Department of Community Planning and Economic Development—Planning Division
Conditional Use Permit, Expansion of a Nonconforming Use, Site Plan Review
BZZ-2453

Hearing Date: 8/1/05

Date Application Deemed Complete: 6/27/05

End of 60-Day Decision Period: 8/26/05

Applicant: Martha Head, 1616 W. 22 St., Minneapolis, MN 55406

Address of Property: 4740 Minnehaha Ave.

Contact Person and Phone: Martha Head, 1616 W. 22 St., Minneapolis, MN 55406, 952-473-9714 or 612-377-4402, fax: 952-449-0940 or 612-377-7452.

Staff Contact Person and Phone: J. Michael Orange, Principal Planner. Phone: 612-673-2347; facsimile: 673-2728; TDD: 673-2157; e-mail: michael.orange@ci.minneapolis.mn.us

Ward: 12 **Neighborhood Organization:** Longfellow Community Organization

Existing Zoning: C2, Neighborhood Corridor Commercial District

Zoning Plate Number: 34

Proposed Use: Application by Martha Head to demolish the existing Dairy Queen restaurant located at 4740 Minnehaha Ave. and construct a new 1,969 sq. ft. Dairy Queen restaurant on the same site with parking for 18 vehicles and 749 sq. ft. of seating area. It will be open year-round as opposed to the seasonal operation at the current building and the new restaurant would include a drive-through service while the current restaurant does not. Applications include expansion of a nonconforming use, conditional use permit, and site plan review.

Prior approvals: None

Concurrent Review: Conditional use permit for the use, expansion of a nonconforming use, and site plan review.

Applicable zoning code provisions:
- **Conditional use permit:** Required for a fast food restaurant per Table 548-1.
- **Expansion of a nonconforming use:** Per Section 531.50.
- **Site plan review:** Per Chapter 530 of the Zoning Code.

Attention: If you want help translating this information, call - **Hmong** - Ceeb toom. Yog koj xav tau kev pab txhais cov xov no rau koj dawb, hu 612-673-2800; **Spanish** - Atención. Si desea recibir asistencia gratuita para traducir esta información, llama 612-673-2700; **Somali** - Ogow. Haddii aad dooneyso in lagaa kaalmeeyo tarjamadda macluumaadkani oo lacag la' aan wac 612-673-3500

BACKGROUND

Existing and proposed changes in nonconformities and inconsistencies: The applicant indicated that Dairy Queen has operated on the site since 1946. Section 548.300 (6) in the Zoning Code states the following:

> 548.300. General district regulations. The following conditions govern uses in the C2 District: . . .
> (6) *Fast food restaurants.* Fast food restaurants established after the effective date of this ordinance shall be located only in storefront buildings existing on the effective date of this ordinance, provided further that no significant changes shall be made to the exterior of the structure and freestanding signs shall be prohibited, except where the property is part of an area of at least six hundred sixty (660) feet of continuous C2, C3S, C4 or industrial zoning fronting along the same side of the street as the fast food restaurant, without interruption by a residence, office residence, C1, C3A or Pedestrian Oriented Overlay District.

The site does not meet this criterion and so it is a legal nonconforming use as to its use as a fast food restaurant. Since the prior zoning on the site—B3S-3, Community Service District, prohibited "convenience food restaurants" and drive-through facilities, the use was inconsistent with the old Zoning Code as well. In the 1963 Code, the more intense B3C, Community Commercial District was the first commercial district to allow convenience food restaurants and drive-through facilities.

The applicant proposes to demolish the building and build a new Dairy Queen fast food restaurant on the site. Although the City's nonconforming use chapter in the Zoning Code would not allow the construction of a new fast restaurant here (refer to Section 531.40), the Zoning Administrator, in consultation with the City Attorney, has concluded that the recently amended (8/04) Minnesota Statutes at 462.357 (1)(e) grants "grandfather" rights as regards the use, building bulk, signs, and parking that would allow the use to be rebuilt even after being completely destroyed.

Attachment 6 compares the current site and building with the proposed project. As the chart points out, the new fast food restaurant will have the following changes in existing <u>nonconformities</u>:

- The project will continue to be nonconforming as to use as described above.
- It will include the following expansions of the nonconforming use:
  - It will be 49% larger than the current building.
  - It will add a drive-through service.
  - It will be open year-round instead of the current seasonal operation.
- The two existing signs on the front of the building (east side facing Minnehaha) are nonconforming as to size (46 sq. ft. currently and 25 sq. ft. allowed = 84% larger than allowed). The proposed signs for the front of the building will reduce the nonconformity (38 sq. ft. proposed and 32 sq. ft. allowed = 19% larger than allowed). The Zoning Administrator has determined that the original amount of signage (46 sq. ft.) is "grandfathered." The applicant has

committed to modify the sign plan to conform to the overall limit of a 94-sq.-ft.-total for all signs on the property.

