

Community Planning and Economic Development Planning Division Report
Expansion of a Legal Nonconforming Use
BZZ-4430

Date: July 13, 2009

Applicant: Jerry's Enterprises, Inc.

Address of Property: 5937 Nicollet Avenue

Contact Person and Phone: Tom Thueson, (952) 928-1656

Planning Staff and Phone: Janelle Widmeier, (612) 673-3156

Date Application Deemed Complete: May 29, 2009

End of 60 Day Decision Period: July 28, 2009

Ward: 11 **Neighborhood Organization:** Windom Community Council

Existing Zoning: C3S Community Shopping Center District, R1 Single-Family District, TP Transitional Parking Overlay District, and AP Airport Overlay District

Proposed Zoning: Not applicable for this application

Zoning Plate Number: 37

Legal Description: Not applicable for this application

Existing Use: Grocery store and an accessory parking lot for the grocery store with a freestanding sign

Concurrent Review: Expansion of a nonconforming sign to increase the height from 35 feet to 50 feet.

Applicable Zoning Code Provisions: Chapter 531, Nonconforming Uses and Structures, Section 531.50(b).

Background: The applicant is proposing to increase the height of a freestanding sign from 35 feet to 50 feet located at the property of 5937 Nicollet Avenue. The sign is a back lighted pole sign for the Cub Foods grocery store also located on the property. The sign is located on the part of the property adjacent to I-35W zoned R1 with a TP overlay. These districts do not allow signage for nonresidential uses that are not allowed in an R1 district, including a grocery store. When the sign was installed, the portion of the site where it is located was zoned B3SP Community Service Parking District. The purpose of this district was to provide off-street parking areas for nearby commercial districts. The district also allowed business signs up to 35 feet in height. In 1999, the zoning code was updated and the zoning on this site was changed to R1 with the TP overlay, which does not allow signage for

CPED Planning Division Report
BZZ-4430

commercial uses. Therefore the existing sign is a nonconforming use. Increasing the height is an expansion of a nonconforming use under Section 531.50(b) of the zoning code and therefore requires authorization from the City Planning Commission. Regardless of the outcome of the expansion of nonconforming use application, the applicant is required to provide landscaping designed to screen the base of all on-site freestanding signs and any light fixtures as required by section 543.240 of the zoning code. These landscape materials are required to be capable of screening all year and be well maintained.

As of writing this staff 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.

EXPANSION OF A NONCONFORMING USE:

Findings as Required by the Minneapolis Zoning Code for the Expansion of a Legal Nonconforming Use:

(1) A rezoning of the property would be inappropriate.

The site is zoned C3S and R1. The portion of the site zoned R1 also has the TP overlay. The building is located in the portion of the site zoned C3S. The accessory parking lot located on the R1 portion of the site is allowed by the TP overlay. Only the sign is a nonconforming use. The site is located in a commercial node designated by *The Minneapolis Plan*. The plan also designates Nicollet Avenue as a community corridor. (In the update of the comprehensive plan, *The Minneapolis Plan for Sustainable Growth*, Nicollet Avenue will be designated as a commercial corridor, the area around the intersection of Nicollet Avenue and 60th Street will be designated as a major retail center, and the future land use designation of the entire subject site will be mixed use.) Although it could be appropriate to rezone the R1 portion of the site to another commercial district to allow future development, a rezoning of the property to allow a taller sign would not be appropriate because no other zoning districts exist that would allow a taller sign as-of-right.

(2) The enlargement, expansion, relocation, structural alteration or intensification will be compatible with adjacent property and the neighborhood.

The sign is located adjacent to I-35W and a multiple-family dwelling. In the blocks surrounding the site and west of I-35W, there is a mix of nonresidential and residential uses. Cub Foods is the largest commercial establishment in the immediate area. There are several pole signs along Nicollet Avenue for other commercial businesses, but none are adjacent to the highway. There is also a second Cub Foods sign adjacent to Nicollet Avenue. It appears that the pole signs along Nicollet Avenue are not more than 30 feet in height. The maximum allowed height of a freestanding sign allowed as-of-right in the commercial districts ranges from 20 to 30 feet. The purpose of regulations governing on-premise signs are to allow effective signage appropriate to the planned character of each zoning district, to promote an attractive environment by minimizing visual clutter and confusion, to minimize adverse effects on nearby property, and to protect the public health, safety and welfare. The increase in height would not be compatible with adjacent property or the neighborhood and could set a precedent for allowing taller signs and result in visual clutter.

- (3) **The enlargement, expansion, relocation, structural alteration or intensification will not result in significant increases of adverse, off-site impacts such as traffic, noise, dust, odors, and parking congestion.**

The sign area and lighting type would not change. The increase in height should not have an impact on traffic, noise, dust, odors, and parking congestion.

- (4) **The enlargement, expansion, relocation, structural alteration or intensification, because of improvements to the property, will improve the appearance or stability of the neighborhood.**

The increase in sign height is the only change proposed for the property. Although the increase in height would make the sign more visible from the highway over the sound barrier wall, it would not improve the appearance or stability of the neighborhood.

- (5) **In districts in which residential uses are allowed, the enlargement, expansion, relocation, structural alteration or intensification will not result in the creation or presence of more dwelling units on the subject property than is allowed by the regulations of the district in which the property is located.**

No dwelling units are proposed.

- (6) **The enlargement, expansion, relocation, structural alteration or intensification will not be located in the Floodway District.**

The property is not located in the Floodway District.

RECOMMENDATION:

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

The Community Planning and Economic Development Department—Planning Division recommends that the City Planning Commission adopt the above findings and **deny** the application for an expansion of a legal nonconforming use to increase the height of a freestanding sign from 35 feet to 50 feet located at the property of 5937 Nicollet Avenue.

Attachments:

- 1) Applicant statement of use
- 2) Applicant findings
- 3) Zoning map
- 4) Plans
- 5) Photos