

**Department of Community Planning and Economic Development – Planning
Division
Conditional Use Permit
BZZ-5032**

Date: December 13, 2010

Applicant: Falafel King, Attn: Fouad Masroujh, 1851 Central Avenue NE, Minneapolis, MN 55415, (612) 788-4122

Addresses of Property: 1851 Central Ave NE

Project Name: Falafel King

Contact Person and Phone: Fouad Masroujh, 701 West Lake Street, Minneapolis, MN 55408, (612)824-7887

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

Date Application Deemed Complete: November 1, 2010

End of 60-Day Decision Period: December 30, 2010

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

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

Legal Description: Not applicable for this application.

Proposed Use: Extend the operational hours of a new business.

Concurrent Review: Falafel King has applied for a Conditional Use Permit to extend the hours of operation for property located at 1851 Central Avenue NE to allow 24-hour operation of the drive-thru. The sit-down aspect of the restaurant would maintain the allowable hours of operation permitted under the C2 district regulations. Typically, the hours of operation allowed in the C2 (Neighborhood Corridor Commercial) district are 6:00 a.m. to 10:00 p.m. Sunday through 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 a new Falafel King which would occupy the former Porky's site located at 1851 Central Avenue NE. The subject property is located at the southeast corner of Central Avenue NE and 19th Avenue NE. The property is zoned C2 and the use is categorized as a delicatessen restaurant which is a permitted use in the C2 district. The standard hours of operation in the C2 district are typically 6:00 a.m. to 10:00 p.m. Sunday through Thursday and 6:00 a.m. to 11:00 p.m. Friday and Saturday. The applicant proposes to extend the hours of operation to allow a 24-hour drive-thru. The sit-down aspect of the restaurant would maintain the allowable hours of operation permitted under the C2 district regulations as noted above. The restaurant does not serve alcoholic beverages.

Planning Staff has consulted with the applicable Police Precinct which does not have concerns regarding a potential extension of operational hours for the drive-thru.

Several land use applications were submitted in 2005, in order to construct a new Porky's restaurant on the premises. 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 a rezoning from C1 to C2. That rezoning was approved de facto under Minn. Stat. 15.99; as a result the rezoning of 1851 Central Ave NE to C2 then provided the required linear feet of C2 zoning needed to allow the conditional use of a fast food restaurant. The subsequent land use applications (BZZ-3251) that were approved on December 1, 2006, by the City Council allowed the construction of a new fast food restaurant on the property. 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. As a result, in April of 2008, the applicant submitted an application to amend the approved site plan in order to receive approval for the as built conditions that existed on the site (BZZ-3998). While some minor adjustments were made to the original approvals, the applicant was required to make alterations to the as built conditions.

The former occupant, Porky's, closed earlier this spring. To date, the site is still not in full compliance with the required conditions of approval. Specifically, the applicant was required to meet the following condition of approval: *"A masonry wall along the public alley shall be installed in order to buffer noise from the residential properties to the east."* The applicant constructed a 6 foot tall wood fence along the east property line adjacent to the alley instead of the required masonry wall. The City Council approved the following condition of approval as part of BZZ-3998: *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.* Planning Staff will recommend that the Planning Commission require that the site be brought into full compliance before the applicant is allowed to commence any allowable extension of operational hours.

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 any official correspondence from Windom Park Citizens in Action 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 – to allow 24-hour operation of the drive-thru

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.

Planning Staff does not believe that allowing extended hours of operation in this location would be detrimental to or endanger the public health or safety, but could impact the public comfort and/or general welfare due to the proximity of residential uses. Planning Staff would recommend that the Planning Commission deny the request to allow a 24-hour drive-thru on the premises but in lieu of approve drive-thru hours until 11:00 p.m. Sunday through Thursday and 12:00 a.m. Friday and Saturday subject to conditions of approval. As previously noted, the Police Precinct did not have any concerns regarding the request to extend the hours of operation for the drive-thru.

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.

Planning Staff believes that granting extended hours in this location could potentially be injurious to the use and enjoyment of other property in the vicinity, although would likely not impede the normal or orderly development and improvement of surrounding property for uses permitted in the district. The surrounding area is fully developed with commercial and residential uses. The request to allow a 24-hour drive-thru operation when residential uses are so contextually proximate to the subject site could likely result in adverse impacts on the neighborhood and surrounding properties.

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. There is adequate, associated off-street parking for the business.

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 Central Avenue NE, a designated Commercial Corridor in this location, and within a mixed-use area. Allowing a slight extension in the operational hours for the drive-thru would be generally consistent with the following policy and implementation steps that pertain to the request:

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.

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.

It is Planning’s Staff position that provided the applicant constructs the required masonry fence along the east property line, that a minor extension of hours for the drive-thru aspect to allow Falafel King to be open until 11:00 p.m. Sunday through Thursday and 12:00 a.m. Friday and Saturday is supportable.

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, Staff has recommended that the Planning Commission require that the applicant construct the masonry fence as required prior to the business being allowed to commence with any approved extended hours for the business.

The development would appear to comply with all of the applicable provisions of the C2 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 along both sides of Central Avenue NE are zoned C1, C2 and OR3. The residential properties to the east and west of Central Avenue NE are zoned R5. There are residential dwellings located directly to the east of the site along 19th Avenue NE. Directly abutting the site to the east across the alley is a single-family home. Vehicles utilizing the drive-thru on the premises would exit the site onto 19th Avenue NE directly abutting the alley adjacent to this structure. As previously mentioned, this is the specific location of where the existing wood fence must be replaced with the required masonry fence for sound attenuation purposes.

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

Due to the proximity of residential uses, Planning Staff would expect that the applicant's request to extend the hours of operation for the drive-thru to 24 hours daily could result in substantive impacts in regard to noise, light, and/or traffic within the immediate vicinity. Due to the location of the site along a designated Commercial Corridor, Planning Staff believes that allowing a slight increase in the allowable hours of operation for the drive-thru is supportable; however, allowing 24-hour operation is not due to the surrounding context of the area. While the installation of a masonry fence would help to mitigate the impacts associated with a drive-thru use, no reasonable conditions of approval would fully mitigate the impacts of operating the drive-through 24 hours per day, seven days per week.

(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 C2 district. Should the applicant construct the required masonry wall along the east property line as required, and the conditional use permit for extended hours be approved in part as well as the business complies 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.

Not applicable. The Falafel King is new to the premises. Planning Staff has consulted with the applicable Police Precinct which does not have concerns regarding a potential extension of hours for the drive-thru.

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 24-hour operation of the drive-thru for Falafel King and in lieu thereof **approve** a conditional use permit to allow Falafel King located at 1851 Central Avenue

NE to have allowable drive-thru hours until 11:00 p.m. Sunday through Thursday and 12:00 midnight Friday and Saturday subject to the following conditions:

1. The conditional use permit shall be recorded with Hennepin County as required by Minn. Stat. 462.3595, subd. 4 before building permits may be issued or before the use or activity requiring a conditional use permit may commence. Unless extended by the zoning administrator, the conditional use permit shall expire if it is not recorded within one year of approval.
2. As required by the previous land use application (BZZ-3998), 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 before the applicant can commence with any extended operational hours beyond those allowed under the C2 district.
3. Compliance with the window sign provision as stated in Section 543.480 of the Zoning Code.

Attachments:

1. Statement / Findings – Conditional Use Permit
2. Correspondence – CM, neighborhood letters
3. Zoning map
4. Plans –floor plan /photos
5. Police calls