 6 a.m. to 10 p.m. and Friday and Saturday from 6 a.m. to 11:00 p.m. The applicant proposes to extend the hours of operation until 3 a.m. daily.

The business has previously been issued citations for operating beyond the hours allowed under the C1 district regulations; thus the application to legally extend the hours of operation. Planning Staff has consulted with the applicable Police Precinct which does not support any extension of hours on the premises beyond what is allowed under the C1 district regulations.

Staff has not received any official correspondence from the Northside Residents Redevelopment Council, Hawthorne Area Community Council, or any neighborhood letter prior to the printing of this report. Correspondence received prior to the meeting shall be forwarded on to the Planning Commission for consideration.

**CONDITIONAL USE PERMIT** – for extended hours to 3 a.m. daily

**Findings as Required by the Minneapolis Zoning Code:**

The Community Planning and Economic Development Department – Planning Division has analyzed the application and from the findings above concludes that the establishment, maintenance, or operation of the proposed conditional use:

- 1. Will not be detrimental to or endanger the public health, safety, comfort or general welfare.**

After consulting with the applicable Police Precinct, Planning Staff does believe that allowing extended hours of operation in this location could potentially be detrimental to or endanger the public health, safety, comfort and/or general welfare. Based on information obtained from the Police Department, there have been several past license violations and the Police Department is concerned that extending the business hours would merely exacerbate the problems that exist in the area including loitering. There have been complaints about the business operating illegally beyond the hours allowed under the C1 district regulations. The business has been cited on two occasions; information pertaining to the licensing issues has been attached. There

have also been several police calls to the property over the years. Please see the attached Police Incidents Report which details the police calls from 2003-2010. The applicant has stated, however, that if the business is granted extended hours, the applicant is willing to have a security guard (either an off-duty police officer or private security officer) on site after 10:00 p.m. as a condition of the permit.

**2. Will not be injurious to the use and enjoyment of other property in the vicinity and will not impede the normal or orderly development and improvement of surrounding property for uses permitted in the district.**

After consulting with the applicable Police Precinct, Planning Staff is concerned that allowing extended hours of operation in this location until 3 a.m. daily could potentially be injurious to the use and enjoyment of other property in the vicinity and could potentially impact the normal or orderly development and improvement of surrounding property for uses permitted in the district. The surrounding area is developed; however, there are numerous opportunities for redevelopment along this segment of West Broadway. Commercial uses line both sides of the West Broadway corridor, the majority of which operate without extended hours. The commercial uses in the vicinity that have been granted extended hours include drive-thru fast food restaurants, a laundromat, gas station and grocery store. No sit-down or delicatessen type restaurants have been granted extended hours.

**3. Adequate utilities, access roads, drainage, necessary facilities or other measures, have been or will be provided.**

The utilities, access roads, and drainage are existing and adequate.

**4. Adequate measures have been or will be provided to minimize traffic congestion in the public streets.**

The application for extended hours should not have any significant additional impacts on congestion in the public streets beyond that allowed under the existing hours. The capacity of the restaurant is

small and there is no associated off-street parking for the business other than employee parking located in a surface lot at the rear of the structure.

**5. Is consistent with the applicable policies of the comprehensive plan.**

According to *The Minneapolis Plan for Sustainable Growth*, the subject property is located along West Broadway which is a designated Commercial Corridor in this location. The plan states that Commercial Corridors “serve as boundaries connecting a number of neighborhoods and serve as focal points for activity.” Further, the plan states that “Commercial Corridors can accommodate intensive commercial uses and high levels of traffic.” The plan also mentions “While the character of these streets is mainly commercial, residential areas are nearby and impacts from commercial uses must be mitigated as appropriate. The plan has the following relevant policy and implementation steps:

Land Use Policy 1.1: Establish land use regulations to achieve the highest possible development standards, enhance the environment, protect public health, support a vital mix of land uses, and promote flexible approaches to carry out the comprehensive plan. This policy includes the following applicable implementation step: (1.1.5) “Ensure that land use regulations continue to promote development that is compatible with nearby properties, neighborhood character, and natural features; minimizes pedestrian and vehicular conflict; promotes street life and activity; reinforces public spaces; and visually enhances development”.

Land Use Policy 1.2: Ensure appropriate transitions between uses with different size, scale, and intensity. This policy includes the following applicable implementation step: (1.2.3) “Lessen the negative impacts of non-residential uses on residential areas through controls on noise, odors, and hours open to the public.”

