

**MINUTES OF THE ZONING COMMITTEE**  
**Thursday, January 31, 2019 - 3:30 p.m.**  
**City Council Chambers, 3rd Floor**  
**City Hall and Court House**  
**15 West Kellogg Boulevard**

PRESENT: Baker, DeJoy, Edgerton, Fredson, Lindeke, Ochs, Rangel Morales, and Reveal  
STAFF: Allan Torstenson, Samantha Langer, and Peter Warner

The meeting was chaired by Commissioner Edgerton.

**Reza Inc. - 19-003-730 - Rezone from BC community business (converted) to T2 traditional neighborhood, 770 Grand Avenue, between Avon and Grotto**

Allan Tortsenson presented the staff report for Kady Dadlez with a recommendation of approval for the rezoning. He stated District 16 recommended approval, and there were no letters in support, and 2 letters in opposition.

In response to a question from Commissioner Reveal regarding the concerns noted in the Summit Hill Association letter, Mr. Torstenson said it seems there is plenty of space for snow storage and enough space between the garage and the alley for garbage bins. ADA compliance of the parking space and wheel chair ramp could be verified by the applicant.

In response to Commissioner Lindeke, Mr. Torstenson provided some zoning history for Grand Avenue. It was zoned commercial, a mixed use designation, from 1922 – 1975. BC, a city wide zoning district, was first used on the eastern portion of Grand Avenue in the 1980s. T zoning was introduced in 2004.

In response to Commissioner Baker, Mr. Torstenson said T2 is basically a combination of the adjacent RM2 residential and B2 commercial zoning, consistent with surrounding residential and commercial uses, and therefore not spot zoning.

Shab Shakibi, 770 Grand Avenue, Saint Paul, stated she is a partner of REZA, Inc. and property owner. She stated that the representatives of Treats, the tenant of their property, were also present. She explained that this property has been in their family since 1993. Her mom operated a hair salon from 1994 to 2017. The property has been vacant since they closed the hair salon. The majority of people who have wanted to lease the space have wanted to do some sort of food service, which is not allowed in their current zoning. She said that until she came across Treats no one really fit the vibe of Grand Avenue. She thinks this business is consistent with the area and everyone around their property is serving or selling some sort of food.

Vorak Seng, 1795 Rye Court, Shakopee, MN, explained his vision for the building. He and his family would live upstairs and operate the business on the main floor. He said that he and his wife have a lot of memories of Saint Paul. His parents were immigrants and he was the first person to graduate college. He has worked in the area and earned his American dream by purchasing his first Subway franchise in Minneapolis. He has learned a lot about operating a business over the years and also owns five Jamba Juice stores in Minnesota. He has learned in that in business you need to give back to the community. They currently have a Jamba Juice in Saint Paul and gave back 20% of the revenue to local schools. Their latest project, Waffle Bar, in Minneapolis is wildly successful. They have partnered with Sebastian Joes and would use their ice cream for this new project. They have a new business concept that has not been done in Minnesota and his wife will explain the details.

Trisha Dinh, 1795 Rye Court, Shakopee, MN made a presentation of the business concept of Treats. Treats will take your favorite cereal combination made to order served in a cone, cup or shake. It's like replacing milk with ice cream. Their beverage menu will offer bubble tea and matcha tea served with local milk. The goal for Treats is not only to excite your taste buds, but also to have a nostalgic experience.

Ms. Shakibi addressed the concerns noted in the Summit Hill Association letter. She said they have never had any issues with snow removal, trash, or ADA compliance. She said the salon was a senior hair salon. The majority of their customers and staff were above the age of 75. All of them were able to access the building using the handicap ramp, and there were never any complaints about the ADA compliance. If there are updates, she believes that would be addressed when they get permits for the new business. Regarding the snow and trash, she believes that is a general issue that happens in the alleys of Grand Avenue. There are certain businesses or residents that may plow the alleyway and shove the snow onto their neighbor's property. They store their snow on their property along the fence line and it has never been an issue. She thinks there is adequate space to accommodate trash bins.

No one spoke in support.

