

BOARD OF ZONING APPEALS STAFF REPORT

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TYPE OF APPLICATION: Administrative Review **FILE #**14-199046

APPLICANT: BrianAltonMcClay-Alton, PLLP for property owner Dennis P. Getten

HEARING DATE: May 28, 2014

LOCATION: 1338 BAYARD AVENUE

LEGAL DESCRIPTION: Hacketts Sub Of B4 Lex Park 5 Lot 15

PLANNING DISTRICT: 15

PRESENT ZONING: R4

ZONING CODE REFERENCE: 60.104; 61.701; 65.511

REPORT DATE: May 21, 2014 **BY:** Yaya Diatta

DEADLINE FOR ACTION: June 23, 2014

DATE RECEIVED: April 25, 2014

A. **PURPOSE:** An appeal of a decision by the Zoning Administrator that the proposed use of the property at 1338 Bayard Avenue for Getten Credit Co., a state licensed regulated lender, is an alternative financial establishment which is not a permitted use in this R4 one family residential zoning district.

B. **SITE AND AREA CONDITIONS:**

Surrounding Land Use: Residential uses to the north, south, east, and west.

C. **CODE CITATIONS:**

Sec. 60.104. Construction of language.

The following rules of construction apply to the text of this code:

(a) The particular shall control the general.

Sec. 61.701. Administrative appeals.

- (a) The board of zoning appeals shall have the power to hear and decide appeals where it is alleged by the appellant that there is an error in any order, requirement, permit, decision or refusal made by the zoning administrator in carrying out or enforcing any provision of this code.

Sec. 65.511. Alternative financial establishment

A person, firm, association, corporation or partnership engaged in the business or service of check-cashing or making loans to be repaid in one (1) lump sum or in installments over a set period of time, either collateralized or not, for which there is a fee or service charge, or interest received, including but not limited to loans collateralized by personal check, payroll check, wage assignment or personal property title, or collateralized with the promise to relinquish possession of any personal property upon default. Alternative financial establishment includes but is not limited to consumer small loan companies, currency exchanges, industrial loan and thrifts, and regulated loan companies, as defined and licensed by the Minnesota Department of Commerce. Alternative financial establishment does not include federal or state chartered banks, credit unions, or savings banks, nor does it include a person, firm, association, corporation or partnership that provides the service of cashing checks, drafts, money orders, or travelers checks for a fee, incidental to the person's primary business and the charge for cashing a check or draft does not exceed one dollar (\$1.00) or one (1) percent of the value of the check or draft, whichever is greater.

Standards and conditions:

- (a) The alternative financial establishment shall be located at least one hundred fifty (150) feet from any lot in a residential district or lot occupied with a one-, two-, or multiple-family dwelling, measured in a straight line from the closest point of the building in which the business is or is to be located to the closest point of the residential property line.
- (b) No alternative financial establishment shall be located within two thousand six hundred forty (2,640) feet of another alternative financial establishment, measured from the nearest building wall of the existing establishment to the nearest building wall of the proposed use, or if there is no building, to the nearest lot line of the proposed use.
- (c) No alternative financial establishment shall be located within one thousand three hundred twenty (1,320) feet of any pawnshop, measured from the nearest building wall of the existing establishment to the nearest building wall of the proposed use, or if there is no building, to the nearest lot line of the proposed use.

D. FINDINGS:

- 1. In March, 2014, the Department of Safety and Inspections (DSI) was informed that Getten Credit Co., located at 202 Snelling Avenue North, was moving to 1338 Bayard Avenue. A DSI Inspector investigated this information and found that Getten Credit Co. had already moved and was operating at 1338 Bayard Avenue which is located in

the R4 one family residential zoning district.

1338 Bayard Avenue was zoned for residential use prior to 1975 and has historically been a mixed commercial-residential building. A December 2006 certificate of occupancy inspection indicated that there were no residential tenants in any portion of this two-story building and that a commercial use was occupying both floors. The commercial occupancy of the entire building was a violation of the zoning code. In 2007, a legal nonconforming use permit to expand this existing commercial use to the second floor was approved by the Planning Commission. See, PC Resolution No. 07-043-352. The current Certificate of Occupancy for 1338 Bayard Avenue is for an office (low-rise) "B" occupancy. For zoning purposes, Getten Credit Co. is not considered an office use.

