Department of Community Planning and Economic Development - Planning Division
Rezoning, Conditional Use Permit, Variance
BZZ-5483

Date: May 7, 2012

Applicant: R401K – Pat and Donna Mulroy

Address of Property: 3900 and 3920 Nicollet Avenue

Project Name: Mulroy's Body Shop

Contact Person and Phone: Tom Wasmoen (612) 819-1835

Planning Staff and Phone: Thomas Leighton (612) 673-3853

Date Application Deemed Complete: April 3, 2012

End of 60 Day Decision Period: June 2, 2012

Ward: 8 **Neighborhood Organization:** Kingfield Neighborhood Association

Existing Zoning: R2B, Two-family District

Proposed Zoning: C2, Neighborhood Corridor Commercial District

Zoning Plate Number: 31

Legal Description: 3900 Nicollet Avenue South: Lots 1 to 3 inclusive, Block 1, Van Nests Addition to Minneapolis. 3920 Nicollet Avenue South: Lots 4 to 6 inclusive, Lots 25 to 29 inclusive, Block 1, Van Nests Addition to Minneapolis.

Proposed Use: Major Automobile Repair, Shopping Center

Concurrent Review:
Rezoning: From R2B to C2 for property at 3900 and 3920 Nicollet Avenue South.
Conditional Use Permit: To establish a shopping center in the C2 zoning district.
Variance: To allow signage on the north wall of the building, which is a non-primary building wall.

Applicable zoning code provisions: Chapter 525, Article VII, Conditional Use Permits; and Chapter 525, Article IX, Variances, specifically Section 525.520 (21) "to vary the number, type, height, area or location of allowed signs on property located in an OR2 or OR3 District or a commercial, downtown or industrial district, pursuant to Chapter 543, On-Premise Signs; Chapter 530, Site Plan Review

Background: The applicants have operated a major automobile repair business at this location since 2004, replacing a taxicab company. Major automobile repair is defined as automobile repair that includes "rebuilding or reconditioning of passenger automobiles, body, frame or fender straightening, replacement or repair, painting or rustproofing." The only commercial zoning district which allows major automobile repair is the C4 zoning district.

In 2004 the City approved a Change of Nonconforming Use application to allow the automobile repair business to replace the taxicab company. An application at that time to rezone the property to C4 was denied.

Also approved was a Site Plan Review application, and the site improvements associated with that application have been implemented.

Rezoning

There are several reasons for the applicant's application for a rezoning to C2, despite the fact that the automobile repair use would remain nonconforming in that zoning district.

A) The applicants would like to lease out part of the office portion of the building for multiple small-scale neighborhood serving businesses, both retail and services, through a single entrance off Nicollet Avenue separate from the entrance to the automobile repair business. A cluster of businesses of this kind, through a single entryway, is defined as a "shopping center" in the City's zoning code. Shopping Centers are allowed as a conditional use in commercial zoning districts. And although the shopping center use could be applied for as a Change of Nonconforming Use, that could require additional Change of Nonconforming Use applications in the future with certain tenant changes.

B) The applicants would like to be able to host the Kingfield Farmer's Market during the growing season, and a Christmas tree lot during the holiday season. Temporary farmers' markets are allowed on zoning lots larger than 20,000 square feet as a temporary use in the R2B zoning district. The site is 39,370 square feet in size.

C) The applicants would like to place signage on the north side of their building, despite the fact that the north building wall is not a "principal building wall" as defined by the zoning code because it lacks a customer entrance. This requires a sign variance, which is not available in residential zoning districts.

A range of rezoning scenarios could meet these purposes, as follows.

Purposes	OR2	C2
Host Kingfield Farmer's Market and Christmas Tree Lot (as temporary uses)	X	X
Allow variance application for locating signage on North wall	X	X
Create building space for business tenants in "Shopping Center"	A single retail tenant, or multiple office tenants	Multiple tenants including a broad range of retail and services businesses

The types of businesses suggested by the applicant for the proposed new shopping center are small scale businesses that would likely have little or no negative impacts on the surrounding neighborhoods. However, staff evaluation of the rezoning to C2 needs to take into consideration the full range of businesses it allows, and the longer-term implications of the zoning change. Zoning changes are an enduring change that remains until changed again. The zoning of property endures through changes of ownership, and even through redevelopment of the property.

