

MINUTES OF THE MEETING OF THE BOARD OF ZONING APPEALS  
CITY COUNCIL CHAMBERS, 330 CITY HALL  
ST PAUL, MINNESOTA, DECEMBER 27, 2011

*Continued from 12-12-11*

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

ABSENT: Tienne Linden\*

\*Excused

The meeting was chaired by Joyce Maddox, Chair.

Kevin D. Vanderaa (#11-282158) 949 Grand Avenue: The applicant is requesting a variance of the off-street parking requirements in order to obtain a wine and beer license for 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 parking spaces.

The staff report recommends denial.

Eight correspondence letters were received supporting the variance request.

No further correspondence was received from District 16 regarding the variance request.

Mr. Ward and Ms. Tilley discussed whether the Board was still considering additional parking outside the required distance from the applicant's building to fulfilling the parking shortfall, however, the BZA is not considering this as it would have to go to the Planning Commission.

The applicant submitted a parking lease agreement he entered into with Anderson Cleaners for 6 parking spaces.

Ms. Lane stated that even though there is a lease that has been submitted, DSI (Department of Safety & Inspection) does not consider it to be shared parking. They have not submitted the information for the shared parking so the applicant wants to continue on with the variance. The purpose of the lease is to show the Board that there is parking that is available in the area even though it does not meet the code requirements for the shared parking.

Mr. Courtney was not in attendance when the photos were shown and he requested that the photos be shown. Staff went through the photos for 949 Grand Avenue.

The applicant **KEVIN D. VANDERAA**, 640 Morgan Avenue South, was present. Mr. Vanderaa submitted additional photos of the street parking from several days, showing that there is street parking available on this block of Grand Avenue. Mr. Vanderaa argued that he has demonstrated that he can remove cars from the street with the lease agreement with Anderson Cleaners and the bike rack he will install, however, because this does not meet the code he is requesting a variance. Mr. Vanderaa stated he had an open house and spoke with his neighbors and they were all supportive. He argued that this block of Grand Avenue does not have a lot of businesses or apartment buildings so the parking is not as problematic as other blocks along other blocks of Grand Avenue.

Mr. Courtney and Mr. Vanderaa discussed when the photos were taken. Lisa Erickson 920 Osceola Avenue, stated that she lives about 4 blocks from 494 Grand Avenue. she has been on the Board of the Summit Hill Association for 4 years, and also the Board of the Grand Avenue Business Association for 4 years. This issue only came to her attention about two weeks ago. Ms. Erickson stated that there was some miscommunication and the District Council thought 10 off-street parking spaces were required, now that they understand that only 7 parking spaces are required they are supporting the variance request. Ms. Erickson stated that she has counted 8-30 open on street spaces all day along that block of Grand Avenue. Ms. Erickson stated that it is the opinion of both the Summit Hill Association and the Grand Avenue Business Association that this block does not have the same parking issues as the blocks on either side of it.

Mark Prokop, 2197 Standford Avenue, the property owner, stated that they have lost 4 tenants at that location. Contending that Cupcake will add to Grand Avenue there.

Mr. Courtney asked Mr. Prokop if he had anything to say about the parking, because the variance here is about parking. Mr. Prokop stated that he used the site for an office and there was ample parking on street to support the building. This is not a heavy retail area, there are not a lot of apartment buildings in the block radius that are fighting for the street parking. A lot of the businesses have parking available in the back of their building that is not common knowledge. He stated that there are a lot of homes that have been renovated that have a small business, pet grooming, law offices, etc. on the first floor, these businesses do not pull in a lot of people at one time to the point that they would be fighting for parking. Mr. Courtney questioned whether there were parking spaces behind the building. Mr. Prokop replied yes there is parking behind the building.

Bruce Olson, 2325 Endicott Street, stated he has done business with Mr. Vanderaa for several years at his Minneapolis location, stating that small businesses need to stick together.

There was no opposition present at the hearing.

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

Mr. Courtney and Ms. Lane discussed the parking lease with Anderson Cleaners. Ms. Lane explained that under the code Anderson Cleaners does not have the parking spaces to give so DSI cannot count the parking spaces toward Cupcake's requirement.

Mr. Warner discussed the parking and zoning requirements and how the Board can consider the testimony presented to the Board about the street parking availability.

Mr. Ward questioned use of the Exeter Parking Ramp. Ms. Lane explained that approximately 30 different businesses use that ramp and Exeter has not gotten back to the City with the information and the applicant decided not to wait for that information and continue with this variance. Ms. Lane explained that staff has gone by Anderson Cleaners a couple of times and noted the number of cars in the lot and that there were also open on-street spaces available on both the north and south sides of the street in that block, however, this has not been done when William Mitchell was in session so staff is not sure what the parking situation is like on a regular basis.

