



**Request for City Council Committee Action
From the Department of Community Planning & Economic Development**

Date: March 25, 2004

To: Council Member Gary Schiff, Chair, Zoning & Planning Committee and Members of the Committee

Prepared by: Jim Voll, City Planner, (612) 673-3887

Approved by: Barbara Sporlein, Director, Planning

Subject: Appeal of the decision of the City Planning Commission by Cindy Banovetz

Previous Directives: A conditional use permit for extended hours was approved at the February 23, 2004 meeting of the City Planning Commission. The Commission voted 6-0 to approve the extended hours.

Financial Impact: Not applicable

Community Impact:

Ward: 11

Neighborhood Notification: The Tangletown Neighborhood Association was notified of the application and has submitted a letter of support (please see attached letter).

City Goals: See staff report

Comprehensive Plan: See staff report

Zoning Code: See staff report

Living Wage/Job Linkage: Not applicable
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Other: Not applicable

Background/Supporting Information: Kowalski's stores applied for a conditional use permit to allow 24-hour operation for their store located at 5327 Lyndale Avenue South. Staff recommended denial of the extended hours due to the potential impacts of light, noise, and traffic on the residential uses to the east on Garfield. Notwithstanding the staff recommendation, the City Planning Commission approved the conditional use permit for extended hours at its meeting of February 23, 2004. Cindy Banovetz and other residents of Garfield Avenue filed an appeal of the Planning Commission's decision (please see attached appeal) on March 4, 2004.

CPED Planning Division Report

Conditional Use Permit for extended hours
BZZ-1591

Date: February 23, 2004

Appellant: George Johnson on behalf of Kowalski's Companies

Address of Property: 5327 Lyndale Avenue South

Date Application Deemed Complete: February 2, 2004

End of 60 Day Decision Period: April 2, 2004

Contact Person and Phone: George Johnson – Harriss Architects 612-339-2190

Planning Staff and Phone: Jim Voll 612-673-3887

Ward: 11 **Neighborhood Organization:** Tangletown

Existing Zoning: C2 Neighborhood Corridor Commercial District & R5 Residential.

Existing Use: Grocery Store

Proposed Conditional Use Permit: Extension of hours open to the for 24 hours everyday.

Appropriate Section(s) of the Zoning Code: Chapter 525, Article VII, Conditional use permits.

Prior Approvals and Background: A conditional use permit for J.G.'s Super Valu (C-1528) was denied by the City Council in 1993. The City Planning Commission approved a site plan for this site in July of 2002 (BZZ-694 & PW#7182). The site is in conformance with the approved site plan, but some of the wrought iron fencing on the east side of the parking lot has been damaged. This is required to be repaired or replaced. The site is in the Tangletown neighborhood and is adjacent to the Lynnhurst neighborhood. Kowalski's notified the Tangletown and Lynnhurst neighborhoods and the Kenny and Windom neighborhoods as well. There are letters from the Kenny and Windom neighborhoods attached to this report. As of the writing of this report, staff has not received any comments from the Tangletown or Lynnhurst neighborhoods.

As is consistent policy, staff has recommended denial of the extended hours where there are residential uses on the block. If the Planning Commission should choose to approve the hours staff would recommend that it be subject to conditions that deliveries be restricted to normal C2 hours of operation and that the Garfield Avenue parking lot access be closed during the extended hours to limit the traffic impact on the residential properties to the east.

Findings as Required by the Minneapolis Zoning Code:

The CPED Planning Division has analyzed the application and from the findings above concludes that the establishment, maintenance, or operation of the proposed conditional use:

1. May be detrimental to or endanger the public health, safety, comfort or general welfare.

The permitted hours of operation in the C2 District are 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. The applicant proposes to be open 24 every day. The extended hours for the store may have an impact on the residential properties to the east of the site, especially with the traffic leaving the parking areas.

2. May 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.

Staff uses the following criteria to determine compatibility of extended hours with the surrounding area:

a) Proximity to permitted or conditional residential uses. The site is bordered by residential uses to the east, otherwise the site is bordered by commercial uses.

b) Nature of the business and its impacts of noise, light and traffic.

The business is a grocery store. Kowalski's has provided comparisons of other stores (one in Woodbury and one on Grand Avenue in St. Paul) to give an idea of the potential traffic to the site. The Woodbury store has approximately 76 customers during the extended hours and the St. Paul store had approximately 105, although most were arriving during the 11:00 p.m. to 1:00 a.m. time period. This could generate noise and traffic that would have an effect on the nearby residential properties.

c) Conformance of use. The proposed use is a permitted use in the C2 zone. The site has received site plan review approval in 2002. The zoning code limits operating hours in the C2 District are 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. If the conditional use permit for extended hours is approved then the proposed hours will be in conformance with the code.

d) Complaints received. Staff is not aware of any complaints received about the site. There have been 13 calls for service since January 1, 2003 (please see attached report).

As has been the consistent policy, staff has recommended denial if there are residential uses located on the block.

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

Roads and utilities are existing and adequate.

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

The site is required to have 55 spaces and 84 are provided on-site.

- 5. May not be consistent with the applicable policies of the comprehensive plan.**

The Minneapolis Plan designated the intersection of Lyndale Avenue and West 54th Street as a neighborhood commercial node. *The Minneapolis Plan* states that “Neighborhood Commercial Nodes are the small scale service locations and focal points for neighborhoods. Their character is defined by the limited impact and scale of businesses operating in these locations, making them good neighbors to the largely low-density residential areas that surround them. Commercial uses in Neighborhood Commercial Nodes operate with little negative impact on their neighbors, such as the production of fumes or noise or negative aesthetics, or even blight through minimal or deferred maintenance of buildings and land. These areas are generally pedestrian oriented in scale and design. Neighborhood commercial nodes have usually developed at intersections, and the intersecting streets are often designated as community corridors. Related to the city’s historical growth pattern, these nodes generally consist of traditional commercial storefront buildings, and maintain a building typology that is appropriate for the surrounding residential neighborhoods.”

