CPED STAFF REPORT

Prepared for the Board of Adjustment

BOA Agenda Item #3
November 6, 2014
BZZ-6819

LAND USE APPLICATION SUMMARY

Property Location: 216 10th St S
Prepared By: Joseph.Giant@minneapolismn.gov, City Planner, (612) 673-3489
Applicant: Brian P. Short
Project Contact: William C. Griffith, Larkin Hoffman and Associates
Required Applications:

Appeal of Zoning Administrator	• Appeal of the decision of the Zoning Administrator in regards to compliance with landscaping and screening requirements for the parking lot located at 216 10th St S.

SITE DATA

Existing Zoning	B4-2 Downtown Business District DP Downtown Overlay District
Lot Area	8,525 square feet / 0.19 acres
Ward(s)	7
Neighborhood(s)	Downtown West
Designated Future Land Use	Commercial
Land Use Features	NA
Small Area Plan(s)	NA

Date Application Deemed Complete	July 24, 2014	**Date Extension Letter Sent**	September 16, 2014
End of 60-Day Decision Period	September 24, 2014	**End of 120-Day Decision Period**	November 16, 2014

APPEAL OF THE ZONING ADMINISTRATOR

REASON FOR APPEAL. William C. Griffith of Larkin Hoffman and Associates, on behalf of Brian P. Short, has appealed the decision of the Zoning Administrator in regards to compliance with landscaping and screening requirements for the parking lot located at 216 10th St S. This appeal pertains to the commercial parking lots owned by the appellant located at the following addresses: 419 9th St S, 410 10th St S, 901 2nd Ave S, 900 3rd Ave S, 216 10th St S.

The appellant claims that required landscaping and screening conflicts with the protection of legally nonconforming property provided by the legislature pursuant to Minnesota Statutes, Section 462.357, Subd. 1e.

The Zoning Administrator contests that screening and landscaping standards are required to the extent that they are economically and practically feasible, pursuant to Minnesota Code of Ordinances Chapter 531.110 pertaining to compliance with current standards for nonconforming uses and structures.

BACKGROUND. On July 9, 2014, all Class A and Class B commercial parking lot owners were sent a letter stating that their parking lots would need to be brought into compliance with current landscaping and screening standards in order to renew their business license. Applicants were initially given until October 15, 2014, to submit a site plan of proposed improvements.

On July 24, 2014, William Griffith of Larkin Hoffman Attorneys, on behalf of Brian P. Short, sent a letter to CPED – Zoning Administration stating that Mr. Short wished to appeal the requirements of the letter. The appeal was initially scheduled for the October 9, 2014 Board of Adjustment hearing.

On September 28, 2014, the appellants and CPED-Zoning Administration agreed that more time was needed to evaluate the relevant ordinance provisions, state statutes, and case law. A continuance until the November 6, 2014, Board of Adjustment hearing was requested and granted at the October 9th Board of Adjustment hearing.

Rather than pursue the appeal at the November 6th hearing, the appellant and the Zoning Administrator have negotiated a solution to the landscaping, screening, and surfacing requirements based on research prepared by the appellant as well as records maintained by the City. The Zoning Administrator has concluded that the subject parking lot was lawfully established between 1985 and 1992, and is therefore considered a lawfully established nonconforming use, in accordance with the following findings:

1. The subject lot is located in the DP Downtown Parking Overlay District, which was established in 2009. The overlay district requirements prohibit the establishment or expansion of commercial surface parking lots (Section 551.750);

2. The subject lot was lawfully established between 1985 and 1992, prior to the establishment of the DP Downtown Overlay District, and has continued to operate as commercial surface parking lot without interruption from these dates to the present time;

3. The surface parking lot is therefore classified as a **lawfully established nonconforming use;**

4. According to Section 531.20, lawfully established nonconforming uses and structures shall be allowed to continue to operate so long as they remain otherwise lawful.

Therefore, the subject lot is not subject to Section 531.110 requiring compliance with current standards pertaining to landscaping and screening. As a lawfully established nonconforming use, however, the lot is required to observe the standards that were in place at the time it was established, including those pertaining to landscaping and screening. The lot currently falls short of this standard, so in order to maintain good standing as a lawfully established nonconforming use, the zoning administrator will require compliance with that portion of those standards that is practically and economically feasible. This may include, but is not limited to, repairs to pavement, installation of screening, and repair/replacement of vegetation and landscaping.

The City and the owner of the subject lot will negotiate the nature of the improvements at a later date. The agreed upon improvements must be implemented by November 27, 2015. Upon written request by the owner, the zoning administrator may, for good cause shown, grant an extension of this time limit.