Ms. Maddox questioned the number of employees Mr. Vanderaa has at one time. Ms. Maddox reopened the public hearing.

Ms. Maddox and Mr. Vanderaa discussed the number of employees at peak and off-peak times for the restaurant. Mr. Vanderaa stated he recently went from 30 employees to 20 and he now only has 3 employees that drive. The rest bike or ride public transit.

Mr. Wilson and the Board discussed the parking agreement with Anderson Cleaners.

Mr. Vanderaa and Mr. Ward discussed the language in the parking agreement that allows Anderson Cleaners to possibly take back 2 parking spaces some time in the future, leaving Cupcake short 2 parking spaces.

Mr. Courtney discussed making the variance contingent on this parking lease with Anderson Cleaners asking Mr. Vanderaa if that was agreeable. Mr. Vanderaa explained that is why he provided the agreement and adding the condition is ok with him.

Ms. Tilley explained how adding the parking lease as a contingency could affect Cupcake's beer and wine license and the problems Licensing may have with enforcement.

Mr. Ward and Ms. Lane discussed the Exeter Parking Ramp and their slow response to the request for information about the parking use of the ramp.

Mr. Vanderaa discussed his decision to try to get parking from Exeter and his decision to continue without Exeter.

Mr. Courtney stated he would like to accept the lease from Anderson Cleaners and give Mr. Vanderaa his variance.

Ms. Bogen and the Board discussed the variance for 7 off-street parking spaces and parking agreement.

Ms. Tilley explained that the Lease Agreement would be placed on Cupcake's license as a requirement to receiving their Beer & Wine license every year, and how not having an agreement would violate their license.

Mr. Ward discussed adding the possibility of an agreement with Exeter. Ms. Tilley explained that any agreement with Exeter, because it is outside the 500 foot required to be considered as parking for Cupcake, would have to be reviewed by the Planning Commission, and because there are more than three businesses using the ramp.

Ms. Bogen commented that conditioning the variance on something that the applicant must depend on someone else to do places the applicant in a very precarious position.

Ms. Maddox and the Board discussed the findings to granting the variance request.

Mr. Warner stated that depending on the will of the Board he and staff could come up with findings to grant the variance if the Board can state their conditions for granting the variance.

Ms. Bogen and Mr. Ward discussed the Lease Agreement and the number of off-street parking spaces.

Mr. Ward stated he agrees with the condition of employees not parking in the designated off-street parking in the rear of the property and he would like to add signage designating the parking for Cupcake in the Anderson Cleaner's lot. Mr. Courtney and Ms. Morton agreed to the additional conditions.

Ms. Lane stated that the property owner to the west of the property was complaining that people going to 949 Grand Avenue were parking in the back of their lot. She suggested adding a condition that a fence be installed on the west property line. Mr. Ward questioned whether a fence was really needed. Ms. Lane stated that she thinks that the property owner to the west would like a fence. Mr. Courtney and Ms. Morton stated they are fine with the addition of a fence on the west property line.

Ms. Lane suggested the Board may want to add a condition that the applicant provide a site plan showing where the two bike racks will be placed in the front and the rear and showing the fence to be installed on the west property line. Mr. Courtney and Ms. Morton accepted Ms. Lane's condition as friendly.

Ms. Tilley and Mr. Warner discussed the number of votes necessary to grant the variance because of the Beer & Wine license.

Ms. Maddox reopened the public portion of the hearing.

Mr. Vanderaa stated this is a huge investment for his company and he has no problem doing what is required that he has control over. He is asking for the variance without the requirement of a lease for 6 off-street parking spaces. If loses the lease and then loses his beer and wine license, he may decide to go somewhere else.

Ms. Maddox closed the public portion of the hearing.

Mr. Ward stated this is the only thing that the Board can do based on the testimony. No formal parking studies have been done by the City.

Ms. Maddox stated there are five conditions. The fence on the west property line, the bike racks, the signage, and the employee parking, and that the lease have 6 parking spaces. Mr. Courtney and Ms. Bogen discussed the lease for off-street parking spaces. Mr. Wilson suggested that the wording be "a lease" rather than "this lease." The Board discussed the wording of the "a lease", to be "a substantially similar lease."

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

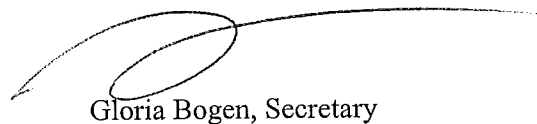
Ms. Morton seconded the motion, which passed on a roll call vote of 6-0.