The new fast food restaurant will have the following changes in existing inconsistencies with the requirements in the site plan review chapter of the Code:

- The current building is inconsistent with Section 530.110: "In the case of a corner lot, the building wall abutting each street shall be located not more than eight (8) feet from the lot line, except where a greater yard is required by this zoning ordinance." It was also inconsistent with the former Zoning Code on this point. The new building increases the setbacks from both Minnehaha Ave. and Nawadaha Blvd., thus increasing this inconsistency (from 21 to 32 ft. on Minnehaha, an 11-ft./52% increase; and from 24 to 28 ft. on Nawadaha, a 4-ft./17% increase).
- The current site has no landscaping which makes it inconsistent with the requirement that landscaping cover at least 20% of the net site. The proposed site will eliminate this inconsistency and include landscaping on 34% of the net site.

Pedestrian-Oriented Overlay District: At ¼ mile from the LRT station, the site is well within the 46th St. Station's ½-mile radius influence area. Nonetheless, the City Council approved on 1/6/05 a Pedestrian Oriented Overlay District which covers much but not all of this influence area and specifically exempted the project site.

Neighborhood: The applicant notified the neighborhood group about the project on 6/22/05 but Planning staff have received no comment from the group.

CONDITIONAL USE PERMIT

Findings as required by the Minneapolis Zoning Code for the Conditional Use Permit:

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.

Expansion of the restaurant: The current Dairy Queen has been on this site for over 50 years. The site is adjacent to Minnehaha Park and surrounded by low density residential to the north and east, industrial to the south and northwest, and commercial to the east and west. The project will provide an improved Dairy Queen restaurant with new signage and a site that has landscaping on 34% of the net site. The rebuilding and expansion of the restaurant use will be compatible with these neighboring uses.

Expansion with a new drive-through service: The proposed drive-through service will encourage a significant increase in traffic; however, the existing street capacity and distance from neighboring residential uses prevent significant off-site impacts of congestion and noise. The adopted plans and policies affecting this area encourage commercial uses that are

neighborhood and pedestrian oriented, and they prohibit drive-through facilities because they are auto-oriented and they erode the pedestrian environment (refer to the response to finding 5 below). This is especially true for the subject site given its location on a corner of an important street, Minnehaha, and it adjacency to Minnehaha Park with its important pedestrian and bicycle-oriented amenities. As such, the proposed drive-through service would not be compatible with adjacent property and the neighborhood.

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.

Refer to the prior responses.

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

Pedestrian access to the entrance on Minnehaha would be via walkways that connect with the sidewalks on Minnehaha Ave. and Nawadaha Blvd. and the outdoor seating area. Vehicular access would be via a two-way curb cut on Minnehaha. Drive-through service and other exiting customers would leave via the curb cut on Nawadaha Blvd. The Preliminary Development Review Committee will review the project on 7/27/05. The project would include adequate utility service, access, and driveways consistent with all pertinent regulations.

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

Refer to the prior responses.

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

a. The City's Goals (selected goals):

No City Goals apply to the project.

b. The *Minneapolis Plan* (adopted by the City Council in 2000):

Applicable policies of the *Minneapolis Plan:*

Community Corridors: The *Minneapolis Plan* designates Minnehaha Ave. as a Community Corridor (emphasis added): "Community Corridors are locations that support new residential development at medium density and increased housing diversity in our neighborhoods. They support <u>limited commercial uses, which are measured against their impacts on residential character, such as the production of fumes or noise or negative aesthetics. Design and development along these streets is oriented towards the pedestrian experience.</u> The streets, which form the spine of the community corridors, carry fairly

high volumes of traffic, but must balance vehicular travel against residential quality of life. These streets are also important identifiers and travel routes for neighborhood residents and pass-through traffic. Commercial services do not overwhelm the character of these streets, but there are normally clustered storefronts or services found along their lengths. Commercial uses, whether retail or services, are low intensity in these areas. They do not create noise, significant traffic or disruption to neighbors by being open to the public for extended hours. These streets are also a source of pride and identity for neighbors: they both connect people and act as a definitive boundary for residents, workers and investors.

Policy 4.2/9.27: Minneapolis will coordinate land use and transportation planning on designated Community Corridors streets through attention to the mix and intensity of land uses, the pedestrian character and residential livability of the streets, and the type of transit service provided on these streets.

Implementation Steps (selected and emphasis added):

- Support the continued presence of small-scale retail sales and commercial services along Community Corridors.
- Ensure that commercial uses do not negatively impact nearby residential areas.

Policy 4.5: Minneapolis will identify Neighborhood Commercial Nodes that provide a shopping environment of small-scale retail sales and commercial services and are compatible with adjacent residential areas.

Implementation Steps (selected and emphasis added):

- Support the continued presence of small-scale retail sales and commercial services in Neighborhood Commercial Nodes.
- Direct other uses that act as neighborhood focal points (institutional, cultural or social) to locate at Neighborhood Commercial Nodes.

Transit Station Areas (TSAs) are designated on the Land Use Policy Map. The *Minneapolis Plan* does not delineate the precise geographic extent of these policy areas. The following general characteristics should be used to guide policy application and implementation steps in these areas:

- TSAs will be the subject of established master plans that identify and/or prioritize areas for change (and preservation), as well as specific goals and objectives for redevelopment, public infrastructure, density and urban design.