Land Use Policy 1.4: Develop and maintain strong and successful commercial and mixed use areas with a wide range of character and functions to serve the needs of current and future users. This policy includes the following applicable implementation step: (1.4.3) Continue to implement land use controls applicable to all uses and

structures located in commercial districts and corridors, including but not limited to maximum occupancy standards, hours open to the public, truck parking, provisions for increasing the maximum height of structures, lot dimension requirements, density bonuses, yard requirements, and enclosed building requirements.

Land Use Policy 1.10: Support development along Commercial Corridors that enhances the street's character, fosters pedestrian movement, expands the range of goods and services available, and improves the ability to accommodate automobile traffic.

**6. And, does in all other respects conform to the applicable regulations of the district in which it is located.**

If the conditional use permit were to be approved, the development would appear to comply with all of the applicable provisions of the C1 district. Any/all window signage would need to comply with Section 543.480 of the Zoning Code. Planning Staff considers this provision important to public safety/visibility, especially if extended hours are granted for the business. The use is also subject to specific development standards for delicatessen restaurants as follows:

(1) The premises, all adjacent streets, sidewalks and alleys, and all sidewalks and alleys within one hundred (100) feet shall be inspected regularly for purposes of removing any litter found thereon.

**Additional Findings Required for Extension of Hours Open To the Public:**

**(1) Proximity to permitted or conditional residential uses.**

The properties located within the immediate vicinity are predominantly zoned C1 and C2 along West Broadway, which is a designated Commercial Corridor in this location. The subject parcel abuts C1 zoning to the east and west, C2 to the north across West Broadway and R4 zoning to the south. The abutting lot to the south of the subject parcel (1838 Dupont Avenue North) is owned by the City and is currently vacant. The TP (Transitional Parking) Overlay District was applied to the parcel as part of the West Broadway rezoning study. It is likely that the parcel would be packaged with the adjacent City owner parcel located at 927 West Broadway as part of a larger redevelopment proposal. In order for the 1838 Dupont Avenue North parcel to be utilized as a parking lot, it would need to be improved in compliance with Chapter 530 standards. There are residential dwellings located directly south of the City owned parcel, or approximately 60 feet south of the subject site.

**(2) Nature of the business and its impacts of noise, light and traffic.**

Planning Staff would not expect that an extension of operational hours would have substantive impacts on light within the immediate vicinity. However, there is the potential that extended hours of operation could impact noise due to potential loitering and traffic within the immediate vicinity. The majority of the businesses located within the surrounding neighborhoods including Hawthorne, Near North and Jordan that have extended hours are either drive-thru fast food restaurants, a laundromat, gas station and grocery store. Please see the attached spreadsheet. There is no off-street parking available for the business as two employee parking spaces are located at the rear of the building.

**(3) Conformance with applicable zoning regulations, including but not limited to use, yards, gross floor area and specific development standards.**

The existing business is categorized as a delicatessen restaurant which is a permitted use in the C1 district. The Olympic Café shares the building with two other tenants and occupies approximately 2,000 square feet. Should the conditional use permit for extended hours be approved and the business comply with the specific development standards that pertain to delicatessen restaurants, the proposal would appear to be in conformance with the applicable zoning regulations.

**(4) History of complaints related to the use.**

There have been complaints about the business operating illegally beyond the hours allowed under the C1 district regulations. The business has been cited on two occasions; information pertaining to the licensing issues has been attached. There have also been several police calls to the property over the years. Please see the attached Police Incidents Report which details the police calls from 2003-2010. Planning Staff has consulted with the applicable Police Precinct which does not support any extension of business hours at this location.

## **RECOMMENDATIONS:**

### **Recommendation of the Department of Community Planning and Economic Development – Planning Division for the conditional use permit to allow extended hours:**

The Department of Community Planning and Economic Development - Planning Division recommends that the City Planning Commission adopt the findings above and **deny** the conditional use permit to allow the existing restaurant to operate until 3 a.m. daily for the property located at 923 West Broadway (921 West Broadway).

