

Department of Community Planning and Economic Development - Planning Division
Rezoning and Conditional Use Permit
BZZ-5481

Date: April 9, 2012

Applicant: Kim Bartmann

Address of Property: 1024 East 38th Street

Project Name: 1024 East 38th Street

Contact Person and Phone: Kim Bartmann (612) 940-8279

Planning Staff and Phone: Kimberly Holien (612) 673-2402

Date Application Deemed Complete: March 20, 2012

End of 60 Day Decision Period: May 19, 2012

Ward: 8 **Neighborhood Organization:** Powderhorn Park Neighborhood Association

Existing Zoning: R2B, Two-family District

Proposed Zoning: C1, Neighborhood Commercial District

Zoning Plate Number: 26

Legal Description: Lot 14, Auditor's Subdivision No. 181, Hennepin County, Minnesota.

Proposed Use: Restaurant with freestanding solar energy system

Concurrent Review:

Rezoning: From R2B to C1 for property at 1024 East 38th Street.

Conditional Use Permit: For a freestanding solar energy system.

Applicable zoning code provisions: Chapter 525, Article VII, Conditional Use Permits; Chapter 530, Site Plan Review.

Background: Kim Bartmann is proposing to establish a restaurant use in an existing commercial building at 1024 East 38th Street. The project includes a 610 square foot addition on the north side of the existing building and the construction of a freestanding solar energy system on the west side of the existing building. After construction the building will be 1,738 square feet in size. The building addition will comply with the setback requirements of the C1 District and be constructed of materials that match and compliment the existing building. The addition complies with the window requirements of Chapter 530, Site Plan Review. The freestanding

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solar energy system will be designed to resemble a large canopy and a patio constructed of porous pavers will be established beneath it. The patio is intended to be used for outdoor seating. The outdoor dining area will be a minimum of 20 feet away from the district boundary of the adjacent residential district in compliance with Section 548.180 of the zoning code.

I would explain the history of the site here a little bit. The site is zoned R2B and has lost non-conforming rights for most commercial uses, other than those allowed in the R2B district. The applicant has requested rezoning to the C1, Neighborhood Commercial District to allow a restaurant use in the existing building.

Freestanding solar energy systems, those with a supporting framework that is placed on or anchored in the ground independent of a building or other structure, are permitted up to a height of 20 feet or the height of the principal structure, whichever is less. Any freestanding solar energy system that does not comply with this requirement needs a conditional use permit. The height of the principal building on the site is 12'8" and the proposed solar energy system is 17'8" in height. Therefore, a conditional use permit is required.

Staff received a letter from the Powderhorn Park Neighborhood Association dated February 9, 2012, expressing support for the project. The letter is attached for review. The adjacent Bancroft Neighborhood sent an e-mail of support dated February 9, 2012, which has also been attached for review.

REZONING: Petition to rezone the property at 1024 East 38th Street from R2B to C1.

Findings as required by the Minneapolis Zoning Code:

1. Whether the amendment is consistent with the applicable policies of the comprehensive plan.

The proposed zoning would be consistent with the applicable policies of *The Minneapolis Plan for Sustainable Growth*. The property is designated as urban neighborhood on the future land use map and 38th Street is a Community Corridor in this location. The following principles and polices outlined in the plan apply to this proposal:

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.

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

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- 1.2.1 Promote quality design in new development, as well as building orientation, scale, massing, buffering, and setbacks that are appropriate with the context of the surrounding area.

Policy 1.6: Recognize that market conditions and neighborhood traditions significantly influence the viability of businesses in areas of the city not designated as commercial corridors and districts.

- 1.6.1 Allow for retention of existing commercial uses and zoning districts in designated Urban Neighborhood areas, to the extent they are consistent with other city goals and do not adversely impact surrounding areas.

Policy 1.9: Through attention to the mix and intensity of land uses and transit service, the City will support development along Community Corridors that enhances residential livability and pedestrian access.

- 1.9.1 Support the continued presence of existing small-scale retail sales and commercial services along Community Corridors.

Policy 10.8: Strengthen the character and desirability of the city's urban neighborhood residential areas while accommodating reinvestment through infill development.

- 10.8.8 Appropriate non-residential land uses, such as institutional, public and suitable commercial uses, should be integrated into low density residential areas through proper building location and design, landscaping, and other site improvements.

The property contains an existing, non-residential building that has historically been used for commercial purposes. The property has lost non-conforming rights to most commercial uses and rezoning to C1 at this time would allow for the retention of small-scale commercial uses along a Community Corridor. The commercial uses allowed in the C1 district will contribute to the overall vitality of the area without having a detrimental impact on the surrounding area. The site will be designed to minimize the impact on surrounding residential uses through landscaping, screening and other site improvements.