The long-term implications of the proposed change to C2 are primarily associated with impacts on the community, and the proper location of commercial activity.

Community impacts. C2 zoning opens the door to a set of commercial uses that have more significant impacts than those that are allowed in the OR2 zoning districts, including gas stations, car rental businesses, automobile sales lots, car washes, liquor stores, tobacco shops and currency exchange businesses. Some of these uses would require redevelopment of the site. Others could be tenants of the existing building. It also allows businesses that are larger—up to 30,000 square feet in area as opposed to 2,000 square feet per business in the OR2 district—and thus potentially invites more impacts in terms of customer traffic, noise, and related issues. These impacts have the potential to be more acute since the property is a relatively shallow through-lot with frontage on both Nicollet Avenue and Van Nest Avenue.

Proper location. The City's comprehensive plan provides strong guidance about where commercial activity should be concentrated and directed. Activity Centers, Commercial Corridors, and Neighborhood Commercial Nodes are designated in the comprehensive plan as

locations where City policy supports business growth. They are more appropriate locations for larger scale businesses, which may then provide the nucleus for a mix of neighborhood serving retail sales and services.

Conditional Use Permit

A shopping center is allowed as a conditional use in the C2 zoning district. The shopping center is proposed to occupy about 3,000 square feet of the office portion of the building, including the shared hallway. Four tenant spaces are proposed, sized at approximately 900 square feet, 500 square feet, 400 square feet, and 400 square feet.

Variance

The zoning code only allows 16 square feet of signage in the R2B zoning district for nonconforming uses such as this auto repair business. However, the City Planning Commission's approval of the Change of Nonconforming Use application in 2004, which allowed the establishment of the business, included a condition that allowed the business to "install signs consistent with the regulations of a C1 District provided that back-lighted signs shall be prohibited and no illuminated sign shall be located within twenty (20) feet of an adjacent property." With 119'-3" of linear feet of building frontage on Nicollet Avenue (the primary building wall), this allows the business to install up to 179 square feet of signage on that wall.

The applicants propose to abide by the total amount of signage allowed (179 square feet), but woud like to mount up to 60 square feet of that signage on the north side of the building. The zoning code would allow signage to be placed on the north wall as of right if it included a customer entrance. However, because the service bays of the business are in the northern part of the building, there is no customer entrance on that building wall. So signage on that wall is not allowed without a variance.

Variances of sign locations are allowed by section 525.520 of the zoning code, which allows the variance of "the number, type, height, area or location of allowed signs on property located in an OR2 or OR3 District or a commercial, downtown or industrial district, pursuant to Chapter 543, On-Premise Signs." Note that a variance of the location of signage in the R2B zoning district is not allowed. So the variance of sign location can only be considered if the property is rezoned to an office residential or commercial zoning district.

Public Input

Some petitions in support of rezoning the property were gathered from immediate neighbors of the business. Such petitions are a prerequisite to applying for a rezoning from a residential to a commercial zoning district.

The neighborhood organization provided input on the project in 2004, and provided a new letter dated January 12, 2012 (attached), that declined to take a position on the rezoning request. One area of community concern was the relocation of business deliveries to the north side of the building rather than through the rear door on Van Nest Avenue. My understanding is that the business intends to make that change regardless of the outcome of this application. More recent

and pending meetings may yield more input from the neighborhood organization and community members.

One e-mail has been received from an interested party, expressing support for the applications (attached).

REZONING: Petition to rezone the properties at 3900 and 3920 Nicollet Avenue South from R2B to C2.

