

November 27, 2014

City Council of Saint Paul
310 Ramsey County Courthouse
Saint Paul, Mn. 55102

RE: License No. 20140001613 Application for Liquor License-Eagle Street Grill dba
The Salt Cellar. 173 Western Ave. N.

Dear Council Members,

This letter is in reference to the request by Eagle Street Grill LLC (Applicant) for on sale liquor at 173 Western Ave. N.

I expect the outcome on this has already been determined and once the 10 day BZA appeal time has run out, the license will ultimately be granted. In fact, I sense that the outcome of this was determined long ago and City Staff and Council have chosen to ignore the damaging ramifications of this action and green light this bar/restaurant regardless of the consequences and poor policy it represents.

As a property owner and long time resident/investor in the area, I, along with many other concerned neighbors and business owners took issue with the proposal for a 180 seat capacity bar/restaurant while providing only 13 off street parking spaces without a variance request that would normally be required. This is a neighborhood that is one of the most congested in the city as far as parking goes. I, along with many others followed this project from the beginning and mostly, out of a sense of "there has to be something wrong with this picture", dug in and did lots of research, asked lots of questions, talked to neighbors, met with Councilman Thao, and tried to figure out how this could actually be getting approval despite all the obvious errors and flaws in the site plan and consequent parking problems it will cause.

I am not a political person and rarely get involved in these types of actions. What motivated me to get involved was the realization that if this passes without first addressing the severe parking problems that this restaurant will cause, the existing parking problems will be made much worse and our neighborhood will be adversely effected. I thought that it would be a simple matter of bringing attention to the errors and consequences of allowing this project to go forward, and our wise Council and Staff would reasonably and logically take action, and at a minimum, require variances for the parking shortfalls and other zoning issues. Instead, what I experienced through this process has jaded me and left me with little faith in the integrity of our City staff and officials. Numbers were fudged if not outright altered to do whatever it took to make this work without a variance, including misrepresenting the building size, selectively ignoring zoning rules, and cherry picking numbers to fit the desired outcome. I need to express my frustration and disappointment in the City Council, City Zoning, BZA and all those who's jobs are to uphold the laws of our fine city and their (in)ability to listen to the people it serves and ensure fairness and a fair hearing. Every step of the way has felt like

being a character in a Kafka novel or observing a real time version of “The Emperor’s new clothes”.

On its face, the idea of 180 seat bar/restaurant with 13 parking spaces in this neighborhood was so ridiculous and damaging that there was a feeling this could not happen, and our representatives would see through the errors and set things right. I was very wrong. Along the way, we were thwarted every step of the way by City Staff and representatives and despite having compelling facts and solid legal arguments, City Staff, the BZA and the City Council simply dismissed our arguments and concerns and chose to pretend there is no problem. Or alternatively, suggesting that it’s “not the Cities problem” and the businesses/residents can work it out. Quite simply, nobody was going to give this anything but a nod and any facts that got in the way of approval, were simply dismissed. As a last resort, we filed an appeal to the BZA in hopes of getting a fair hearing-we were wrong to have this expectation. We put forth 3 strong legal arguments, any one of them should have been enough to require a variance before proceeding. At the BZA hearing, none of our arguments were even addressed and the board members, who, in the end, were so clearly confused and incapable of understanding the simplest arguments or think logically, basically had to ask City Staff how they should vote. It was a farce. This whole project should not have gotten this far without City Staff and Council intervening and telling the developer and applicants to go back to the drawing board and get it right. Sadly, nobody seems to have the wisdom or courage to take a stand.

This to me is representative of why people don’t trust our government. It seems like a gamed system that only gives lip service to the people they represent. The real power seems to be in the hands of those with money and political influence. In the end, this is what determined the outcome, not fairness, reasonableness or the law, but politics.

None of this is a valuable lesson unless we recognize there is a problem and reflecting on how we might do things better. Here are a few solutions and thoughts;

-What is clear to me is this problem is the obvious consequence of some very poorly thought out legislation. When the Council altered the required parking for bars/restaurants to 400 sq. feet per car, the natural outcome is exactly this-too many cars in too few spaces. I realize that the intent may have been to help encourage smaller “mom and pop” establishments that might be short a parking space or two, but nobody seemed to consider how this legislation would play out with larger establishments in already crowded neighborhoods such as ours. I would encourage new legislation that addresses this problem-perhaps allowing for two different parking requirements-one for smaller businesses-beer/wine, coffee shops, cafes, etc. and another, stricter one for those larger establishments with full bars and sizable restaurants such as the Salt Cellar.

-The other immediate solution for our parking problems is to come up with a system (besides closing ½ the streets as happened last year) of getting snow removed promptly in the Winter-St. Paul has a terrible record of snow removal and it effects our businesses and residences adversely. We pay a lot of property taxes and street fees-please give us at least this for our money.

-I would also suggest comprehensive studies on parking prior to issuing licenses for businesses that will have large scale impacts-particularly when they are using “grandfathered rights” to circumvent the normal parking requirements. If a study indicates a parking problem, withhold approval of any new “parking intensive”

establishment until the parking problems can be addressed in a way that works to the benefit of our businesses and residents.

