

**Department of Community Planning and Economic Development - Planning Division Report**

Appeal of the Decision of the Zoning Administrator  
BZZ-2170

**Date:** February 3, 2005

**Appellant:** Bruce Knutson

**Address of Property:** 324 First Street North

**Contact Person and Phone:** Bruce Knutson, (612) 332-8000

**Planning Staff and Phone:** Tanya Holmgren, (612) 673-5887

**Date Application Deemed Complete:** January 5, 2004

**End of 60 Day Decision Period:** March 5, 2005

**Ward:** 5      **Neighborhood Organization:** Warehouse District North Loop Neighborhood Association

**Existing Zoning:** C3A Community Activity Center District, DH Downtown Height Overlay District, MR Mississippi River Overlay District, DP Downtown Parking Overlay District.

**Appeal of the decision of the Zoning Administrator:** Bruce Knutson on behalf of Lehman Brothers Holdings has filed an appeal of the decision of the Zoning Administrator regarding the determination that the approvals of the City Planning Commission are no longer valid due to the lack of continuous construction in the C3A district at 324 1<sup>st</sup> Street North.

**525.170. Appeals of decisions of the zoning administrator.** All findings and decisions of the zoning administrator, planning director or other official involved in the administration or the enforcement of this zoning ordinance shall be final subject to appeal to the board of adjustment, except as otherwise provided by this zoning ordinance. Appeals may be initiated by any affected person by filing the appeal with the zoning administrator on a form approved by the zoning administrator. All appeals shall be filed within twenty (20) calendar days of the date of the decision. Timely filing of an appeal shall stay all proceedings in the action appealed, unless the zoning administrator certifies to the board of adjustment, with service of a copy to the applicant, that a stay would cause imminent peril to life or property, in which case the proceedings shall not be stayed. The board of adjustment shall hold a public hearing on each complete application for an appeal as provided in section 525.150. All findings and decisions of the board of adjustment concerning appeals shall be final, subject to appeal to the city council as specified in section 525.180.

**Background and Analysis:** The appellant has appealed the decision of the Zoning Administrator regarding the determination that the approvals of the City Planning Commission are no longer valid due to the lack of continuous construction of the Reserve project at 324 1<sup>st</sup> Street North.

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The Reserve project required both zoning and heritage preservation approvals. On January 31, 2000 the City Planning Commission granted the following zoning approvals: Conditional Use Permit (C-2050) for multiple family dwelling units, Conditional Use Permit (C-2054) for an increase in height to 96 ft., a Conditional Use Permit (C-2055) for a parking lot, a variance (V-4599) for a side yard set back to 5 ft., and a Site Plan Review (PR-578). On September 9, 2001 the Zoning Administrator approved a height increase to eleven stories.

Section 525.40 of the Zoning Code establishes a time limit for the validity of zoning approvals and provides for extension of that time limit by the Zoning Administrator.

525.40. Period of decision. No decision of the zoning administrator or planning director, or zoning approval granted by the city planning commission, board of adjustment or city council, except zoning amendments, shall be valid for a period longer than one (1) year from the date of such decision unless the building permit is obtained within such period and the erection or alteration of a building is substantially begun and proceeds on a continuous basis toward completion, or the use is established within such period by actual operation pursuant to the applicable conditions and requirements of such approval. The zoning administrator, upon written request, may for good cause shown grant up to a one (1) year extension to this time limit.

Pursuant to Section 525.40 the Zoning Administrator granted the extension of the original approvals to January 31, 2002. The original approvals from January 31, 2001, received a further extension by City Council and Mayor to January 31, 2003.

The final heritage preservation approvals for The Reserve were granted by the Heritage Preservation Commission on May 14, 2002. The Heritage Preservation Commission approved a height of eight stories, but denied the height increase to eleven stories. The City's heritage preservation ordinances also include a provision that imposes a time limit on the validity of Heritage Preservation Commission approvals.

599.70. Period of decision. No approval granted pursuant to this chapter, except designations, shall be valid for a period longer than one (1) year from the date of such decision unless the required permit is obtained within such period and the action approved is substantially begun and proceeds on a continuous basis toward completion, or the use is established within such period by actual operation pursuant to the applicable conditions and requirements of such approval. The planning director, upon written request, may for good cause shown grant up to a one (1) year extension to this time limit.

On January 9, 2003 a permit was issued for site demolition, land excavation, and the pouring of a foundation. The appellant states in his December 2, 2004 letter that this work has been completed as part of phase 1 of the project.

On July 1, 2003, a building permit for an eight story building was applied for, but never issued. The building permit request received Zoning approval, but did not pay for the permit.

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On December 16, 2004 the appellant was sent a letter regarding the determination of the Zoning Administrator that the construction on 324 First Street North has been discontinued since July 2003. The Zoning Administrator states the appellant met the extended deadline the city council granted for the site demolition and excavation permit, however no additional permits were obtained since that work was completed to show continuous construction. In the letter dated December 16, 2004, the Zoning Administrator determined that new land use approvals are required from the City Planning Commission and the Heritage Preservation Commission in order for the appellant to recommence construction, which the appellant indicates is intended to begin in April of 2005.

The appellant states that the definition of “construction proceeding on a continuous basis” is vague and does not allow for the continuation of the construction process as described in the legal documents of the developer. The appellant claims that the developers are following the timeframe agreed upon by their contracts and are therefore proceeding continuously.

The time limits set in section 525.40 and 599.70 are based on the need to show ongoing construction activity on the approved building, not the construction planning of the project. By the appellant’s logic, a development agreement could extend the period of the decision indefinitely.

Based on the lack of proof of construction proceeding on a continuous basis, Planning staff agrees that the Zoning Administrator has correctly interpreted the zoning code.

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

The Department of Community Planning and Economic Development Planning Division recommends **denial** of the appeal of the decision of the Zoning Administrator.