

MINUTES  
BOARD OF ZONING APPEALS  
15 W KELLOGG BLVD, ROOM 330  
ST PAUL, MINNESOTA, SEPTEMBER 10, 2018

Continued from 8-27-18

PRESENT: Mmes. Bogen, Swift and Trout-Oertel; Messrs. Clarksen, Rangel Morales and Saylor of the Board of Zoning Appeals; Mr. Warner, City Attorney; Mr. Benner II, Mr. Diatta and Ms. Crippen of the Department of Safety and Inspections.

ABSENT: Daniel Miller\*

\*Excused

The meeting was chaired by Gloria Bogen, Chair.

**Little Grocery (#18-092702) 1724 University Avenue West:** The applicant is requesting a variance of the separation requirement between tobacco products shops in order to operate a new tobacco products shop. The zoning code requires a tobacco products shop to be located at least one-half mile (2,640 feet) from another one. The proposed tobacco product shop would be 2,600 feet from the existing for a variance request of 40'.

Mr. Benner reviewed the case history with a recommendation for approval. Mr. Benner stated that Zoning Staff met with Mr. Warner to discuss this issue. One e-mail was also received from the planner that was involved in writing this ordinance regarding the separation requirement. The separation requirement for the tobacco shops does not have a specific way for staff to measure the distance between shops. The ordinance simply says that the tobacco product shop must be 2,640-feet/half mile away from existing tobacco product shops. It has been a long-standing policy that the way staff measures that distance is between the two closest property lines. Mr. Benner continued that in the staff report he explained how DSI (Department of Safety & Inspections) measured the distance between shops, but he also included the survey submitted by the applicant, in the handout. The applicant for his measurement went from front door of the proposed tobacco products shop to front door of the existing tobacco products shop at 681 Selling Avenue. When measured from front door to front door, while this is not the way that DSI accepts the measurement as the correct way to measure, it does demonstrate that the tobacco products shops are not within a half mile of each other and would meet the spirit of that code. To give the Board a little more information the City does have a definition of a Pawn Shop that also has a separation requirement. It has a very clear way of how the measurement is done. In St. Paul Pawn Shops are not allowed within a mile of each other. There has to be 1 mile of separation between pawn shops. *Sec. 65.531 (b)(1) There is no existing pawnshop within five thousand two hundred eighty (5,280) feet of the proposed location measured from the nearest building wall of the existing pawnshop to the nearest building wall of the proposed use, or if there is no building, to the nearest lot line of the proposed use.* To give an idea, when we have a multi-use building, on one side of the building there is a proposed tobacco products shop and a tattoo shop at the proposed location, at the existing location, Vape Pros at 681 Snelling there is a tobacco products shop next to one other commercial use. Both tobacco products shops are on opposite ends of their properties from each other.

One letter was received from the Association for Non-smokers, opposing the variance request.

No correspondence was received from District 13 regarding the variance request.

The applicant **MUSSIE EMBAYE - Little Grocery**, 1724 University Avenue West, was present. Mr. Embaye stated that he needs a variance to continue his business. In the last six months the City of St. Paul has changed certain rules and regulations that affect how his convenience store with a retail tobacco