Chuck Repke, 154 W Winifred, Saint Paul, spoke in opposition. Mr. Repke stated he was representing Gary Huffman, a resident on Lincoln and a business owner on Grand Avenue. He said it sounds like a great idea for a restaurant and he hopes that they find land that is zoned properly for a restaurant rather than converting this property. He urged the Committee to resist the temptation to accommodate the temporary need of one property owner and consider instead the long term best interest of Grand Avenue. The proposed change in zoning is not consistent with how the area has developed. The community business converted zoning on Grand Avenue is unique. As Grand Avenue went through a renaissance in the 1970s and early 1980s, concern about the pressure to demo Victorian style homes for commercial development or parking became a major concern. After a long planning process and considerable discussion and efforts in both the business and residential communities the BC zoning designation was developed. It allowed the structures to be either mixed use residential and commercial or commercial uses that have limited parking requirements and low impact on adjacent residential properties on Summit and Lincoln. The types of uses allowed were retail and office in nature that anticipated limited hours and restaurant uses were prohibited. The T2 zoning district is not as narrow in scope and will allow more intense uses than are allowed in the BC zoning district. It also allows for the potential destruction of the property. He read the intent of the BC community business (converted) district and passed out photos of businesses on Grand Avenue. The pictures showed the BC zoned properties within two blocks of the proposed zoning change. There is one T2 zoned property on Grand Avenue in District 16. It has an addition on the front of the property because the set-backs on the street allows for the addition. When you change the zoning to T2 the structure can be changed. We have protected the properties on Grand Avenue for 40 years by having the BC zoning district. The proposed zoning is not consistent with the Comprehensive Plan. The BC zoning district was designed for Grand Avenue. To eliminate BC zones threatens the planned development of the area. He noted the Summit Hill / District 16 Neighborhood Plan's vision and provided alternative findings for denial. (See attached)

Gary Huffman, 1283 Lincoln Avenue, Saint Paul, a business owner at 750 Grand Avenue, spoke in opposition. He said there was short notice for the Summit Hill Zoning and Land Use Committee meeting. It came to them on Friday and the meeting was Sunday. They didn't have it in the Summit Hill district; they had it in the Palace Rec Center. It made it very difficult for any concerned neighbors to attend. He has talked to some neighbors and they are all opposed to this. They have had little notification and even the tenant in this building had no idea that this was in process. A former tenant from this property will shed some light on it. This block,

between Avon and Grotto, is saturated with food establishments. There is an extreme shortage of parking and from what he has seen of this property there is absolutely no room for a handicapped parking spot. Commercial use is already so intense that it would be very difficult to accommodate anything further. He has had to go through a number of renovations on his property and seek approval of neighbors. None of the neighbors are approving of this proposed use and he challenges them to get signatures from neighbors. He said that a friend that lives behind this property received no notification and is highly opposed. Please consider not rezoning this property and changing the structure of the neighborhood. He does not see anything between Avon and Grotto that is zoned T2.

In response to Commissioner Baker, Mr. Huffman stated that this commercial use will inundate the area and makes it very untenable. He had concerns when it was a hair salon and said the ramp is not in compliance with ADA codes.

In response to Commissioner Lindeke, Mr. Huffman stated he owns the building and the Grand Ole Creamery and Pizzeria at 750 Grand Avenue. The Grand Avenue Business Association is upstairs.

Adam Wilson, owner of Owasso Guitars, 407 Grand Avenue, Saint Paul, spoke in opposition. He was a tenant at 770 Grand Avenue from 2012 to August of 2018. He doesn't think this type of thing was ever discussed in the long run. Rosie, Shab's mom, was his landlord for four years. She was a great landlord and that allowed him to start his business. They had a very good relationship, but two years ago, when Rosie retired, maintenance and security ceased. It was a difficult time. He opposes this for a lot of reasons, but a main one is that it is such short notice. This is the dead of winter, and it is very hard for people to get out and he would have had more people out to support him had the weather been a little bit better. This is a serious spot zoning issue and is considered to be detrimental to the community, and it breeds corruption. Independent businesses can become prey to these pump and dump type things where a business goes in with a shorter term lease and makes a number of property improvements up to the point it qualifies as a rezone. He said that the wheel chair ramp at the property is probably not up to code, but it is safe. He has total confidence that the tenant who lives upstairs was not informed of this hearing. The paper work is not accurate. He said if the neighbors who live closest to this property knew about this they would have been here to speak in opposition.

At questions from the Commissioners, Mr. Wilson explained that the paperwork was hasty and elaborated on what the term "pump and dump" means. He said it's basically where your tenant makes the place a little bit better and when it gets close to being good enough where it can get rezoned and turned into something else they do it through spot zoning.

