

**CITY OF SAINT PAUL
BOARD OF ZONING APPEALS RESOLUTION
ZONING FILE NUMBER: 11-282158
DATE: January 9, 2012**

WHEREAS, Kevin D. Vanderaa has applied for a variance from the strict application of the provisions of Section 63.207 of the Saint Paul Legislative Code pertaining to off-street parking requirements in order to obtain a wine and beer license for the Cupcake Restaurant. The previous retail use required 3 off-street parking spaces. The new use requires 10 off-street parking spaces for a variance of 7 off-street parking spaces, in the B2 zoning district at 949 Grand Avenue. PIN: 022823310077; and

WHEREAS, the Saint Paul Board of Zoning Appeals conducted a public hearing on January 9, 2012 pursuant to said application in accordance with the requirements of Section 61.601 of the Legislative Code; and

WHEREAS, the Saint Paul Board of Zoning Appeals based upon evidence presented at the public hearing, as substantially reflected in the minutes, made the following findings of fact:

- 1. The variance is in harmony with the general purposes and intent of the zoning code.*

This finding can be met. The applicant wants to open a new restaurant along Grand Avenue with a capacity of 37 seats. In addition to serving cupcakes, other bakery items as well as sandwiches, salads, and small plates, the restaurant desires to also serve beer and wine. When a restaurant serves beer and wine, the zoning code requires more parking. Because the proposed site only has 3 off-street parking spaces and 10 are required, a parking variance is necessary. If beer and wine were not served, the site has adequate off-street parking.

The applicant has proposed to take steps to address the parking shortfall. The applicant will provide bicycle parking in the front and rear of the building. This will reduce the applicant's parking shortfall from 7 spaces to 6 per Leg. Code § 63.210.(b). The applicant has also entered into a lease agreement for 6 parking spaces with Anderson Cleaners. However, the lease provides that these 6 spaces can be reduced to 4 spaces if Anderson determines it needs the extra spaces. In addition, the parking lot for Anderson Cleaners is located approximately 300 feet from Cupcakes. Accordingly, the parking agreement cannot be accepted as a shared parking agreement under the strict provision of code as these spaces are considered required parking spaces for Anderson. Nevertheless, if the applicant insures that his employees use the Anderson site spaces instead of the 3 spaces on site or public street parking in the immediate vicinity of the proposed restaurant, and provided that the lease agreement for 6 parking spaces is maintained so long as the proposed restaurant serves beer and wine, the general purpose and intent of the code can be met because the lease serves to lessen congestion on the public streets immediately surrounding the proposed restaurant. However, if Anderson reduces the available spaces provided under the lease to less than 6 spaces, the

applicant must immediately inform the City so that a determination can be made whether the reduced parking for the restaurant adversely impacts properties surrounding it due to increased parking or traffic congestion.

2. *The variance is consistent with the comprehensive plan.*

This finding is met. This parking variance is generally consistent with the comprehensive plan goals to support businesses that would provide opportunities for employment.

3. *The applicant has established that there are practical difficulties in complying with the provision that the property owner proposes to use the property in a reasonable manner not permitted by the provision. Economic considerations alone do not constitute practical difficulties.*

This finding is met. The applicant wants to lease space in an existing commercial building with limited on-site parking. The commercial space has been vacant for sometime. The use proposed by the applicant is a permitted use in this zoning district. Because of the mixture of commercial and residential uses on this well established portion of Grand Avenue, it is not possible to provide on this site the additional parking required under the zoning code. In order to lessen the impact of the proposed use on surrounding properties, the applicant has obtained an agreement with a nearby business to share parking spaces that business does not presently need. Although this agreement cannot be treated as a shared parking agreement under the strict provisions of the code and given the lack of available off-street parking on this particular portion of Grand Avenue, the parking agreement, provided it is maintained so long as the applicant serves beer and wine, is a reasonable attempt to comply with the off-street parking requirements of the code.