-Listen to neighbors. We have a right to at least a minimal say in what goes on in our neighborhoods. I approve of new businesses and support them and the tax dollars they bring in-it benefits everyone when it is well thought out and balanced. We are taxpayers too, and to be supportive of any business regardless of the impact on neighborhoods, and simply ignoring the overall impact of a particular business, is poor policy.

-Another more immediate solution would be to consider selective two sided parking on streets that only allow one sided parking. Perhaps this, in combination with residential permits, timed parking, etc. might be a reasonable approach to alleviating some of the congestion that we are experiencing.

What should not happen though is for neighborhood residents to be expected to bear the cost of increased traffic alone, which is what is occurring. The City needs to be proactive and consider additional commercial parking solutions to accommodate increased traffic prior to new development, not after.

Please read through the attached documents that were submitted by 2 separate attorneys and an architect addressing the multiple errors in the approved site plan-any one of which would significantly alter the parking calculations and require a variance. Based on the discrepancy of the building size alone (Site plan says 12,600 square feet, the actual gross building area is over 13,700) would require an additional 3 parking spaces, therefore a variance. Setbacks are ignored, fencing between residential/commercial parking areas are ignored, parking on an established easement is ignored and the whole "grandfathering" defense is misapplied.

Regards,

Jeffrey Austin

COURTNEY & COURTNEY

ATTORNEYS AT LAW

VINCENT P. COURTNEY (1918-2001)

VINCENT J. COURTNEY

1150 MONTREAL AVENUE, SUITE 103

ST. PAUL, MN 55116

PHONE (651) 224-6622 • FAX (651) 675-4908

E-MAIL COURTNEYVINCENT@HOTMAIL.COM

November 21, 2014

Board of Zoning Appeals
Department of Safety & Inspections
375 Jackson Street, Suite 220
Saint Paul, MN 55101

Re: Appeal of Zoning Administrator's Determination
173 North Western Avenue

Dear Board Members:

I represent Mariana and Naum Liberman who are the owners of Moscow on the Hill located at 371 Selby Avenue, just down the street from the proposed Salt Cellar located at 173 Western Avenue North (hereinafter the "Property").

I write for the purpose of supporting the Appeal of John Rupp and Jeffrey Austin. Specifically we support the arguments of Peter Beck contained in his letter to you November 18, 2014. Mr. Beck's letter contains three strong arguments for overruling the decision of the Zoning Administrator. We support all of these arguments and I will not burden the Board by rearguing each one individually.

I would like to point to a couple of additional arguments that I have come up with for granting the Appeal of Mr. Rupp and Mr. Austin and rejecting the Zoning Administrator's Decision.

1. Any Grandfathering in of Parking Spots, should be based on what the previous user was legally required to provide.

The Zoning Administrator has taken the position that Section 63.204 allows for the grandfathering in of parking spots, i.e., if the previous owner was 10 parking spots short, then the new business can be 10 parking spots short. However, even if the Zoning Administrator, were correct, the interpretation is incorrect.

The Zoning Administrator ignores how many parking spots were required of the previous owner. The Zoning Administrator discusses the use of a "concept" plan and admits that all relevant documents show that the previous user was required to have in place 21 spaces or at least 18 spaces. Then the Zoning Administrator concludes that the information is irrelevant.

Even if Sec. 63.204 allows for grandfathering of parking spots, an interpretation we disagree with, it should only grandfather in based on what was legally required before. If 21 spaces were required by the previous use and one more is required now, then 22 spaces should be required. If

the previous owner had less parking spaces than legally required, those illegal spaces should not be grandfathered in.

2. Site Plan relied up by the Zoning Administrator is Incorrect. The Zoning Administrator Concludes that the Applicant needs to come up with one more parking spot. Implicit in this finding is that the Applicant now needs 14 parking spots instead of the 13 spots shown on the Site Plan.

The attached aerial photo shows the parking lot in question. On the northwest side of the Lot are 4 alleged parking spots. 2 of the spots provide direct access to the lot on Dayton Avenue. I point this out for two reasons. First of all, there are not 13 parking spots on the lot as set forth in Site Plan and as relied on by the Zoning Administrator.

Secondly, I point out what appears to be a clear practical error for the purpose of showing that the Zoning Administrator has gone to great lengths to justify a position that has very little factual support. This is just another example of that. The 13 spots are not there. Clearly 2 of them are used for ingress and egress to the parking lot on Dayton Avenue. Pictures do not lie.

Conclusion: In addition to the above arguments, The Zoning Administrator ignores Planning Commission Resolution #95-81 which is clear evidence that the previous use of the property required 24 spaces not 31. **No** documentation is provided supporting The Zoning Administrator's Decision. None.

Lastly, with regard to calculating the gross floor area, Ordinance 60.207 -F defines "Floor area, gross". It does not say take the word or the applicant. Implicit in the definition is that the Zoning Administrator is charged with coming up with an accurate number, not just one given by the applicant. If the evidence at the Hearing shows that the number used by the Zoning Administrator is incorrect, the Appeal should be granted.

For the reasons set forth herein, the Appeal should be granted.