Heather Huffman, 1283 Lincoln Avenue, Saint Paul, said her family owns Grand Ole Creamery and she opposes this large up zoning from BC to T2 because she is concerned about Grand Avenue in the long run. She has lived off of Grand for 34 years and she is concerned about the changes they could make to the structure. They could tear it down and turn it into fast food. This house is a beautiful property that adds to the historic character of their block. She is concerned that this spot zoning would be detrimental to the character of their neighborhood and it would change the street. She believes this request violates many of the criteria that are required for the Planning Commission to grant a spot zoning or nonconforming use permit. Once this property becomes T2 it will not have adequate parking space for employees, the resident who lives on the upper floor, and customers. This rezoning, in her opinion, would result in spot zoning which is very problematic for Grand Avenue. This property was designated BC for a reason. This block cannot fit any more intensive commercial use. There are nine restaurants on this block already. The appeal of Grand Avenue is that they have a mix of low impact and high impact businesses. This block in particular is saturated with high commercial use and this house

is one of the few remaining properties that has a low intensity nature to it. Also, one of the requirements in the zoning chapter is that the applicant must have a notarized petition of two thirds of property owners within 350 feet that has to be obtained before supporting this sort of use of the property. They have never seen a petition. She is concerned that the neighbors have not been fully informed of this request. The other side of the alley is 100% residential and any more intensive use would definitely impact the families that live along there. Any sort of waste or snow removal would require the entire length of the alley. The structure is beautiful the way it is and there is plenty of room on Grand Avenue for all of us to pursue our entrepreneurial aspirations. There is plenty of vacant commercial property that is already zoned for the food service use. There isn't a reason to up zone at this property.

Charles Amos, 401 Sibley Street, Saint Paul, stated he was present on behalf of the Huffman family. He opposes this rezoning because he loves the area the way it is and he is concerned about the future of the area. He sees beautiful brownstones and doesn't see a reason why that would need to change. The community is family oriented and the businesses are getting along and if there is a change it could become more congested.

Chase Huffman, 1283 Lincoln Avenue, Saint Paul, stated that his family owns the Grand Ole Creamery at 750 Grand Avenue. He is opposed to this rezoning because it is an example of cutthroat business. He said there is a perfect example on Grand Avenue where this was allowed to happen at Lexington and Grand. There are two optical shops that opened right next door to each other, and that to him is what you call cutthroat business, where you go after each other's customers, and it is not a healthy business environment. If you are talking about giving back to the community and bringing over ice cream from one of their biggest rivals in Minneapolis and putting that on Grand Avenue to go toe to toe with Grand Ole Creamery, piggybacking off of an establishment that has been there for 35 years, that is promoting cutthroat business on Grand Avenue. Also, it would set precedent for other businesses on Grand Avenue to rezone.

Shab Shakibi responded to testimony. First, she wants to address Adam, the former tenant. It is funny that he is present because she had to ask him to leave the space because there were so many complaints against him from the neighbors and surrounding businesses to the point where she started to feel unsafe. The fact that he is here opposing this is not surprising. The Huffman family has been completely unethical in their conduct on this rezoning. They have threatened her and tried to intimidate them to stop the process from happening. Not once did they mention that they don't want this rezoning because it is going to affect their pockets. That is really what it's about and they are upset that on the application it says that we are going to sell ice cream. That isn't the only thing we are going to sell and they don't own the rights to selling ice cream on Grand Avenue. They sell pizza and Punch Pizza is across the street and that wasn't stopped. The rezoning is consistent with the area and they are in a historical preservation area so they cannot tear down the building and rebuild. They have had offers from multiple places that have wanted to buy and tear down the building and they have not sold the property. It is not their intention to remake Grand Avenue into a non-historic area. That is exactly why they are keeping the property and why they want Treats LLC in there because they are going to maintain the value that Grand Avenue has, unlike many other parties that were interested in this property. At the Summit Hill Association the neighbors were very enthusiastic about this. She and her brother own a car dealership together and there are at least ten other dealerships on the same street. This is free enterprise that has nothing to do with stepping on anyone's toes. They are doing their own thing that will bring new consumers to Grand Avenue.

In response to Commissioner DeJoy, Ms. Shakibi stated as far as she knows the current ramp for ADA accessibility is in compliance with the code. She believes it will go through review before they get their Certificate of Occupancy. In regards to changes of the exterior of the

building, she said they will be painting the exterior of the building and taking out the rocks to add outdoor seating in the front area.

