



Request for Council Action

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| Originator Community Development | Item City Code Amendments - Interim Use Standards | # 5.4B1 |
| Agenda Section HEARINGS/PUBLIC INPUT | By EAS | Approved Date June 1, 2009 |

Description

Case 10000D-09

GENERAL INFORMATION

Applicant: City of Bloomington

Request: City Code Amendments - Interim Use Standards

PROPOSAL

The purpose of this item is to consider amendments proposed to the City Code for interim uses to include conditions for continuing interim uses for the same use on the site and changing the use status of billboards from temporary conditional uses to interim uses. Also, the term for an Interim Use Permit currently can not exceed three years, and is proposed to be amended to a term not to exceed five years.

On May 18, 2009, the Council requested staff provide additional information for consideration, as follows:

- Uses that have been reclassified from temporary conditional uses (TCUPs); and
- Market value implications of the proposed code amendments changing temporary conditional uses to interim uses.

The requested additional information is enclosed (see table: *Uses Reclassified From Temporary Conditional Uses (TCUPs), and Memorandum from City Assessor, dated May 27, 2009*).

The Council also requested revisions to the proposed City Code amendments clarifying the waiver provisions, and specifying a reduced fee for re-application for an interim use permit (for the same use on the same site). The revised draft containing the proposed City Code amendments is attached.

CHRONOLOGY

Focus Group Meeting: 4/09/09-Meeting with representatives of billboard owners to discuss proposed amendments

Planning Commission Meeting: 4/16/09-Public hearing on amendments to the City Code for interim uses

City Council Meeting: 5/18/09-Public hearing on amendments to the City Code for interim uses

City Council Meeting: 6/01/09-City Council hearing continued

DEADLINE FOR AGENCY ACTION

Application Date: 03/11/09
60 Days: 05/09/09
Extension Letter mailed: yes
120 Days: 07/08/09

RECOMENDATION

In Case 10000D-09, the Planning Division Staff and the Planning Commission recommend approval of the proposed amendments to the Bloomington City Code modifying interim uses to include:

- 1) Conditions for continuing interim uses for the same use on the site;
- 2) Changing the use status of billboards from temporary conditional uses to interim uses;
and
- 3) Extending the potential term for an Interim Use Permit from three to up to five years.



Request for Council Action

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|------------------------------------------------|-------------------------------------------------------------|----------|-----------------------------|
| Originator Community Development | Item City Code Amendments - Interim Use Standards | | # 5.4B |
| Agenda Section HEARINGS/PUBLIC INPUT | By EAS | Approved | Date May 18, 2009 |

Description

Case 10000D-09

GENERAL INFORMATION

Applicant: City of Bloomington

Request: City Code Amendments - Interim Use Standards

PROPOSAL

The purpose of this item is to consider amendments proposed to the City Code for interim uses to include conditions for continuing interim uses for the same use on the site and changing the use status of billboards from temporary conditional uses to interim uses. Also, the term for an Interim Use Permit currently can not exceed three years, and is proposed to be amended to a term not to exceed five years. The draft ordinance containing the proposed amendments is attached.

CHRONOLOGY

Focus Group Meeting: 4/09/09-Meeting with representatives of billboard owners to discuss proposed amendments

Planning Commission Meeting: 4/16/09-Public hearing on amendments to the City Code for interim uses

City Council Meeting: 5/18/09-Public hearing on amendments to the City Code for interim uses

DEADLINE FOR AGENCY ACTION

Application Date: 03/11/09

60 Days: 05/09/09

Extension Letter mailed: yes

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RECOMENDATION

In Case 10000D-09, the Planning Division Staff and the Planning Commission recommend approval of the proposed amendments to the Bloomington City Code modifying interim uses to include:

- 1) Conditions for continuing interim uses for the same use on the site;
- 2) Changing the use status of billboards from temporary conditional uses to interim uses;
and
- 3) Extending the potential term for an Interim Use Permit from three to up to five years.

Item 3

GENERAL INFORMATION

Applicant: City of Bloomington

Location: Citywide

Request: City Code Amendments - Interim Use Standards

PROPOSAL

The purpose of this item is to consider amendments proposed to the City Code for interim uses to include conditions for continuing interim uses for the same use on the site and changing the use status of billboards from temporary conditional uses to interim uses. Also, the term for an Interim Use Permit currently can not exceed three years, and is proposed to be amended to a term not to exceed five years.

The ordinance containing the proposed amendments to the City Code modifying interim uses and standards is attached, along with an accompanying memorandum prepared by the City Attorney's office, dated April 16, 2009.