According to the Minnesota Department of Commerce, Getten Credit Co. is classified as a "licensed regulated lender." Zoning Code Sec. 65.511, defines an "alternative financial establishment" to include a "regulated loan company." A "licensed regulated lender" and a "regulated loan company" are one in the same: alternative financial establishments. Regulated loan companies are not permitted uses in the R4 zoning district. Likewise, a regulated loan company is not an "office use" allowed under the 2007 nonconforming use permit.

2. The applicant is appealing the order stating that the Zoning Administrator erred in determining that Getten Credit Co.'s present use of the property is not an office use permitted under the 2007 nonconforming use permit.

Although Getten Credit Co. may operate like an office, the specific nature of the use meets the definition of an alternative financial establishment. Leg. Code § 60.104 states that "the particular shall control the general." Getten Credit Co. operates as an alternative financial establishment which is a more particular use than a general office use. Alternative financial establishments are first permitted in a B3 zoning district with a conditional use permit while an office use is first permitted in T1 zoning district.

3. The applicant is appealing the order stating that the Zoning Administrator erred in determining that Getten Credit Co. is not properly licensed to conduct business at 1338 Bayard Avenue.

As of the April 15, 2014 enforcement letter, the Zoning Administrator had confirmed with the Minnesota Department of Commerce that Getten Credit Co. held a current registered lender license to operate at 202 Snelling Avenue North. Getten Credit Co. did not have a current registered lender license to operate at 1338 Bayard Avenue. In addition, as the date of this staff report, no information has been submitted which would have verified that the Minnesota Department of Commerce has issued a license to Getten Credit Co. at 1338 Bayard Avenue.

Whether Getten Credit Co. possessed a license from the Minnesota Department of Commerce to operate at the Bayard Street address is irrelevant as to whether there is a zoning violation. An alternative financial establishment is not permitted at this location. The existence of a state license is irrelevant to the zoning existence of a zoning violation.

- E. **DISTRICT COUNCIL RECOMMENDATION:** As of the date of this report, staff has not received a recommendation from Planning District 15.
- F. **CORRESPONDENCE:** As of the date of the staff report, 9 documents from adjacent property owners have been received objecting to this administrative appeal.
- G. **STAFF RECOMMENDATION:** Based on findings 1 through 3, staff recommends that the Board find that the Zoning Administrator did not err in determining that Getten Credit Co. is an alternative financial establishment not permitted to operate in the R4 zoning district and, further, that Getten Credit Co. is not an "office use" as allowed under the 2007 nonconforming use permit.

MINUTES OF THE MEETING OF THE BOARD OF ZONING APPEALS
CITY COUNCIL CHAMBERS, 330 CITY HALL
ST PAUL, MINNESOTA, MAY 28, 2014

PRESENT: Mmes. Maddox, Porter and Bogen; Messrs. Courtney, Saylor and Wilson of the Board of Zoning Appeals; Mr. Warner, City Attorney; Mr. Diatta, Ms. Lane and Ms. Crippen of the Department of Safety and Inspections.

ABSENT: Daniel Ward,
Gloria Bogen*, & Thomas Saylor* had to leave early.

*Excused

The meeting was chaired by Joyce Maddox, Chair.

McClay-Alton, PLLP (#14-199046) 1338 Bayard Avenue : An appeal of a decision by the Zoning Administrator that the proposed use of the property at 1338 Bayard Avenue for Getten Credit Co., a state licensed regulated lender, is an alternative financial institution which is not a permitted use in this R4 one family residential zoning district.

Mr. Diatta showed slides of the site and reviewed the staff report, finding that the Zoning Administrator did not err in determining that Getten Credit Co. is an alternative financial establishment not permitted in the R4 zoning district and is not an office use as allowed under the nonconforming use permit.

Four letters were received supporting the variance request and sixteen letters in opposition were received by staff.

One letter was received from District 15 opposing the variance request. The District Council does not support this type of business in a residential area. However, if the Board should approve the variance and allow Getten Credit to continue at this address, the District Council has submitted some conditions in which they wish the business to operate under.

