

**Department of Community Planning and Economic Development – Planning Division**  
**Conditional Use Permit and Parking Variance**  
**BZZ-2356**

**Date:** June 13, 2005

**Applicant:** Matador Coffee, Inc.

**Address of Property:** 2 East 26<sup>th</sup> Street

**Project Name:** Bad Waitress

**Contact Person and Phone:** T. Christian Johnson, (612) 812-2243

**Planning Staff and Phone:** Lonnie Nichols, (612) 673-5468

**Date Application Deemed Complete:** May 6, 2005

**End of 60-Day Decision Period:** July 5, 2005

**End of 120-Day Decision Period:** Not applicable at this time

**Ward:** 6      **Neighborhood Organization:** Whittier Alliance

**Existing Zoning:** C2

**Proposed Zoning:** No change proposed, not applicable for this application

**Zoning Plate Number:** 20

**Legal Description:** No zoning change proposed, not applicable for this application

**Proposed Use:** Coffee shop, diner, and wine bar on ground floor of Arts Quarter Lofts building

**Concurrent Review:** Conditional Use Permit for extended hours of operation to 1:00 am daily and a parking variance from 27 to 0 stalls.

**Applicable zoning code provisions:** Chapter 525, Article VII, Conditional Use Permits; Chapter 541, Off Street Parking and Loading; Chapter 548, Commercial Districts.

**Background:** Matador Coffee, Inc., dba Bad Waitress Coffee Shop has filed application for a conditional use permit for extended hours of operation to 1:00 am daily and a parking variance from 27 to 0 stalls for a restaurant/coffee shop located at 2 East 26<sup>th</sup> Street on the ground floor of the Arts Quarter Lofts building in the C2 district. Regular hours of operation allowed under the C2 district are from 6:00 a.m. to 10:00 p.m. Sunday through Thursday and 6:00 a.m. to 11:00 p.m. Friday and Saturday.

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In October 2003, after a partial approval by the City Planning Commission in September 2003 for the Arts Quarter Lofts (BZZ 1259 and Alley Vacation 1419), the Zoning and Planning Committee and City Council approved the project as a mixed use building with 29 dwelling units and ground floor commercial space, constructed in part over the top of a public alley. The approval included variances for setbacks, required minimum lot area, and maximum permitted floor area. The original site plan for BZZ 1259 showed 13 commercial-retail parking stalls at grade, but 4 of the stalls proposed were not allowed on the final plans as per the requirements of the zoning code and the Public Works department. The current site plan for BZZ 2356 shows 9 parking stalls for the commercial-retail tenant space(s) (1 HC, 1 compact, 7 standard-size). The site plan has consistently listed 6,012 sf of ground floor retail space in the building, but no tenants have been proposed prior to this application. 2137 sf of the retail space has now been proposed for the Bad Waitress establishment of which 1350 sf is seating/lobby area. The parking requirement for the seating/lobby area is 27 stalls (calculation:  $1350 \times .30 = 405/15 = 27$ ). This leaves 3875 sf ( $6012 - 2137 = 3875$ ) of retail space in the building that the property owner has indicated will be split into two additional tenant spaces. The additional retail tenants have not yet been identified, but the property owner has indicated that market demand will determine who fills the space and that an additional restaurant (that could also have a 20+ stall parking requirement) is a possibility.

The applicant submitted one page from his lease agreement that includes an exclusivity clause that states, "Landlord shall not use or allow any other person or entity (except tenant) to use any portion of the Project for the sale of (a) freshly ground or whole coffee beans, (b) espresso, espresso-based coffee drinks or coffee-based drinks, (c) bakery and breakfast restaurant, or (d) wine bar and lounge. This restriction shall also apply to kiosks and carts". However, the lease agreement also includes a permit and financing contingency that indicates if the tenant has not received the necessary permits, licenses, and financing to conduct said business by December 1, 2004, neither party shall have any rights or liabilities under the lease. Regardless of whether or not a lease agreement is still held by the applicant, it does not appear to prevent another restaurant that may also have a substantial parking requirement, from becoming a tenant in the building.

The property owner has indicated that they are attempting to fill the retail space with a complimentary mix of tenants that will have staggered peak-level parking demands. The property owner has also indicated they will be submitting a written statement confirming that they will be leasing 3 parking stalls to Bad Waitress, providing bicycle parking, and communicating with the Public Works department regarding the establishment of signage for short term street parking and/or parking meters. Staff has not received a written response from the Whittier Alliance indicating the neighborhood organizations' position on the applications. Planning staff has contacted the Public Works Department for additional comments on the Nicollet Avenue Traffic and Parking Management Study of August 2003. Selected pages of the Nicollet Avenue Traffic and Parking Management Study, relevant to the intersection of Nicollet Avenue and 26<sup>th</sup> Street, have been attached to the hard copy of this report.

