

CITY OF SAINT PAUL
BOARD OF ZONING APPEALS RESOLUTION
ZONING FILE NUMBER: 18-110426
DATE: October 22, 2018

WHEREAS, Zamzam Inc. has applied for a variance from the strict application of the provisions of Section 66.535 of the Saint Paul Legislative Code pertaining to a variance of the separation requirement between tobacco products shops in order to operate a new tobacco products shop. The zoning code requires a tobacco products shop to be located at least one-half mile (2,640-feet) from another one. The proposed tobacco product shop would be 1,715-feet from the existing for a variance request of 925' in the B2 zoning district at 1541 Maryland Avenue East. PIN: 222922430040; and

WHEREAS, the Saint Paul Board of Zoning Appeals conducted a public hearing on October 22, 2018 pursuant to said application in accordance with the requirements of Section 61.601 of the Legislative Code; and

WHEREAS, the Saint Paul Board of Zoning Appeals based upon evidence presented at the public hearing, as substantially reflected in the minutes, made the following findings of fact:

1. The variance is in harmony with the general purposes and intent of the zoning code. The zoning code defines a "Tobacco products shop" as a retail establishment with a principal entrance door opening directly to the outside that derives more than ninety (90) percent of its gross revenue from the sale of loose tobacco, plants, or herbs and cigars, cigarettes, pipes, and other smoking devices for burning tobacco and related smoking accessories and in which the sale of other products is merely incidental. "Tobacco products shop" does not include a tobacco department or section of any individual business establishment with any type of liquor, food, or restaurant license.

The applicant's existing business, Sana's Market, is located in a strip mall that will be demolished. The applicant is proposing to construct a new multi-tenant building, "Shops At Maryland," that would include a tobacco product shop, a coin-operated laundromat, a cellular phone store, and a gas station.

Sana's Market is not a tobacco products shop as defined above. In November of 2017, the City Council passed an ordinance prohibiting the sale of menthol cigarettes at convenience stores. Consumers will only be able to buy menthol cigarettes at tobacco product shops as defined in Section 65.535 of the Zoning Code and liquor stores, effective November 1, 2018. The applicant is seeking to establish a new tobacco products shop at this location, however, the zoning code requires a tobacco products shop to be located at least one-half mile (2,640-feet) from another tobacco products shop. Because there is an existing shop already operating

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1,715-feet away from this site at 1375 Maryland Avenue East, the proposed shop cannot be established without the requested variance.

The B2 community business district is intended to serve the needs of a consumer population larger than that served by the "local business district," and is generally characterized by a cluster of establishments generating large volumes of vehicular and pedestrian traffic. This proposed tobacco shop would be in a multi-tenant commercial building that serves a high volume commercial and pedestrian traffic. This request is in harmony with the intent of the B2 district. This finding is met.

2. The variance is consistent with the comprehensive plan.

There are a number of businesses on this commercial stretch of Maryland Avenue East. The Comprehensive Plan (Strategy 1.46) "encourages retail establishments located in close proximity to each other" because the concentration "creates a synergy that benefits all businesses" resulting in more opportunities to attract new businesses as well expand existing ones. The location of businesses within close proximity to one another allows customers to walk between the different destinations without having to drive.

Additionally, the applicant's proposed business is locally owned and operated. The Economic Strategy of the Comprehensive Plan includes creating a climate conducive to economic self-sufficiency and growth by fostering economic development activities and attracting businesses to Saint Paul. This request is in keeping with Strategy 1.46 of the Comprehensive Plan and its goal to support local businesses. This finding is met.

3. The applicant has established that there are practical difficulties in complying with the provision, that the property owner proposes to use the property in a reasonable manner not permitted by the provision. Economic considerations alone do not constitute practical difficulties.

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

The prohibition of menthol cigarette sales as part of a retail operation does not affect the applicant's ability to sell other tobacco products. However, it does affect his revenue base because the applicant contends that menthol cigarettes are a large part of his business.

Other than economic reasons, there is no practical difficulty that would warrant two tobacco products shops within 1,715-feet of each other. This finding is not met.

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

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

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

A tobacco products shop is a permitted use in the B2, community business zoning district and the requested variance will not change the zoning classification of the property. This finding is met.

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

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

NOW, THEREFORE, BE IT RESOLVED, by the Saint Paul Board of Zoning Appeals that the request to waive the provisions of Section 66.535 to allow a tobacco products shop to be 1,715-feet from an existing tobacco products shop, for a variance request of 925' on property located at 1541 Maryland Avenue East; and legally described as Section 22 Town 29 Range 22 W 180 Ft Of S 173 Ft Of (Subj To St Ave & Esmts) Of Se 1/4 Of Sec 22 Tn 29 Rn 22; in accordance with the application for variance and the site plan on file with the Zoning Administrator. IS HEREBY DENIED.

MOVED BY: Clarksen

SECONDED BY: Rangel Morales

IN FAVOR: 4

AGAINST: 1

MAILED: October 23, 2018

TIME LIMIT: No decision of the zoning or planning administrator, planning commission, board of zoning appeals or city council approving a site plan, permit, variance, or other zoning approval shall be valid for a period longer than two (2) years, unless a building permit is obtained within such period and the erection or alteration of a building is proceeding under the terms of the decision, or the use is established within such period by actual operation pursuant to the applicable conditions and requirements of the approval, unless the zoning or planning administrator grants an extension not to exceed one (1) year.

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APPEAL: Decisions of the Board of Zoning Appeals are final subject to appeal to the City Council within 10 days by anyone affected by the decision. Building permits shall not be issued after an appeal has been filed. If permits have been issued before an appeal has been filed, then the permits are suspended and construction shall cease until the City Council has made a final determination of the appeal.

CERTIFICATION: I, the undersigned Secretary to the Board of Zoning Appeals for the City of Saint Paul, Minnesota, do hereby certify that I have compared the foregoing copy with the original record in my office; and find the same to be a true and correct copy of said original and of the whole thereof, as based on approved minutes of the Saint Paul Board of Zoning Appeals meeting held on October 22, 2018 and on record in the Department of Safety and Inspections, 375 Jackson Street, Saint Paul, Minnesota.

SAINT PAUL BOARD OF ZONING APPEALS

Debbie M. Crippen
Secretary to the Board