

city of saint paul
planning commission resolution

file number 10-76

date October 22, 2010

WHEREAS, 2446 University Ave LLC. has filed an appeal (File # 10-797-728) under the provisions of Section 61.701.c of the Saint Paul Legislative Code of a determination by the Zoning Administrator that 10 parking spaces on the east side of the building at 2446 University Avenue (Parcel Identification Number (PIN) 292923340081, legally described as Bakers Addition To Thecity O Subj To Esmts & Vac Alley Accruing; The Nwly 170.13 Ft Lying Swly Of The Nely 137.05 Ft Of Lot 29 In Auditor's Subd No.4 & In Sd Baker's Add; Part Of Lot 7 Blk 7 Lying Nely Of A Line Run From A Pt On N Line Of & 47.37 Ft E Fro) cannot be used or counted for zoning purposes because the only access to these parking spaces is across the adjacent property; and

WHEREAS, the Zoning Committee of the Planning Commission, on September 16 and October 14, 2010, held a public hearing at which all persons present were given an opportunity to be heard pursuant to said application in accordance with the requirements of §61.303 of the Saint Paul Legislative Code; and

WHEREAS, the Saint Paul Planning Commission, based on the evidence presented to its Zoning Committee at the public hearing as substantially reflected in the minutes, made the following findings of fact:

1. The building at 2446 University has a mix of commercial uses: retail, office and a small fast food restaurant. Parking for the building is provided in several locations: there is a large parking lot across University Avenue, a small parking lot in front of the building and other small parking areas at the back and side of the building.
2. There are 10 parking spaces along the east side of the building at 2446 University. However, the only access to these spaces is across the neighboring property to the east (2420 University). There is an access easement in favor of 22446 University over the adjacent property at 2420 University. But his easement is not contiguous with the 10 parking spaces on the east side of the building at 2446 University and cars cannot get to the 10 parking spaces without driving outside of the easement area.
3. In October 2004 City zoning staff approved a site plan showing parking spaces at 2446 University. The site plan shows new paving south of the building to create 16 parking spaces and striping for the area east of the building to provide 10 parking spaces. The site plan does not show any property lines but shows an area labeled "Approx. Alley Location (Irregular)" that appears to provide a way for cars to get to the 10 parking spaces on the east of the building. Staff did not have a survey of the property and was not aware of the location of the access

moved by Kramer

seconded by _____

in favor Unanimous

against _____

easement when the site plan was approved.

4. Starting in 2008, the owner of the property at 2420 University raised questions with zoning staff about the status of the parking spaces on the east side of the building at 2446 University, claiming that there is no legal access to these spaces. The owner of 2420 University submitted a survey. It shows that there is not an alley near the 10 parking spaces in question and shows that an access easement in favor of 2446 University Avenue is not contiguous with the parking spaces: there is a strip approximately 20' wide between the easement and the property line shared by 2420 and 2446 University Avenue.
5. Aerial photos show the area east of the building was not used as a parking lot prior to 2006:
2009 – Area is paved and striped for parking. 8 cars are parked.
2008 – Area is paved and striped for parking. 8 cars are parked.
2006 - Area is not striped. No cars are parked in the area.
2003 – Area is not striped. No cars are parked in the area. Some cars are parked to the south.
2001 - Area is not striped. No cars are parked in the area.
1997 – Photo is not clear but there is no evidence that cars are parked in the area.
1985 – Photo is not clear but there is no evidence that cars are parked in the area.
6. In August 2010 zoning staff wrote a letter to the owner of 2446 University Avenue. The letter makes the following determinations:
 - Staff's approval of the 10 spaces shown on the 2004 site plan was based on a plan that incorrectly shows access to the parking spaces on the east side of the building via an "Alley" that did not exist.
 - Because the plan was inaccurate and there is no legal access to the parking spaces, the City rescinds the 2004 approval of the parking spaces.
 - The use of the parking spaces must cease. In addition, the City would allow the owner of 2420 University to take actions that would block access to the parking spaces, including building a fence along the shared property line.
7. Staff later determined that the building at 2446 University has enough off-street parking without the 10 parking spaces along the east side of the building: 126 spaces are provided and 114 spaces are required.
8. On August 23, 2010, 2446 University Ave LLC, the owner of 2446 University Avenue, filed an appeal of staff's determination that the parking spaces on the east side of the building were not legal and could not be used. The appeal contends that:

"The parking on the 2446 University Avenue property has been used this way since the building was constructed 50 years ago. The City previous[ly] provided its approval of the parking for 2446 University Avenue. If there is an issue with the use of the parking spaces, it is a private dispute between the 2446 University Avenue property owner and the neighboring property owner and does not and should not involve the City."
9. In response to the issues raised in the appeal:
 - Aerial photos do not show cars parked in the area east of the building prior to 2006.