license, operates. He would like to convert into a tobacco products shop primarily because of the new laws that will go into effect in November 2018. Along with the laws that changed this July the City Council capped the number of tobacco licenses that can be issued. What he is asking for is in reaction to the City Council's actions on tobacco products. Mr. Embaye stated that he did not think it was fair to go from property line to property line in measuring the distance. The City has made a lot of exceptions in order to relocate businesses to allow the stadium to be built. Midway Shopping Center has gone through a lot of construction, there have been a lot of variances to allow the stadium to be built and to relocate businesses that have been displaced by the construction of the stadium. Variances have been granted to move liquor stores and to allow Target to add a liquor license to their store when they went to a Super Target, they moved their liquor department to the back, the right corner of the store and the City approved it. Big Top Liquor is moving to the old Perkins building which is too close to the Target liquor department, a variance was approved for that\* **(there was not a zoning variance that was approved for this use. It was through the licensing department that this exception was granted)**. There was a tobacco products shop on Maryland and Rice street that appeared before this Board a few weeks ago, that needed 200-feet that was approved. That was 160-feet more than he is requesting, it was approved a few weeks ago. That applicant had an attorney, Mr. Embaye stated that he does not have an attorney. He continued that he is 30-years old, this is his first business. He can see why the previous owners wanted to sell the business. At the moment he has been paying rent and electricity on a store that he cannot operate for profit. Since December of 2017 he has been working and saving on top of paying for the stores rent and utilities. Turning this store into a tobacco products shop is the only viable option that he has at this location because of the new laws. He was naïve when he got into this business, however, he is not opposed to the new laws and restrictions on tobacco products licenses, he has a variance request for 40-feet and hopes that the Board will approved it.

Ms. Swift asked what is the existing building now? Mr. Embaye stated that he has a corner store called Little Grocery, it has been in this location, he wants to say 100 years, the building was built in 1928, he believes that the Little Grocery went into this location in the 1930s. Right now, it is a convenience store, and most of his customers are menthol or flavored tobacco buyers. Until November he can sell those products, he just did not see this as a viable option to continue going forward without applying for the tobacco products shop license. Because that is his main customer base. Mr. Embaye stated that the City is drawing a line from a tattoo shop to the front of another commercial building that does not affect him or the commercial building. He continued that the Vape Pros on 681 Snelling Avenue does not sell any tobacco products, they have a tobacco products shop license but they sell Vape Juice and e-cigarettes, it does not sell any type of tobacco or cigarettes it is more of a lounge. The business that he is proposing does not compare with the Snelling Avenue store, except for the licensing.

Ms. Bogen questioned that Mr. Embaye stated that he has not run the store since December, but is stating that he has customers. Mr. Embaye replied that he purchased the store in August of 2017 and operated it from August 15, 2017 until December 1, 2017 when he decided the store was not viable for him to continue operating it with the little income he was getting. He realized that he needed to make changes and needed to become a tobacco products shop. In February he started working with the African Economic Development Program, to work on requesting a variance. He started working with his local City Council member's aide, he worked with her in the beginning of April on this variance request. On June 28, 2018 the City Council held a vote overnight and did certain things that made him move forward in haste. He applied for his tobacco products shop license while he was still working on this variance request and the City Council voted on the cap for the tobacco products shop licenses. At the moment his store is not open to allow him to save money so that he can make the store what he intended it to be, which is a tobacco products shop.



There was no opposition present at the hearing.

Damone Presley, 3521 Century Avenue North, Mr. Presley submitted a map to the Board and he stated that he is the Director of the Youth Council of the Frogtown/Rhondo Action Network at the Aroura-St. Anthony Neighborhood Development Corporation. These programs give our community members the tools to create a healthier safe community, to live, work and raise their children. They have worked hard with the coalition and other organizations to reduce the influence of the tobacco industry. They supported the restrictions on the sale of flavored and menthol tobacco, because menthol tobacco is easier to start smoking with and harder to quit. Not to mention that the tobacco industry has targeted his community with it for decades. They also supported the recent ordinance that capped the number of tobacco licenses in the City of St. Paul. It makes sense to limit the number of stores that can sell tobacco products. Mr. Presley stated that if the Board looks at the map he submitted it shows in the dark-outlined box that there are already four adult only tobacco shops and three liquor stores that will be able to sell menthol tobacco in our neighborhood. We do not need any more stores selling this poison to our community and our young people. Young people are already exposed to tobacco products enough. Granting this variance will lead to a continuation of young people being exposed to this deadly product and the tobacco industry for advertising it to our community. Our youth and our community is healthier as a result of our work. Please do not reverse that. He urged that the Board deny the variance request, by denying this variance the Board is supporting a healthy community for our young people.