Yours very truly,
COURTNEY & COURTNEY

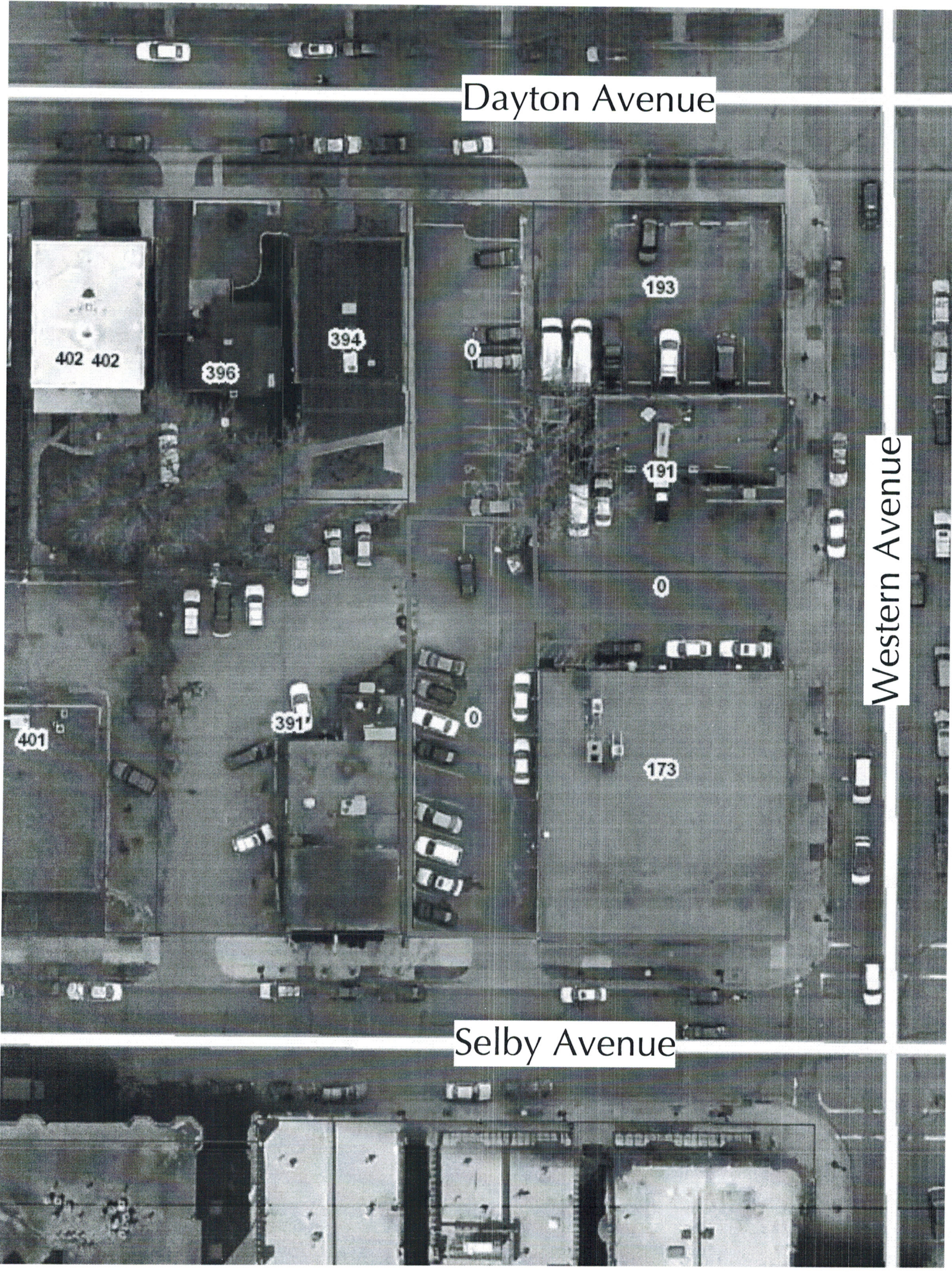
By 
Vincent J. Courtney

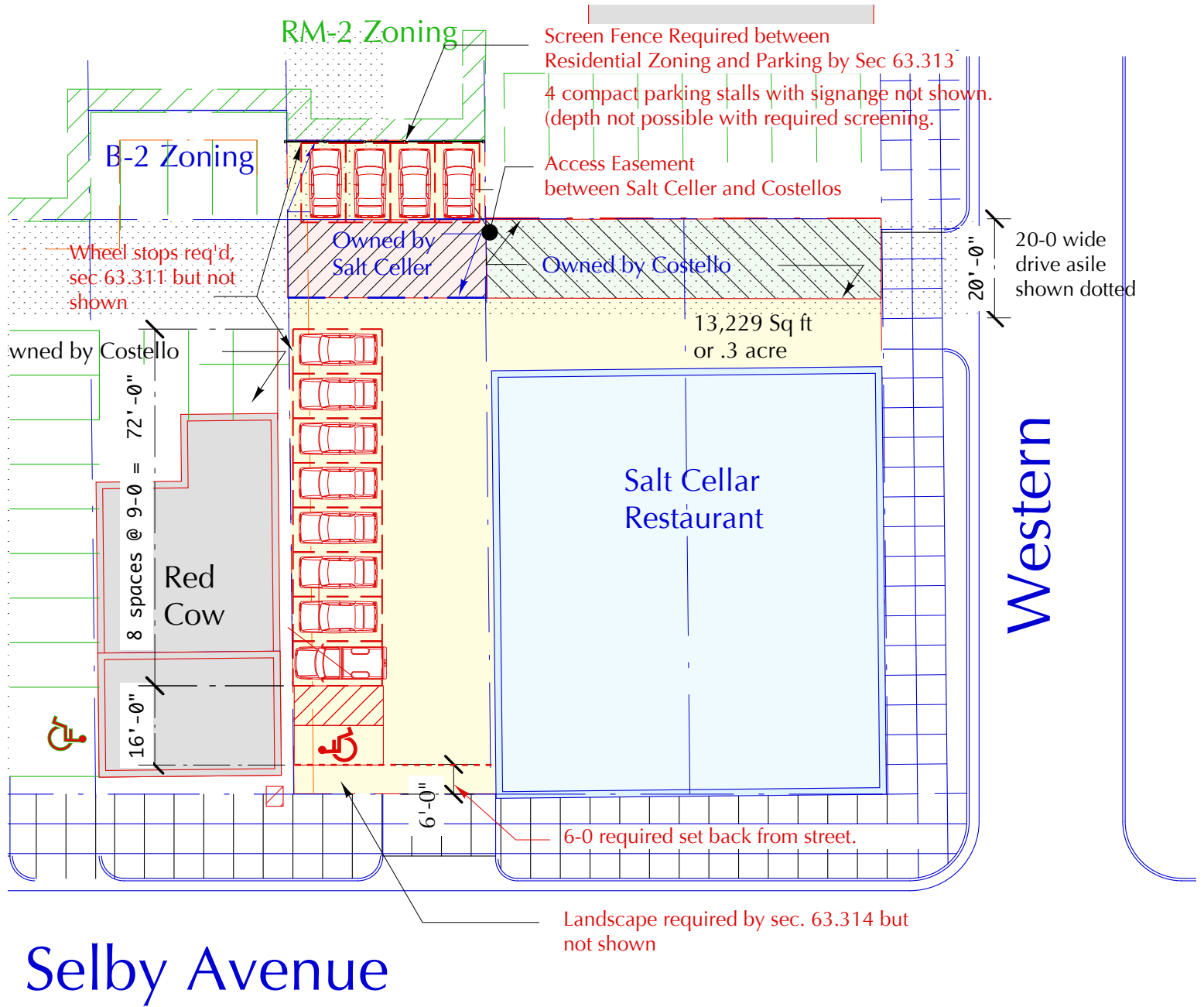
cc: Moscow on the Hill

Dayton Avenue

Western Avenue

Selby Avenue





City Scheme
9 conforming Spaces and
4 spaces require variance for size to allow screening

Carlsen & Frank Architects, llc

524 Selby Avenue, Saint Paul, Minnesota 55102

Ph. (651) 227-4576

Date November 21, 2014

RE Comments on 173 Western Avenue Approval of Revised Site Plan
15=3280-08 for the proposed restaurant (D>B>A> Salt Cellar/Liquor License
#20140001613) with Addition of Bicycle Parking. Site Plan to Mr Joseph
Kasl, by Lawrence R Zangs, Project Facilitator.

By: Peter Carlsen

This is a review the approval of a site plan for the Salt Cellar I received today. My comments do not address my contention that the project requires a minimum of 23 and perhaps 34 parking spaces. I would note the following about the site plan which seems to show it is still not compliant with the Zoning Ordinance with only 13 spaces shown.

1. Item 1, should state 14 off street parking spaces required of which 4 secure bicycle parking has been substituted for one of the required spaces.
2. In item 3 all parking spaces are required to be 9 ft x 18 ft. There is only 16-0 depth for parking along northern border and the 4 spaces placed there on the plan can not provide required size without overhanging the easement.
3. A landscaped area along Selby Avenue is required by Sec 63.314. It is not shown.
