

CITY OF SAINT PAUL
BOARD OF ZONING APPEALS RESOLUTION
ZONING FILE NUMBER: 18-092702
DATE: September 10, 2018

WHEREAS, Mussie Embaye – Little Grocery has applied for a variance from the strict application of the provisions of Section 65.535 of the Saint Paul Legislative Code pertaining to 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' in the T3, CC zoning district at 1724 University Avenue West. PIN: 332923420005; and

WHEREAS, the Saint Paul Board of Zoning Appeals conducted a public hearing on September 10, 2018 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.*

The zoning code defines a “Tobacco products shop” as a retail establishment with a principal entrance door opening directly to the outside that derives more than ninety (90) percent of its gross revenue from the sale of loose tobacco, plants, or herbs and cigars, cigarettes, pipes, and other smoking devices for burning tobacco and related smoking accessories and in which the sale of other products is merely incidental. "Tobacco products shop" does not include a tobacco department or section of any individual business establishment with any type of liquor, food, or restaurant license.

The existing convenience store is not a tobacco products shop as defined above. In November of 2017, the City Council passed an ordinance prohibiting the sale of menthol cigarettes at convenience stores. Consumers will only be able to buy menthol cigarettes at tobacco product shops as defined in Section 65.535 of the Zoning Code and in liquor stores, effective November 1, 2018.

The applicant’s convenience store is within a multi-tenant building. The zoning code requires a tobacco products shop to be located at least one-half mile, 2,640 feet, from another tobacco products shop. This is determined by measuring the distance between the two closest points from property line to property line. Because there is an existing shop already operating 2,600 feet away from this site at 681 Snelling Avenue, the proposed shop cannot be established without the requested variance.

The intent of the T2, traditional neighborhood zoning district, is to foster and support compact, pedestrian-oriented commercial development that, in turn, can support and increase transit usage. This building is located along the Light Rail Transit (LRT) Green Line. This business serves the commuters traveling along the Green Line and residents from adjacent neighborhoods. The proposed use is in harmony with the general purposes and intent of the zoning code. This finding is met.

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

There are a number of businesses on this commercial stretch of University Avenue West. The Comprehensive Plan (Strategy 1.46) “encourages retail establishments located in close proximity to each other” because the concentration “creates a synergy that benefits all businesses”, resulting in more opportunities to attract new businesses as well expand existing ones. The proximity of multiple businesses allows customers to walk between the different destinations without having to drive between them.

Additionally, the applicant’s proposed business is locally owned and operated. The Economic Strategy of the Comprehensive Plan includes creating a climate conducive to economic self-sufficiency and growth by fostering economic development activities and attracting businesses to Saint Paul. This request is in keeping with Strategy 1.46 of the Comprehensive Plan and its goal to support local businesses. This finding is met.

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.*

Currently, the applicant’s existing convenience sells tobacco products, including the sale of menthol cigarettes. The applicant’s store has legally sold menthol cigarettes at this location for several years. This convenience store is within a multi-tenant building and it is not located near the property line where the separation measurement was taken from.

The zoning code requires that a tobacco products shop is 2,640 feet from an existing one. This is determined by measuring from closest points between the properties. Under this application, the closest distance between each property line measured from the northeast corner of the proposed shop to the southwest corner of the existing shop at 681 Snelling, is 2,600 feet. This provision of the zoning code does not dictate how the distance between each property should be computed; it has been a long-standing policy of the zoning staff to measure the closest distance from property line to property line.

The certified survey provided by the applicant indicates the proposed shop would be 2,716 feet from the existing shop at 681 Snelling. The measurement on the survey is taken from the front door of the proposed shop to front door of the existing one. It would be reasonable to allow the proposed shop to operate because its location meets the intent of the zoning code to discourage a concentration of tobacco products shops. This finding is met.

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

As stated above, the City of Saint Paul passed an ordinance prohibiting the sale of menthol cigarettes in convenience stores, such as the applicant's, effective November 1, 2018.

As a result, the applicant will have to cease the sale of menthol cigarettes beginning on the effective date. The applicant is not proposing to sell anything different than what he already has been selling for many years on this property. The ordinance that passed could potentially impact the applicant's business in a detrimental way.

Furthermore, this property is already within 2,640 ft. of another business that currently sales menthol cigarettes. It would be a plight to the landowner to cease the sale of one of his products and let the other business owner continue. The location of the convenience store in relation to the existing tobacco products shop is a circumstance unique to the property not created by the landowner. This finding is met.

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

This property is zoned T2, traditional neighborhood zoning district. If granted, this variance will not allow a use that is otherwise not permitted. This finding is met.

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

This section of University has a variety of commercial uses. This proposed tobacco shop would not alter the essential character of this neighborhood. This finding is met.

NOW, THEREFORE, BE IT RESOLVED, by the Saint Paul Board of Zoning Appeals that the provisions of Section 65.535 are hereby waived to allow the tobacco product shop to be 2,600 feet from the existing for a variance request of 40' on property located at 1724 University Avenue West; and legally described as Howard Park Lots 10 Thru Lot 13; in accordance with the application for variance and the site plan on file with the Zoning Administrator.
IS HEREBY APPROVED.

MOVED BY: Rangel Morales

SECONDED BY: Clarksen

IN FAVOR: 4

AGAINST: 2

MAILED: September 11, 2018

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 September 10, 2018 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