- TSAs are areas approximately one-half mile in radius from transit stations, reflecting an understanding that most walking trips to and from transit stations are ten minutes or less in duration. Density, urban design, and public infrastructure is, therefore, especially critical in these areas. The actual size of this area is

influenced by directness of routes, physical barriers, and the potential for those barriers to be bridged.

- Potential TSA densities and/or redevelopment opportunities are generally highest within 1/4 mile of the transit station, but are also dependent upon factors such as existing neighborhood character and land cost and availability.

- TSA development is designed with the pedestrian, bicyclist, and/or transit user in mind.

- TSA development serves individuals who are more likely to use transit (e.g., residents of multi-family housing and office and retail workers)

- TSA development includes small-scale retail services that are neighborhood in scale and from which pedestrians, bicyclists, and/or transit riders are likely to benefit (e.g., coffee shop, day care, dry cleaners, small-scale grocery, flower shop)

9.36 Minneapolis will encourage both a density and mix of land uses in TSAs that both support ridership for transit as well as benefit from its users.

Implementation Steps (selected with emphasis added):

- Explore and pursue opportunities to integrate development with transit stations.
- Concentrate highest densities and mixed-use development nearest the transit station and/or along Commercial Corridors, Community Corridors and/or streets served by local bus transit.
- Support and encourage small-scale, pedestrian-oriented services and retail uses to locate near stations and within mixed-use buildings to serve transit riders and the immediate neighborhood (e.g., day care centers, cafés, dry cleaners, convenience grocery, etc.).
- Discourage automobile services and drive-through facilities from locating or expanding in these designated areas.

9.37 Minneapolis will require design standards for TSAs that are oriented to the pedestrian and bicyclist and that enforce traditional urban form.

Implementation Steps (selected and emphasis added):

- Ensure that TSA building and site design is oriented to the pedestrian (e.g., reinforcing street walls, anchoring street corners, creating semi-public outdoor spaces, creating visual interest, providing adequate fenestration, and ensuring that principal building entrances open onto public sidewalks).

- Preserve traditional urban form where it currently exists within TSAs, and encourage new development to relate to this context. (See description of traditional urban form in *Chapter 9, City Form*)
- Ensure that new development and renovation of existing structures adhere to the principles of Crime Prevention Through Environmental Design (CPTED) (See description of building form and context in *Chapter 9, City Form*.)

9.39 Minneapolis recognizes that parking is a necessary part of the urban environment, but will limit the amount, location, and design of parking in TSAs in order to encourage and support walking, bicycling, and transit use.

Implementation Steps (selected):

- Restrict the location of off-street parking for new development to the side or rear of buildings, so that there are direct connections between the public sidewalk and the principal entrances of buildings.
- Limit the amount of street frontage for new off-street parking lots and require landscaping between parking lots and public sidewalks.

c. "46th Street Station Area Master Plan" (adopted by the City Council on 7/26/02 as an amendment to the *Minneapolis Plan*):

The land use plan map for the "46th Street Station Area Master Plan" (Master Plan) calls for a three-story, mixed-use building on the project site with retail on the first floor (refer to excerpts from the Master Plan in Attachment 7). The section of the plan regarding build-to lines states: "Require that all new buildings in the redevelopment area except single-family homes be built no more than 10 feet back from the sidewalk. This helps create a more comfortable walking environment. Buildings built close together and close to the street also give the street the sense of enclosure discussed in the previous chapter" (p.4-3). As regards drive-through service, the plan states: "Prohibit drive-thru building types in the study area except to the far north. Drive-thrus erode the pedestrian environment" (p. 4-5).

d. Consistency of the project with the plans and policies:

- The *Minneapolis Plan* designates Minnehaha Ave. as a Community Corridor. The fast food restaurant with its limited seating and adequate parking is compatible with the plan's emphasis on limited, neighborhood-oriented, commercial uses and consistent with Policies 4.2 and 9.27. However, the proposed auto-oriented, drive-through service is inconsistent with the Community Corridor requirement that, "Design and development along these streets is oriented towards the pedestrian experience" (emphasis added).
- Policy 9.36 encourages the highest densities and mixed-use developments along Community Corridors and streets served by local transit. While Hiawatha is a Community Corridor, Metro Transit's Route 7 doesn't serve the street south of 46th, one block to the

