

Department of Community Planning and Economic Development – Planning Division
Conditional Use Permit
BZZ – 5060

Date: January 24, 2011

Applicant: Andy Johnson

Address of Property: 2936 Lyndale Avenue South

Project Name: Toppers Pizza

Contact Person and Phone: Nathan Walter, (715) 829-9137

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

Date Application Deemed Complete: December 15, 2010

End of 60-Day Decision Period: February 13, 2011

Ward: 10 **Neighborhood Organization:** Lowry Hill East (adjacent to Whittier Alliance)

Existing Zoning: C3A Community Activity Center District and PO Pedestrian Oriented Overlay District

Proposed Zoning: Not applicable for this application

Zoning Plate Number: 24

Legal Description: Not applicable for this application

Proposed Use: Extend the hours open to the public for a restaurant

Concurrent Review: Conditional use permit to extend the hours open to the public from 1:00 a.m. to 3:00 a.m. Sunday through Thursday and from 1:00 a.m. to 3:30 a.m. Friday and Saturday.

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

Background: Toppers Pizza, located at 2936 Lyndale Avenue South, is proposing to extend their hours open to the public. In the C3A district, businesses are allowed to be open to the public from 6:00 a.m. to 1:00 a.m. daily. The request is to extend the allowed hours to 3:00 a.m. Sunday through Thursday and to 3:30 a.m. Friday and Saturday. The use would continue to open at 11:00 a.m. The business recently received a violation notice for operating beyond the hours allowed under the C3A district regulations. A conditional use permit is required to extend the hours thus an application has been submitted to legally extend the hours of operation. Upon approval of the conditional use permit, the action must be recorded with Hennepin County as required by state law.

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The Planning Commission continued this application from the January 10, 2011 meeting to allow time for the request to be discussed at a neighborhood group meeting. On January 12th, the LHENA Zoning and Planning committee discussed the request. 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.

Findings as required by the Minneapolis Zoning Code:

The Community Planning and Economic Development 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.

The Business Licensing Division was not aware of any complaints or violations related to this use affecting public health or safety. As of the writing of this report, staff had not received a response from the Police Department. In the immediate area, several businesses have been allowed to stay open until 2:00 or 3:00 a.m. With more businesses staying open at later hours, the difficulty of maintaining public safety increases. Allowing this business to stay open until 3:30 a.m. may be detrimental to the public safety and general welfare. The extension of hours to 3:00 a.m. daily should not prove detrimental to public health, safety, comfort or general welfare provided the use complies with all applicable licensing and life safety ordinances.

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.

The site is located in an activity center and on a commercial corridor. Uses to the north, south and east of the use are all nonresidential. A multi-family apartment building is located to the west across the alley. An enclosed hallway separates dwelling units from the exterior wall adjacent to the alley. In the surrounding area, there are several establishments that serve alcohol that are allowed to stay open until 2:00 a.m. Since 2002, extended hours were granted for the following businesses in the Lyn-Lake activity center.

Business	Address	Allowed to Stay Open Until
Caffrey Deli and Subs	3008 Lyndale Avenue South	3:00 a.m. daily
Falafel King	701 West Lake Street	3:00 a.m. daily
Galactic Pizza	2917 Lyndale Avenue South	12:00 a.m. Sunday-Thursday 2:30 a.m. Friday-Saturday
Milio's	700 West Lake Street	2:00 a.m. Sunday-Wednesday 3:00 a.m. Thursday-Saturday
Lyndale Express (automobile convenience facility)	2801 Lyndale Avenue South	12:00 a.m. Sunday-Thursday 2:00 a.m. Friday-Saturday

Allowing the use to be open until 3:00 a.m. every day would be a reasonable use of the property. Extended hours until 3:30 a.m. on Friday and Saturday may have an impact that is detrimental to the

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surrounding area. It may set precedence for other businesses to stay open later, which may increase associated noise, traffic and other nuisances where commercial uses are adjacent to residential uses.

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

The site is served by existing infrastructure.

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 seating capacity of the restaurant is small. Two parking spaces are located behind the building for the use. There are two off-street public parking facilities within close proximity to the site.

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

The future land use of the site is designated as mixed use by *The Minneapolis Plan for Sustainable Growth*. The site is located within the Lyn-Lake activity center. The site is located in the area where Lyndale Avenue is designated as a commercial corridor. According to the principles and polices outlined in the plan, the following apply to this proposal:

Policy 1.2: Ensure appropriate transitions between uses with different size, scale, and intensity.

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.

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.

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.

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

Applicable Implementation Step

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

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.

Applicable Implementation Step

1.10.1 Support a mix of uses – such as retail sales, office, institutional, high-density residential and clean low impact light industrial – where compatible with the existing and desired character.

The *Midtown Greenway Land Use and Development Plan*, adopted by the City Council in 2007, and the *Lyn-Lake Small Area Plan*, adopted by the City Council in 2009, also identify the subject site as appropriate for commercial/mixed use.

Staff comment: The use provides a desired service for the area. The staff recommended hours would be consistent with these policies.

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.

Restaurants must comply with the following specific development standard found in section 536.20:

Restaurant, delicatessen. 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.

Although the parking spaces are located across the alley from a residential use, it would not be practical to provide landscaping and screening required by section 541.360 of the zoning code because it would result in the elimination of those parking spaces. With approval of the conditional use permit, the use would comply with all other applicable regulations of the district.

Additional Findings Required to Extend Hours Open to the Public:

In addition to the conditional use standards, the city planning commission shall consider, but not be limited to, the following factors when determining the hours open to the public:

1. Proximity to permitted or conditional residential uses.

Residential uses are located across the alley from the site. An enclosed hallway separates dwelling units from the exterior wall adjacent to the alley. Allowing the use to stay open past 3:00 a.m. may increase associated noise, traffic and other nuisances for nearby residences.

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

The use provides pizza delivery service. Customers can also carry out. There is a small seating area at the front of the restaurant adjacent to Lyndale Avenue. 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. Other impacts of the business, including light and noise, should not be significant.

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

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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. Although the parking spaces are located across the alley from a residential use, it would not be practical to provide landscaping and screening required by section 541.360 of the zoning code because it would result in the elimination of those parking spaces.

4. History of complaints related to the use.

The applicant has operated this use at this site since 2005. The Business Licensing Division of the Regulatory Services Department was aware of two violations related to this use. In a letter, they advised the owner they needed a sidewalk license to put chairs on the sidewalk. The chairs were removed. They also sent the owner a letter in November of 2010 advising them a conditional use permit is required to stay open to the public after 1:00 a.m. Since the letter was sent, Toppers has not stayed open past 1:00 a.m. As of the writing of this report, staff had not received a response from the Police Department.

RECOMMENDATION

Recommendation of the Department of Community Planning and Economic Development – Planning Division for the Conditional Use Permit:

The Community Planning and Economic Development Department - Planning Division recommends that the City Planning Commission adopt the findings above and **deny** the conditional use permit to allow extended hours open to the public from 1:00 a.m. to 3:00 a.m. Sunday through Thursday and from 1:00 a.m. to 3:30 a.m. Friday and Saturday and in lieu thereof **approve** a conditional use permit to allow extended hours open to the public from 1:00 a.m. to 3:00 a.m. daily for the property located at 2936 Lyndale Avenue South, 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) Applicant's statement of proposed use and responses to findings
- 2) Zoning map
- 3) Plans
- 4) Photos