ITEM 5 *6:49 p.m.*	**CASE:**	5660B-14
	APPLICANT:	Jennifer Development Company, Inc.
	LOCATION:	10701 Hampshire Avenue
	REQUEST:	Major Revision to Final Site and Building Plans to demolish 68,874 square feet of an existing 153,473 square foot warehouse and office building and construct an 81,098 square foot warehouse addition (net increase of 12,224 square feet)

SPEAKING FOR THE APPLICANT:

Michael Mergins, Legal Counsel for Jennifer Development

PUBLIC HEARING DISCUSSION:

Centinario explained this application is for a major revision to Final Site and Building Plans to demolish 68,874 square feet of an existing 153,473 square foot warehouse and office building and construct an 81,098 square foot warehouse addition (net increase of 12,224 square feet). He identified the location and surrounding land uses.

Centinario displayed a current conditions site plan depicting the buildings layout on the parcel. He identified the portion of the existing building proposed to be demolished and identified the location of the proposed addition. He displayed the proposed site plan depicting the modifications to the buildings and the proposed parking lot changes. A landscaping plan has been submitted in which all plantings and an infiltration basin, all meet Code. Centinario added all building materials being proposed for the addition meet Code.

Centinario explained there is an area of disagreement between staff and the applicant regarding the sidewalks on the site. The City maintains Sections 21.301.04 of the City Code requires the existing sidewalks be brought up to current Code as part of this redevelopment which would require 6 foot wide sidewalk along Hampshire Avenue and 8 foot wide sidewalk along Old Shakopee Road, both constructed with concrete. In this case, the City Engineer is recommending a ten foot wide bituminous sidewalk along West Old Shakopee Road instead of an 8 foot concrete sidewalk. On November 5, staff received a letter from the applicant's attorney stating reconstructing the sidewalk was not required because the project did not meet the definition of "significant redevelopment." Staff contends the project meet the definition of significant redevelopment and has included a condition of approval that the sidewalks be upgraded to meet Code requirements.

Centinario stated staff recommends approval of major revisions to Final Site and Building Plans to demolish 68,874 square feet of an existing 153,473 square foot warehouse and office building and construct an 81,098 square foot warehouse addition at 10701 Hampshire Avenue subject to the conditions of approval listed in the staff report. He stated he is available for questions and comments from the Commission.

Spiess asked for clarification from staff if staff's recommendation includes the requirements mentioned earlier regarding the sidewalks. Centinario stated staff has included a condition of approval requiring a 6 foot concrete sidewalk along Hampshire Avenue and a 10 foot asphalt sidewalk be installed along West Old Shakopee Road.

Michael Mergins stated he is legal counsel representing the Jennifer Development Company, Inc. He stated there is a disagreement regarding the sidewalk Code requirement. Mergins stated one thing that was not addressed in the staff report was that this exact project was approved in 2010 without the

sidewalk replacement requirement. He asked why would there be a different interpretation during that approval process that did not include sidewalk replacements than this application. Mergins stated it is their position that this application does not constitute significant redevelopment as defined by the Code and therefore should not be required to replace the sidewalks as part of this application. He stated what it comes down to is how the addition is calculated. He cited a Supreme Court Case File (see letter included in the staff report) stating that if ordinance language is ambiguous or could be interpreted in a different manner, the property owner interpretation is used. Practical consideration should also be considered. The costs associated with the sidewalk improvements are around $50,000. The project budget does not have $50,000 and would stop this project from moving forward. Mergins summarized by stating the project is the same project proposed in 2010 without the sidewalk replacement requirement and we ask for that same approval with this application.

The public hearing was closed via a motion.

Fischer asked staff to clarify what sidewalks exist along this property today. Centinario stated both the Hampshire Avenue and West Old Shakopee frontages do have existing sidewalks, but the sidewalk widths do not meet today's Code.

Batterson asked what the widths of the existing sidewalk are today. Centinario stated he believes they are five feet wide. Batterson asked if the existing sidewalks are concrete or bituminous. Centinario stated the sidewalk along Hampshire Avenue is concrete and the frontage along West Old Shakopee Road is a mixture of asphalt and concrete sections.

Bennett asked if there have been any changes to the Code regarding sidewalk replacement since 2010. Centinario stated he is not aware of any Code changes.

Batterson asked if the existing sidewalks on the property connect to other sidewalks to the north and east. Centinario stated there currently is no sidewalk connection from the street to the building on Hampshire Avenue, but that connection is being provided as part of the application. He added the existing sidewalks on the property do connect to adjoining parcels which also have sidewalks.

Bennett asked if this application is the same as the application approved in 2010 and if there was discussion regarding the sidewalks as part of that approval. Centinario stated this application is similar, but not identical to the application in 2010. He stated staff has reviewed the 2010 approval and found no mention of sidewalks as a concern. He explained that the letter of transmittal for the approval of the 2010 application did not enumerate a sidewalk replacement requirement; however, all Code requirements are not listed in the letter of transmittal.