ANALYSIS

As part of its comprehensive zoning ordinance update, the City has been converting the use status for uses classified by the City Code as temporary from temporary conditional uses to interim uses. Minnesota statutes do not specifically list "temporary conditional uses" and their status is unclear. Interim uses, however, are explicitly allowed by Minnesota's zoning enabling legislation. Billboards are one of the few remaining uses classified by the City Code as temporary that have not yet had their use status converted to an interim use.

The City Code (Section 19.66(b)(12)) limits the approval period for billboards to three years. The City has historically and should continue to regulate billboards as temporary uses rather than permanent uses for the following reasons:

- (1) The frequently changing nature of billboard use and adjacent uses requires regular review and analysis to ensure that billboards continue to conform to City Code standards, particularly with respect to adjacent properties and uses. For example, the City Code prohibits billboards within 500 feet of residential properties (Section 19.66(b) (14)). A temporary billboard conforming to that standard during its current approval term may not conform to that standard in the future if residential redevelopment were to occur within 500 feet;
- (2) State and federal laws pursuant to the Highway Beautification Act have specified government is to protect the public investment in our highways, and consequently, billboards are not permitted as of right;

- (3) Billboard use has a potential to delay or affect permanent development of a site or adjacent properties (for example, through legal contracts, its location or limited sight lines). The City Code (Section 19.23.03(d) (1)) requires the following finding to be made prior to issuance of an Interim Use Permit: “the use will not delay permanent development of the site”. Over time, it may become apparent that the presence of a billboard is delaying or impeding development of a site or adjacent property; and
- (4) Billboard impacts on health, safety, and welfare may change over time as the billboard is modified, as surrounding land uses change and as roadways are realigned or modified.

On April 9, 2009, staff met with representatives of billboard owners to discuss the proposed amendments. Billboard representatives expressed concern with the proposed transition for billboards from temporary conditional use status to interim use status. They acknowledged the City’s desire to move away from the Temporary Conditional Use Permit process but requested that billboards be converted to permanent conditional uses.

It is important to note that a conversion from temporary to permanent status would be a significant policy change in status of billboard uses. An upgrade to permanent land use status would greatly expand the rights available to the billboards and increase their value. Rather than the City being able to review whether the billboard meets City Code standards (such as being 500 feet from residential property or impeding permanent development) on a periodic basis, as a permanent use, billboards would acquire “grandfathered” rights. For example, if residential uses were established in the immediate vicinity, a permanent billboard would simply become legally nonconforming but could continue to exist indefinitely and be maintained under Minnesota Statutes, Sec. 462.357, subd. 1e.

There are currently five billboards in the City of Bloomington, as follows:

| Address | Property Owner | Current Zoning |
|-----------------------------------|----------------------------------------------------------------------------------------------------------------------------------------|----------------|
| 9321 East Bloomington Freeway | Bucks Unpainted Furniture Attn: Roger J. Buck 9231 East Bloomington Freeway Bloomington, MN 55420 | I-3 |
| 5000 West 78 th Street | California Closets T.C.C.C., Inc. Attn: Thomas R. Sweeny, President 5000 West 78 th Street Bloomington , MN 555435 | CS-0.5 |
| 1301 American Blvd. West | 1301 Partners Attn: Roger Lindeman, President 6934 Edge Brook Place Eden Prairie, MN 55346 | I-3 |
| 405 East 78 th Street | Gil Williams, President 405 East 78 th Street Bloomington, MN 55420 | FD-2 |
| 9600 Aldrich Avenue | Corridor MN Building, LLC Steven L. Cummings, Secretary /Treasurer 755 E. Mulberry Ave., Suite 600 San Antonio, TX 78212 | I-3 |

The proposed amendments to the City Code for interim uses include:

- (1) No Interim Use Permit shall be granted for the continuance of a previously approved interim use on the same site unless the interim use has satisfied all previous conditions of approval and meets all Code requirements or receives appropriate variances;
- (2) Changing the use status of billboards from temporary conditional uses to interim uses; and
- (3) Changing the term for an Interim Use Permit from not to exceed three years, to a term not to exceed five years.

Staff has determined the proposed amendments would promote better use of administrative resources by the City and would be better suited to the needs of the applicants and property owners. While the recommended five year period would be the maximum time permitted, the time limit established for any particular permit may be less than the five year period, as appropriate to the request or the proposed use. Minnesota statutes also permit a specified event, such as a proposal to rezone or redevelop property as a trigger to terminate Interim Use Permits.

RECOMMENDATION

In Case 10000D-09, Staff recommends approval of the proposed amendments to the Bloomington City Code modifying interim uses to include:

- 1) Conditions for continuing interim uses for the same use on the site;
- 2) Changing the use status of billboards from temporary conditional uses to interim uses; and
- 3) Extending the term for an Interim Use Permit from three to up to five years.

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