Findings as required by the Minneapolis Zoning Code:

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

The proposed zoning would not be consistent with the applicable policies of *The Minneapolis Plan for Sustainable Growth*. The property is guided urban neighborhood on the future land use map. And 38th Street is a designated Community Corridor, but the property is not part of another designated comprehensive plan feature. The following principles and polices outlined in the plan apply to this proposal:

Policy 1.1: Establish land use regulations to achieve the highest possible development standards, enhance the environment, protect public health, support a vital mix of land uses, and promote flexible approaches to carry out the comprehensive plan.

1.1.5 Ensure that land use regulations continue to promote development that is compatible with nearby properties, neighborhood character, and natural features; minimizes pedestrian and vehicular conflict; promotes street life and activity; reinforces public spaces; and visually enhances development.

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

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

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

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

1.9.2 Support new small-scale retail sales and services, commercial services, and mixed uses where Community Corridors intersect with Neighborhood Commercial Nodes.

1.9.3 Discourage uses that diminish the transit and pedestrian oriented character of Community Corridors, such as automobile services and drive-through facilities.

As discussed in the background section above, the types of uses and the scale of development that is allowed in the C2 commercial district is not appropriate for this part of Nicollet Avenue, which is a community corridor, but is not in a designated neighborhood commercial node or activity center. Locating larger scale commercial uses in this location can weaken the strength and usefulness of nearby commercial areas, and it could have detrimental impacts on the surrounding neighborhood.

Small area plans are incorporated by reference in the City's comprehensive plan, and this part of Nicollet Avenue was studied, and policy recommendations formulated, in a small area plan that was adopted by the City Council. The plan titled "Nicollet Avenue: The Revitalization of Minneapolis' Main Street" was adopted in May, 2000.

Four overarching strategies for Nicollet are proposed in the plan, as follows:

Strategy #1: Invest in well-defined commercial nodes and corridors to encourage increased compatibility of adjacent uses

Strategy #2: Redevelop under-utilized commercial areas to encourage increased compatibility of adjacent uses

Strategy #3: Encourage quality urban design and pedestrian-friendly environments

Strategy #4: Manage traffic flow and reduce traffic speed

The plan notes that identity is a particular challenge for the 33rd Street to 40th Street section of Nicollet Avenue.

> Of all of the sections along Nicollet Avenue, the section between 33rd and 40th is the area with the least-defined identity. With a few key exceptions, there are no strong distinguishing features in the area: no topographical features, no historic sites, no landmarks, no substantial institutional anchors, and no noticeable public realm. In addition, there are no clear land use patterns: rather than mixed-use, there is a generic mix of uses, some single family residential, a bit of multi-family residential, scattered commercial, and a few institutional uses. To compound the problem, the majority of the commercial and residential structures along this stretch of the avenue were built prior to 1920. As a result, many of these buildings are in need of renovation and repair which is sensitive to the preservation of the decorative detail and character that they possess.

The recommendations for this section of Nicollet include the following:

7.8 Encourage the long-term redevelopment of the auto-oriented businesses at the 39th and 40th Street nodes as residential to capitalize on the neighboring park and quality residential environment.

Plan excerpts are attached.

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

In the short term the rezoning would allow for the introduction of new small scale neighborhood serving businesses. But over the longer term, new development could include land uses and business types that are out of scale with the neighborhood setting, and that have detrimental impacts.

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

There is other commercial activity on the subject block, including a child care center directly south of the subject property. But there is no other commercial zoning nearby. The entire block is zoned R2B. If the property were rezoned to C2, it would be the only commercially zoned property on the block or the block across the street.

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

The property has nonconforming rights to operate the car repair business. And a condition of approval of the 2004 Change of Nonconforming Use application confers rights to the amount of signage that is allowed in commercial districts. Given that, the property continues to have economic value for the applicant in its current R2B zoning classification. Furthermore, while it may not offer everything that the applicant desires, a zoning change to an alternative zoning district would confer additional options for commercial use of the property without introducing a zoning district that is as anomalous and potentially impactful to the surrounding area.

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

Staff is not aware of any changes to the use or zoning of property in the general area of the subject property that would supports an intensification of zoning or use of the subject property.