Jeanne Weigum, 1642 Laurel Avenue, submitted a map to the Board. She stated that the map submitted to the Board shows all the tobacco licenses in the entire City. The neighborhood in question here is very heavily blanketed with tobacco products shops, this is precisely why the City passed this ordinances that they did. This is what they are trying to prevent, the only neighborhood that has more tobacco shops or tobacco retailers than the midway area is downtown. This is what the City Council was trying to prevent with their distance requirements. She was present for and supports the ordinances that impose restrictions on menthol and proposed distance requirements between tobacco shops and put a cap on the total number of tobacco shop licenses. The intent of the City Council cannot be misunderstood. They made these ordinance changes to restrict the number of licenses and the density of tobacco licenses. It is the intent of the ordinances to create change in our neighborhoods. She contended that the proposed variance flies in the face of the Council's intent, all three of these ordinances had strong community support. Hundreds of people showed up wearing shirts like hers in support of the menthol ordinance and the other ordinances. There were three different ordinances, with three different votes, which means that there were 21 opportunities by council members to vote for or against these changes. A total of one person voted against the ordinances and twenty council members voted in favor of these changes. The one who voted against would have supported a stronger ordinance. The council has made it clear that they will continue to do things to limit tobacco use by our young people. Two mayors have strongly supported these changes, Mayor Coleman and Mayor Carter. Ms. Wiegum continued that if the Board votes in favor of this variance they will be undermining the will of the people who supported it and of all of the council members and both mayors. The special circumstances claimed by the owner of this store are not special at all, they are the same as every other place that sells tobacco. The intent is to reduce the amount of menthol cigarettes sold in these stores. Nobody has a different situation who has a tobacco license, there is nothing unique except that the wants a variance. The City Council had a half mile in mind when they passed this ordinance, it was not a suggestion, they said a half mile, that was their intent, she hopes that the Board will support that. The City was concerned about small retailers and how the changes would affect them. They have spent substantial resources, they have sought grants, and applied various other resources the City had to help these small stores just like this one, to help them transition to a healthy business model. Lots has been gone into on this issue, she asked that the Board not to undermine those efforts.



Ms. Swift asked if this is strictly on menthol cigarettes? Ms. Wiegum replied that is a restriction where menthol tobacco can be sold. Going forward starting in November 1, menthol can only be sold in tobacco only stores. Ms. Swift asked if Ms. Wiegum knew why the restriction is on menthol only? Ms. Wiegum replied that menthol flavor is the only tobacco flavor allowed in cigarettes, all the other flavors have been banned by the Federal Government. There was heavy tobacco industry lobbying that kept menthol in and it is the only flavor allowed in tobacco. Flavors like chocolate, gummy bears and others are around in cigars and chew which have not been affected. Ms. Wiegum stated that the use of menthol tobacco is much higher in the LGBTQ (Lesbian, gay, bisexual and transgender, queer/questioning), and the African American communities. About 86% of African Americans who smoke, smoke menthol cigarettes and it plays a huge role in the health disparities that affect the African American and LGBTQ communities. This is not an accident these communities have been very heavily targeted. Kool Jazz Festival some of you may remember that, sponsored by a tobacco company. At a time when virtually nobody would advertise in African American publications, Salem and Newport were delighted. The results are a much higher death rates among those targeted populations. Now we are trying to undo the damage done by huge corporations that frankly do not care about black lives.

Ms. Swift asked about the businesses on the map that sell tobacco, how many of those businesses are owned by people of color or LGBTQ community? Wiegum replied that there are almost none. The people who testified were almost all Caucasian, to the best of her knowledge.

