

**Department of Community Planning and Economic Development – Planning Division**  
Conditional Use Permit  
BZZ-5051

**Date:** January 10, 2011

**Applicant:** Dinkytown Subway, Inc.

**Address of Property:** 1400 5<sup>th</sup> Street Southeast

**Project Name:** Dinkytown Subway

**Contact Person and Phone:** Ed Connelly, (612) 275-6152

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

**Date Application Deemed Complete:** December 7, 2010

**End of 60-Day Decision Period:** February 5, 2011

**Ward: 3      Neighborhood Organization:** Marcy Holmes Neighborhood Association

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

**Proposed Zoning:** Not applicable for this application

**Zoning Plate Number:** 15

**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 10:00 p.m. to 11:00 p.m. Sunday through Thursday and from 11:00 p.m. to 2:00 a.m. Saturday and Sunday for a restaurant.

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

**Background:** The owner of Dinkytown Subway, currently located at 1412 5<sup>th</sup> Avenue Southeast, is proposing to relocate the business to 1400 5<sup>th</sup> Avenue Southeast (formerly occupied by Hollywood Video). At their current location, they stay open to the public until 11:00 p.m. Sunday through Thursday and 2:00 a.m. Friday and Saturday (in 1994, the city council approved a conditional use permit to extend the hours open to the public until 2:00 a.m. daily). Because the business is relocating, those hours don't transfer with the business and it is subject to the hours allowed by the district (10:00 p.m. Sunday through Thursday and 11:00 p.m. Friday and Saturday). The applicant is requesting that

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the hours allowed at their existing location are allowed at their new location. A conditional use permit is required to extend the hours. Upon approval of the conditional use permit, the action must be recorded with Hennepin County as required by state law.

The use is located in a multiple tenant building. It will occupy approximately half of the tenant space formerly occupied by Hollywood Video. A 30+ space parking lot is also located on the site. In 2003, the planning commission approved a site plan review application for the property to allow an addition to add a new tenant space for Pizza Hut. The site has been inspected for compliance with the previous site plan approval.

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. Also, the Police Department did not cite any history of problems related to this use. The extension of hours 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. Uses directly adjacent to the restaurant are all nonresidential. Uses across 14<sup>th</sup> Avenue are also nonresidential. Residential uses are located across 5<sup>th</sup> Street from the site. In the immediate area, there are several nightclubs and restaurants that serve alcohol that are allowed to stay open until 2:00 a.m. Since 2002, ten applications to extend hours open to the public have been processed for Dinkytown businesses. All were approved and all were for restaurants. These requests were to remain open until 2:00 or 3:00 a.m. The existing restaurant location is closer to the nearest residential uses than the proposed location. The adjacent tenant, Pizza Hut, has hours open to the public until 1:00 a.m. Sunday through Thursday and until 2:00 a.m. Friday and Saturday. The extension of hours should have little impact on surrounding properties.

**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.**

In the Dinkytown Pedestrian Oriented Overlay District, nonresidential uses are not required to provide parking. A 30+ space parking lot and bicycle racks exist on the site. Most of the patrons are pedestrians. On-street, metered public parking is available. The extension of hours should have little effect on traffic congestion.

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

The future land use of the site is designated as commercial by *The Minneapolis Plan for Sustainable Growth*. The site is located within the Dinkytown activity center and the University of Minnesota/SEMI area growth center. According to the principles and polices outlined in the plan, the following apply to this proposal:

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 1.15: Support development of Growth Centers as locations for concentration of jobs and housing, and supporting services.

The *Master Plan for the Marcy-Holmes Neighborhood* small area plan designates the subject site as general commercial on the land use plan.

*Staff comment:* The use provides a desired service for the area. The extended 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.**

The proposed use 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.

In 2003, the planning commission approved a site plan review application for the property to allow an addition to add a new tenant space for Pizza Hut. Landscaping, screening and curbing of the parking lot were part of the approval. The site has been inspected for compliance with the previous site plan approval.

The applicant is proposing a new 2.5 foot by 13.5 foot internally illuminated wall sign (approximately 34 square feet) that would be installed on the wall facing the parking lot. Signage is regulated by Chapter 543 and section 551.130 of the zoning code. In the C1 district, a wall sign not exceeding 45 square feet is allowed if the total amount of signage on a wall does not exceed one

square foot for each linear foot of building wall with a freestanding sign on the same zoning lot. The total amount of existing and proposed wall signage (approximately 69 square feet) would not exceed one square foot for each linear foot of building wall. The sign may be up to 14 feet in height above grade. In the PO Overlay District, backlit awning, canopy, and insertable panel projecting signs are prohibited. The new signage will need to comply with these requirements and will require Zoning Office review, approval, and a permit. A backlit, freestanding pole sign also exists on the site. The applicant is proposing to reface a portion of the freestanding sign. In the PO Overlay District, pole signs are prohibited. The pole sign was installed before this regulation was in effect; therefore, it is legally nonconforming. Refacing a legally nonconforming panel sign is considered maintenance and allowed by the zoning code. It also requires Zoning Office review, approval, and a permit.

With daily litter removal, obtaining the necessary sign permits, and approval of the conditional use permit, the use would comply with the 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 5<sup>th</sup> Street from the site. The new location for the use is directly adjacent to the old location. The proposed hours open to the public are the same as the existing hours open to the public. The extension of hours should have little effect on nearby residences.

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

The use is pedestrian oriented and produces little vehicle traffic. Other impacts of the business, including light and noise, are also insignificant. The landscaping and screening improvements implemented from the previous site plan review also mitigate impacts to nearby properties.

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

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. New signage will need to comply with applicable signage regulations and will require Zoning office review, approval and permits.

**4. History of complaints related to the use.**

The applicant has operated this use at this site since December of 1999. The Business Licensing Division of the Regulatory Services Department was not aware of any complaints or violations related to this use. Also, the Police Department did not cite any history of problems related to this use.

**RECOMMENDATION**

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

The Department of Community Planning and Economic Development – Planning Division recommends that the City Planning Commission adopt the above findings and **approve** the conditional use permit to extend the hours open to the public from 10:00 p.m. to 11:00 p.m. Sunday through Thursday and from 11:00 p.m. to 2:00 a.m. Saturday and Sunday for a restaurant located at the property of 1400 5<sup>th</sup> Street Southeast, subject to the following condition:

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