CONDITIONAL USE PERMIT: To establish a shopping center in the C2 zoning district

Findings as Required by the Minneapolis Zoning Code:

The Community Planning and Economic Development Department – Planning Division has analyzed the application and from the findings below concludes that the establishment, maintenance, or operation of the proposed conditional use:

1. Will not be detrimental to or endanger the public health, safety, comfort or general welfare.

The proposed shopping center would house small scale commercial uses that may well provide useful services to the community, and have minimal impacts. However, a C2 zoning district also introduces the risk of commercial uses that are incompatible with the residential neighborhood setting, as noted in the background section of this report. The rezoning to C2 would also introduce redevelopment possibilities that could be detrimental to the public health, safety, comfort or general welfare, because of their character or scale, as described above.

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 shopping center is small scale, and would require only four parking spaces, which are available in the parking lot to the north of the building.

This depends, however, on the zoning change being approved, since a shopping center is not allowed in the current R2B zoning district. And the zoning change to C2 would introduce redevelopment possibilities that could negatively impact the value of properties and impede expected development patterns—particularly if it introduces development that is out of scale for this community corridor, or land uses that have detrimental impacts on the residential character of the surrounding area.

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

Roads and utilities are existing and adequate, and would accommodate most development that can be envisioned.

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

The proposed and intended use of the property will have minimal impact on traffic patterns. The existing parking lot is likely to accommodate new customer traffic. However, the proposed zoning change to C2 introduces possibilities that would introduce significantly more traffic to this area.

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

Given the proposed C2 zoning district, the character of the potential uses may not be consistent with the policies of the comprehensive plan, since they could include land uses that would

normally be steered to areas that are designated in the City's comprehensive plan for more robust commercial development. Examples of such uses are described in the background section of this report.

The C2 district also creates redevelopment possibilities that would not be consistent with the City's comprehensive plan in scale and character, as described above.

The property is guided Urban Neighborhood, which references issues of character and compatibility.

> **Urban Neighborhood (UN)—**Predominantly residential area with a range of densities, with highest densities generally to be concentrated around identified nodes and corridors. ***May include undesignated nodes and some other small-scale uses, including neighborhood-serving commercial and institutional and semi-public uses (for example, schools, community centers, religious institutions, public safety facilities, etc.) scattered throughout. More intensive non-residential uses may be located in neighborhoods closer to Downtown and around Growth Centers.*** Not generally intended to accommodate significant new growth, other than replacement of existing buildings with those of similar density.

Note the following policies as well.

Policy 1.1: Establish land use regulations to achieve the highest possible development standards, enhance the environment, protect public health, support a vital mix of land uses, and promote flexible approaches to carry out the comprehensive plan.

1.1.5 Ensure that land use regulations continue to promote development that is compatible with nearby properties, neighborhood character, and natural features; minimizes pedestrian and vehicular conflict; promotes street life and activity; reinforces public spaces; and visually enhances development.

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

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

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

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

1.9.2 Support new small-scale retail sales and services, commercial services, and mixed uses where Community Corridors intersect with Neighborhood Commercial Nodes.

1.9.3 Discourage uses that diminish the transit and pedestrian oriented character of Community Corridors, such as automobile services and drive-through facilities.

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

The applicant is providing a more detailed floor plan of the building that provides a basis for more exact parking calculations to be made. However, staff estimated the parking requirement under a couple of scenarios, and it appears that 27 to 35 parking spaces will be required for the automobile repair shop and shopping center uses. There are 40 parking spaces provided on site.

The site is in conformance with the City's site plan review ordinance after it implemented its 2004 approved site plan.

VARIANCE: to allow up to 60 square feet of the total signage area to be located on the north wall of the building

Findings as Required by the Minneapolis Zoning Code for the Variance:

1. **Practical difficulties exist in complying with the ordinance because of circumstances unique to the property. The unique circumstances were not created by persons presently having an interest in the property and are not based on economic considerations alone.**

The building as constructed has its service bays at the north end of the property and its office area at the south end of the property. That creates practical difficulties in putting a customer entrance in the north building wall. The wall is thus not a primary building wall, and signage is not allowed without a variance. This condition was not created by the present owners of the property.