4. The northern 6 parking stalls require wheel stops by Sec 63.311, but are not shown or specified in memo.
5. Visual screening required by Sec 63.313 along northern property line abutting a residential district is not shown or required. If installed it will further reduce the possibilities for code compliant parking at this location.
6. The 4 secure bicycle parking rack will not meet the requirement for landscape along Selby and should be located in another location.
7. Staff does not have the option of ignoring provisions of the zoning ordinance. This is clearly implied in the zoning ordinance sec 63.105 which states

...no new use or change shall be made or maintained of any building, structure, or land, or part thereof, except in conformity with the provisions of this code.

BECK LAW OFFICE

2600 US Bancorp Center
800 Nicollet Mall
Minneapolis, MN 55402

Peter K Beck
Attorney at Law

peter@peterbecklaw.com
612-991-1350
www.peterbecklaw.com

November 18, 2014

Via Email

Board of Zoning Appeals
Department of Safety & Inspections
375 Jackson Street, Suite 220
Saint Paul, MN 55101

**Re: *Appeal of Zoning Administrator's Determination
173 North Western Avenue***

Dear Board Members:

This letter is written on behalf of John Rupp, a co-applicant on the Application for Appeal of the Zoning Administrator's Determination, dated October 30, 2014, regarding the parking required for a proposed restaurant at 175 North Western Avenue.