Mr. Embaye stated that he has no objections to what Wiegum says, he has a different view. Smoking is a choice, he does not target 18-year-olds, he is in favor of increasing the age for tobacco use to 21. He believes that there are 242 tobacco retail licenses in the City of St. Paul that sell or distribute tobacco. He believes that 95% of those are owned by Caucasians or other than African American. He was able to find one other African American owner of a tobacco store, he thinks that the address is 445 Dale Street. Newport's and flavored tobacco he feels is a form of gentrification and discrimination. Changing the prices of products that are primarily used by African Americans in communities that want to gentrify. Mr. Embaye stated that he was not going to get into that, but single cigars that used to sell for \$1.00 four years ago and was not marketed to kids, those prices went up to \$2.74 by law, for a single cigar that used to cost \$1.00. Other laws that target menthols, as stated by the previous speaker, 87% of users are African Americans. Nobody forced them to purchase them, the majority of people that come to his store are not children, they are not kids, he has never gotten a ticket for selling to anyone under the age of 18. He feels that this is a good cause, but the City Council has changed the laws to fit a certain demographic and view they want of the City. Mr. Embaye stated that he feels that all these laws that are being enacted are disproportionately affecting a certain segment of the population that live in this community. Every single gas station does not sell a pack of Newport, who does that disadvantage? If he was one of the 87% of smokers in the City of St. Paul, he would have to find an alternative means of finding something that he used to be able to get at the corner stores. He feels that if someone lights up a cigarette, it's a cigarette, it does not matter if they call it lite, menthol, reds, whatever, those people are still allowed to go to any gas station, he can go to Ford Parkway and Snelling and those people are not inconvenienced. If he goes to Dale and Thomas those people are inconvenienced, just because certain people in certain neighborhoods smoke a certain thing. He does not feel that it is right to dictate where and when they can buy that product. Everyone who comes to his store are above the age to purchase, he does not do any advertisement and he is not big tobacco. He is just trying to make a living in St. Paul where he has lived for the past 25 years. He finds it ridiculous that the City is inconveniencing a certain demographic in the City.

Mr. Clarksen questioned that Mr. Embaye has a license to operate a convenience store? Mr. Embaye



stated he has a current license, there are two types of tobacco licenses. The first is tobacco retail which most convenience stores have, but come November all those bans take effect, which means that he is selling products that nobody that walks into his store buys. The corner of University and Snelling Avenues is the busiest intersection in the City of St. Paul. He is a businessman, he is going to go where the money is at, this location is in harmony with the City's incentive for businesses in the Lite Rail corridor. Mr. Clarksen stated that Mr. Embaye currently has a tobacco license. Mr. Embaye stated that he can sell any tobacco products. Mr. Clarksen stated that Mr. Embaye has applied for a license to convert to a tobacco products shop, where he does not sell convenience type food. Mr. Embaye replied he is going to selling strictly tobacco. Mr. Clarksen asked if at the point that Mr. Embaye made that application was the menthol plan in place yet. Mr. Embaye replied it does not go into effect until November 2018. He was told the City officials to apply for a variance and a tobacco product license at the same time.

Mr. Clarksen questioned that he saw somewhere in this there was some discussion about requesting a variance for a limited time. It is his understanding that if this Board approves the variance this would be an action that would be permanent and would not have any type of temporary application, is that correct? Mr. Benner replied that he does not understand the question. Ms. Bogen commented that maybe Mr. Clarksen is asking if the variance will remain at this address? Mr. Clarksen asked how temporary or permanent would the BZA's approval of this request be? If the Board approves this? Mr. Benner replied variances run with the land. Once the variance gets approved, or if it gets approved the variance will stay on that property. However, he thinks it is important to make the distinction between a tobacco products license and a variance. If Mr. Embaye decided to move to a different location in the City, that license would not go with him, he would have to reapply, following the same process he is following now. However, if someone else wanted to move into that location and wanted to open up a tobacco products shop that would be allowed by the variance.

Mr. Warner stated he wanted to clarify that. The variance will allow the tobacco products shop, but the City has capped the number of licenses, there would have to be an available license in order to open another tobacco products shop.

