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December 3, 2014

City Council of Saint Paul
310 Ramsey County Courthouse
Saint Paul, MN 55102-1615

Re: Res-14-1729-Liquor License Application for The Eagle Street Grille, LLC
d/b/a The Salt Cellar at 173 Western Avenue North
On Agenda for December 2, 2014 at 3:30 P.M.

Dear Council Members:

I continue to represent Marina 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 again for the purpose of opposing the granting of a Liquor License for the proposed Salt Cellar. It is our position that the Salt Cellar has legally insufficient parking to warrant the granting of a Liquor License and the various conclusions reached by DSI with regard to the issue are incorrect and not supported by either the facts or the law.

Board of Zoning Appeals (BZA): No doubt someone will point out that the Appeal of John Rupp and Jeffrey Austin was denied by the BZA and accordingly, we have had our day in Court. While that may argument may appear to have merit, the hearing at the BZA only served to show that the whole issue of parking at the Salt Cellar continues to proceed in a cloud of secrecy where no one wants to talk about the facts and the law, least of all the City of Saint Paul.

Yes, it is unfortunate that the Salt Cellar and its owners suffer because of this delay. To the best of my knowledge, they have done nothing wrong (although they certainly have not volunteered to formally commit to any parking not required by the City). The question is should we ignore the facts and the law (and the rest of the neighborhood) because it is unfair to the Salt Cellar. So far the answer to that question has been a resounding "YES", by the City of Saint Paul.

City Finally Discloses Key Document at BZA Hearing: Quite simply, the BZA is not the appropriate entity to deal with the appeal of a relatively complex Zoning Administrator's Decision. The Board does not have that expertise and such an Appeal is not what the BZA regularly deals with. However something was accomplished at the Hearing. At the Hearing, I introduced a letter dated April 22, 1994 from the President of the College of Associated Arts to Tom Beach of the City's Department of Planning & Economic Development (Letter enclosed). I suggested to the BZA that the letter was the only evidence in the City's file that supported the City's finding that the previous use of the property required 33, now 31 parking spots. This is a letter that was written by someone not associated with the City about a business/college they were contemplating putting in place. To the best of my knowledge, the City has never stated what documents it was relying on.

Following the Public Hearing, a Hearing where the City did not appear and did not offer any documents supporting its position, the City Attorney asked the Zoning Administrator if the April 22, 1994 Letter was the Letter that the City was relying on for its position. The answer to that question was "Yes". (This exchange took place on the record after the closing of the public portion of the meeting).

Section 63.204 of the City Code provides in pertinent party as follows:

"When a structure, or part of a structure, is vacant, the zoning administrator shall determine the previous existing use for purposes of calculating requirements using city records, land use surveys or directories."

In the present case, the City chose to rely on an April 22, 1994 letter from a college president rather than a November 17, 1995 Planning Commission Resolution (enclosed) that says in part:

"The requirement for the Selby & Western location for students (21) and staff (3) is **24 spaces**." (Emphasis added).

Conveniently City Staff cherry-picked the April 22, 1994 Letter as the best evidence of the previous use of the property because doing so did not appear to require any additional parking for the new owner. (Since the original finding the City has admitted to making the same mistake in calculating parking as was contained in the April 22, 1994 Letter. Now that deficit has allegedly been made up.)

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Any objective individual looking at the decision made by City Staff would wonder why the City made that decision. Unfortunately we have not been allowed to ask that question. If there was a answer to the question, certainly we would have heard it by now. There are other questions that remain unanswered and they are thoroughly addressed in my previous letters to the Council dated October 21, 2014 and November 5, 2014.

Admittedly the decisions by City Staff have been complex which is why I only point out one issue in this letter. Why did the City relied on this meaningless and untimely letter from a college president as opposed to a timely document by the Planning Commission is something that should have to be explained.

Conclusion: My clients emigrated here from Russia 23 years and they thought they left unfair government behind. Now they are wondering if a similar type of government does not exist here in St. Paul. Admittedly I am also surprised by the secrecy and lack of any openness by DSI in this matter. My phone calls remain unanswered and the City really has failed to adequately answer legitimate questions. The City came forward and admitted to an obvious mathematical error months into the process and then it took 9 days to come up with a Zoning Administrator's Decision acknowledging the obvious error. Why did it take 9 days and why did it take the City so long to admit and/or find that error in the first place.

Somewhere, during this process, the City has abandoned its role as neutral decision maker and has become an advocate for one party over another. This whole issue should be sent back to DSI for specific findings and the neighbors should then be allowed a true day in Court before an Administrative Law Judge.

Thank you for your attention to this matter.

Yours very truly,
COURTNEY & COURTNEY

By


Vincent J. Courtney

cc: Moscow on the Hill

117 N. WESTERN



April 22, 1994

Mr. Tom Beach
 Division of Planning
 Dept. of Planning & Economic Development
 25 W. Forth Street
 St. Paul, MN 55102

Re: Parking requirement for 173 Western Avenue complex

Dear Mr. Beach:

I am writing to update you concerning the College of Associated Arts intended use of the above-referenced property in light of the recently-revised City parking regulations.

When remodeling is completed later this summer, the facility will consist of four classroom/studio spaces, a gallery and a woodworking studio. The current tenant in the building (Geraldo's Foods) will be vacating its leased space by the end of June, prior to commencement of the College's use in late August. With the vacation of this leased space by Geraldo's, the College's anticipated use of the building will be slightly greater than that reported to you last November.

The College anticipates the level of use by part-time students to increase from 60 to 80 and the number of staff persons using this location to increase from 4 to 6. This is based on an average class size of 15 for each of the four main classroom/studio spaces (total of 60) with one instructor for each class (total of 4), the presence of one staff supervisor for the gallery area, use of the existing office by one faculty or staff person, and average use of the woodworking and gallery areas by 15 to 20 part-time students.

As I understand it, current parking regulations would call for a total of 33 spaces to be available for this use, based on the following formula:

6 staff	=	6 x 1	=	6 cars
80 part-time students	=	80 divided by 3	=	27 cars

				33 cars

Mr. Tom Beach
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April 22, 1994

I also understand that the property has been "credited" with 42 parking spaces under "grandfathering" language in the existing ordinances, and that the College's anticipated use anticipated use would, therefore, conform with current parking requirements.

We would appreciate your advise on the foregoing.

Very truly yours,

Chris R. Kabella
President

CRK/plc

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.