north of the site

- Policy 4.5 encourages the economic vitality of the City's designated commercial areas. Although the closest Neighborhood Commercial Node designed in the Minneapolis Plan is 9 blocks away at 34 Ave. E. and 54 St., the site is slightly further than ¼ mile from the 46th St. LRT station and well within the approximately 1/2-mile radius within which Transit Station Area (TSA) policies apply. The plan policies regarding TSAs call for "highest densities and mixed-use development nearest the transit station and/or along Commercial Corridors;" uses "from which pedestrians, bicyclists, and/or transit riders are likely to benefit." The "46th Street Station Area Master Plan" furthers these policies and provides more specific guidance by calling for a three-story, mixed-use building on the project site with retail (which can include restaurants) on the first floor. This project is a very low density development with a floor area ratio (FAR) of 0.1 while the C2 District allows development at 1.7, 17 times greater than proposed.
- Policy 9.36 specifically discourages drive-through services within TSAs. The Master Plan also prohibits drive-through facilities in the area of the site.
- As such, the restaurant use can be viewed as not inconsistent with the applicable TSA policies of the *Minneapolis Plan* and the "46th Street Station Area Master Plan," however, this very low density, single-story and single-use restaurant is inconsistent with the long-range plan to have much greater density on site and a mix of compatible uses. Clearly, the proposed drive-through service is inconsistent with the applicable policies of the *Minneapolis Plan* and the Master Plan.
- Consistent with Policy 9.37, the project creates semi-public outdoor spaces, adequate fenestration, and orients its principal building entrance towards the public sidewalk on Minnehaha. Inconsistent with this and other *Minneapolis Plan* and Master Plan policies related to pedestrian orientation principles, the project is set back from both streets, and does not reinforce the street wall nor anchor the street corners.
- Consistent with Policy 9.39, the project includes parking that is located to the side of the building along Minnehaha and well landscaped and screened. A preferred site design would locate the parking to the rear of the site.
- The site plan is oriented to minimize the potential that fumes and noise from vehicles and car radios would adversely affect the residential areas to the north and east of the site while queuing up for the drive-through service. The outdoor eating area is oriented towards the adjacent Minnehaha Park and the residential area to the east.

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 sections of this report that deal with the expansion of a nonconforming use permit and the site plan review applications address how the project conforms to the other applicable regulations governing this district.

EXPANSION OF A NONCONFORMING USE PERMIT

The Community Planning and Economic Development—Planning Division has analyzed the application and makes the following findings:

The Planning Commission may approve an application if it meets the following standards and all other applicable regulations in the zoning ordinance (this section shall not authorize a use prohibited in the zoning district in which it is located to be expanded beyond the boundaries of its zoning lot):

1. A rezoning of the property would be inappropriate.

The site is properly zoned within a C2 District to allow fast food restaurants and drive-through services as conditional uses. The issue is that the use is not in compliance with Section 548.300 (6) in the Zoning Code which requires the property be part of an area of at least 660 feet of continuous C2, C3S, C4 or industrial zoning fronting along the same side of the street as the fast food restaurant, without interruption by a residence, office residence, C1, C3A or Pedestrian Oriented Overlay District. Rezoning the site cannot cure this inconsistency.

2. The enlargement, expansion, relocation, structural alteration or intensification will be compatible with adjacent property and the neighborhood.

Expansion of the restaurant use: As stated above, the current Dairy Queen has been on this site for over 50 years. The site is adjacent to Minnehaha Park and surrounded by low density residential to the north and east, industrial to the south and northwest, and commercial to the east and west. The rebuilding and expansion of the restaurant use will be compatible with these neighboring uses.

Expansion with a new drive-through service: As stated above, the adopted plans and policies affecting this area encourage commercial uses that are neighborhood and pedestrian oriented, and they prohibit drive-through facilities because they are auto-oriented and they erode the pedestrian environment (refer to the response to finding 5 in the prior section of this report). As such, the proposed drive-through service would not be compatible with adjacent property and the neighborhood.

3. The enlargement, expansion, relocation, structural alteration or intensification will not result in significant increases of adverse, off-site impacts such as traffic, noise, dust, odors, and parking congestion.

Expansion of the restaurant use: The larger building will include more indoor and outdoor seating capacity as compared to the current restaurant. The project includes three more parking stalls than required by the Zoning Code. The restaurant use is unlikely to cause any significant change in off-site impacts including traffic congestion, parking, odors, noise, or dust.

Expansion with a new drive-through service: The speaker for the menu board is located to the rear of the building and 96 feet from the closest residence located to the north of the site. The

drive-through queue is located to the rear and south of the site and away from the residences to the north and east. This is sufficient distance to mitigate any off-site noise that would stem from the menu board speaker and car radios. The proposed drive-through service will encourage a significant increase in traffic; however, the existing street capacity and distance from neighboring residential uses prevent significant off-site impacts of congestion and noise. Nonetheless, the drive-through service will have an adverse effect on the pedestrian-oriented environment which is the case currently and called for in the adopted plans for the area (refer to the response to finding 5 in the prior section of this report).

4. The enlargement, expansion, relocation, structural alteration or intensification, because of improvements to the property, will improve the appearance or stability of the neighborhood.

Expansion of the restaurant use: The project will substantially improve the site with a new building, new signage, and landscaping where there currently is none. The outdoor seating area will also be a significant improvement over the few concrete picnic tables that currently sit on a concrete patio area devoid of landscaping and other amenities.

Expansion with a new drive-through service: While impacts associated with drive-through facilities can be mitigated to a certain degree, the addition of a drive-through facility would not improve the appearance of the project or the neighborhood. The applicant proposes to place the drive-through in a location that would be clearly visible from the public street, preventing the building from having a street presence that is called for in Chapter 530 of the zoning code. Refer also to the response to the prior findings.

5. In districts in which residential uses are allowed, the enlargement, expansion, relocation, structural alteration or intensification will not result in the creation or presence of more dwelling units on the subject property than is allowed by the regulations of the district in which the property is located.