Ms. Trout-Oertel asked Mr. Benner about the last paragraph of finding four, she would like some clarification on that, it seems like the applicant is saying that the applicant would be penalized as opposed to another business owner in the neighborhood. Mr. Benner stated that what that finding is essentially saying is that fourth finding is that the current location at 681 Snelling Avenue Vape Pros would be allowed to continue to sell their e-cigarettes products while the ordinance does not make a distinction between plant based tobacco products like Mr. Embaye is wanting to sell verses e-cigarettes or E-juice cigarettes as they are called, the ordinance still looks at it as a tobacco product. What this is saying is that one person should not be allowed to continue their business and the other one not, when they are selling virtually the same type of products. The unique circumstance is that the tobacco products shop is already in existence and that is not a circumstance that was created by Mr. Embaye. Ms. Bogen questioned hasn't he created the circumstance by wanting to sell menthol after November 1, 2018? Mr. Benner replied he supposed so, but there are other tobacco products that Mr. Embaye could sell. Ms. Bogen asked what can't he sell? It is menthol, correct? Mr. Benner replied correct. Ms. Bogen stated that Mr. Embaye could sell every other tobacco product, if he wanted to without getting this license, correct? Mr. Benner replied correct. Ms. Bogen stated that the only thing that Mr. Embaye is asking for this license for is to sell menthol cigarettes or menthol products, starting in November. Mr. Embaye stated it is not just a ban on menthol, it is a ban on flavored tobacco. Ms. Bogen replied no, it is just menthol. Mr. Embaye stated it is his understanding that it is flavored tobacco products. Mr. Benner stated that certain flavors of tobacco have already been banned, menthol is the next step to get banned. Ms. Bogen stated as she reads



the ordinance come November only a tobacco products shop can sell menthol. A convenience store, mom & pop store, gas station or something like that has to stop selling menthol products come November. What Mr. Embaye is trying to do is change to a tobacco products shop for the sole reason so that he can sell menthol. Mr. Embaye replied not his sole reason. Ms. Bogen asked what else is he going to be selling that he cannot now? Mr. Embaye replied menthol products. Ms. Bogen stated that he is already selling that now. Mr. Embaye stated that he wants to obtain 90% of his income from the store from tobacco products.

Ms. Bogen asked what is the limit of tobacco products that a shop can sell? If he sold 90% now would that be in violation of his current license? Mr. Benner replied that he is not familiar with any laws that would cap the percentage of what a typical convenience store can sell. That would be more of a licensing question. There is no zoning ordinance that would limit. Mr. Warner stated he does not know the answer to that, he could find out.

Mr. Saylor stated that this keeps coming back to the measurement question. He read the second paragraph from the staff report and stated that some of this seems to waffle to him, and brings to mind precedent setting. He asked Mr. Warner to address it. Mr. Warner stated that this particular ordinance does not specify a point to measure from and to. Traditionally the City has measured from property line to property line. As a result of this we will probably go back to the Planning Commission and have them recommend a particular point as they have done in the Pawn Shop Ordinance, to make this clearer. The fact of the matter is that staff has always measured these applications from property line to property line. As one of the speakers testified today the City Council wanted a half mile, that seems to be a reasonable basis to establish a half mile. It is a certain distance and by using a property line there is a certain reference point to measure out from. The staff report shows that applicant here has proposed a different way of measuring the distance than what has been the City's policy in the past and the staff recommendation seemed to accept that. If staff accepts that, then moving forward, that would be the preferable way to measure the distance and it is preferable that there be consistency. If staff uses that method than staff will have to use the same method going forward in making their calculations. Ms. Bogen stated that if they were going to do it that way and had done it that way for this there would not be any need for this variance. Staff is not calculating the distance from door to door yet. Mr. Warner stated that it is his understanding that would be the recommendation on how to measure the distance now, from door to door. Since staff is recommending approval of this application. Mr. Benner replied that he is recommending approval because 40-feet is a reasonable shortfall of the distance. The building is only 40-feet away from meeting the requirement, therefore, he felt that it was reasonable request to approve the variance. Not necessarily saying that there is a new way that staff should be measuring the distance. As Mr. Warner stated this ordinance is not as clear as the pawn shop ordinance, but at this point he thinks that allowing the 40-foot shortfall is reasonable. Mr. Benner is not suggesting that we accept Mr. Embaye's way of measuring the distance. It offers a different perspective to the Board. Based on the traditional method of measuring separation requirements, the property is 40' too close to another tobacco product shop.