Mr. Courtney asked Mr. Diatta if the reasons that Getten cannot be located here is because they did not get proper license at the Department of Commerce. Mr. Diatta replied that is not the issue. The main issue is that the property was allowed as an office, they have a non-conforming use permit to operate as an office and currently they are not operating as an office. They are operating as an Alternative Financial Establishment, that is not allowed in the Zoning Code. Mr. Courtney stated he understands that but, is part of the reason that they did not get the proper license under finding number 3? Mr. Diatta stated that they do have the proper license at the other location but they cannot operate at this location even if they have the proper license.. But that is irrelevant because the Zoning Code does not allow that type of business to operate in this zoning district. Ms. Bogen stated that the applicants' providing the correct license from the Department of Commerce, for the Bayard address, does not change that the Zoning Administrator says that they are not allowed to operate at the 1338 Bayard Address under the St. Paul Zoning Code. Mr. Diatta replied that is correct, the fact that Getten has a license from the state at 1338 Bayard Avenue is irrelevant, because the City Zoning Code says they cannot be there.

Mr. Saylor stated that he is not understanding, the document from the state says that they are approved to conduct business at 1338 Bayard Avenue. Ms. Bogen stated that just means that they are licensed, they have to be licensed where their business is located. That does not mean that their business can be located in that zoning district, under the City Zoning Code, the state cannot decide what zoning district they are allowed in.

Mr. Courtney stated that Getten is not allowed to be at 1338 Bayard Avenue because they are not an office, he asked where the City's definition of an office is.

Mr. Warner stated that in the zoning Code the City is divided up into zoning districts and within those zoning districts there are permitted uses, there are uses permitted with a conditional use permit, and if it is not listed as a permitted use in that particular Zoning District it is not permitted. That was the determination decided by the Zoning Administrator that this type of use which is regulated under the zoning code as an Alternative Financial Establishment is not permitted in the R4 Zoning District. An Alternative Financial Center is first found under a commercial use in a B3 District with a conditional use permit and it is first permitted as a matter of right in a B4 District. Office usage is a catch all for dental offices, florist shops, dog grooming facilities, there are all sorts of things that fall under Office Use. But this particular use is not permitted in the R4 zoning district. That is the nature of the appeal today, whether the Zoning Administrator is correct or incorrect.

The applicant **BRIAN ALTON, PLLP**, Attorney, 951 Grand Avenue, was present with the applicant Denny Getten, 1338 Bayard Avenue. Mr. Getten stated he is the owner and president of Getten Credit. Mr. Alton stated that Getten Credit has been licensed by the state for 53 years as a regulated Department of Commerce licensed business, it is not a payday lender. There is a separate form for a payday lender that the Department of Commerce has and Mr. Diatta included a copy with the staff report the list of regulated lenders that Getten Credit falls under, they are not a payday lender. If Mr. Getten's business was a real estate office he would not have this issue. There was a conditional use permit to allow up to ten employees to exist in that property. It was run as John H. Morgan Company, they were in the plumbing supply business and that was their office it was not a show room. Mr. Alton contended that if an office is allowed to be in that building when Mr. & Mrs. Getten purchased the building, they moved in and thought that they were operating as an office. He stated that it is their contention that if Getten Credit is not a payday lender they should be allowed to operate in the building. The Zoning Administrator has determined that they are an Alternative Financial Establishment and that is the determination that we are appealing. Mr. Alton stated that Getten Credit is not a payday lender, a currency exchange, a check cashing service, they aren't a pawn shop, they are not a predatory lender which the ordinance for an Alternative Financial Establishment was intended to regulate. If Mr. Getten had moved his business to that property prior to 2010 we would not be here. The Alternative Financial Establishment definition was created in the Zoning Study of 2009 and the purpose of the study was to regulate payday lenders. Mr. Alton contended that Getten Credit is not a payday lender and if they were, the Board should not approve this appeal. Mr. Alton discussed payday lenders and how this definition of Alternative Financial Establishment was created to regulate the payday lenders who had found a loophole in the statute and were getting a different license and then operating as payday lenders, they were called Currency Exchanges at that time. He contended that if U.S. Bank or a Credit Union opened an office at this location doing payday lending office at this site they would not have a problem. Because that is permitted, the definition of Alternative Financial Establishment says it does not apply to federal or state chartered banks, credit unions, or savings banks. Up until January Wells Fargo was in the payday lending business. Up until May 30 of this year U.S. Bank is currently in the payday lending business. According to the Center for Responsible Lending the big banks are getting out of the payday lending business and we think that is a good thing. Mr. Alton requested that the Board grant the appeal.

Mr. Courtney commented that Mr. Alton has told the Board what Getten Credit isn't, what is it? Mr. Alton stated that Getten Credit has a niche, big banks do not like to loan to people that do not have good credit and then there are payday lenders. The big banks call their program deposit advanced loans and they are happy to give you a deposit advance loan. Getten Credit loans money to small borrowers for cars

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and things like that.