Not applicable.

6. The enlargement, expansion, relocation, structural alteration or intensification will not be located in the Floodway District.

According to the FEMA Panel 27053C0387E, the site is not located within a flood plain.

SITE PLAN REVIEW

Findings as Required By the Minneapolis Zoning for Site Plan Review

Required Findings for Site Plan Review

a. **The site plan conforms to all applicable standards of Chapter 530, Site Plan Review. (See Section A Below for Evaluation.)**
b. **The site plan conforms to all applicable regulations of the zoning ordinance and is consistent with applicable policies of the comprehensive plan and applicable small area plans adopted by the city council. (See Section B Below for Evaluation.)**

Section A: Conformance with Chapter 530 of Zoning Code

BUILDING PLACEMENT AND FAÇADE:

- **Placement of the building shall reinforce the street wall, maximize natural surveillance and visibility, and facilitate pedestrian access and circulation.**
- **First floor of the building shall be located not more than eight (8) feet from the front lot line (except in C3S District or where a greater yard is required by the zoning ordinance). If located on corner lot, the building wall abutting each street shall be subject to this requirement.**
- **The area between the building and the lot line shall include amenities.**
- **The building shall be oriented so that at least one (1) principal entrance faces the public street. In the case of a corner lot, the principal entrance shall face the front lot line.**
- **Except in the C3S District, on-site accessory parking facilities shall be located to the rear or interior of the site, within the principal building served, or entirely below grade.**
- **For new construction, the building walls shall provide architectural detail and shall contain windows as required by Chapter 530 in order to create visual interest and to increase security of adjacent outdoor spaces by maximizing natural surveillance and visibility.**
- **In larger buildings, architectural elements, including recesses or projections, windows and entries, shall be emphasized to divide the building into smaller identifiable sections.**
- **Blank, uninterrupted walls that do not include windows, entries, recesses or projections, or other architectural elements, shall not exceed twenty five (25) feet in length.**
- **Exterior materials shall be durable, including but not limited to masonry, brick, stone, stucco, wood, metal, and glass.**
- **The exterior materials and appearance of the rear and side walls of any building shall be similar to and compatible with the front of the building.**
- **The use of plain face concrete block as an exterior material shall be prohibited fronting along a public street, public sidewalk, public pathway, or adjacent to a residence or office residence district.**
- **Entrances and windows:**
    - **Residential uses:**
      Principal entrances shall be clearly defined and emphasized through the use of architectural features such as porches and roofs or other details that express the importance of the entrance. Multiple entrances shall be encouraged. Twenty (20) percent of the walls on the first floor and ten (10) percent of the walls on each floor above the first that face a public street, public sidewalk, public pathway, or on-site parking lot, shall be windows as follows:
      a. Windows shall be vertical in proportion.
      b. Windows shall be distributed in a more or less even manner.
    - **Nonresidential uses:**
      Principal entrances shall be clearly defined and emphasized through the use of architectural features such as roofs or other details that express the importance of the entrance. Multiple entrances shall be encouraged. Thirty (30) percent of the walls on the first floor and ten (10) percent of the walls on

each floor above the first that face a public street, public sidewalk, public pathway, or on-site parking lot, shall be windows as follows:

a. Windows shall be vertical in proportion.

b. Windows shall be distributed in a more or less even manner.

c. The bottom of any window used to satisfy the ground floor window requirement may not be more than four (4) feet above the adjacent grade.

d. First floor or ground floor windows shall have clear or lightly tinted glass with a visible light transmittance ratio of 0.6 or higher.

e. First floor or ground floor windows shall allow views into and out of the building at eye level. Shelving, mechanical equipment or other similar fixtures shall not block views into and out of the building in the area between four (4) and seven (7) feet above the adjacent grade. However, window area in excess of the minimum required area shall not be required to allow views into and out of the building.

f. Industrial uses in Table 550-1, Principal Industrial Uses in the Industrial Districts, may provide less than thirty (30) percent windows on the walls that face an on-site parking lot, provided the parking lot is not located between the building and a public street, public sidewalk or public pathway.

Minimum window area shall be measured as indicated in section 530.120 of the zoning code.

- **The form and pitch of roof lines shall be similar to surrounding buildings.**
- **Parking Garages: The exterior design shall ensure that sloped floors do not dominate the appearance of the walls and that vehicles are screened from view. At least thirty (30) percent of the first floor building wall that faces a public street, public sidewalk or public pathway shall be occupied by active uses, or shall be designed with architectural detail or windows, including display windows, that create visual interest.**

Conformance:

- Currently the building is not consistent with the requirement to be within 8 feet of the property line on Minnehaha and Nawadaha (21 ft. and 24 ft. respectively, refer to Attachment 5). The proposal is to increase this inconsistency by 11 ft. on the Minnehaha side to 32 ft., and by 4 ft. on the Nawadaha side to 28 ft. According to the Zoning Administrator, the current setbacks would be "grandfathered" for the new restaurant.
- The project would meet the 20 ft. by 40 ft. setback on the northeast corner of the site.
- Inconsistent with Section 530.110 (b), mitigating measures would be limited to landscaping along Minnehaha and Nawadaha. No decorative fence or masonry wall, as suggested by the Code, would be included.
- The area between the building and Nawadaha Blvd. would be dominated by the drive-through-service aisle and a car-waiting area instead of having the amenities such as outdoor seating and landscaping as called for in the Code.
- Pedestrian access would be via the main entrance on Minnehaha by way of sidewalks that connect the building to the outdoor seating area and the sidewalks on the two streets.
- All areas not covered by buildings, sidewalks, patios, the dumpster enclosure, and vehicular areas would be landscaped.
- The parking would be to the side of the building.
- The windows would be of clear glass and have a vertical orientation.
- The percentage of glass would be as follows:
    - East side (primary façade on Minnehaha; 30% glass required by the Code within 2 and 10 feet of wall): 59% provided.
    - South sides (secondary façade on Nawadaha; 30% glass required by the Code within 2 and 10 feet of wall): 30% provided

  - North side (faces parking lot; 30% required by the Code): 30% provided
  - West side (faces drive through and alley; no minimum required by the Code): No windows provided.
- Shelving, mechanical equipment or other similar fixtures would not block views into and out of the building in the area between 4-to-7 feet above the adjacent grade.
- No wall would have more than 25 ft. of blank space.
- Building materials include white colored EIFS (stucco-like material) and colored metal panels (refer to renderings in Attachment 5).
- The roof would be flat as is the case currently.

ACCESS AND CIRCULATION:

- **Clear and well-lighted walkways of at least four (4) feet in width shall connect building entrances to the adjacent public sidewalk and to any parking facilities located on the site.**
- **Transit shelters shall be well lighted, weather protected and shall be placed in locations that promote security.**
- **Vehicular access and circulation shall be designed to minimize conflicts with pedestrian traffic and surrounding residential uses.**
- **Traffic shall be directed to minimize impact upon residential properties and shall be subject to section 530.150 (b) related to alley access.**
- **Site plans shall minimize the use of impervious surfaces.**

Conformance:

- The project includes adequate and well-lit sidewalks that connect to the public sidewalks and to the parking lot.
- As stated above, the project includes three more parking stalls than required by the Zoning Code.
- The speaker for the menu board would be located to the rear of the building and 96 feet from the closest residence located to the north of the site. The drive-through queue would be located to the rear and south of the site and away from the residences to the north and east. This would be sufficient distance to mitigate any off-site noise that would stem from the menu board speaker and car radios.
- There would continue to be no alley access.
- There would continue to be no bus service on either street nor shelters.
- The drive-through queuing lane would be located such that there will be no pedestrian traffic crossing it.
- The one-way exit on to Nawadaha would minimize traffic and pedestrian conflicts on the public sidewalk.

- All areas not needed for the building, sidewalks, the trash enclosure, or vehicles would be landscaped.

LANDSCAPING AND SCREENING:

- **The composition and location of landscaped areas shall complement the scale of the development and its surroundings.**
- **Not less than twenty (20) percent of the site not occupied by buildings, including all required landscaped yards, shall be landscaped as specified in section 530.160 (a).**
- **Required screening shall be six (6) feet in height, unless otherwise specified, except in required front yards where such screening shall be three (3) feet in height.**
- **Except as otherwise provided, required screening shall be at least ninety-five (95) percent opaque throughout the year. Screening shall be satisfied by one or a combination of the following:**
  - **A decorative fence.**
  - **A masonry wall.**
  - **A hedge.**
- **Parking and loading facilities located along a public street, public sidewalk or public pathway shall comply with section 530.170 (b), including providing landscape yards along a public street, public sidewalk or public pathway and abutting or across an alley from a residence or office residence district, or any permitted or conditional residential use.**
- **The corners of parking lots where rows of parking spaces leave areas unavailable for parking or vehicular circulation shall be landscaped as specified for a required landscaped yard. Such spaces may include architectural features such as benches, kiosks or bicycle parking.**
- **In parking lots of ten (10) spaces or more, no parking space shall be located more than fifty (50) feet from the center of an on-site deciduous tree. Tree islands located within the interior of a parking lot shall have a minimum width of seven (7) feet in any direction.**
- **All other areas not governed by sections 530.160 and 530.170 and not occupied by buildings, parking and loading facilities or driveways, shall be covered with turf grass, native grasses or other perennial flowering plants, vines, mulch, shrubs or trees.**
- **Installation and maintenance of all landscape materials shall comply with the standards outlined in section 530.210.**
- **The city planning commission may approve the substitution or reduction of landscaped plant materials, landscaped area or other landscaping or screening standards, subject to section 530.80, as provided in section 530.220.**

Conformance:

- The lot area (19,297 sq. ft.) less the building footprint (1,969 sq. ft.) yields a net site of 17,328 sq. ft. The Code requires a minimum of 3,466 sq. ft. of landscaping, 7 trees and 35 shrubs. The project includes 5,975 sq. ft. of landscaping, which equals 34% of the net site. The project will include 12 trees, 71 shrubs in addition to the 6-ft.-high hedge that currently grows on the north side of the site. This hedge effectively screens the parking lot from the adjacent residence to the north. The landscaping plan meets the Code's requirements regarding landscaping and screening between the parking lot and the street.
- Consistent with Section 530.170, the project includes screening of the drive-through road from Nawadaha Blvd.
- All 15 stalls would be within 50 feet of an on-site deciduous tree.