2. Whether the amendment is in the public interest and is not solely for the interest of a single property owner.

The rezoning would allow for a limited range of goods and services on a community corridor. Rezoning to C1 to allow commercial uses on the subject site would enhance residential livability and reinvestment in the neighborhood. The amendment is in the public interest and not solely in the interest of the property owner.

3. Whether the existing uses of property and the zoning classification of property within the general area of the property in question are compatible with the proposed zoning classification, where the amendment is to change the zoning classification of particular property.

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The proposed zoning should be compatible with the zoning classifications and existing uses of other property in the area. While the site is surrounded by residential uses, it has contained commercial uses since approximately 1953 when an automobile convenience facility was established on the site. Since that time, the building has contained a barber shop, grocery store, retail store, restaurant and club or lodge. Rezoning to C1 would allow a variety of commercial uses on a community corridor. The potential impact any commercial use may have on the neighboring residences can be mitigated through proper site design and adherence to applicable zoning code requirements.

4. Whether there are reasonable uses of the property in question permitted under the existing zoning classification, where the amendment is to change the zoning classification of particular property.

The existing zoning is R2B but the site contains a non-residential structure. The site is 14,478 square feet in size which would permit a single family home or duplex. Due to the design of the structure and the layout of the site, it is unlikely that the existing building would be used for residential purposes. The majority of non-residential uses that are allowed in the R2B district have a minimum lot area requirement of 20,000 square feet. Those factors limit the reasonable use of the property under the current zoning.

5. Whether there has been a change in the character or trend of development in the general area of the property in question, which has taken place since such property was placed in its present zoning classification, where the amendment is to change the zoning classification of particular property.

The property has been zoned R2B since at least 1963. The existing building was constructed in 1953 for use as an automobile convenience facility. The building has contained commercial uses continuously since that time and has recently lost non-conforming rights due to the fact that it has been vacant for more than one year. Since the subject building was constructed, the surrounding properties have been zoned R2B and consistently contained residential uses. Multiple applications for a change of non-conforming use have been approved since the site was placed in its present zoning classification.

CONDITIONAL USE PERMIT: To allow a freestanding solar energy system that exceeds the height of the principal structure.

Findings as Required by the Minneapolis Zoning Code:

The Community Planning and Economic Development Department – Planning Division has analyzed the application and from the findings below 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.

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Allowing a freestanding solar energy system is not expected to be detrimental to the public health, safety or general welfare. Freestanding solar energy systems are permitted up to a height of 20 feet or the height of the principal structure, whichever is less. Any system that does not comply with these height provisions requires a conditional use permit. In this case the principal structure is rather short, at a maximum height of only 12'8". The proposed freestanding solar energy system will be 17'8" in height; shorter than the 20 feet allowed but taller than the principal structure. The solar energy system will be designed to appear as an extension of the existing building and function as a canopy over the outdoor seating area.

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.

Allowing a freestanding solar energy system is not expected to be injurious to the use and enjoyment of other property in the vicinity. The surrounding area is fully developed and primarily includes residential uses. The conditional use permit is required due to the proposed height of the structure. The height of the existing building is relatively short for a commercial building and the height of the proposed solar energy system is necessary to capture the most sunshine. As noted below, staff is making recommendations for landscaping and screening to buffer the system from adjacent residential uses. The parking area is also subject to the parking and loading landscaping and screening requirements of Chapter 530, Site Plan Review.

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

Roads and utilities are existing and adequate. The applicant has submitted a copy of an application to Xcel Energy to serve as written evidence that the electric utility service provider has been informed of the applicant's intent to install a solar energy system and to connect the system to the electricity grid. The installation of the system should have little impact on drainage as the area underneath it will be surfaced with porous pavers.

4. Adequate measures have been or will be provided to minimize traffic congestion in the public streets.

Allowing the freestanding solar energy system should have little impact on traffic congestion in the public streets. The minimum parking requirement for a restaurant use is one space per 500 square feet of gross floor area and a minimum of four spaces. With the proposed addition, the building would be 1,738 square feet, translating to a minimum parking requirement of 4 stalls. The existing, on-site parking lot has 25 spaces. Access into the site is provided via an existing curb cut that will not be modified as part of this project. The minimum bike parking requirement is three spaces and a bike rack is shown on the east side of the building. As a condition of approval, this bike rack will need to contain a minimum of three spaces.

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

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The freestanding solar energy system is consistent with the policies of *The Minneapolis Plan for Sustainable Growth*. Per the policies below, this type of renewable energy is encouraged:

Policy 6.3: Encourage sustainable design practices in the planning, construction and operations of new developments, large additions and building renovations.

6.3.1 Encourage developments to implement sustainable design practices during programming and design, deconstruction and construction, and operations and maintenance.

6.3.4 Encourage developments to utilize renewable energy sources, including solar, wind, geothermal, hydro, and biomass.

Policy 6.4: Expand the use of renewable energy.

6.4.2 Encourage use and generation of renewable energy systems in the city.

6.4.4 Take measures for the protection and development of access to sources of renewable energies, especially solar and wind power.