- The site plan approved by the City in 2004 was primarily for paving an area south of the building so it could be used for parking. The City accepted the parking spaces shown on the east side of the building based on the assumption that access was provided to these spaces over an area incorrectly identified on the plan as “Approx. Alley Location (Irregular)”
- The City became involved in the matter when the owner of 2420 University Avenue asked City staff about the status of the parking spaces and what the City’s position would be if he erected a fence along his property line or took steps to block access across his property to the spaces.

NOW, THEREFORE, BE IT RESOLVED, by the Saint Paul Planning Commission, under the authority of the City's Legislative Code, that the appeal filed by 2446 University Ave LLC of a determination by the Zoning Administrator that 10 parking spaces on the east side of the building at 2446 University Avenue cannot be used or counted for zoning purposes because the only access to these parking spaces is across the adjacent property, is hereby denied.

MINUTES OF THE ZONING COMMITTEE
Thursday, October 14, 2010 - 3:30 p.m.
City Council Chambers, 3rd Floor
City Hall and Court House
15 West Kellogg Boulevard

PRESENT: Commers, Donnelly-Cohen, Kramer, Merrigan, Nelson, Wencil, and Wickiser

STAFF: Tom Beach, Samantha Langer, Patricia James, Allan and Peter Warner

The meeting was chaired by Commissioner Kramer.

2446 University appeal - 10-797-728 - Appeal of a staff determination that 10 parking spaces on the east side of the building at 2446 University Avenue cannot be used or counted for zoning purposes because the only access to these parking spaces is across the adjacent property.

Tom Beach provided an update to the staff report from the September 16, 2010 meeting, and a letter from Brad Beisel, representative of the owner of the property, was submitted. Mr. Beach's recommendation of denial of the appeal remains the same. Tom Beach also stated District 12 had not responded, and there was 1 letter in support, and 1 letter in opposition.

Kyle Hegna, representative of the appellant, 7300 Metro Boulevard, Suite 300, Edina MN, stated he doesn't have any additional information. He stated he is available for any questions.

No one spoke in support or opposition.

The public hearing was closed.

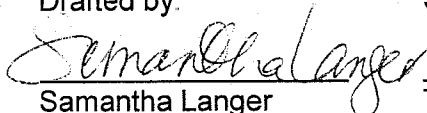
Upon inquiry from the Commissioners, Mr. Warner explained that this matter turns out to be a private party dispute. The City can't approve zoning applications based on incorrect information. Mr. Warner also stated the City has the authority to rescind an approval if there is a legal and factual basis to do so.

Commissioner Gaius Nelson moved denial of the Appeal. Commissioner David Wickiser seconded the motion.

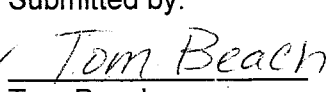
The motion passed by a vote of 7-0-0.

Adopted Yeas - 7 Nays - 0 Abstained - 0

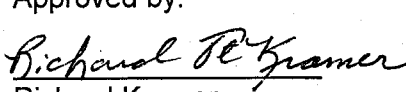
Drafted by:


Samantha Langer
Recording Secretary

Submitted by:


Tom Beach
Zoning Section

Approved by:


Richard Kramer
Chair

*Signed by
Samantha
Langer*

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Tom Beach presented the staff report with a recommendation of denial for the Appeal of staff determination that parking spaces on the east side of the building at 2446 University Avenue are not legal. Tom Beach also stated District 12 had not responded, and there were 0 letters in support, and 0 letters in opposition.