The proposed restaurant will accommodate 150 to 160 patrons and have 40 full-time and part-time employees. The parking lot for the restaurant can accommodate only 13 parking spaces. The Zoning Administrator has determined that only one additional parking space is required. The Applicant appeals this determination on the following three grounds:

1. The Zoning Administrator incorrectly calculated the number of parking spaces required for the proposed restaurant.

The Zoning Administrator, based on floor plans submitted by the restaurant applicant, determined there will be 12,600 square feet of gross floor area in the restaurant and calculated the parking required at 31 spaces. However, the attached Ramsey County tax records show that the gross square footage of the building is over 13,700 square feet. The Zoning Ordinance requires 34 parking spaces for a 13,600 square foot restaurant. That is the parking required for the proposed restaurant.

2. The Zoning Administrator incorrectly interpreted City Code Section 63.204 to transfer grandfather rights from one use to a new and completely different use.

The first sentence of Section 63.204 reads:

When any existing use within a structure changes to a new use which requires more off-street parking spaces than the existing use as determined by Section 63.207, then the additional required off-street parking spaces must be provided.

This language requires that a new use provide the number of permanent, off-street parking spaces required by Section 63.207 for that use. In this case, 34 parking spaces. However, the Zoning Administrator has interpreted this Section to say that if an existing use has a parking deficiency, no matter how significant that deficiency, the new use is entitled to the benefit of this nonconforming deficiency and need only provide the difference between the parking spaces the existing use should have had and the parking spaces required by the new use.

This interpretation is contrary to the purpose, intent and language of Section 63.204. The purpose of Section 63.204 is to bring parking into compliance with City Code requirements when there is a change in use. Grandfathering in an existing parking deficiency for a different use defeats this purpose by perpetuating the nonconforming parking deficiency indefinitely. This is why the language of Section 63.204 itself says that when an existing use changes to a new use, the additional required off-street parking must be provided. Parking deficiencies are not to be perpetuated by allowing new uses to get the benefit of the prior use's parking deficiencies. The proposed restaurant must provide the 34 parking spaces required by Section 63.207.

3. Even if the Zoning Administrator's interpretation of Section 63.204 is correct, and the proposed restaurant need only provide the difference between the parking required for the prior use and the parking required for the restaurant, the Zoning Administrator incorrectly calculated the number of parking spaces required for the prior use.

The Zoning Administrator determined that a total of 30 parking spaces were required for the prior College use in 1994, and states that "the College parking requirement has not changed since the College was established at this property in 1994." This statement is incorrect. In 1995, the College applied for a Special Conditional Use Permit to add a property to its multi-campus college and, in connection with that request, rebalanced its students between the campuses. In Resolution No. 95-81 (copy attached), the Saint Paul Planning Commission approved the Special Conditional Use Permit applied for, subject to six conditions. The six conditions include condition 4(e), which sets forth detailed findings regarding parking at all of the College's campuses. With respect to the College's Selby and Western Campus, the building which the restaurant proposes to reuse, the Planning Commission Resolution states that:

The requirement for the Selby and Western location for students (21) and staff (3) is 24 spaces.

Since the restaurant use requires 34 parking spaces, even under the Zoning Administrator's interpretation of Section 63.204, the proposed restaurant must provide 10 additional parking spaces, or obtain a variance from the requirement that it provide those spaces.

Parking in the Cathedral Hill area has been a problem for many years. Although the College of Visual Arts Selby and Western Campus was grossly underparked, its peak parking demand was during the day and therefore did not conflict with the restaurants on the corner. The new restaurant proposal will be even more severely underparked, with a peak demand that will conflict directly with the existing peak parking demand in the area. This is why Mr. Rupp, other businesses in the area, and many residents in the area have opposed establishment of the proposed restaurant without the required parking.

The required parking, pursuant to Section 63.207 of the City Code, is 34 spaces. The restaurant parking lot can accommodate 13 spaces. The Zoning Administrator's determination that only one additional parking space is needed to establish a new restaurant with up to 200 patrons and employees will severely exacerbate the existing parking shortage in the area. This is contrary to the purpose, intent and language of Section 63.204 of the Zoning Code, which is intended to bring properties into compliance with off-street parking requirements as uses change, not to create bigger parking problems.

Mr. Rupp requests that the Board of Zoning Appeals uphold his Appeal and determine that the proposed restaurant must provide the 34 permanent parking spaces required by the City Code.