In response to Commissioner Baker about contacting surrounding property owners, Ms. Shakibi said a consent petition is only required if they were going from residential to commercial zoning. She has been telling the current resident since they closed the salon that she is in the process of selling or finding a new tenant. She hasn't spoken to the surrounding neighbors and business owners. She said the space has been vacant since October 2017.

Arash Shakibi, 770 Grand Avenue, Saint Paul, said his parents have owned the building since 1993. He feels his sister did a great job explaining the situation, but he wants to touch on a few things he has noticed. He is new to this process and he has never been to any kind of meeting like they were at on Sunday. What he saw was disturbing. The Huffman's were trying to intimidate his sister. With business, he feels that the more people that come into the area, the better. The reason that Treats LLC chose this location is because of the area and the reasonable price they are offering. He would like them as a tenant versus anyone else.

Trisha Dinh added that there were notices sent out to the neighbors. She believes the notice went out mid-January.

The public hearing was closed.

Mr. Torstenson stated that City staff sends out notice ten days before the public hearing as required by law. A notarized petition is not required for rezoning from one commercial district to another.

In response to Commissioner Fredson, Mr. Torstenson stated that if there were any change in the use at this property it would need to meet all requirements for that particular use, including parking requirements. Regarding Finding 3, Strategy G4 of the Summit Hill / District 16 Neighborhood Plan doesn't prohibit rezoning from BC and residential zoning to another zoning district. Rezoning is based on the specific location of a property and whether a different district is appropriate given the surroundings.

At questions from the Commissioners regarding other ways to permit the proposed use, Mr. Torstenson said the existing zoning does not allow the proposed use, and use variances are not allowed under Minnesota law. If a use is not listed in the use table as a conditional or permitted use in the zoning district it is not allowed. He explained that the application is for rezoning to T2; it is not for approving a particular use. Rezoning to T2 would allow anything that is permitted under T2 zoning as long as it meets all of the City's conditions and requirements for that use. Conditions and requirements vary by use. There are standards for the district and the use that must be met for a use to go in. Mr. Torstenson said that T2 zoning is consistent with the way this area has developed, and consistent with the surrounding zoning and land uses. He noted some of the comments that this lot is unique because it has such low intensity use compared to the rest of the block. The kind of uses allowed in T2 are permitted on the entire block except for a couple of lots. Not allowing uses on this lot that are allowed on the rest of the block is closer to spot zoning than rezoning to T2 to allow them. T2 is consistent with adjacent RM2 and B2 zoning districts and uses, and is the most appropriate zone for this site. T2 allows use of a building like this for entirely residential use, and also allows commercial uses that are consistent with the uses that are adjacent.

Commissioner Edgerton said he feels supportive of what the applicant is trying to do, but he also understands the opposition. By allowing the rezoning, it has the potential to be detrimental to the neighborhood and become out of character with the BC designation.

Mr. Torstenson discussed the zoning history and changes over the years in the Grand Avenue area. There was a desire in the 1980s for commercial uses to go into houses. There was a general rezoning of houses to BC and apartment buildings remained RM2. There are certain areas on Grand that should remain BC, but in a case like this, where the lot is in the middle of an otherwise largely commercial area, it is harder to make the case that it needs to remain BC. He confirmed that part of the reason for the standards of the BC district was to maintain the residential character of the buildings.

Commissioner Ochs asked if there is a way to allow this use in a BC district or allow it to be a T2 zoning district with certain conditions applied so that the intent of the BC district is preserved.

Mr. Torstenson said that a zoning code amendment would be needed to allow food and beverage use in a BC district, and conditions cannot be attached to a rezoning under Minnesota state law. It is possible to attach conditions to a particular use within a zoning district. Many uses within a T2 zone would require a conditional use permit (CUP), and some uses that don't require a CUP would still have special conditions that apply to that use. Any use that goes into this location would have to meet whatever conditions apply to that use.

Commissioner Lindeke said the last Summit Hill Small Area Plan was adopted in 2006, just after T zoning became a designation. There is a broader conversation that needs to happen regarding Grand Avenue zoning reflecting changes in the zoning code. His inclination is to move toward T zoning because it better reflects how our communities, and especially our commercial mixed use corridors, have developed, with complex fabric. T zoning fits with the building and surrounding zoning and land uses in this case.

Mr. Torstenson stated that the Zoning Administrator is present and he was able to confirm that the building is within the State Historic District.

Commissioner Fredson moved approval of the rezoning. Commissioner Reveal seconded the motion.

