



**CITY OF SAINT PAUL**

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**Board of Zoning Appeals**

**Staff Report**

**TYPE OF APPLICATION:** Major Variance **FILE #**18-113695

**APPLICANT:** M and A Hark Inc

**HEARING DATE:** November 5, 2018

**LOCATION:** 589 Dale Street North

**LEGAL DESCRIPTION:** CHUTE BROTHERS DIVISION, NO. 3 LOTS 1 THRU LOT 5

**PLANNING DISTRICT:** 7

**PRESENT ZONING:** T2

**ZONING CODE REFERENCE:** 65.535

**DATE RECEIVED:** October 15, 2018 **BY:** Jerome Benner II

**REPORT DATE:** October 29, 2018 **DEADLINE FOR ACTION:** December 13, 2018

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A. **PURPOSE:** 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 2,311 feet from the existing shop for a variance request of 329'.

B. **SITE AND AREA CONDITIONS:** This is a corner lot that is approximately 24,800 square feet in size with access from Dale Street and Thomas Avenue.

Surrounding Land Use: This area has a mix of commercial uses along with low density residential housing.

C. **BACKGROUND:**

On August 11, 2010, the City Council adopted an ordinance (Ord. #10-777) amending the zoning code to define tobacco products shops and require a separation between them in order to differentiate businesses whose primary purpose is to sell tobacco that may offer product sampling from the majority of businesses that sell tobacco and tobacco-related products as only a portion of their more general commercial/retail business.

In November of 2017, the City Council passed an ordinance prohibiting the sale of menthol cigarettes and other flavored tobacco at convenience stores. Consumers will only be able to buy menthol cigarettes and other flavored tobacco at tobacco product shops as defined in Section 65.535 of the Zoning Code and in liquor stores. The menthol ban commences on November 1, 2018.

#### D. ZONING CODE CITATIONS:

##### **Sec. 65.535. - Tobacco products shop**

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.

#### E. FINDINGS:

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 applicant's business, Speedy Market, is an existing convenience store with a gas station. The existing store would remain and the proposal is to create a 450-square foot space where a new tobacco products shop would be established. The two stores would have their own entrance door opening directly to the outside and separated by walls within the same 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. Because there is an existing shop already operating 2,311 feet away from this site at 440 University Avenue West, the proposed shop cannot be established without the requested variance.

The T2 traditional neighborhood district is designed for use in existing or potential pedestrian and transit nodes. Its intent is to foster and support compact, pedestrian-oriented commercial and residential development that, in turn, can support and increase transit usage. It encourages, but does not require, a variety of uses and housing types, with careful attention to the amount and placement of parking and transitions to adjacent residential neighborhoods.

This proposal would allow two businesses on the same property to serve the immediate neighborhood and commuters that utilize the transit system. This request 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.*

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 location of businesses within close proximity to one another allows customers to walk between the different destinations without having to drive.

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.*

The purpose of the separation requirement is to prevent the over concentration of tobacco products shops in a specific area. Access to tobacco products shops requires a minimum age of at least 18 years. Limiting the sale of menthol cigarettes and other flavored tobacco to tobacco products shops is intended to discourage the exposure of these products to underage youth.

The applicant states that the existing tobacco products shop, Sunrise Tobacco, is located at 440 University Avenue West, which is a part of the Summit-University Neighborhood. Generally, the customers that frequent this store, live in this neighborhood. Additionally, it serves the commuters that use the Light Rail Transit System and local bus routes that are within close proximity to the store. The proposed shop would be north of University Avenue West and is a part of the Frogtown Neighborhood, having a different customer base.

The applicant suggests that because each store would be serving entirely two different neighborhoods of the City, it would be reasonable to allow the proposed shop within one half-mile of the existing tobacco shop.

However, staff does not believe the University Avenue demonstrably acts as a physical barrier that would justify a practical difficulty. Allowing the establishment of a tobacco products shop at this location could further diminish the purpose of the separation requirement. This finding is not met.

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

The need for the variance is prompted by the applicant's intent to establish the proposed use at this location. There is nothing unique to the property, therefore, the plight of the applicant is self-created. This finding is not met.

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

A tobacco products shop is a permitted use in the T2, traditional neighborhood zoning district and the requested variance will not change the zoning classification of the property. This finding is met.

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

This request to operate a tobacco products shop within one-half mile from a similar shop will not alter the essential character of the area. This finding is met.

- F. **DISTRICT COUNCIL RECOMMENDATION:** As of the date of this report, District 7, Frogtown Community Council has not provided a recommendation.
- G. **CORRESPONDENCE:** Staff has not received any correspondence.
- H. **STAFF RECOMMENDATION:** Based on findings 3 and 4, staff recommends denial of the variance request.