### **Attachments:**

1. Statement / Findings – Conditional Use Permit
2. Correspondence – CM, neighborhood letters
3. Zoning map
4. Plans –site plan / floor plan /photos
5. Spreadsheet showing CUP hours for Hawthorne, Near North and Jordan
6. Police calls
7. License Issue documentation

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

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**MEMORANDUM**

DATE: March 15, 2010

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

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

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

SUBJECT: Planning Commission decisions of March 8, 2010

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The following actions were taken by the Planning Commission on March 8, 2010. As you know, the Planning Commission's decisions on items other than rezonings, text amendments, vacations, 40 Acre studies and comprehensive plan amendments are final subject to a ten calendar day appeal period before permits can be issued:

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

Not present: Bourn

Committee Clerk: Lisa Baldwin (612) 673-3710

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**6. Olympic Café (BZZ-4713, Wards: 5 and 3), 923 W Broadway (921 W Broadway) ([Becca Farrar](#)).**

**A. Conditional Use Permit:** Application by Mark Thieroff, on behalf of Nora, Inc., and Olympic Café, for a conditional use permit to extend the hours of operation for the Olympic Café located at 923 W Broadway (921 W Broadway) to 3 a.m. daily. Typically, the hours of operation allowed in the C1 district are 6:00 a.m. to 10:00 p.m., Sunday thru Thursday and 6:00 a.m. to 11:00 p.m., Friday and Saturday.

**Action:** The City Planning Commission adopted the findings and **denied** the conditional use permit to allow the existing restaurant to operate until 3 a.m. daily for the property located at 923 West Broadway (921 West Broadway).

Staff Farrar presented the staff report.

President Motzenbecker opened the public hearing.

**Jim Yarosh (100 Washington Ave S):** I represent the owner of the Olympic Café. The request here is a CUP to extend the hours of operation until 3:00 a.m. One thing that I think is important, this is a predominantly take out restaurant. There was reference to other places, like McDonald's, that's open 24 hours across the street. There are only 12 seats so it is predominantly take out. I want to emphasize, as a condition of this permit, my client would pay for onsite security which we'd like to be off duty police officers. I think that's important because staff recommendation, as I read it, recommends the denial essentially because the police precinct does not support any extension of hours in this neighborhood because they say there is past violations. That's true, there were two past violations, they're trying to come in compliance and go through and do it the right way and that's why we're here before you to request that. That's what the violations were for, it's not any other violations. We're here to try to take care of that problem. That was the first reason the police said they didn't support the application. Secondly, they say they don't want to exacerbate problems that exist in the area like loitering. I think this helps the area because if you have additional onsite security guards, off duty police officers, I think that makes it better. You have more people helping and controlling this area, witnessing things, calling 911 if necessary. There is a no loitering sign, it doesn't help their business to have people blocking their entrance. In regards to the history of complaints in the area, when we made this application we asked the Police Department and Planning Department to give us any and all complaints from 2006 forward, we got them and analyzed them and there are no police calls for services that are related to the operation of this business, they all deal with someone was arrested on the site and they look at the closest address and it had nothing to do with the business. If you just read the staff report and see there is Police concerns and calls, it's not contributable to this business so I think it's unfair to penalize them to say because there is a loitering issue out there that you're going to deny them the opportunity...they think it will increase their business because they are going to pay a security guard and have increased expenses so I think that's an unfair penalty. There were no complaints that the Planning Department set forward. We did supply a petition of 200 customer names, most of them in North Minneapolis and you have that in the record. We had sought out the neighborhood groups and haven't heard anything. We had some informational conversations and what we heard from the Near Northside neighborhood was

asking how we are going to handle security. In what was received in the supplement, which we hadn't had a chance to respond to, it said there hadn't been a response but there was a specific question - they wanted an extension of time. There was the question of security, they weren't sure how. We did respond to that neighborhood group. There are two other neighborhood groups but this is the first we heard about it. The ongoing involvement with WBC Safety and Security Committee, they hold those meetings at lunch time, a busy time for a restaurant, I talked to my clients about that if they're able to have more staff or it's a slow point and they want to participate, obviously they want to call 911 regularly if there is people hanging around because they don't want that in front of their store and they will participate in the WBC programs and activities to help decrease the problem behavior. We could talk about adding that as a condition and they're willing to do it. The only issue was kind of the busy time during lunch and they wanted to wait one year before they would give their approval and endorsement of this. They didn't want to wait one year, they wanted to come in compliance as soon as possible and that's why they're here now but I think we can address those issues with that neighborhood group. The third group, the Old Highland Neighborhood, I think the conditions they recommend are fine - they already are going to have the off duty police officer and the twice daily litter clean up in the parking area. I don't think those are problems and I think we can satisfy those concerns and I know there is some law that says if you can satisfy the concerns that it's not rational for them to deny it if you can add those as conditions and that's why we have a conditional use permit to make this fit. This establishment does not serve alcohol. I want to examine the nature of the police precinct communication because if you read the staff report, what comes out is that there are these police calls and violations and that sounds bad but hopefully I've touched on that and explained why those happened, but if you look, it was Ms. Farrar basically inquiring with the police precinct captain and seeing what he thinks about it. He says "I'm opposed to it based on past license violations and the problems it would create in the area." There's not explaining what the problems would be, especially if there is an off duty police officer there during those extended hours. It's not clear. I think that serves as the main basis for recommended denial.