Upon questions from the Commissioners, Mr. Beach explained that of the 126 parking spaces referred to in finding seven about 70 spaces are located across University Avenue. The remaining spaces are located around the building at 2446 University Avenue. The amount of parking spaces meets the newly adopted zoning code requirements for parking. Mr. Beach stated that the easement is located on the property associated with 2420 University Avenue and in favor of 2446 University Avenue. He confirmed it is a private easement. Mr. Beach explained that he reviewed a site plan in 2004 for parking at 2446 University Avenue. Although the site plan dealt primarily with a new parking lot south of the building, it showed the 10 parking spaces east of the building that are in question now. The plan included a label just east of the parking spaces that said "Approx. Alley Location (Irregular)". Staff did not verify that there was an easement or exactly where it was located. Mr. Beach explained that there is about sixty feet between the two buildings, which is typically enough room to have two rows of parked cars and a drive lane. He confirmed that if the property owners could work out an agreement, there is enough room to allow an easement in the middle, and parking on both sides, and this would meet zoning code requirements of the City.

Kyle Hegna, representative of the appellant, 7300 Metro Boulevard, Suite 300, Edina, MN explained that their position is that this is a private dispute between the owners of 2420 University and 2446 University Avenue. The Zoning Committee shouldn't be involved; the dispute should be dealt within Ramsey County District Court. He referred to the letter dated August 12 in the zoning packet from Tom Beach, stating that the original approval of the parking spaces was based on incorrect information and he is rescinding his 2004 approval of the 10 parking spaces along the east side of the building unless it is demonstrated that you have permission for cars to drive on the adjacent property to get to the spaces.

Upon inquiry from the Commissioners, Mr. Hegna stated he will revise the September 16, 2010 memo, Section III (b) to reflect that the Zoning Committee and Planning Commission have not made a decision on this case; this is the appeal of a staff decision. Mr. Hegna explained that between 2004 and 2009 the access easement was used as stated in a document that was dated between 1920 and 1940. He stated that the survey from December 2006 is the first legal survey that he is aware of being completed.

No one else spoke in support.

Bradley Beisel, representative for Mark Cemensky the owner of the adjacent property at 2420 University, stated that there is a prior survey from June 1974 that shows the property and submitted it for the record. Mr. Beisel explained that there is an easement agreement from 2009 because of a lawsuit in 2008, which

was started by the appellant who wanted access to the parking, and the easement agreement from 2009 (also submitted) represents the settlement of that lawsuit. He stated there is proof positive that Mr. Beach's recommendation is correct. Mr. Beisel explained which easement area was granted in item number one of the Easement Agreement from 2009.

Mark Cemensky, explained that he attempted to contact the owner of 2446 University Avenue regarding the use of parking spaces without permission and she did not respond to any of his attempts. Cars from 2446 University continue to use the parking spaces on the east side of the building so he contacted the City to see what options he has to restrict access of the parking spaces. Mr. Cemensky explained that he has granted the easement access on the north side of their building. He stated he would be more than willing to move the easement to the middle to allow parking on both sides if the owner of 2446 University Avenue made a legitimate offer.

Bradley Beisel stated they have already been through a lawsuit and the results are listed in the Easement Agreement submitted.

Kyle Hegna responded to testimony. Mr. Hegna stated that this is a private party dispute and it all comes down to money. He explained that his client was not unresponsive to Mr. Cemensky's attempts to work out an offer, and his client has not received an offer yet. Mr. Hegna stated he is not aware of the police being contacted regarding parking in the easement area. This should be resolved as a private dispute.

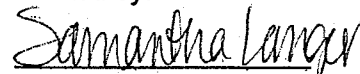
The public hearing remains open.

After discussion regarding litigation, Commissioner Gaius Nelson moved lay over of the Appeal, to allow time to consult with the City Attorney, to October 14, 2010. Commissioner Barbara Wencil seconded the motion.

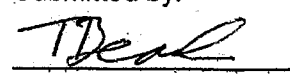
The motion passed by a vote of 6-0-0.

Adopted Yeas - 6 Nays - 0 Abstained - 0

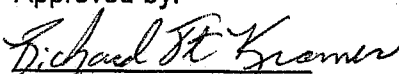
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Approved by:


Richard Kramer
Chair