Mr. Getten stated that Getten Credit is a consumer finance company. He stated that until he received the letter from the City he had never heard the term Alternative Financial Establishment. Mr. Getten stated that they lend money to people that maybe have an older vehicle and the banks don't care how good the credit is they will not do it.

Carol Schwartzbauer, 1717 Marshall Avenue, stated that she is a former employee of Getten Credit and worked for them 30 years, she is also a family friend, this is a family business. There are three or four generations of referrals that generate the customers. She stated that it has become more internet driven, most of the application, telephone and electronic fund transfer are through the internet or mailed in. Payments are done electronically. When a loan is made people come in to sign the papers and pick up the check. No check cashing is done there. The foot traffic is almost nil it is almost completely done electronically.

There was opposition present at the hearing.

Cathy Kruth, Executive Director of the Highland District Council, stated that she wants to clarify the District Council's position. She stated that they held a meeting with Mr. Getten and the neighbors and because of the complexities of this case, the District Council felt that the Board of Zoning Appeals had the expertise to decide if Getten Credit is considered an Alternative Financial Establishment. The District Council wanted to make sure that if the Board decided that Getten Credit could do business at the 1338 Bayard Avenue site, that if they should choose to become a payday lender that they not be allowed to continue business there and that this language be written into the resolution as not being allowed under the non-conforming use permit.

Dan Smith, 1346 Bayard Avenue, submitted a petition signed by 30 neighbors in opposition to this variance. This is not someone who build a building too high, this is someone who tried to put one of the most restricted land uses, without permission, into one of the lease permissive zoning districts. The neighborhood is not ok with this and are concerned about the precedent that would be set and the Department of Commerce needs to be notified 30 days before an address change and that was not done. Mr. Smith stated that he read the 2010 Zoning Study and the applicants are trying to say that the City did not intend to include Getten Credit in with the payday lenders, however, the page in the study that lists all the businesses that would be impacted by this change in the code, listed Getten Credit. Mr. Smith submitted a copy of the 2010 Zoning Study to the Board, he thinks that Getten Credit was clearly intended to be defined as an Alternative Financial Establishment. It also placed additional restrictions on Alternative Financial Establishments based on proximity to single family homes, schools and he believes that this location is also in violation of these restrictions.

Steven Costollo, 1376 Bayard Avenue, stated that Getten Credit claims to be an office and the question is what are they an office for. They are an office for a lending business, the fact that they say they are a lending business and the way the zoning code is written, this code pertains to them.

Patty Ruth, 1361 Bayard Avenue, stated that she is in opposition to this because she thinks the neighborhood will not be as safe for her 98 year old mother to walk around the neighborhood, because of the increase in traffic into the neighborhood.

Deborah Engelen-Elgles, 1277 Bayard Avenue, stated that regardless of the nature of the business Getten

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Credit is doing right now, because of the license that they have they can engage in more check cashing, and payday lending like activities in the future, financial markets are always changing and with financial pressures on the business and the kinds of activities that they might engage in can change in the future regardless of the good intentions that they have or the kind of preferred business model that they express at this time. She contended that if Getten Credit is allowed to conduct business with the license that they have at the 1338 Bayard Avenue address it does not preclude them from expanding the kinds of activities five or ten years down the road.

Mr. Getten stated that some of the neighbors thought that they had not done their due diligence, however, they had an attorney that walked them through this process before Brian Alton. The zoning issue never came up until he received the letter from the City in March, he was at DSI in November of 2013 and applied for permits to put in new windows, and doors and nothing was raised about zoning issues. He was asked if Getten knew that this is a neighborhood and he told them yes, he lives four blocks away. This location was a Mom and Pop store, then a real estate office for many years and their attorney never caught anything about the zoning issues.

Mr. Alton stated that Getten Credit is not a payday lender and never has been a payday lender. He contended that the 2010 Zoning Study only talks about payday lending.

Mr. Courtney stated that the question is whether Getten Credit is an Alternative Financial Establishment.

Ms. Porter and Mr. Getten discussed that he purchased the building in September 2013, moved in it in November and they did not hear about this until March of this year.

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

Ms. Porter stated that the Zoning Code is clear here, Getten Credit is an Alternative Financial Establishment.