However, if the rezoning to C2 is not approved, there is no provision in the Zoning Code to allow the consideration of a variance of sign location.

2. **The property owner or authorized applicant proposes to use the property in a reasonable manner that will be in keeping with the spirit and intent of the ordinance and the comprehensive plan.**

The zoning code requires at least one principal entrance to face the public street, but where the interior of the building supports it many property owners would provide additional public access on the side of the building that faces the parking lot. If the building were utilized in that manner, additional signage would be allowed on the north facing wall. The total amount of signage that was allowed would be increased, as well as having the additional locational flexibility for signage.

Given that, it is reasonable for the applicant to propose some increased locational flexibility for the building's signage while not increasing the total amount of signage that is allowed.

However, if the rezoning to C2 is not approved, there is no provision in the Zoning Code to allow the consideration of a variance of sign location.

3. **The proposed variance will not alter the essential character of the locality or be injurious to the use or enjoyment of other property in the vicinity. If granted, the proposed variance will not be detrimental to the health, safety, or welfare of the general public or of those utilizing the property or nearby properties.**

The proposed signage on the north building wall would be modest in size, and separated from the nearest residential properties by some distance across the parking lot. Thus, no injury to the use and enjoyment of nearby property would be anticipated. Nor would there be anticipated impacts to the health, safety or welfare of others.

However, if the rezoning to C2 is not approved, there is no provision in the Zoning Code to allow the consideration of a variance of sign location.

Additional Findings Required by the Minneapolis Zoning Code for a Sign Variance:

1. **The sign adjustment will not significantly increase or lead to sign clutter in the area or result in a sign that is inconsistent with the purpose of the zoning district in which the property is located.**

The applicant has applied for a variance that would not result in an increased amount of signage over what would normally be allowed in a commercial or office residential district. The variance would allow additional flexibility in the placement of the signage only. For that reason it would not lead to sign clutter in the area.

However, if the rezoning to C2 is not approved, there is no provision in the Zoning Code to allow the consideration of a variance of sign location.

2. **The sign adjustment will allow a sign that relates in size, shape, materials, color, illumination and character to the function and architectural character of the building or property on which the sign will be located.**

Because the future tenants have not yet been identified, specific sign details are not yet known. Potential locations for signage have been identified that relate well to the scale of the building. Sign materials and illumination would need to conform to the regulations of Chapter 543 of the City's zoning code, which relate to on-premise signage.

However, if the rezoning to C2 is not approved, there is no provision in the Zoning Code to allow the consideration of a variance of sign location.

RECOMMENDATIONS:

Recommendation of the Department of Community Planning and Economic Development – Planning Division for the rezoning from R2B to C2:

The Department of Community Planning and Economic Development – Planning Division recommends that the City Planning Commission and the City Council adopt the findings above and **deny** the rezoning from the R2B, Two-family Residential District to the C2, Neighborhood Corridor Commercial District for the properties located at 3900 and 3920 Nicollet Avenue South.

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 findings above and **deny** the conditional use permit for a shopping center in the C2 zoning district for the properties located at 3900 and 3920 Nicollet Avenue South.

Recommendation of the Department of Community Planning and Economic Development – Planning Division for the variance to allow up to 60 square feet of the total signage area to be located on the north wall of the building:

The Department of Community Planning and Economic Development – Planning Division recommends that the City Planning Commission adopt the above findings and **deny** the application for a variance to allow up to 60 square feet of the total signage area to be located on the north wall of the building for the properties located at 3900 and 3920 Nicollet Avenue South..

Attachments:

1. Statement and findings from applicant.
2. Neighborhood organization correspondence
3. Von Fischer comment letter
4. Nicollet Avenue plan excerpts
5. Memo from City Attorney Re: Petition for the Amendment of the Zoning Ordinance
6. Zoning map
7. Site plans and elevations
8. Photos