**CONDITIONAL USE PERMIT:**

**Findings as required by the Minneapolis Zoning Code:**

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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 establishment of an all day diner, located in a designated activity center and on a commercial corridor commonly referred to as "Eat Street" will not be detrimental to or endanger the public health, safety, comfort or general welfare. However, given that dwelling units will be located in the same building as the wine/beer restaurant with extended hours, staff has some concern over potential negative impact of extended hours of operation.

**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 extension of hours for a wine/beer restaurant may be injurious to the use and enjoyment of selected dwelling units within the building, but should not impede the normal or orderly development and improvement of surrounding property for uses permitted in the district. Staff uses the following criteria to determine compatibility of extended hours with the surrounding area.

**Proximity to permitted or conditional residential uses.** There are 29 dwelling units proposed for the Arts Quarter Lofts building. While the operation of an all day diner with extended hours should not negatively impact most of the units, those located on the second story and within close proximity to the restaurant may be impacted by the late night hours. The immediate area is a mix of commercial uses. To the south is the Black Forest restaurant, southeast the Little Tijuana restaurant, and southwest Butler Drug. To the west is the Azia restaurant (which may have second story residential), northwest a surface parking lot, and north Weiss recording studio. To the east of the Bad Waitress is a yet to be determined commercial-retail tenant space(s). Further east, on the other side of the alley is the enclosed commercial-retail parking area at grade. The parking for the residential units (32 stalls) is located below grade and separated from the commercial parking area. There a residential units on floors 2, 3, and 4 of the Arts Quarter Lofts building.

**Nature of the business and its impacts of noise, light and traffic.** The applicant is proposing to operate the Bad Waitress as a coffee shop restaurant all day with two components, breakfast in the morning and wine/beer at night. The proposed hours are from 6:00 am to 1:00 pm daily. Regular hours of operation allowed under the C2 district are from 6:00 a.m. to 10:00 p.m. Sunday through Thursday and 6:00 a.m. to 11:00 p.m. Friday and Saturday. Given that the site is located on a commercial corridor served by frequent bus transit and some of the anticipated customers are expected to arrive by foot or bicycle, staff does not believe the Bad Waitress restaurant will create a significant amount of noise, light, and traffic, provided there is not an entertainment venue.

**Conformance of use.** Coffee shops with limited entertainment and sit down restaurants, including the serving of alcoholic beverages, with limited and general entertainment are a permitted use in the C2

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zoning district. Bad Waitress has applied to be an all day coffee shop serving wine/beer at night on the ground floor of a mixed use building. The applicant has applied for a parking variance to allow the use.

**Complaints received.** Staff printed a police incidents report from the City of Minneapolis property information webpage for 2 26<sup>th</sup> Street East. Given that there has been demolition activity and new construction at the site over the past two years, neither the property nor proposed use with extended hours of operation has an established pattern of police incidents. There was one incident listed for a suspicious person at the site on February 19, 2004, at 12:21 am. No reports have been filed for the address during the past three years.

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

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

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

Adequate measures to minimize traffic congestion in the public streets would have to be provided through the approval of a parking variance. The property owner has indicated that they will lease three of the nine commercial parking stalls at the site to the applicant (Bad Waitress) and provide bicycle parking in the enclosed parking area. The property owner has also indicated that they will be working with the Public Works department to designate short term parking area on the street and/or parking meters in the future. The proposed coffee shop/restaurant requires 27 parking stalls. As per staff's understanding of the terms of the lease agreement and with the provision of bicycle parking, the Bad Waitress can provide a maximum of 4 parking stalls.

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

The Minneapolis Plan designates the area around 26<sup>th</sup> and Nicollet as an Activity Center, a destination that attracts large numbers of visitors, workers and residents. The portion of Nicollet Avenue on which the site is located is designated as a Commercial Corridor.

Planning staff has identified the following policies of the Minneapolis Plan as being relevant to this land use proposal.

*Relevant policy:* **4.7.** Minneapolis will identify and support Activity Centers by preserving the mix and intensity of land uses and enhancing the design features of each area that give it a unique and urban character.

*Relevant Implementation Steps:*

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- Ensure that land use regulations support diverse commercial and residential development types which generate activity all day long and into the evening.
- Promote the incorporation of residential uses within the same structure as other commercial uses.
- Develop parking facilities and management strategies that accommodate high customer demand, promote shared facilities and minimize visual impact and adverse effects on pedestrian and sidewalk traffic.
- Ensure that regulations balance the transition between high traffic land uses and adjoining residential areas.

*Staff comment:* The above policy and implementation steps offer mixed guidance about the parking variance and extension of hours. Although the Bad Waitress establishment would be located in the ground floor of a mixed use building, the generation of all day activity and into the evening does not necessarily mean the extension of operating hours. The property owner has expressed an interest in developing a parking management strategy, but does not have other tenants in the building to calculate a shared parking agreement.

*Relevant policy:* **9.28.** Minneapolis will support development in Commercial Corridors where it enhances the street's character, improves its ability to accommodate automobile traffic and foster pedestrian movement, and expands the range of goods and services offered.