ADDITIONAL STANDARDS:

- **All parking lots and driveways shall be designed with wheel stops or discontinuous curbing to provide on-site retention and filtration of stormwater. Where on-site retention and filtration is not practical, the parking lot shall be defined by six (6) inch by six (6) inch continuous concrete curb.**
- **Lighting shall comply with the requirements of Chapter 535 and Chapter 541. A lighting diagram may be required.**
- **Parking and loading facilities and all other areas upon which vehicles may be located shall be screened to avoid headlights shining onto residential properties.**
- **To the extent practical, site plans shall minimize the blocking of views of important elements of the city.**
- **To the extent practical, buildings shall be located and arranged to minimize shadowing on public spaces and adjacent properties.**
- **To the extent practical, buildings shall be located and arranged to minimize the generation of wind currents at ground level.**
- **Site plans shall include crime prevention design elements as specified in section 530.260 related to:**
  - **Natural surveillance and visibility**
  - **Lighting levels**
  - **Territorial reinforcement and space delineation**
  - **Natural access control**
- **To the extent practical, site plans shall include the rehabilitation and integration of locally designated historic structures or structures that have been determined to be eligible to be locally designated. Where rehabilitation is not feasible, the development shall include the reuse of significant features of historic buildings.**

Conformance:

- The applicant shall add wheel stops, continuous curbing, or discontinuous curbing on the north side of the parking lot adjacent the landscaped yard and hedge. The Planning Department encourages on-site filtration through the use of wheel stops or discontinuous curbing.
- Lighting would be consistent with the Code through the use of full cut-off fixtures and proper placement.
- The screening by means of the 6-ft.-high hedge and other on-site landscaping would adequately screen potential headlight glare for the residential areas.
- The project would not block views of important elements of the city nor create any substantive shadows on adjacent buildings and open spaces.
- At only 1 floor, the building would have no significant impact on the generation of pedestrian-level winds.
- The site design and landscape plan allows views from the public sidewalk and alley into the site. The landscape plan would allow visibility in the important 2-to-5-foot range. Lighting would include full cut-off fixtures that will minimize glare while providing an overall acceptable level of lighting. The paved patio and the private sidewalks would define the public space and control access in the front of the building.

Section B: Conformance with All Applicable Zoning Code Provisions and Consistency with the Comprehensive Plan and Applicable Small Area Plans Adopted by the City Council

Zoning Code: The proposed fast food restaurant is conditional in the C2 District.

Off-Street Parking and Loading: The C2 District requirement for fast food restaurants is 30% of the seating capacity for persons (749 sq. ft. of seating area has a capacity for 50 people). The parking requirement is 15 stalls. The site would have 18 stalls including one handicap stall.

Maximum Floor Area: The maximum floor area in the C2 District is 30,000 sq. ft. The restaurant would have 1,969 sq. ft.

Building Height: Building height in the C2 District is limited to 4 stories or 56 feet, whichever is less. The project would be one story tall and be 17.5 ft. tall.

Minimum Lot Area: The minimum lot area in the C2 District is 12,000 for a restaurant with a drive-through service. The lot area on the site is 19,297.

Yard Requirements: The C2 District includes the following yard requirements for this single-story restaurant:

- East side requirement (front on Minnehaha Ave., 20 feet for the first 40 ft. on the north east side): Meets the Code requirement.
- West side requirement (rear; no requirement): 5 ft. yard proposed
- North side requirement (7 ft. per 530. 170 (b)(1)): 7.75 ft. yard proposed.
- South side requirement (no requirement): 4 ft. minimum yard proposed.

Specific Development Standards: The premises, all adjacent streets, sidewalks and alleys, and all sidewalks and alleys within 100 feet shall be inspected regularly for purposes of removing any litter found thereon.

The applicant is aware of this requirement and has been complying with it with the current fast food restaurant.

Hours of Operation: In the C2 District, uses may be open to the public during the following hours: Sunday through Thursday from 6 a.m. to 10 p.m.; Friday and Saturday from 6 a.m. to 11 p.m.

The applicant currently complies with these hours and will continue to comply.

Signs: Signs are subject to 531 and 543 of the Zoning Code. All new signs are required to meet the requirements of Chapter 543 of the zoning code. The two existing signs on the front of the building (east side facing Minnehaha) are nonconforming as to size (46 sq. ft. currently and 25 sq. ft. allowed = 84% larger than allowed). The proposed signs for the front of the building will reduce the nonconformity (38 sq. ft. proposed and 32 sq. ft. allowed = 19% larger than allowed). The Zoning Administrator has determined that the original amount of signage (46 sq. ft.) is “grandfathered” for the east side. The

applicant has committed to modify the sign plan to conform to the overall limit of a 94-sq.-ft.-total for all signs on the property.