Fischer asked if the widths of the sidewalk connections on the adjoining properties are the same width as the existing sidewalks on the applicant property or if they are up to today's Code. Centinario stated that staff has not looked at the widths of the sidewalks on the adjoining properties, but are likely not up to current Code. He added as those adjoining parcels redeveloped (depending if the level of redevelopment triggers compliance) they would likely be asked to bring the sidewalks along their property up to Code. Centinario noted that the City Legal Department concurs with staff's interpretation of the application being deemed significant redevelopment and that the sidewalk requirements are appropriate. Fischer commented there are large residential areas to both the east and west and having an adequate sidewalk for pedestrians to get back and forth safely would enhance the quality of life in the area.

Bennett stated that since the sidewalk issue comes down to a legal interpretation as to whether the sidewalk improvements are required and we have a legal opinion from the City's Legal Department included in the materials that tells the Commission the sidewalk improvements are required she is

comfortable with that and will be supporting approval of the application with the Code requirements listed in the staff report.

Batterson stated the applicant is proposing to demolish almost half of the existing building with significant modifications and is also proposing significant modification to the parking and landscaping on the parcel. He stated he does not understand how such modifications could not be construed as being deemed significant and is in support of requiring the sidewalk improvements.

Spiess stated the Planning Commission decision on this item is final unless a written appeal is received by 4:30 p.m. on Tuesday, November 25, 2014.

ACTIONS OF THE COMMISSION:

M/Willette, S/Fischer: To close the public hearing. Motion carried 5-0.

M/Bennett, S/Batterson: Having been able to make the required findings in Case 5660B-14, I move to approve the Major Revisions to Final Site and Building Plans to demolish 68,874 square feet of an existing 153,473 square foot warehouse and office building and construct an 81,098 square foot warehouse addition at 10701 Hampshire Avenue subject to the conditions of approval and Code requirements listed in the staff report. Motion carried 5-0.

CONDITIONS AND CODE REQUIREMENTS APPROVED BY THE COMMISSION:

1) Building and site improvements must be limited to those on the approved plans in Case 5660A-14;
2) The Grading, Drainage, Utility, Erosion Control, Traffic Control, Access, Circulation, and Parking plans must be revised for approval by the City Engineer;
3) Connection charges must be determined and satisfied;
4) Sewer Availability Charge (SAC) be determined and be satisfied;
5) An erosion control surety must be provided and approved erosion control measures must be in place and inspected prior to issuance of grading permits;
6) A Stormwater Management Plan must be provided to the City and the Lower Minnesota River Valley Watershed District which meets the requirements of the City of Bloomington Surface Water Management Plan, as well as a maintenance plan to be signed by the property owner and filed of record with Hennepin County;
7) A National Pollutant Discharge Elimination System (NPDES) Construction Site Permit and Storm Water Pollution Prevention Plan (SWPPP) must be provided prior to the issuance of any permits;
8) A Minnesota Department of Health (MDH) approval for watermain work must be submitted or documentation provided that indicates that no MDH approval is required;

and subject to the following conditions:

10) Reconstruct a 10 foot bituminous sidewalk along West Old Shakopee Road and a six foot concrete sidewalk within the aforementioned sidewalk/bikeway easement, as approved by the City Engineer;
11) Alterations to utilities be at the developer's expense;
12) All construction related parking, loading and unloading, staging, and material storage must occur on-site and off of adjacent public streets except as may be approved by the Director of Public Works for a temporary period;
13) Site improvements must include a sidewalk from the west building entry to Hampshire Avenue;

14) The coated exterior finish material remaining on the existing building may be recoated after review and approval by the Planning Manager;

and, while the use and improvements must comply will all applicable local, state, and federal codes, the applicant should pay particular attention to the following Code requirements:

1) Exterior finish materials for the new exterior of the existing building and the addition must meet City Code requirements as approved by the Planning Manager (Sec. 19.63.08);
2) The developer must submit electronic utility as-builts to the Public Works Department prior to the issuance of the Certificate of Occupancy;
3) A landscaping surety must be provided in accordance with Sec. 19.52(h)(5) of the City Code;
4) Landscape plan must be approved by the Planning Manager and must include at least one tree in each new parking island (Sec 19.52);
5) All rooftop equipment on the raised roof portion of the building and the addition must be fully screened (Sec. 19.52.01);
6) Building be provided with an automatic fire sprinkler system as approved by the Fire Marshal (MN Bldg. Code 3802; Uniform Fire Code Ch. 10.306);
7) Fire lanes must be posted as approved by the Fire Marshal (Sec. 8.73);
8) Utility plan showing location of existing and proposed water main and fire hydrant locations must be approved by the Fire Marshal and Utilities Engineer (Sec. 6.20, Uniform Fire Code Ch. 10.301-C);
9) Parking lot and site security lighting for the alterations to the existing building and the addition area must satisfy the requirements of Section 21.301.07 of the City Code;
10) Signage must comply with the requirements of Chapter 19, Article X of the City Code; and
11) Tier 2 TDM plan (Sec. 21.301.09(b)(2)).