

**CITY OF MINNEAPOLIS
CITY COUNCIL
ZONING AND PLANNING COMMITTEE**

In Re: Appeal of Basim Sabri, on behalf of Karmel Properties, LLC of the Planning Commission's Action on the Karmel Plaza & Square Project

**FINDINGS OF FACT
AND
RECOMMENDATION**

The above-entitled matter came before the Standing Committee on Zoning and Planning of the Minneapolis City Council on Thursday, November 12, 2015, in Room 317, City Hall, 350 South Fifth Street, Minneapolis, MN 55415. On October 19, 2015, the Planning Commission approved the land-use applications for the expansion of a nonconforming use and site plan review for proposed building additions at Karmel Plaza & Square, located at 2910–2936 Pillsbury Avenue South. The Planning Commission's action included imposition of an additional sixth condition to the staff recommendation providing that *“[t]he expansion of nonconforming use shall be limited to the square footage on the south side of the building, internal to the site, which is referenced on page two of the staff report.”* The applicant, Basim Sabri (on behalf of Karmel Properties, LLC) appealed the inclusion of the referenced sixth condition to the City Council pursuant to Minneapolis Code of Ordinances (MCO) § 525.180. Having held a public hearing on the appeal, the Committee now makes the following findings:

FINDINGS OF FACT

1. The appeal of Basim Sabri, on behalf of Karmel Properties, LLC, is denied in full. The Committee concurs with the action of the Planning Commission approving the land-use applications for the proposed Karmel Plaza & Square project including the addition of the

above-referenced sixth condition to its approval of the application for expansion of a nonconforming use.

2. The purpose for the regulatory framework governing nonconforming uses and structures is explicitly-stated in Section 531.10 of the Code of Ordinances: “*Regulations governing nonconforming uses and structures are established to control the continued existence of legal nonconforming uses and structures by bringing about their gradual elimination, by regulating their enlargement, intensification, expansion or reconstruction, and by prohibiting their reestablishment after abandonment or destruction, and to regulate the use of, and construction on, nonconforming lots.*”
3. In furtherance of this clearly-established purpose, the operative presumption under controlling law is that nonconformities shall not be permitted to expand: “[n]o structure or use, or part thereof, shall hereafter be erected, constructed, altered, enlarged, relocated, used or intensified in character or operation except in conformity with the provisions of this zoning ordinance.” MCO § 531.20(a).
4. Unlike other types of land use applications, the decision-making body is provided with extensive discretion when deciding upon an application for expansion of a nonconforming use:

Structure (conforming or nonconforming) containing a legal nonconforming use. Structures containing one (1) or more legal nonconforming uses shall not be moved to a new location on the zoning lot, expanded, enlarged in any way, nor shall such use be intensified, except that the city planning commission **may** permit the relocation, expansion, enlargement or intensification of such use or structure or any accessory structure, if it makes the following findings, and the relocation, expansion, enlargement or intensification meets all other applicable regulations of this 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.

- (2) The enlargement, expansion, relocation or intensification will be compatible with adjacent property and the neighborhood.
- (3) The enlargement, expansion, relocation or intensification will not result in significant increases of adverse off-site impacts such as traffic, noise, dust, odors and parking congestion.
- (4) The enlargement, expansion, relocation or intensification, because of improvements to the property, will improve the appearance or stability of the neighborhood.
- (5) In districts in which residential uses are allowed, the enlargement, expansion, relocation or intensification will not result in the creation or presence of more dwelling units or rooming units on the subject property than is allowed by the regulations of the district in which the property is located.
- (6) The enlargement, expansion, relocation or intensification will not be located in the floodway district.

MCO § 531.50(b) (emphasis added).

5. The CPED staff report, dated September 21, 2015 and presented to the Planning Commission, is adopted and incorporated herein by reference, except to the degree that the rationale supporting the inclusion of the sixth condition, explained below, is inconsistent with the report's findings enumerated in items 2 and 3 on page 4 of the staff report. To the extent any inconsistency exists, these findings shall control and supersede any inconsistent language or finding from the staff report.
6. The Planning Commission's addition of the above-referenced sixth condition is affirmed for the following reasons:
 - As reflected in the record, the shopping center use at the site has been expanded several times since becoming nonconforming in the industrial zoning district. Such successive expansions have operated to compound adverse, off-site impacts upon the surrounding neighborhood, as referenced in several submissions to the record including an opposition letter from the Whittier Alliance neighborhood organization.

- Evidence has been submitted to the record demonstrating that the use has led to significant parking congestion and parking violations in the immediate area. A map of tickets for parking violations in the area clearly demonstrates that the violations are centered upon the property in question, which is the major traffic and parking generator in the immediate area. Although the property owner has recently developed a multi-level pay-parking structure, it has not been established that this has alleviated the parking problems. In fact, parking tickets on adjacent streets increased during the first two weeks of October 2015 compared to the first two weeks of September 2015, indicating that users' parking decisions still adversely affect the immediate neighborhood.
 - The proposed expanded use is too intensive for this site with light industrial zoning, near a range of residential uses. Shopping centers are higher intensity commercial uses, requiring a conditional use permit in commercial districts. The location of the applicant's shopping center — which is not located in an activity center, commercial corridor, or community corridor — coupled with the high intensity usage has created and distributed substantial traffic, parking and adverse off-site impacts onto residential streets to the north of the development. The large-scale proposed expansion of the nonconforming use that is not internal to the site would exacerbate the existing adverse off-site impacts by an unreasonable and unacceptable factor.
3. As explained by staff at the public hearing of the applicant's appeal, both the intent and effect of the Planning Commission's addition of the above-referenced sixth condition to its approval of the application for expansion of nonconforming use was to make its corresponding approval of the site plan subject to it. To the extent this determination is disputed by the applicant, this committee expressly affirms the staff determination and position and concludes that the site plan approval is subject to and modified by the corresponding conditioning of the approval of the expansion of nonconforming use, such that the site plan approval does not include any approval to expand the building or use beyond the square footage on the south side of the building, internal to the site.

Therefore, based on the foregoing Findings of Fact, the Committee makes the following recommendation:

RECOMMENDATION

1. That the full City Council deny the appeal of Basim Sabri, on behalf of Karmel Properties, LLC, and affirm the actions of the Planning Commission relative to the land-use applications for the expansion of a non-conforming use and site plan review for proposed building additions at Karmel Plaza & Square, located at 2910 – 2936 Pillsbury Avenue South, including the imposition of additional condition #6.
2. That these Findings of Fact and Recommendation be adopted by the City Council and made part of the official record.