Very truly yours,

PETER K. BECK ATTORNEY AT LAW PLLC

By:



Peter K. Beck

PKB:tk

Attachment

cc: John R. Rupp

Ramsey County tax

Property Identification Number (PIN)	01.28.23.21.0047	
Property Address	173 Western Ave N	
Municipality	St. Paul	
Watershed	Capital Region W/S	
School District Number	625	
Assessment Date	01-02-2013	01-02-2014
Tax Payable Year	2014	2015
Total Estimated Market Value	\$1,164,400	\$1,010,000
Total Taxable Market Value		\$1,010,000
Total Estimated Land Value	\$192,000	\$192,000
Total Estimated Building Value	\$972,400	\$818,000
Property Tax	\$0.00	
Special Assessments	\$1,025.18	
Total Property Tax + Special Assessments	\$1,025.18	
Property Class Description	Exempt	Comm/Ind
Year Built	1963	
# of Stories	1.00	
Residential Finished SQ Feet/Comm, Ind, Apt Bldg Area	13728	
Foundation Size		

The Plat or Section / Township / Range and Legal Description listed below may be an abbreviated legal description - Do not use to prepare legal documents

Section / Township / Range	1-28-23
Plat	Kern's Addition To, st. Paul
Legal Description	S 100 Ft Of Lots 29 And Lot 30 Blk 2

To determine whether your property is Abstract or Torrens, call (651)266-2050

records

city of saint paul
planning commission resolution
file number 95-81
date November 17, 1995

WHEREAS, THE COLLEGE OF VISUAL ARTS, file #95-221, has applied for a Special Condition Use Permit under the provisions of Sections 60.413(7) and 64.300(d) of the Saint Paul Legislative Code, to establish a campus for the college, on property located at 394 DAYTON AVENUE, legally described as Lot 3, except the South 16 feet thereof; and Lot 4, except the South 22 feet thereof, Block 2; Kern's Addition; and

WHEREAS, the Zoning Committee of the Planning Commission held a public hearing on November 9, 1995, at which all persons present were given an opportunity to be heard pursuant to said application in accordance with the requirements of Section 64.300 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 College of Visual Arts is an independent, non-profit, four-year college of art and design. The college's main offices are located at 344 Summit Avenue. The college also owns and maintains property at 173 and 175 Western Avenue and 385 Selby Avenue which is used to house classrooms, studios, an art gallery, faculty offices, and a student lounge.

The College of Visual Arts intends to purchase property at 394 Dayton, rehabilitate the building, and establish a college use there. The college anticipates multiple uses for the building including a library, computer lab, artist studios, and office space. The basement will be used for storage. Students and faculty will move freely from the Summit Avenue, Western Avenue, and Dayton Avenue campuses. At any one time it is expected that three to four employees and 14 to 16 students will use the Dayton Avenue facility.

More specifically, the library would be staffed by one full-time librarian and one half-time assistant who would share one of the offices. The second office would be shared by two faculty members. Based on experience with their current library, they expect the library at the Dayton facility to serve four to six students at any one time. The computer lab would accommodate up to five students at any one time.

moved by Morton
seconded by _____
in favor Unanimous
against _____

2. This current permit application is to allow the college to establish a new campus, separate from the Summit Avenue location and also separate from the Selby & Western location. The Dayton campus is not part of the Summit Campus since the two are not contiguous; the Western Avenue Campus is a permitted use without a special condition use permit since it is located in a commercial zoning district.
3. The Dayton Avenue property is currently comprised of an eight-unit apartment building and adjacent surface parking for 12 vehicles. The building has been vacant for more than two years and was recently declared a nuisance property. It is deteriorated and in need of substantial repairs and will be demolished unless improvements are made.
4. Section 60.413(7) of the zoning code identifies colleges, universities, and seminaries as permitted uses subject to special conditions in the R-1 through R-4 (single family) zoning districts, as they are in all subsequent residential zoning districts except RM-3 (high density multiple-family). They are subject to six conditions, as follows:

- a. The campus boundary as defined under subparagraph d. below at some point shall be adjacent to a major thoroughfare as designated on the major thoroughfare plan.*

This condition is not met. The college requests a modification of this condition. The college states that while the proposed campus is not located on a major thoroughfare, it is contiguous to a portion of the existing campus which fronts on Selby Avenue. Selby Avenue is designated as a "Minor Arterial Level B" in the Streets and Highways Plan, a chapter of the city's comprehensive plan. The zoning code defines a "minor arterial" as a major thoroughfare (Section 60.213.M.). Therefore, Selby Avenue is considered a major thoroughfare. The parking lot for the Dayton Avenue campus will be accessible from Selby Avenue.

- b. Buildings shall be set back a minimum of fifty (50) feet from every property line, plus an additional two (2) feet for every foot the building's height exceeds fifty (50) feet.*

This condition is not met. The college requests a modification of this condition given that the existing structure on the site cannot meet this condition. The existing building on the property is not set back 50 feet as required by the code.

- c. On a campus of five (5) acres or more, no building shall exceed ninety (90) feet in height; on a campus smaller than five (5) acres, no building shall exceed forty (40) feet in height.*

This condition is met. The college states that the height of the existing structure does not and will not exceed 40 feet.

- d. The boundaries of the institution shall be as defined in the permit, and may not be expanded without prior approval of the planning commission, as evidenced by an amended special condition use permit. The campus that is defined by the boundaries shall be a minimum of three (3) acres, and all property within the campus boundaries must be contiguous.*

The college requests that this condition be modified. The proposed campus is significantly smaller than the required three acres. The campus on Dayton Avenue is about 7,800 square feet, the Western Avenue campus is about 12,640 square feet, and the Summit Avenue campus is about 52,270 square feet. The total area of all the campuses is about 1.7 acres.