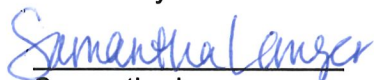
Commissioner Reveal said she would like confirmation at the Planning Commission that the property is ADA compliant or will require a new C of O.

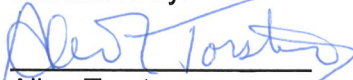
In response to Commissioner Rangel Morales, Mr. Torstenson provided more information on the State Historic District designation. He said that State Historic District requirements for review of changes to the structure includes removal of the building or a large part of the building, but not smaller exterior changes.


The motion passed by a vote of 7-1-0.

Commissioner Edgerton stated his opposition is due to the fact that a BC zoning calls for maintaining the residential character, which would not be required under T2 zoning.

Adopted                      Yeas - 7              Nays - 1 (Edgerton)      Abstained - 0

Drafted by:  
  
Samantha Langer  
Recording Secretary

Submitted by:  
  
Allan Torstenson  
Principal City Planner

Approved by:  
  
Dan Edgerton  
Chair



Submitted by  
Chuck Repke  
1.31.19

Proposed Replacement language

Findings:

1. – Same as staff findings
2. The proposed zoning is not consistent with how the area has developed. The Community Business converted (BC ) Zoning on Grand Avenue is unique in the City of Saint Paul. **Sec. 66.413. - Intent, BC community business (converted) district.** *The BC community business (converted) district is a business district expressly for existing residential structures in commercial areas, which will permit the operation of businesses which do not generate large amounts of traffic and at the same time will retain the visual character of the building forms and open space associated with residential uses. This includes a limited height on buildings and front and side yards. It is further the intent of this district to provide parking for employees who work in buildings which are converted from residential to business use.*

As Grand Avenue went through a renaissance in the 1970's and early 1980's concern about the pressures to demo Victorian Styled homes for commercial development or parking became a major concern. After a long planning process and considerable discussion and efforts in the business and residential communities the BC zoning designation was developed. The BC designation allowed the structures to be either mixed use residential and commercial or commercial uses that have limited parking requirements and low impact on the adjacent residential properties on Summit or Lincoln. The types of uses allowed were retail and office in nature that anticipated limited hours of operation. Restaurant uses are prohibited. T2 zoning district is not as narrow in scope and will allow more intense uses than are allowed in the BC zoning district.

3. The proposed zoning is not consistent with the Comprehensive Plan. Grand Avenue is a primary thoroughfare through the city that is served by public transit and includes areas where two or more uses could be located in the same building or close proximity. Policy 1.23 in the land use plan calls for guiding development along mixed use corridors. Policy 1.24 calls for a mix of uses on mixed used corridors. Policy 1.47 supports compatible mixed use within single buildings and in separate buildings in close proximity. The BC zoning district was designed for Grand Avenue to accomplish all of those goals in this neighborhood. To eliminate BC zones threatens that guided/planned development of the area.

The Summit Hill/District 16 Neighborhood Plan's vision for Grand Avenue is an eclectic mix and balance of housing and small scale shops, restaurants and services, both locally and nationally owned for residents and visitors. Strategy G1 of the plan states, Maintain Grand Avenue as a continuous neighborhood retail and residential corridor and contain commercial uses and accessory parking with existing boundaries. **Strategy G4 states, retain BC (commercial uses in residential structures) and residential zoning on Grand Avenue. Discourage rezoning of residential uses to more intensive uses.** Rezoning from BC to T2 directly violates strategy G4 and would be inconsistent with the neighborhood plan. Every owner of BC property on Grand Avenue who loses an existing tenant may find it more profitable to rent to a coffee house or restaurant use. Rezoning to T2 further could allow the demolition of the Victorian styled home and replace with a more modern office/retail or mixed use building.

4. – Same as staff findings
5. Court rulings have determined that “spot zoning” is illegal in Minnesota. Minnesota courts have stated that this term *“applies to zoning changes, typically limited to small plots of land, which establish a use classification inconsistent with surrounding uses and create an island of nonconforming use within a larger zoned property.”* Grand Avenue within the District 16 area has been consistent in how it was developed mixed use development exists in the BC zoning districts. Piecemeal rezoning of one parcel of 40 foot wide BC zoned property to T2 which does not exist on the block could be considered spot zoning.

**Based on findings 2, 3 and 5, the petition to rezone from BC community business (converted) to T 2 traditional neighborhood at 770 Grand Avenue should be denied.**