Mr. Wilson stated that he does not think that the Board has a choice here, being they are a regulated loan company, Getten is an Alternative Financial Establishment according to the City Zoning Code. Mr. Courtney commented that he is sympathetic to Getten Credit and is sure they would do a great job, but in the neighborhood the envelop has already been pushed on that corner before, he is sure the neighbors are responding because it is being pushed again. It looks like the Zoning Administrator is correct even if they are the nicest Alternative Financial Establishment around that is what they still are and the Board needs to support the Zoning Administrator.

Ms. Porter moved to deny the appeal based on finding that the Zoning Administrator did not err in determining that Getten Credit Co. is an Alternative Financial Establishment not permitted in the R4 zoning district and is not an office use as allowed under the nonconforming use permit.

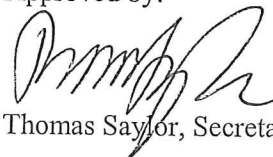
Mr. Courtney seconded the motion, which passed on a roll call vote of 4-0.

Submitted by:



YaYa Diatta

Approved by:



Thomas Saylor, Secretary

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CITY OF SAINT PAUL
BOARD OF ZONING APPEALS RESOLUTION
ZONING FILE NUMBER: 14-199046
DATE: May 28, 2014

WHEREAS, Brian Alton McClay-Alton, PLLP for property owner Dennis P. Getten has applied a decision of the Zoning Administer, determining that the proposed use of the property at 1338 Bayard Avenue for Getten Credit Co., a state licensed regulated lender, is an alternative financial establishment which is not a permitted use in this R4 one family residential zoning district is not a permitted use in this R4 single-family residential zoning district as set fourth in the provisions of Sections 60.104, 61.701, 65.511 of the Saint Paul Legislative Code pertaining to the use of the property in the R4 zoning district at 1338 Bayard Avenue. PIN: 102823430094; and

WHEREAS, the Saint Paul Board of Zoning Appeals conducted a public hearing on May 28, 2014 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. In March, 2014, the Department of Safety and Inspections (DSI) was informed that Getten Credit Co., located at 202 Snelling Avenue North, was moving to 1338 Bayard Avenue. A DSI Inspector investigated this information and found that Getten Credit Co. had already moved and was operating at 1338 Bayard Avenue which is located in the R4 one family residential zoning district.

1338 Bayard Avenue was zoned for residential use prior to 1975 and has historically been a mixed commercial-residential building. A December 2006 certificate of occupancy inspection indicated that there were no residential tenants in any portion of this two-story building and that a commercial use was occupying both floors. The commercial occupancy of the entire building was a violation of the zoning code. In 2007, a legal nonconforming use permit to expand this existing commercial use to the second floor was approved by the Planning Commission. See, PC Resolution No. 07-043-352. The current Certificate of Occupancy for 1338 Bayard Avenue is for an office (low-rise) "B" occupancy. For zoning purposes, Getten Credit Co. is not considered an office use.

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2. The applicant is appealing the order stating that the Zoning Administrator erred in determining that Getten Credit Co.'s present use of the property is not an office use permitted under the 2007 nonconforming use permit.

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Whether Getten Credit Co. possessed a license from the Minnesota Department of Commerce to operate at the Bayard Street address is irrelevant as to whether there is a zoning violation. An alternative financial establishment is not permitted at this location. The existence of a state license is irrelevant to the zoning existence of a zoning violation.

NOW, THEREFORE, BE IT RESOLVED, by the Saint Paul Board of Zoning Appeals that the Zoning Administrator did not error in determining that the property at 1338 Bayard Avenue in determining that Getten Credit Co. is an alternative financial establishment not permitted in the R4 zoning district and is not an office use as allowed under the nonconforming use permit pursuant to Sections 60.104, 61.701, 65.511 on property located at 1338 Bayard Avenue; and legally described as Hacketts Sub Of B4 Lex Park 5 Lot 15; in accordance with the application for variance and the site plan on file with the Zoning Administrator.

BE IT FURTHER RESOLVED; that the appeal is hereby denied.

MOVED BY: Porter

SECONDED BY: Courtney

IN FAVOR: 4

AGAINST: 0

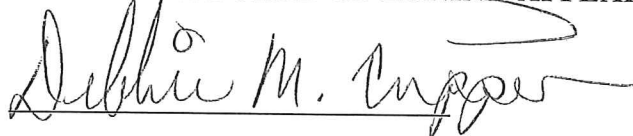
MAILED: May 29, 2014

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 May 28, 2014 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