Mr. Saylor stated if it has been a long-standing policy to measure from property line to property line, he thinks that Mr. Benner is making a stand on this. Mr. Benner stated that he thinks that 40-feet is a reasonable shortfall. He is simply giving the Board the two options of looking at this and the ordinance is asking if the property will be used in a reasonable manner. He felt that recommendation was justified.

Mr. Clarksen stated he was trying to figure out where the front door is located. Ms. Bogen stated we did not do photos. Staff brought up the two photos of the two properties. Mr. Clarksen asked where the entrance to the business is located. Mr. Embaye replied it is to the right-hand side of the building. Mr.



Clarksen and Mr. Benner discussed the sizes of the lot at 681 Snelling Avenue. Mr. Clarksen thought measuring from a center line of the property may get the number closer to compliance. Ms. Bogen referred to the previous hearing and the reasons for all the discussion about where the measurement is taken from, noting that if the measurement is made from the front doors, on a larger property the business could move within that site and either move into or out of compliance by changing their location in the building.

Ms. Trout-Oertel stated that she is a little uncomfortable with staff not taking a stance as to what they will do going forward. The only question is this application, however, in terms of finding a rational for justifying the variance, she feels that the Board does not want this just specific for this project. Mr. Benner stated that the specificity here is that this property is unique in that it is a multi-tenant building and there are three different uses within this property. An inoperable convenience store, a tattoo shop, and residential uses. It is specific to this site, if there is another case that may come up, he thinks it is important to consider the margin of difference, which is 40-feet here, which is the only case he is making to the Board. He is not trying to demonstrate to the Board that the way that Mr. Embaye has presented to the Board is the correct way to measure. The correct way is staff's long-standing policy and that is what he stands next to. However, he felt that the distance of only 40-feet whereas the previous case a couple of weeks ago was 200-feet from compliance. He felt that this falls within an area that seemed to be fair to move forward with. Of course, the Board could overturn that recommendation. Ms. Trout-Oertel stated that he wants to maintain the right and ability to consider each project separately, on the basis of the facts. Mr. Benner replied under this circumstance, yes. For reasons that he and Mr. Warner have raised there is room for some clarification that we can send to the Planning Commission for a text amendment to have a more specific way of measuring, as we do for Pawn Shops.

Ms. Bogen stated that she is having a problem with meeting the findings. She does not see that the applicant has established a practical difficulty in complying with the provision and that he can sell everything that he is currently selling, his practical difficulty is that he cannot sell menthol cigarettes. Is that a practical difficulty? Then economic considerations alone do not constitute practical difficulties. The applicant did say that he wanted to make a lot of money, and apparently thinks that menthol is the way to go. Ms. Bogen stated that she has a problem with that finding and she has a problem with the same paragraph as Ms. Trout-Oertel.

Ms. Swift stated that in response to what Ms. Bogen was saying about the menthol cigarettes, she thinks the difference is based upon the clientele that walks through the door, which cigarettes would be more likely to be sold. As mentioned menthol cigarettes are smoked mostly by the black community and if that is the base of the clientele that would make a difference in the people that come into the store and how viable the business is.

Hearing no further testimony, Ms. Bogen closed the public portion of the meeting.

Mr. Saylor moved to deny the variance and resolution based on finding 3 and economic considerations.