The applicant shall submit an "anticipated growth and development statement" for approval of a new or expanded campus boundary, which statement shall include but not be limited to the following elements:

1. Proposed new boundary or boundary expansion.

The college plans to establish a campus at 394 Dayton Avenue. They have no plans at the present time for boundary expansion beyond the Dayton Avenue property.

2. Enrollment growth plans that include planned or anticipated maximum enrollment by major category (full-time, part-time, undergraduate, graduate) over the next ten (10) years and also the anticipated maximum enrollment over the next twenty (20) years.

The college's full-time enrollment currently stands at just under 200 students. A five year growth plan recently approved by the College's Board of Trustees would cap the college's enrollment in the year 2000 at 250 full-time students. All of these students are undergraduates as the college does not have a graduate degree program. The college expects the enrollment to remain at or near 250 full-time students for a considerable period of time.

The College's Board of Trustees has not adopted a formal growth plan which extends 10 to 20 years into the future, but no significant increases in enrollment beyond 250 students are anticipated at this time.

3. Plans for parking facilities over the next ten (10) years, including potential locations and approximate time of development.

The college expects to use the existing surface parking lot (12 spaces) provided at 394 Dayton Avenue and in the future to be able to share the parking lot being

developed by the YWCA. The college also expressed interest in sharing the proposed parking lot at the southeast corner of Marshall & Western, if it is ever developed.

Access to the parking lot at 394 Dayton would be from Dayton Avenue and through the college's existing parking lot on the Western Avenue campus which can be accessed from both Selby and Western Avenues.

4. *Plans for the provision of additional student housing, either on-campus or off-campus in college control housing.*

The college is primarily a commuter school and has no plans to develop on- or off-campus housing. The college is exploring guaranteed rent arrangements with existing apartment unit owners in the Selby & Western area as a means of assuring the availability of housing for out-of-town students, but it has no plans to own or otherwise control such housing.

5. *Plans for use of land and buildings, new construction and changes affecting major open space.*

As mentioned previously, the college intends to remodel the Dayton Avenue building and use it for school purposes, including library, computer lab, offices, and artists studios. In addition, the existing parking area will be resurfaced and used for student and faculty parking. These plans will not affect any existing major open spaces. Existing trees and landscaping on the property will be preserved.

6. *An analysis of the effect this expansion will have on the economic, social, and physical well-being of the surrounding neighborhood, and how expansion will benefit the broader community.*

The college states that their use of the property on Dayton Avenue will have a number of positive effects on the economic, social, and physical well-being of the surrounding neighborhood. First, the presence of the college in the Selby & Western area has helped provide substantial support for businesses operating in the area. Students and staff who work in the area often frequent the local restaurants and retail and service establishments. They add that the college's presence creates occasional burdens on the available parking in the area. The proposed new campus would move more of this traffic into off-street parking areas and improve efficiency of the off-street parking which already exists or is being developed.

Second, the college's presence, with its students and staff, has contributed substantially to a safer neighborhood environment. The physical presence and activity at the campus will provide the type of interaction which helps to deter crime.

Third, the improvement to the property at 394 Dayton Avenue can have nothing but a positive impact on the well-being of the surrounding neighborhood. Since the time the property has sat vacant, the building has deteriorated, the parking area has become overgrown, and vandalism has occurred. The improvement of this property and its use as a campus for the college will be a dramatic improvement for this area and will bring with it a vitality which has long been absent from the corner near which it is located.

Fourth, the new campus will allow for additional growth in the college's enrollment which is necessary if the college is to maintain a sufficient critical mass of students and faculty to remain a vital and active part of Saint Paul. While the college intends to maintain a relatively small enrollment, the college needs to be permitted some growth to remain competitive. Approval of this application will allow that growth to take place in Saint Paul.

- e. The institution shall not exceed by more than ten (10) percent or three hundred (300), whichever is less, the student enrollment, staff and employee size and/or dormitory bed levels identified in the permit unless required off-street parking is provided and approved by the planning commission.*

The zoning code parking requirement for colleges, universities, and seminaries is one space for every two employees, plus one space for every three full-time students living off-campus or part-time students, whichever is greater.

The college states that it will not exceed by more than 10 percent or 300 the number of students, faculty, and staff allowed in the permit without acquiring additional off-street parking.

During the 1995-96 school year, the College of Visual Arts expects to have, at its Summit Avenue campus, 95 full-time students, 15 part-time students, and 42 employees. At its Western Avenue campus there will be 63 full-time students, 3 part-time students, and 6 employees. At its new campus on Dayton Avenue the college expects to have 14 full-time students, 2 part-time students, and 4 employees. The total enrollment and employees at all of the college's facilities is expected to be 244.

There are 6 off-street parking spaces at the Summit Avenue Campus, 21 spaces at the Selby & Western campus, and 12 spaces at the Dayton Avenue campus. In addition, the college has a legal non-conformance of 49 off-street parking spaces. The legal

non-conformance dates from the time the city first established parking requirements for colleges in 1975 and also when the parking requirement for employees was increased in 1989. The college is required to provide parking only for the increases in enrollment and number of employees that have occurred subsequent to these changes.

