

Department of Community Planning and Economic Development - Planning Division Report**Appeal of the Decision of the Zoning Administrator
BZZ-2081****Date:** December 2, 2004**Appellant:** Marissa Lasky**Address of Property:** 1538 Nicollet Avenue**Date Application Deemed Complete:** November 5, 2004**End of 60 Day Decision Period:** January 4, 2005**End of 120 Day Decision Period:** March 5, 2005**Appeal Period Expiration:** December 12, 2004**Contact Person and Phone:** Marissa Lasky, 612-377-1167**Planning Staff and Phone:** Carrie Flack, 612-673-3239**Ward: 7** **Neighborhood Organization:** Loring Park**Existing Zoning:** District C2, Neighborhood Corridor Commercial District
District C1, Neighborhood Commercial District

Appeal of the decision of the Zoning Administrator: Marissa Lasky has filed an appeal of the decision of the Zoning Administrator dated October 19, 2004, regarding the relocation of an existing billboard sign. Specifically, the appellant is not permitted to relocate an existing billboard sign located at 1538 Nicollet Avenue due to the nonconforming status of the sign. The appellant challenges this decision and argues that without the relocation of the sign, they are unable to develop the property.

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

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concerning appeals shall be final, subject to appeal to the city council as specified in section 525.180.

Background: The appellant has appealed the decision of the Zoning Administrator regarding the determination that an existing billboard sign located on property at 1538 Nicollet Avenue cannot be relocated as the sign is nonconforming as to spacing from another billboard located within one thousand (1,000) feet on the same side of the roadway, specifically another billboard sign exists at 1500 Nicollet Avenue approximately 300-350 ft. away.

The appellant states that neighborhood leaders are advocating for new development on the subject site to replace the vacant structure with active uses and to reduce or remove the visual blight of the surface parking. The appellant has submitted preliminary site plans that propose to expand the existing building to 3,880 sq. ft. or 5,780 sq. ft. with a drive aisle and a row parking in the location of the existing billboard sign. The appellant states that because the billboard sign is not located at the periphery of the property, the amount of buildable area on the property is restricted and that vehicular circulation for the parking lot becomes complicated. The billboard is currently located 30 ft. north of the southern property line. The appellant is proposing to relocate the billboard approximately 5 ft. from the southern property boundary where it will be on the periphery of the property.

The appellant argues that moving the billboard sign brings the sign further into compliance with the code. The appellant has submitted a map that indicates relocating the billboard sign as proposed increases the distance from the billboard at 1500 Nicollet by approximately 9.7%. Hence, the proposed relocation represents a greater state of compliance with the code.

Analysis: The Zoning Administrator has determined that the subject billboard sign cannot be relocated as the sign is nonconforming as to spacing requirements. Chapter 544.30 (3) states that Advertising signs and sign structures which are moved, replaced, or structurally altered shall be brought into compliance with all applicable regulations of this chapter. The new sign location proposed by the appellant does not comply with all spacing requirements and thus the sign cannot be relocated.

The billboard sign is located within the Downtown Opportunity District and is required to meet several spacing standards identified in Chapter 544.60 Table 544-2 Opportunity Billboard District Standards including: minimum commercial or industrial zoning, minimum frontage, maximum sign area, maximum sign height, lighted sign, and minimum sign spacing. The proposed new location for the sign is not in compliance with the spacing requirements of Table 544-2. Specifically, the appellant's sign does not comply with the following:

1. The sign is not located within at least 1,320 ft. of continuous parallel commercial or industrial zoning along both sides of the roadway from which the billboard is intended to be read. (Table 544-2). The sign is located approximately 1,000 ft. from an OR2 District south on Nicollet Avenue.
2. The sign is located within 200 ft. of a residence or office residence district. (Table 544-2). The sign is located 165 ft. from an adjacent OR3 District.
3. The sign is located within 1,000 ft. from a billboard on the same side of the roadway. (Table 544-2). The sign is located approximately 300-350 ft. from an existing billboard sign at 1500 Nicollet Avenue.

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Therefore, the proposed new location for the sign does not comply with the ordinance requirements and a new sign would not be allowed.

For the same reasons stated above, the sign in its current location is nonconforming as the two locations are only approximately 30 ft. apart. The appellant argues that because the proposed location would be less nonconforming they should be able to move the sign. Chapter 544.30 regulates nonconforming signs. Since the sign currently exists and does not meet these spacing requirements, the sign is considered to be legally nonconforming. The following nonconforming provisions from the ordinance apply.

Chapter 544.30. Nonconforming signs. The following provisions shall apply to nonconforming advertising signs and billboards:

1. Advertising signs and billboards lawfully existing at the time of adoption of this chapter which do not conform to the regulations of this chapter may continue to exist, but shall not be structurally altered or enlarged.
2. Maintenance, repair, and changing of sign messages is allowed provided no structural alterations shall be made. A new painted wall sign painted over an existing painted wall sign is considered a replacement of the sign and shall be prohibited by this chapter.
3. Advertising signs and sign structures which are moved, replaced, or structurally altered shall be brought into compliance with all applicable regulations of this chapter.
4. A nonconforming sign which is damaged or destroyed by any cause or means to the extent that the cost of restoration exceeds one-half (1/2) of its replacement cost shall not be reconstructed except in conformity with all applicable regulations of this chapter.
5. A nonconforming advertising sign which is discontinued for a continuous period of more than one (1) year shall be deemed to be abandoned and may not thereafter be reestablished or resumed except in conformity with all applicable regulations of this chapter.

In addition, pursuant to recent changes in Minnesota State law, the existing nonconforming billboard may be continued, including through repair, replacement, restoration or improvement, but may not be expanded. Minn. Stat. sec. 462.357, subdv 1e. The new statute supercedes some of the above noted mentioned regulations, however, Chapter 544.30 (3) is still enforceable and thus the sign must be brought into compliance. Therefore, the sign may be replaced on the roof of the proposed building in its current location, provided there is no increase in its size or height.

While the appellant believes the relocation of the billboard sign may reduce the nonconformity of the spacing requirements, Chapter 544.30 (3) states that Advertising signs and sign structures which are moved, replaced, or structurally altered shall be brought into compliance with all applicable regulations of this chapter. The new sign location proposed by the appellant does not comply with all spacing requirements and thus the sign cannot be relocated. An expansion of a nonconformity is not allowed

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under ordinance or state law. Planning staff agrees that the Zoning Administrator has correctly and appropriately determined that the billboard sign cannot be relocated.

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.