Submitted by:



Corinne Tilley

Approved by:



Gloria Bogen, Secretary

MINUTES OF THE MEETING OF THE BOARD OF ZONING APPEALS  
CITY COUNCIL CHAMBERS, 330 CITY HALL  
ST PAUL, MINNESOTA, DECEMBER 12, 2011

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

ABSENT: Tienne Linden\*  
\*Excused

The meeting was chaired by Joyce Maddox, Chair.

**Kevin D. Vanderaa (#11-282158) 949 Grand Avenue:** The applicant is requesting a variance of the off-street parking requirements in order to obtain a wine and beer license for Cup Cake 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 parking spaces.

Ms. Lane & Ms. Tilley discussed the applicant's request for a continuance.

The applicant **KEVIN D. VANDERAA**, 640 Morgan Avenue South was present. Mr. Vanderaa stated that he has acquired a parking agreement for 4 additional parking spaces from the drycleaner down the block from his location. He stated that with the parking they have and the 4 additional parking spaces from the drycleaner and the bike rack he is down to needing two additional parking spaces and he would like an extension of two weeks to see if he can get the last two required parking spaces so he would not need a variance.

Ms. Maddox and the Board discussed the timeline for the case. Mr. Warner discussed the problems with serial continuances and instructed the Board about the legal consequences. He discussed the Board's options for dealing with the case and the possible consequences, advising the Board that they needed to take some action regarding the extension request.

Mr. Ward questioned the timeline and whether the timeline starts over or restarts where it left off if the case is withdrawn and then resubmitted at a later date. Mr. Warner replied if the case is withdrawn that ends it, no decision was made. If a new application is submitted then a new 120 days process is started.

Mr. Vanderaa stated that from a business standpoint he has to open a new store before the Light Rail reaches his Minneapolis store or he will lose his business. Whether he gets the two parking spaces or not he has to move on after this two week layover, so this will be his last attempt to get the needed off-street parking required for his business. Mr. Vanderaa stated the reason he is asking for the continuance is that he is down to needing only two parking spaces and if he can find them from one of his neighbors he will not need the variance. Two parking spaces are a lot more attainable than seven, and there is the possibility that he could still get two spaces from the ramp at Exeter Realty.

The Board and Mr. Warner discussed the time necessary to bring a resolution back to the Board for approval and still allow time for a City Council appeal of the decision.

Ms. Lane stated that staff has not received any information from the Anderson Cleaners parking lot yet so we do not know if there is adequate parking for Anderson Cleaners and whether there are any additional

parking spaces available in that lot. Mr. Vanderaa acknowledged that he would have to go through planning again with the parking lot for Anderson Cleaners to see if there are available spaces for him to lease.

Mr. Wilson and Mr. Warner discussed the re-application fee if the application is withdrawn.

Mr. Courtney suggested that Mr. Vanderaa speak with his advisor before he makes his decision. Mr. Vanderaa stated that he can make the decision. He stated that if the Board extends this to December 27 that will be the last time, his new business was supposed to open on November 1<sup>st</sup> and this is dragging on.

Ms. Bogen stated that the Board would then move to continue this until December 27, 2011 and then have the applicant sign the 15.99 waiver that goes on and on. Ms. Maddox replied yes.

There was no opposition present at the hearing.

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

Ms. Bogen moved to continue the matter for two weeks until December 27, 2011.

Ms. Maddox instructed Mr. Vanderaa to write up and sign his waiver of the 15.99 rule and give it to Ms. Lane.

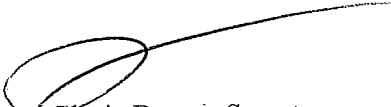
Mr. Courtney seconded the motion, which passed on a roll call vote of 6-0.

Submitted by:



Corinne Tilley

Approved by:



Gloria Bogen, Secretary

MINUTES OF THE MEETING OF THE BOARD OF ZONING APPEALS  
CITY COUNCIL CHAMBERS, 330 CITY HALL  
ST PAUL, MINNESOTA, OCTOBER 31, 2011

PRESENT: Mmes. Maddox, Bogen, Morton, and Porter; Messrs. Ward, 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: Tienne Linden\*, Vincent Courtney\*  
\*Excused

The meeting was chaired by Joyce Maddox, Chair.

**Kevin D. Vanderaa (#11-282158) 949 Grand Avenue:** The applicant is requesting a variance of the off-street parking requirements in order to obtain a wine and beer license for Cup Cake 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 parking spaces.

Mr. Diatta showed slides of the site and reviewed the staff report with a recommendation for denial.

No correspondence was received opposing the variance request.

One letter was received from District 16 opposing the variance request.