*Relevant Implementation Steps:*

- Support a mix of uses on commercial corridors—such as retail sales, office, institutional, higher density residential, and clean low-impact light industrial—where compatible with the existing and desired character of the street.
- Ensure that commercial uses do not negatively impact nearby residential areas.
- Regulate impacts of commercial uses, and in some cases prevent some uses from locating on designated Commercial Corridors, due to their adverse impacts on the viability of nearby residential areas.
- Develop parking facilities and management strategies that balance the following goals: improved customer access, protection of sidewalk traffic; reduced visual impacts and shared use of parking facilities.
- Reduce the impact of non-residential uses on neighboring residential areas by considering appropriate access, buffering between incompatible uses and regulating hours of operation.

*Staff comment:* The above policy and implementation steps offer mixed guidance about the parking variance and extension of hours. Although the Bad Waitress establishment would be allowed by permit in the C2 district, the extension of operating hours could have an unintended negative impact on selected dwelling units in the building, particularly if there is an entertainment venue. The property owner has expressed an interest in developing a parking management strategy.

**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.**

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The required parking for the proposed use would need to be obtained through the approval of a parking variance. The following specific development standards are listed in Chapter 536 of the zoning code for the proposed use at this location.

Coffee shop. 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.

Restaurant, sit down.

(1) Where alcoholic beverages are served, not less than sixty (60) percent of total gross sales revenue shall be from the sale of food and beverages not containing alcohol, and the use shall comply with the requirements of Title 14, Liquor and Beer, of the Minneapolis Code of Ordinances and Chapter 4 of the Minneapolis City Charter.

(2) 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.

**VARIANCE:**

**Findings Required by the Minneapolis Zoning Code:**

- 1. The property cannot be put to a reasonable use under the conditions allowed and strict adherence to the regulations of this zoning ordinance would cause undue hardship.**

The property was designed with an inadequate amount of off-street commercial-retail parking space for a food and beverage use with this amount of seating area. The property can be put to a reasonable use under the conditions allowed by attracting a commercial tenant(s) with a lower parking requirement. Strict adherence to the regulations of this zoning ordinance does not necessarily cause undue hardship.

- 2. The circumstances are unique to the parcel of land for which the variance is sought and have not been created by any persons presently having an interest in the property. Economic considerations alone shall not constitute an undue hardship if reasonable use for the property exists under the terms of the ordinance.**

The circumstances are unique to the parcel of land for which the variance is sought in the sense that the proposed coffee shop and wine/beer restaurant will be housed in a mixed-use building, one block in length, that is built below and above an alley and located in a designated activity center on a commercial corridor that has undergone a traffic and parking management study within the past three years. The circumstances have been created by the property owners, persons who presently have an interest in the property.

3. **The granting of the variance will be in keeping with the spirit and intent of the ordinance and will not alter the essential character of the locality or be injurious to the use or enjoyment of other property in the vicinity.**

The granting of the variance may not be in keeping with the spirit and intent of the ordinance, given that the applicant has applied for a substantial parking reduction and there is additional commercial-retail tenant space(s) in the building that will require parking variances. The granting of the parking variance will not necessarily alter the essential character of the locality or be injurious to the use or enjoyment of other property in the vicinity. However, granting the variance would likely contribute to significant spillover parking in the immediate area, particularly if the restaurant/wine bar component of the business has a regional appeal and draws from a broader geographic area than the coffee shop/diner.

4. **The proposed variance will not substantially increase the congestion of the public streets, or increase the danger of fire, or be detrimental to the public welfare or endanger the public safety.**

The proposed variance may increase the congestion of the public streets, but will not substantially increase the danger of fire, or be detrimental to the public welfare or endanger the public safety. The subject site is located in a pedestrian-oriented area, designated as an activity center by the Minneapolis Comprehensive Plan.

### **RECOMMENDATIONS**

#### **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 for extended hours of operation to 1:00 am daily for the Bad Waitress establishment located at 2 East 26<sup>th</sup> Street on the ground floor of the Arts Quarter Lofts building in the C2 district, subject to the following conditions:

1. Compliance with the applicable specific development standards listed in Chapter 536 of the zoning code.
2. The provision of required parking or an approved parking variance for the Bad Waitress establishment.

#### **Recommendation of the Department of Community Planning and Economic Development – Planning Division for the variance:**

The Department of Community Planning and Economic Development – Planning Division recommends that the City Planning Commission adopt the above findings and **deny** the variance to reduce off-street parking from 27 to 0 stalls for the Bad Waitress establishment located at 2 East 26<sup>th</sup> Street on the ground floor of the Arts Quarter Lofts building in the C2 district.

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**Attachments:**

1. Statement of use
2. CUP and Variance Findings and one-page from tenant lease
3. Master Engineering letter and summary of previous applications
4. Correspondence (copies of emails)
5. Police incidents report
6. Nicollet Avenue Traffic and Parking Mgmt Study-selected pages
7. Zoning map and surrounding uses
8. Ground floor site plan-original concept from BZZ 1259
9. Site and Floor Plans-current construction BZZ 2356
10. Photos