Refuse storage: All storage of refuse and recyclable materials would be enclosed in the dumpster enclosure on the northwest corner of the site and accessed via the alley.

***Minneapolis Plan*:** Refer to the Conditional Use Permit section of this report.

Alternative Compliance: The Planning Commission or zoning administrator may approve alternatives to any site plan review requirement upon finding any of the following:

- **The alternative meets the intent of the site plan chapter and the site plan includes amenities or improvements that address any adverse effects of the alternative. Site amenities may include but are not limited to additional open space, additional landscaping and screening, green roof, decorative pavers, ornamental metal fencing, architectural enhancements, transit facilities, bicycle facilities, preservation of natural resources, restoration of previously damaged natural environment, rehabilitation of existing structures that have been locally designated or have been determined to be eligible to be locally designated as historic structures, and design which is similar in form, scale and materials to existing structures on the site and to surrounding development.**
- **Strict adherence to the requirements is impractical because of site location or conditions and the proposed alternative meets the intent of this chapter.**
- **The proposed alternative is consistent with applicable development plans or development objectives adopted by the city council and meets the intent of this chapter.**

Conformance and alternative compliance: The project is out of conformance in the following ways:

1. **Setbacks from streets:** Currently the building is not consistent with the requirement to be within 8 feet of the property line on Minnehaha and Nawadaha (21 ft. and 24 ft. respectively). The proposal is to increase this inconsistency by 11 ft. on the Minnehaha side to 32 ft., and by 4 ft. on the Nawadaha side to 28 ft. After consultation with the City Attorney, the Zoning Administrator has determined that the use has "grandfather" rights to the existing setbacks. No alternative compliance is warranted <u>if</u> the applicant does not increase the current setbacks and complies with the following in order to mitigate the excessive setbacks:
   - Provides amenities such as outdoor seating and landscaping between the building and the street-front property lines;
   - Does not include a drive-through lane between the building and a street;
   - Provides a decorative fence or masonry wall along the street-front property lines as suggested by the Code at Section 530.110 (b) to reinforce the street wall.
2. **Drive-through-service aisle between the building and Nawadaha Blvd.:** The area between the building and Nawadaha Blvd. is dominated by the drive-through-service aisle and a car-waiting area instead of having the amenities such as outdoor seating and landscaping as called for in the Code. Alternative compliance might include a decorative fence or masonry wall along the street-front property lines as suggested by the Code at Section 530.110 (b) to reinforce the

street wall, however, the Planning Division is not recommending anything other than removal of the drive-through service for the reasons described elsewhere in this report.

4. **North side of parking lot:** The north side of the parking lot does not include wheel stops, continuous curbing, or discontinuous curbing on the north side of the parking lot adjacent the landscaped yard and hedge. The Planning Division recommends wheel stops or discontinuous curbing to maximize the potential for on-site management of stormwater through infiltration.

RECOMMENDATIONS

Recommendation of the Department of Community Planning & Economic Development – Planning Division for the Expansion of a Nonconforming Use Permit for the proposed Dairy Queen fast food restaurant located at 4740 Minnehaha Ave.:

The Department of Community Planning & Economic Development – Planning Division recommends that the City Planning Commission **approve** the Expansion of a Nonconforming Use Permit application for the proposed Dairy Queen fast food restaurant located at 4740 Minnehaha Ave. and to **deny** the proposed drive-through facility.

Recommendation of the Department of Community Planning & Economic Development – Planning Division for the Conditional Use Permit for the proposed Dairy Queen fast food restaurant located at 4740 Minnehaha Ave.:

The Department of Community Planning & Economic Development – Planning Division recommends that the City Planning Commission **approve** the conditional use permit application for the proposed Dairy Queen fast food restaurant located at 4740 Minnehaha Ave. and to **deny** the proposed drive-through facility.

Recommendation of the Department of Community Planning & Economic Development – Planning Division for the site plan review application for the proposed Dairy Queen fast food restaurant located at 4740 Minnehaha Ave.:

The Department of Community Planning & Economic Development – Planning Division recommends that the City Planning Commission **approve** the site plan review application for the proposed Dairy Queen fast food restaurant located at 4740 Minnehaha Ave., subject to the following conditions:

1. CPED Planning staff review and approval of the final site, landscaping plans, and building elevations.
2. The building shall be placed no further away than 21 feet of the property line on Minnehaha and 24 ft. of the property line on Nawadaha, and there shall be amenities such as outdoor seating and landscaping between the building and the street.
3. There will be no drive-through service on the site.
4. The applicant shall add wheel stops or discontinuous curbing on the north side of the parking lot adjacent the landscaped yard and hedge.
5. All site improvements shall be completed by August 1, 2006, unless extended by the Zoning Administrator, or the permit may be revoked for noncompliance.

Attachments:

1. Zoning and lot lines in the vicinity
2. Primary and Overlay Zoning Districts
3. Aerial photo
4. Information from the applicant
5. Project drawings
6. Comparison of current conditions and proposed project
7. "46th St. Station Area Master Plan" excerpts
8. Photos of the site