4. *The plight of the landowner is due to circumstances unique to the property not created by the landowner.*

This finding is met. The subject property contains an existing commercial building that is properly zoned for the proposed use. The property has limited off-street parking with no room to provide additional parking on site. This is a condition that was not created by the property owner.

5. *The variance will not permit any use that is not allowed in the zoning district where the affected land is located.*

This finding is met. A restaurant with wine and beer is a permitted use in this zoning district. If granted, the requested variance will not change or alter the zoning classification of this

property.

6. *The variance will not alter the essential character of the surrounding area.*

This finding is met. There already are a number of restaurants and other businesses that operate with limited off-street parking along Grand Avenue. Provided the applicant maintains the parking agreement for six spaces with the nearby business as presented to the Board, the requested variance, if granted, will not alter the essential character of the surrounding area.

NOW, THEREFORE, BE IT RESOLVED, by the Saint Paul Board of Zoning Appeals that the request to waive the provisions of Section 63.207 to allow a variance of 7 off-street parking spaces, in order to obtain a wine and beer license for the Cupcake Restaurant on property located at 949 Grand Avenue; and legally described as Summit Park Addition Tost Pa Lot 22 Blk 27 is hereby approved; in accordance with the application for variance and the site plan on file with the Zoning Administrator subject to the following conditions:

1. The applicant must maintain a lease for the use of 6 parking spaces in the Anderson Cleaners parking lot located at 978 Grand/54 South Chatsworth. The terms of this lease must be substantially similar to the lease presented by the applicant at the public hearing. A copy of the lease in effect must be provided to the Department of Safety and Inspections which reserves the right from time to time to make inquires as to the terms and status of the lease.
2. The spaces in the existing parking lot behind the building at 949 Grand must not be used by employees of the restaurant, restaurant employees must use the Anderson parking.
3. The applicant must obtain a fence permit to install, and maintain, a fence along the west property line of 949 Grand in order to separate its existing parking lot from that of the adjacent property. The fence shall be installed after a site plan review approval by the department of safety and inspections.
4. The applicant must install bike racks in the front and rear of the property no later than June 1, 2012.
5. The applicant must provide signs in the Anderson Cleaner's parking lot to inform the public that customers for Cupcake can park there.

MOVED BY: Mr. Ward

SECONDED BY: Mr. Wilson

IN FAVOR: 6

AGAINST: 0

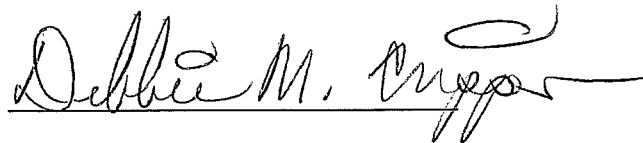
MAILED: January 10, 2012

TIME LIMIT: No decision of the zoning or planning administrator, planning commission, board of zoning appeals or city council approving a site plan, permit, variance, or other zoning approval shall be valid for a period longer than two (2) years, unless a building permit is obtained within such period and the erection or alteration of a building is proceeding under the terms of the decision, or the use is established within such period by actual operation pursuant to the applicable conditions and requirements of the approval, unless the zoning or planning administrator grants an extension not to exceed one (1) year.

APPEAL: Decisions of the Board of Zoning Appeals are final subject to appeal to the City Council within 10 days by anyone affected by the decision. Building permits shall not be issued after an appeal has been filed. If permits have been issued before an appeal has been filed, then the permits are suspended and construction shall cease until the City Council has made a final determination of the appeal.

CERTIFICATION: I, the undersigned Secretary to the Board of Zoning Appeals for the City of Saint Paul, Minnesota, do hereby certify that I have compared the foregoing copy with the original record in my office; and find the same to be a true and correct copy of said original and of the whole thereof, as based on approved minutes of the Saint Paul Board of Zoning Appeals meeting held on January 9, 2012 and on record in the Department of Safety and Inspections, 375 Jackson Street, Saint Paul, Minnesota.

SAINT PAUL BOARD OF ZONING APPEALS



Debbie M. Crippen
Secretary to the Board