If the impacts of noise, light and traffic are mitigated, then the extended hours could be in conformance with the provisions for neighborhood commercial nodes of the comprehensive plan.

- 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.**

Recommendation of the CPED Planning Division:

The CPED Planning Division recommends that the City Planning Commission adopt the findings above and **deny** the conditional use permit for 24 hour operation for the Kowalski’s store located at 5327 Lyndale Avenue South.

Attachments:

1. Site map.
2. Site plan.
3. Letters from applicant and neighborhood groups.
4. Recap report.
5. Photos.

**Excerpt from the
CITY PLANNING COMMISSION
MINUTES**

**Minneapolis Community Planning & Economic Development (CPED)
Planning Division**

350 South Fifth Street, Room 210
Minneapolis, MN 55415-1385
(612) 673-2597 Phone
(612) 673-2728 Fax
(612) 673-2157 TDD

MEMORANDUM

DATE: February 24, 2004

TO: Blake Graham, Community Planning & Economic Development - Planning Div.
Phil Schliesman, Licenses

FROM: Neil Anderson, Supervisor, Community Planning & Economic Development -
Planning Division, Development Services

CC: Barbara Sporlein, Director, Community Planning & Economic Development
Planning Division

SUBJECT: Planning Commission decisions of February 23, 2004

The following actions were taken by the Planning Commission on February 23, 2004. As you know, the Planning Commission's decisions on items other than rezonings, text amendments, vacations, 40 Acre studies and comprehensive plan amendments are final subject to a ten calendar day appeal period before permits can be issued:

ATTENDANCE

President Martin, Vice President Hohmann, G. Johnson, Krause, Kummer, LaShomb, MacKenzie, and Schiff – 8

Note: Due to a previously scheduled meeting running over its allotted time in 317 City Hall, the City Planning Commission was moved to room 220 City Hall.

20. Kowalski's – Lyndale Avenue (BZZ-1591, Ward 11)

5327 Lyndale Avenue South (Jim Voll)

A. Conditional Use Permit

Application by George Johnson on behalf of Kowalski's Companies for a conditional use permit for 24 hour operation for the Kowalski's store located at 5327 Lyndale Avenue South.

Motion: Notwithstanding staff recommendation, the City Planning Commission **approved** the conditional use permit for 24 hour operation for the Kowalski's store located at 5327 Lyndale Avenue South with the following condition:

1. There shall be no deliveries or operation of the trash compactors between the hours of 10 PM and 6 AM on weekdays and 11 PM and 6 AM Fridays and Saturdays;

And based on the following findings:

1. The site is located on a commercial corridor; and
2. Support for the extended hours has been expressed by the neighborhood.

Staff Jim Voll introduced the staff report. He noted that four phone calls had been received since the printing of the staff report that were from residents in the neighborhood stating they had concerns and were opposed to the extension of hours. Additionally, there were two letters received in opposition to the extension, and one letter in favor, and a letter from the neighborhood group in favor of the extension.

Seth Renfield (5311 Garfield Avenue): We're happy Kowalski's is there, it has been a big improvement, however, I believe there must already be a conditional use in place to stay open until midnight in the C-2 district as we are already under 18 hours of operation. Obviously my wife and I, and other neighbors are concerned about increased traffic, car alarms, loitering, all of the things associated. Deliveries are occurring up to midnight. We are voicing our support for denial.

John Banovitz (5335 Garfield Avenue): I am also in favor of denial of the conditional use permit, for many of the same reasons as my neighbor. I would also like to point out that earlier today the commission voted against market forces to maintain the neighborhood and I would encourage that same thought process to happen now.

Commission President Martin closed the public hearing.

Commissioner LaShomb: I might have voted against market forces on behalf of the neighborhood, [but] I don't know if the rest of us did. I think what they probably voted on was consistency with the original agreement. I know what it's like living in an area where you have something going on 24 hours a day, I used to live across from a hospital and we happened to be on the side where they picked their trash up-sounded like they did it every night four or five times and there was always noise emanating from the building. On the other hand, this is a pretty viable business; it's an important part of the neighborhood. I think it would be inconsistent to support the one on Hennepin and then say this one doesn't work, so I am going to move approval of the conditional use permit, with the understanding that there will not be deliveries after 10 p.m. and the same conditions as number 19 [Kowalski's on Hennepin]. I know that's sometimes hard on neighborhoods to have businesses there, but that's what cities are about is kind of a nice mix that you can walk to and if you are too far away you can't walk to them.

Commissioner Hohmann: Friendly amendment that the Garfield entry be closed off at 10 p.m.

Commissioner LaShomb: Madame President, I would ordinarily say that would be ok, but I would agree that if you have a street like Lyndale with a median in the middle, that means that people are going to go to the end of the block and do a U-turn, which I find even more horrific. I see that go on all the time on Hiawatha at 42nd where people do a U-turn to go to McDonald's. I wouldn't regard that as friendly. I don't think you're going to have that much use of Garfield after 10 o'clock at night.

The motion passed 6-0 (Commissioner Schiff not present) with the same conditions and findings as #19 [see actions, above].