6. And, does in all other respects conform to the applicable regulations of the district in which it is located.

The applicant is making improvements to the off-street parking area, thus requiring compliance with the design and maintenance provisions of Chapter 530, Site Plan Review. The site has an approved site plan from 2002 and the site is generally in compliance with the approved site plan. A five-foot landscaped yard is located along the perimeter of the parking lot, per the approved plan from 2002. This landscaped yard contains five canopy trees along the East 38th Street frontage and three canopy trees along the 11th Avenue South frontage with shrub plantings between the trees.

A seven-foot landscaped yard is required along the west property line, between the parking area and the alley. The landscaped yard shall contain screening that is a minimum of three feet in height and 60 percent opaque. Some landscaping is currently provided in this location, along with a chain link fence. However, the site plan submitted at this time shows a parking space in the southwest corner of the site that was not on the previously approved plan. This parking space will not be permitted and the applicant will be required to provide the landscaped yard described above in this location instead. The landscaped yard shall be required to extend to the northern edge of the parking lot. Staff further recommends that screening, a minimum of three feet in height and 60 percent opaque, be extended along the entire north property line to provide a buffer between the outdoor patio space and the adjacent residential property. The applicant has stated that vegetative screens will be provided along the north property line to buffer the use from that residential property. A detailed drawing of these screens shall be required on the final site plan.

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The maximum parking requirement for a restaurant is one space per 75 square feet of gross floor area. The building would be 1,754 square feet with the proposed addition, for a maximum parking requirement of 23 spaces. The parking lot is existing but the striping has faded. The site plan submitted by the applicant shows 25 parking spaces. As stated above, the parking space in the southwest corner of the site will not be allowed per the landscaping and screening requirements of Chapter 530, Site Plan Review. Staff further recommends that the westernmost parking space in the north row of parking stalls be removed to allow for the required landscaped yard to extend along the entire west edge of the parking lot. Removing this space would bring the site into compliance with the maximum parking requirement.

The north elevation of the proposed building addition contains a blank wall in excess of 25 feet. Specifically, the wall in this location will be 32 feet in length with no relief. To comply with the standards in Chapter 530, Site Plan Review, staff is recommending that a material change, recess, projection or other architectural element be provided on the north elevation to break up the blank wall. The gate on the trash enclosure is in disrepair and will be replaced as part of the project.

The site plan shows a loading space on the east side of the building in the required front yard. This paved area is existing and was noted as a loading and parking space on the previously approved site plan. However, the applicant has indicated that this area will likely not be used for loading due to the fact that the entrance on the east side of the building is only accessible via a stairway. Instead, loading will likely occur on the south side of the building during off-peak hours. As such, staff recommends that this loading space be removed from the final site plan as a condition of approval.

RECOMMENDATIONS:

Recommendation of the Department of Community Planning and Economic Development – Planning Division for the rezoning from R2B to C1:

The Department of Community Planning and Economic Development – Planning Division recommends that the City Planning Commission and the City Council adopt the findings above and **approve** the rezoning from the R2B, Two-family Residential District to the C1, Neighborhood Commercial District for the property located at 1024 East 38th Street.

Recommendation of the Community Planning and Economic Development Department - 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 findings above and **approve** the conditional use permit for a freestanding solar energy system for the property located at 1024 East 38th Street, 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

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zoning administrator, the conditional use permit shall expire if it is not recorded within one year of approval.

2. Community Planning and Economic Development Department – Planning Division staff review and approval of the final elevations, floor, site, lighting and landscape plans.
3. The north elevation of the building addition shall be revised to include a material change, recess, projection or other architectural element to eliminate any blank walls in excess of 25 feet, in compliance with Section 530.120 of the zoning code.
4. A landscaped yard a minimum of seven feet in width containing plantings a minimum of three feet in height and 60 percent opaque shall be provided for the length of the west edge of the parking lot, in accordance with Section 530.170 of the zoning code.
5. Screening a minimum of three feet in height and 60 percent opaque shall be provided along the west and north property lines to buffer the outdoor patio space from the adjacent residential uses.
6. The two westernmost parking stalls shall be removed to comply with the maximum parking requirement in Table 541-1 of the zoning code and to provide the required landscaped yard per Section 530.170 of the zoning code.
7. The loading space on the east side of the building shall be removed from the final site plan in compliance with the yard requirements in Section 548.140 of the zoning code.
8. A minimum of three bicycle parking spaces shall be provided, in accordance with Table 541-3 of the zoning code.

Attachments:

1. Statement and findings from applicant.
2. Application to Xcel Energy.
3. Letter from PPNA.
4. E-mail from Bancroft Neighborhood Association.
5. Memo from City Attorney Re: Petition for the Amendment of the Zoning Ordinance
6. Zoning map.
7. Zoning code information sheet.
8. Site plans and elevations.
9. Photos.