STAFF RECOMMENDATION

The Department of Community Planning and Economic Development recommends that the Board of Adjustment adopt staff findings and **withdraw** the appeal of the zoning administrator in regards to parking lot landscaping and screening at 216 10th St S.

ATTACHMENTS

1. Zoning Map
2. Statement of appeal from applicant
3. Letter of withdraw from applicant

Brian P. Short **7th**

NAME OF APPLICANT WARD

PROPERTY ADDRESS

216 10th St S (properties of related appeals represented in gray)

FILE NUMBER

BZZ-6819

Legal Basis for Appeal

The owners of the above referenced lots received correspondence from your office, dated July 9, 2014, and received on July 14, 2014, requiring compliance with certain landscaping and screening requirements found at Chapter 530.170 of the zoning code. This requirement conflicts with the protection of legally nonconforming property provided by the legislature pursuant to Minnesota Statutes, Section 462.357, Subd. 1e. We will provide a full briefing of this issue when the above appeal is scheduled for hearing.

Please let me know if you have any questions regarding the enclosed. Thank you for your assistance in this regard.

Sincerely,

William C. Griffith, for
Larkin Hoffman Daly & Lindgren Ltd.

Direct Dial: 952-896-3290
Direct Fax: 952-842-1729
Email: wgriffith@larkinhoffman.com

Enclosures

cc: Brian P. Short (w/o enclosures)
Douglas V. Swanson (w/o enclosures)

4851-4547-3308, v. 1

Minneapolis
City of Lakes

Community Planning & Economic Development

Development Services

250 South 4th Street – Room 300
Minneapolis MN 55415

Office 612 673-3000 or 311
Fax 612 370-1416
TTY 612 673-2157

July 9, 2014

NAME
ADDRESS
City, State 55455

Dear NAME,

In an effort to improve the management of storm water runoff and improve the pedestrian streetscape, the City will begin inspecting Class A and Class B Licensed parking lots to ensure these lots are in compliance with the licensing and zoning provisions of the Minneapolis Code of Ordinances pertaining to the landscaping and screening of commercial parking lots.

A handout containing the landscaping and screening requirements for parking lots is included in this letter and can be found in Chapter 530.170 of the zoning code.

In order to renew your commercial parking lot license you must currently be in compliance with these regulations or submit to the City a **site plan** of proposed improvements that meets these requirements no later than October 15, 2014.

The **site plan** should be scaled and dimensioned, and should include detailed information regarding the location of all site improvements, plant species and size, ground cover materials, and border materials. Please find the attached sample site plan.

To submit your site plan for review or verify compliance of your Class A or Class B Licensed parking lot, please contact City Planner Joe Giant at joseph.giant@minneapolismn.gov or 612-673-3489.

The City will allow sufficient time for the required improvements at this parking lot to be implemented.

Sincerely;

Steve Poor, Zoning Administrator

CPED, City of Minneapolis

Call 311 Minneapolis
City Information and Services

www.minneapolismn.gov
Affirmative Action Employer

Larkin Hoffman
ATTORNEYS

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October 30, 2014

Mr. Stephen Poor
Zoning Administrator
250 South 4th Street, Rm 300
Minneapolis, MN 55415

Re: Appeal of the Decision of the Zoning Administrator regarding the following lots (the "Lots"):

410 10th Street South	BZZ# 6812
901 2nd Avenue South	BZZ# 6818
216 10th Street South	BZZ# 6819
419 9th Street South	BZZ# 6820
900 3rd Avenue South	BZZ# 6821

Dear Mr. Poor:

As you are aware, this firm represents Brian P. Short and Benson Parking Service, Inc. ("Benson") regarding the consolidated appeal of the decision of the City of Minneapolis (the "City") Zoning Administrator pertaining to the notice issued by the City on July 9, 2014 to Benson with regard to the Lots.

We are in receipt of your letter dated October 30, 2014, which has confirmed the legal nonconforming status of the Lots with respect to landscaping and screening standards, as was detailed in our letter dated October 9, 2016. As we have agreed, Benson will comply with maintenance of existing improvements on these Lots (i.e., fencing, surface repair, and landscaping).

In light of the City's decision to recognize the legal nonconforming status of the Lots, we hereby withdraw the appeal (BZZ #s: 6812, 6818, 6819, 6820, and 6821).

If you have any questions about this letter, please feel free to contact me directly.

Sincerely,

William C. Griffith, for
Larkin Hoffman Daly & Lindgren Ltd.

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Direct Fax: (952) 842-1729
Email: wgriffith@larkinhoffman.com

cc: Erik Nilsson, Assistant City Attorney
Joe Giant, City Planner
Brian Short
Doug Swanson

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