Mr. Rangel Morales asked that Mr. Saylor restate his finding 3 argument. Mr. Saylor stated that the discussion before Mr. Rangel Morales arrived was about measuring and the long-standing policy of how they measure the distance between properties. Even though it is a long-standing policy, Mr. Benner felt it was subjective. And Ms. Bogen stated that this store can exist the way it is now, selling tobacco products, food and the only reason that the applicant is asking for the variance is so that he can get a tobacco products shop license so that he can sell menthol. That is the only thing he would not be able to sell after November 1, 2018. Ms. Bogen stated that she did not think that it was a practical difficulty that the

applicant cannot sell menthol if he cannot get the license. Mr. Rangel Morales asked if staff got any information about the percentage of tobacco sold by this applicant, is getting 75% of his business from tobacco products it was not enough to meet the definition of a tobacco shop, but not having this would mean that he would essentially be out of business. Ms. Bogen replied no, he would not be out of business, the only reason for getting this new license that requires a half mile separation between businesses is to be able to sell menthol cigarettes in November. In November he can sell everything he is selling now, he just cannot sell menthol cigarettes, that is the only thing that is changing. Mr. Rangel Morales questioned how much of Mr. Embaye's 75% of his tobacco sold, what percentage of those sales are menthol? Ms. Bogen stated he can still sell 75% tobacco after November 1<sup>st</sup>, he just cannot sell menthol. If he gets the license he has to up his sales to 90%. Mr. Rangel Morales stated that he is concerned about putting a business out of business, for 40-feet. That is what he is trying to get at. The way the applicant proposed to measure it, which is not the way the City is measuring. Blasted Ink is located where the measurement is taken from and has approximately a 40-foot width of façade, if the measurement was taken from the applicant's property line in the building they would probably have the correct distance from the other shop.

Mr. Clarksen stated that the applicant has a convenience store license and a tobacco license, he wants to convert to a full tobacco store where the majority of his inventory will be tobacco based products. That is the reason why he needs the variance, it is not whether he is selling menthol or not, that is a complete aside. Ms. Bogen replied no it is not. He is already selling 75% tobacco products, he could sell 90% tobacco products in the store. But only people with the tobacco products license will be able to continue to sell menthol cigarettes in November, people with convenience stores will not be able to. That is the only thing that license is giving him, that and being at 90% of his sales from tobacco.

Mr. Rangel Morales stated it is true that the applicant sells other things, he could be selling t-shirts or other things, whether that is keeping him in business is the concern that he has. That is probably why they passed the ordinance and now the Board is dealing with a lot of other issues as to why this regulation was passed. But in this particular case the Board is talking about 40-feet.

Ms. Swift commented, coming back to the 75% of his sales being tobacco, how much of that is menthol cigarettes. Also measuring from property line to property line is not a set procedure, it is just the standard of what has typically been done in the past. Now that someone is objecting that. Mr. Benner replied for clarification Mr. Embaye is willing to accept that his property does not meet the distance requirement, which is why he is here. Mr. Embaye is not appealing the decision that staff has made saying that he is 40-feet too close, he is asking for a variance of that condition. Ms. Swift questioned that it is an actual step, the City measures from property line to property line? Mr. Benner replied yes, it is a policy that the zoning staff has used.

Ms. Trout-Oertel stated that the fact remains that the applicant is at a disadvantage due to an ordinance that is coming up in November, because in that neighborhood menthol cigarettes are what sells as opposed to other cigarettes. The ordinance that is coming up is going to affect him.

Mr. Warner stated for the benefit for the new commissioners, under Minnesota law when there is a staff recommendation to approve, and the Board moves to deny the application, each Boardmember must state their reasons if they are going to join in that motion. It can be as simple as the reasons given by the maker of the motion, Boardmembers can say that they join in the reasons given by the maker of the motion, or can add their own reason. On a voice vote each person that is voting in favor of the motion, has to state their reason why they are joining that motion for denial. Mr. Warner stated that the recommendation here is to approve and the motion here is to deny.




Ms. Trout-Oertel seconded the motion, which failed on a roll call vote of 2 (Saylor finding 3, Bogen finding 3) - 4(Trout-Oertel, Rangel Morales, Swift, Clarksen).

Mr. Rangel Morales moved to approve the variance and resolution based on findings 1 through 6.


Mr. Clarksen seconded the motion, which passed on a roll call vote of 4-2(Saylor, Bogen).

Submitted by:



Jerome Benner II

Approved by:



Diane Trout-Oertel, Secretary