

**Department of Community Planning and Economic Development - Planning Division**  
Conditional Use Permit  
BZZ-4942

**Date:** September 20, 2010

**Applicant:** Miklin Enterprises, Inc.

**Address of Property:** 219 Oak Street SE

**Project Name:** Jimmy John's

**Contact Person and Phone:** Mike Mulligan, (612) 339-0089

**Planning Staff and Phone:** Aly Pennucci (612) 673-5342

**Date Application Deemed Complete:** August 27, 2010

**End of 60 Day Decision Period:** October 25, 2010

**Ward: 2      Neighborhood Organization:** Prospect Park/E. River Rd. Improvement Association

**Existing Zoning:** C1 Neighborhood Commercial District, PO Pedestrian Oriented Overlay District and UA University Area Overlay District.

**Zoning Plate Number:** 22

**Legal Descriptions:** Not applicable

**Existing Use:** Restaurant, delicatessen

**Concurrent Review:**

**Conditional Use Permit:** To extend the hours of operation for a restaurant, delicatessen use to 3:00 a.m. daily.

**Applicable zoning code provisions:** Chapter 525, Article VII Conditional Use Permits; Chapter 548 Commercial Districts

**Background:** Jimmy John's Gourmet Sandwiches, located at 219 Oak Street Southeast, is proposing to extend their hours open to the public to 3:00 a.m. daily. The proposed deli will open at 10:30 a.m. In the C1 district, businesses are allowed to be open to the public from 6:00 a.m. to 10:00 p.m. Sunday through Thursday and from 6:00 a.m. to 11:00 p.m. Saturday and Sunday. A conditional use permit is required to extend the hours. This is a new location for Jimmy John's but the property has been used as a restaurant, delicatessen since 2001.

The applicant plans to submit an application for sidewalk seating to the Business Licensing Division of the Regulatory Services Department. Per section 541.180, outdoor dining areas must be setback at least

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20 feet from an adjacent residence or office residence district boundary or from an adjacent ground floor permitted or conditional residential use. The proposed location of the outdoor seating area exceeds this requirement.

As of the writing of this report, staff has not received any correspondence from the neighborhood group. Staff will forward comments, if any are received, at the City Planning Commission meeting.

### **CONDITIONAL USE PERMIT (to allow extended hours of operation to 3:00 a.m.)**

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

The Minneapolis City Planning Department 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 at this location would be detrimental to or endanger the public health, safety, comfort or general welfare. The permitted hours of operation in the C1 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. The applicant proposes to be open until 3:00 a.m. each day of the week. The Business Licensing Division was not aware of any complaints or violations related to this use. The applicable Police Precinct did not mention any problems related to this use, however they did state that the extended hours of operation should be consistent with other businesses in the area.

There are other uses operating with late night hours in the area. Specifically, the Dominos Pizza at 213 Oak Street SE, the adjacent parcel to the north of the subject site, has a conditional use permit to operate until 1:00 a.m. Sunday through Thursday and 2:00 a.m. on Friday and Saturday. Stub & Herbs, a nightclub on the adjacent parcel to the south, is open until 2:00 a.m., per the liquor license. Stadium Village Mall, located at 210 Ontario St SE and 825 Washington Ave SE is located in the C3A district; the permitted hours of operation in the C3A district are 6 a.m. to 1 a.m. daily. In addition, there is an approved conditional use permit for a restaurant to operate until 3 a.m. in Stadium Village Mall.

**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 does not believe that granting extended hours in this location would be injurious to the use and enjoyment of other property in the vicinity and would 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 area is a designated Activity Center with numerous businesses that operate with late night hours. Staff uses the following criteria to determine compatibility of extended hours with the surrounding area:

a) Proximity to permitted or conditional residential uses.

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Uses directly adjacent to the restaurant are all nonresidential properties. Properties located within the immediate vicinity are predominantly zoned C1, OR3 and C3A. The subject parcel abuts C3A zoning to the west, and C1 zoning to the south. The properties zoned OR3 are across the street to the east and are associated with the University of Minnesota. There are residential uses located approximately 270 feet south of the subject site across Washington Ave SE. The use is not expected to negatively impact surrounding uses.

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

The use is a restaurant, delicatessen. The proposed late night hours are not expected to generate excessive vehicle traffic and therefore should not have a negative impact on the neighboring uses. The site is accessible by public transit and is located in an area that is accessible for pedestrians, further limiting the potential for excessive traffic. There is an accessory off-street parking area to the rear of the building that meets the minimum number of parking stalls required for a restaurant, delicatessen. The statement prepared by the applicant states that the extended hours will primarily accommodate students and a significant amount of late night sales will be delivery.

c) 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 development standard required for a delicatessen restaurant is regular inspection of the premises, all adjacent streets, sidewalks and alleys, and all sidewalks and alleys within 100 feet for the purposes of removing any litter found thereon. With the approval of the conditional use permit for extended hours and compliance with the specific development standards, the proposal would be in conformance with the applicable zoning regulations.

d) History of complaints related to the use.

This is a new location for Jimmy John's; as of the writing of this staff report the restaurant has not opened for business. The Police Precinct did not report any history of complaints related to the previous delis that operated at this location. The applicant states that they have multiple locations throughout the City that have approved conditional use permits for extended hours and have not received any complaints from nearby businesses or residents.

**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.**

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The additional hours of operation are not expected to contribute to congestion in the public streets. The site is accessible by public transit, including mid-day and rush hour bus service and this site is near the University of Minnesota campus and has a large amount of pedestrian traffic. It is anticipated that the bulk of the traffic to the site will be pedestrian oriented rather than vehicular. In addition, the capacity of the restaurant is small and there is an accessory parking area to the rear of the building that meets the minimum number of off-street parking spaces required for a restaurant, delicatessen.

### **5. The conditional use is consistent with the applicable policies of the comprehensive plan.**

According to *The Minneapolis Plan for Sustainable Growth*, the subject property is located in a mixed-use area and is in a designated Activity Center. The plan states that, “Activity Centers support a wide range of commercial, office, and residential uses. They typically have a busy street life with activity throughout the day and into the evening. They are heavily oriented towards pedestrians, and maintain a traditional urban form and scale. Activity Centers are also well-served by transit.” The proposed hours are generally consistent with the following relevant 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.**

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 1.12: Support Activity Centers by preserving the mix and intensity of and uses and by enhancing the design features that give each center its unique urban character.**

1.12.1 Encourage a variety of commercial and residential uses that generate activity all day long and into the evening

Allowing late night hours within the boundaries of an activity center is consistent with the above policies of the comprehensive plan.

### **6. And, does in all other respects conform to the applicable regulations of the district in which it is located upon approval of this conditional use permit.**

With the approval of the conditional use permit, the use will conform to the applicable district regulations.

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**RECOMMENDATIONS:**

**Recommendation of the Community Planning and Economic Development Department - Planning Division for the conditional use permit for extended hours:**

The Community Planning and Economic Development Department - Planning Division recommends that the City Planning Commission adopt the findings above and **approve** the conditional use permit for extended hours of operation from 6:00 to 10:00 p.m. Monday through Thursday and 6:00 a.m. to 11:00 p.m. Friday and Saturday until 3:00 a.m. each day of the week for a restaurant, delicatessen located at 219 Oak St SE, 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.

**Attachments:**

1. Statements from applicant.
2. Correspondence.
3. Zoning maps.
4. Site plan and floor plan.
5. Photos.