**President Motzenbecker:** I think we got your point.

**Jim Yarosh:** It does happen to be the same officer who issued one of those past citations.

**Commissioner Cohen:** Why don't you get the security right now?

**Jim Yarosh:** It hasn't been a problem, but that is a condition of seeking later hours on the CUP for later times.

**Commissioner Cohen:** But you're saying what you want us to do is extend the hours now and then you'll hire the security, why don't you hire the security now and then see how it goes and then we can deal with the question of the extension of the hours?

**Jim Yarosh:** All we're saying is that as part of the grant of this, make it as a condition that we will hire. I understand what you're saying, but I don't think there's a problem with the current hours that needs to be addressed as it relates to this business.

**Commissioner Cohen:** You don't? The reports are full of problems here, there are all kinds of police reports here in my packet. You have the problem now without the extended hours. Why don't you hire the off duty cops now instead of after the hours are extended, what's stopping you from doing that?

**Jim Yarosh:** That may be something I talk to my clients about in terms of doing it, but again, I want to reiterate, the police calls are kind of neighborhood. If there is a traffic stop in the middle of the street they look at the address and write that down.

**Commissioner Cohen:** You've spent the last 10 minutes up there talking about the security problems, that's what you've been discussing, problems with police, the police think this location is a problem and you're even saying you'll address this after we grant the extension, why don't you hire the security now and see how the police react, what kinds of police calls you get and then come in and ask for the extension of hours? That should come first, shouldn't it? If that's the problem it should come first.

**Jim Yarosh:** If that's the problem, but I'm suggesting that that's not been the problem. The applicant since he's been running the business has invested a significant amount of time, effort and money in improving this business. He believes the extended hours will improve his business and he's willing to pay for the security to ensure that it's operated at this site. I respectfully that you use your good judgment and look beyond the mere assertions that there could potentially be some issues here. I don't think they are followed up with facts of the record and I want to say please don't penalize my client because of other issues beyond his control in the neighborhood if there's loitering, he's doing what he can. About the closing time, I just want to suggest that...I haven't heard it expressed in the report that there's something magic that if it's an hour difference that we're ok with that. We're ok with the conditions from the neighborhood group.

President Motzenbecker closed the public hearing.

**Commissioner Gorecki:** I always get a little troubled when a lot of promises get made when the applicant when the applicant is before us for extended hours, especially in a fast-food restaurant situation, take out or sit down, it doesn't make a difference. I think there is enough evidence here, especially when I read the West Broadway email to us that really clearly points out that there has been a long term problem with this business. Its lack of attention to what's happening not only with its business but with its surrounding impact on the community. I'm going to move staff recommendation for denial (Luepke-Pier seconded).

**Commissioner Luepke-Pier:** I'm seconding the motion in part because I live five blocks away from there so I've experienced this business and I used to live two blocks away from there prior to that so over a decade of living near that business which wasn't there the whole decade, but only the last few years. I do want to say that littering has been a problem, loitering has been a problem. I know you said your client is doing what he can but

apparently it's not enough. You can say that people are outside and it's not your problem, but if you run a business it is your problem. It's consistently been a problem. Reading the West Broadway Business Association's letter about how they tried to reach out and tried to engage your client to make this problem go away or alleviate it, it seems as though your client isn't really interested in making the effort to do the same. That tells me that you don't do special favors and give people the benefit of the doubt when they've proven you wrong. There are a lot of police calls and only two or three of them are due to traffic things, the rest seem to be because of loitering. I don't see anything about the litter, the cars that never move that are parked in front of that store and the drug dealing that many people suspect is going on in the proximity to the loitering. It may sound vague for the police officer that said due to the problems, but it's been documented and it's been consistent. There hasn't been any effort with outreach made. I know you say you want it now, but the letter from the West Broadway Business Association says they outreached last May, that's almost a year ago. If they really wanted it right away, they should've jumped on it right away to make the change. I'm in support of staff recommendation on this one. Thank you.

**President Motzenbecker:** Motion is to deny the extended business hours, all those in favor? Opposed?

The motion carried 8-0.