The zoning code requires that additional off-street parking be provided when a college increases its "base" number of employees, dorm beds, and students by more than 10 percent. The current base for the College of Associated Arts, for students and employees is 223. If the base number cumulatively increases by more than 10 percent to 245.3, the college will be required to provide the off-street parking for that increase. The projected number of students and staff in the 1995-1996 school year, for purposes of computing parking, is 224, less than a 10 percent increase from the 1993 base.

The Office of License, Inspections, and Environmental Protection determined that the college's use of the Dayton Avenue facility will not require an increase the college's parking requirement since parking requirements for colleges are determined by the number of students and employees rather than the size of buildings themselves. Since there is no anticipated increase in enrollment or employees the parking requirement will stay the same.

The parking requirement for the number of students (32) and staff (21) spaces at the Summit location is 53 spaces. The requirement for the Selby & Western location for students (21) and staff (3) is 24 spaces. The requirement for students (5) and staff (2) at the Dayton location is 7. The school's total parking requirement for all students and employees is 84 spaces. *

In summary, the school's total parking requirement for all students and staff at all facilities is 84 spaces. There is a 49 space shortfall grandfathered-in so they are required to provide 35 spaces. They have 6 spaces at the Summit campus, 21 spaces at the Western campus, and will have 12 spaces at the Dayton campus, for a total of 39 off-street parking spaces.

- f. This condition relates to required parking for theaters, auditoriums, and sports arenas on college campuses.*

There are no such facilities at the College of Visual Arts.

5. Section 64.300(d) of the zoning code states that before the planning commission may grant approval of a permitted use subject to special conditions, the commission shall find that:

- a. The extent, location, and intensity of the use will be in substantial compliance with the Saint Paul Comprehensive Plan and any applicable subarea plans which were approved by the city council.*
- b. The use will provide adequate ingress and egress to minimize traffic congestion in the public streets.*
- c. The use will not be detrimental to the existing character of the development in the immediate neighborhood or endanger the public health, safety and general welfare.*
- d. The use will not impede the normal and orderly development and improvement of the surrounding property for uses permitted in the district.*
- e. The use shall, in all other respects, conform to the applicable regulations of the district in which it is located.*

All of these issues have already been adequately addressed above in the staff report. The recommended permit would be in conformance with these general standards.

6. Section 64.300(f) of the zoning code states that the planning commission, after public hearing, may modify any or all special conditions, when strict application of such special conditions would unreasonably limit or prevent otherwise lawful use of a piece of property or an existing structure and would result in exceptional undue hardship to the owner of such property or structure; provided, that such modification will not impair the intent and purpose of such special condition and is consistent with health, morals and general welfare of the community and is consistent with reasonable enjoyment of adjacent property. The requirements of Sections 61.100 through 61.105 (schedule of regulations, i.e., setbacks, etc.) and 62.103 (parking requirements) shall remain in force and effect and shall not be superseded or waived by any such modification of a special condition.

Generally speaking, the criteria for campuses were devised with larger schools in mind, not for those with a relatively small campus. The proposed use as a college is a reasonable use of the property and the conditions otherwise restrict this lawful use. Therefore, modifications should be granted in this case.

The alternative to granting these modifications is having the college rezone the property to B-2 to make the college a permitted use. The disadvantages of this are that once rezoned any use allowed in B-2 would be permitted and if the school ever found itself leaving the property, a variety of commercial uses would be permitted. In addition the commercial zoning would be extended even further into a local residential street; currently, just the property at the corner of Dayton & Western is zoned B-2.

By allowing for modifications and issuance of a SCUP the zoning stays the same so that if the school leaves the property, only residential uses would be permitted in the building. If the property were then to be used for commercial purposes, it would have to be rezoned. Presumably, the most likely reuse of the building would be for office use. This would be permitted in an OS-1 zoning district, much more restrictive than a B-2 commercial zoning district.

NOW, THEREFORE, BE IT RESOLVED, by the Saint Paul Planning Commission, that under the authority of the City's Legislative Code, the application for a Special Condition Use Permit to establish a campus for the College of Visual Arts and modification of conditions 2a,b, and d, at 394 DAYTON AVENUE is hereby approved, subject to the following conditions:

1. The campus boundary for the College of Visual Arts's 394 Dayton Avenue campus shall be legally described and shown on the map in Attachment B, dated November 17, 1995. The college shall not expand a school use to any property outside the described campus boundary unless a change in the boundary is approved by the planning commission.
2. Every January 31st, beginning in 1997, the college will report in writing to the planning division staff the numbers of employees, dormitory beds (if any), full-time and part-time students, and available parking spaces for the previous fall term.
3. When the base level of employees, dormitory beds (if any), and the greater of full-time students living off-campus or part-time students increases by more than 10 percent to 245.3, the college will provide the required parking for that increase. For purposes of calculating the number of students, faculty, and staff, and for monitoring parking requirements, the figures for all of the college's facilities shall be added together.
4. The twelve space parking lot at 394 Dayton Avenue shall be paved according to a site plan approved by the planning administrator.