The applicant **KEVIN D. VANDERAA**, 640 Morgan Avenue South, was present. Mr. Vanderaa stated that he found out after signing a 5 year lease on the property that there was a zoning issue with the required off-street parking for a wine and beer license. In order to alleviate the parking issue he has offered to enter into a parking validation program for his employees. He has 8-10 employees at any given time and this parking validation program will take those 8-10 cars off the street freeing up the street parking for customers.

Ms. Maddox asked if Mr. Vanderaa has a signed parking agreement. Mr. Vanderaa replied that he did not, his broker is working on the agreement and it is not complete yet.

The Board discussed the ramp's location and its distance from the applicant's business.

Mr. Ward asked about the hours of operation for the business noting that the nature of a wine bar customers is to linger and socialize sometimes for hours, causing a burden on the parking. He further asked if Mr. Vanderaa had spoken to business owners in the area to obtain a shared parking agreement. Mr. Vanderaa stated that he spoke with neighboring property owners who were not receptive to his proposal. He also contacted the pay lot on Victoria and Grand and that is the only place he could get some off-street parking for his business. Mr. Vanderaa decided that he could not tell his customers to park in the ramp because it is a bit further from his establishment but he could request his employees to use the lot and he would pay for the parking. He felt that this would be a good option for his employees as parking on Grand Avenue is limited to 2 hours and most of his employees work an 8 hour shift.

Mr. Diatta stated that if Mr. Vanderaa could supply the 7 off-street parking spaces for his customers he would not need a variance for the wine and beer license. Ms. Lane stated that the problem is that staff does

not know whether the pay lot on Victoria and Grand meets the parking requirements for this business and whether there is any extra parking available in the ramp.

Ms. Lane and the Board discussed the pay ramp on Victoria and Grand and the changes to the shared parking agreement requirements. Ms. Lane noted that DSI Staff would have to look at all the different uses in the surrounding buildings to see if there were any available parking in the ramp, as well as the location of the ramp to see if the ramp could be used to meet Cupcake's required off-street parking. Ms. Lane added that a filing fee is required for the shared parking agreement review by staff.

Ms. Bogen suggested that the Board continue this matter to give the applicant time to pull together the necessary information about the businesses and the ramp, pay the filing fee and have DSI review the shared parking agreement.

Ms. Maddox questioned whether 2 weeks would be enough time. Ms. Lane stated it would be enough time for DSI staff, however, the applicant must pull together the square footage of each of the different uses in those buildings and the hours of operation. It would depend on how long it would take to pull that information together. Ms. Maddox questioned Mr. Vanderaa whether this is something he is interested in working on. Mr. Vanderaa replied he will do whatever is necessary as he stands to lose a lot of money if he does not get this variance. Ms. Bogen commented that it looks like this ramp is more than 500 feet away so it could not be counted in that case.

Mr. Wilson and the Board discussed how Mr. Vanderaa would police his employees parking in the ramp.

Mr. Jeff Roy, 860 St. Clair Avenue, stated that the Summit Hill Association voted unanimously in opposition to the parking variance because their concerns are that the variance goes with the property run after the use is gone. Mr. Roy stated that this is the first he has heard about any parking agreement with Exeter Realty. He also added that as far as he knows the ramp is more than 500 feet from 949 Grand Avenue putting it outside the required distance for a shared parking agreement. To his knowledge there is no available parking in the ramp. Exeter owns all three of the businesses that use that ramp and they had provided just what they needed in the ramp for their businesses. Mr. Roy stated that a further concern about the parking agreement is the possibility that Exeter could cancel the parking agreement some time in the future leaving Cupcake without the required off-street parking.

Mark Prokop, 2197 Stanford Avenue, stated that he is the property owner and is concerned as there have been three businesses in the building since he has owned it and all three have gone out of business. He stated that the property taxes and the parking issues make it very difficult for a business to be successful in this location with the current economic conditions. Mr. Prokop and Mr. Ward discussed the on street parking and Mr. Prokop stated that when the neighboring businesses closed for the night on-street parking is available as most of the surrounding businesses on the block close around 5 pm.

Rebecca Brents, 2829 Grand Street NE, MPLS, stated she is the future general manager of the 949 Grand Avenue. Ms. Brents stated that without beer & wine they are just a cafe, but they still have people that study and drink coffee much the same as the customers of the wine bar, and they will still have employees that are there for 8 hours.

There was no opposition present at the hearing.

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



Mr. Ward moved to continue the matter for 2 weeks to allow the applicant to prepare a parking study to be reviewed by DSI.

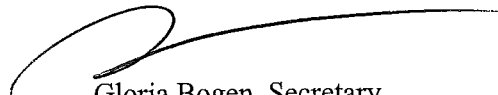
Mr. Wilson seconded the motion, which passed on a roll call vote of 5-1(Bogen).

Submitted by:



YaYa Diatta

Approved by:



Gloria Bogen, Secretary