



## Legislation Details (With Text)

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**Title:** Memorializing the City Council's decision to deny an appeal by the Dayton's Bluff Community Council of a decision by the Planning Commission granting a change of nonconforming use permit for property located at 937 East 3rd Street.

**Sponsors:** Jane L. Prince

**Indexes:**

**Code sections:**

**Attachments:**

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|-----------|------|----------------|---------|--------|
| 2/14/2018 | 1    | Mayor's Office | Signed  |        |
| 2/7/2018  | 1    | City Council   | Adopted | Pass   |

Memorializing the City Council's decision to deny an appeal by the Dayton's Bluff Community Council of a decision by the Planning Commission granting a change of nonconforming use permit for property located at 937 East 3rd Street.

WHEREAS, Syed Mahmood ("Applicant"), in PED Zoning File No. 17-073754 and pursuant to Leg. Code §§ 62.109(c) and 65.535, duly applied for a change of nonconforming use permit for property commonly known as 937 3rd St. E., [PIN No. 332922230071] and legally described as Lot 13, Block 89 of Adam Gotzian's Sub. of Block 89, Lyman Dayton Addition for the purpose of changing the use from a bar to tobacco shop; and

WHEREAS, on September 14, 2017, the Zoning Committee of the Saint Paul Planning Commission ("Commission"), pursuant to Leg. Code § 61.303, duly conducted a public hearing on the Applicant's request at which all persons present were given an opportunity to be heard and, at the close of the hearing and upon discussion and deliberation, the Zoning Committee, on a 5-0 voice vote, moved to recommend that the commission approve change of nonconforming use permit; and

WHEREAS, on September 22, 2017, the Commission, based upon all the evidence presented to its Zoning Committee at the public hearing, as substantially reflected in all the files and minutes for the matter, duly moved on a 13-0 voice vote approve the change of nonconforming use permit based upon the following findings of fact as set forth in Planning Commission Resolution No. 17-61 which is incorporated herein by reference:

"1. The application requests a change of nonconforming use to permit a tobacco shop use. The applicant plans to have the business open seven days a week from 9:00 a.m. to 9:00 p.m., with two full-time employees and one part-time employee.

2. Section 62.109(c) states: The planning commission may allow a nonconforming use to change to another use permitted in the district in which the existing nonconforming use is first allowed, or a use permitted in a district that is more restrictive than the district in which the existing nonconforming use is first allowed, or permit another, related nonconforming use at the same location if the commission makes the following findings:

a. The proposed use is equally appropriate or more appropriate to the neighborhood than the existing nonconforming use. This finding is met. A tobacco products shop is first allowed in the BC Community Business District, while a bar is first allowed in the less restrictive T2 Traditional Neighborhood District.

b. The traffic generated by the proposed use is similar to that generated by the existing nonconforming use. This finding is met. A tobacco products shop is anticipated to generate less traffic than a bar, as exemplified by its lesser parking requirement.

c. The use will not be detrimental to the existing character of development in the immediate neighborhood or endanger the public health, safety, or general welfare. This finding is met. The use will need to abide by City and State licensing requirements for tobacco sales, including those intended to protect public health and general welfare. The Zoning Code ordinarily (when not a nonconforming use permit situation) requires a tobacco products shop to be located no closer than ¼ mile from another such shop; the nearest known tobacco products shop is located about 4,000 feet to the northwest.

d. The use is consistent with the comprehensive plan. This finding is met. The Comprehensive Plan and District 4 Plan Summary contain no provisions specific to tobacco products shops. The District 4 Plan Summary, in Strategy C3, calls for the reuse, instead of demolition, of existing commercial buildings, such as is proposed.”

WHEREAS, On October 2, 2017, the Dayton’s Bluff District 4 Community Council (“Appellant”), in PED Zoning File No.17-204114, duly filed pursuant to Leg. Code § 61.702 an appeal from the Commission’s September 22, 2017 decision and requested a hearing before the City Council for the purpose of considering the actions taken by the Commission; and

WHEREAS, on November 1, 2017, pursuant to Leg. Code § 61.702(b), the City Council, upon notice to affected parties, duly conducted a public hearing on the said appeal where all interested parties were afforded an opportunity to be heard; and

WHEREAS, following the close of the public hearing and upon discussion and deliberation on the matter by the Council, the Council moved to lay over taking a decision on the matter to December 6, 2017; and

WHEREAS, on December 6, 2017, the Council again took up Appellant’s appeal from the Commission’s September 22, 2017 decision and, having heard the statements made and having considered the application and all the records and minutes of these proceedings including the Commission’s staff report, the recommendation of the Zoning Committee and Planning Commission Resolution No.17-61, the Council of the City of Saint Paul, DOES HEREBY

RESOLVE, that Appellant Dayton’s Bluff Community Council’s appeal from the September 22, 2017 decision of the Planning Commission which granted a change of nonconforming use permit for property commonly known as 937 3rd St. for the purpose of changing the said property’s zoning use from a bar to tobacco shop, as approved under Planning Commission Resolution No. 17-61, is hereby denied. This denial is based upon the Council’s finding that Appellant has failed to demonstrate any error in the Planning Commission’s facts, findings, or procedures used in reaching its decision. Accordingly, the Council hereby adopts as its own in support of this decision, the Commission’s facts and findings forth in Commission Resolution No. 17-61; and

BE IT FURTHER RESOLVED, the denial of Appellant’s appeal notwithstanding, pursuant to Leg. Code § 61.704, the Council, based upon the record before it, hereby imposes the following condition on the change of nonconforming use permit granted to the Applicant under Commission Resolution No. 17-61:

1. New above-grade windows shall be installed on each exterior wall facing a public street or sidewalk. The window area of each exterior wall shall equal no less than 20% of the total area of each exterior wall facing a

public street or sidewalk.

- a. All windows shall be installed before the business can open.
- b. The design of the window installation shall be submitted to the zoning administrator and the building official for plan review. The design plan must be approved by the zoning administrator before any building permit(s) is issued.
- c. Visibility through the new windows from the business out to the public right-of-way or from the public right-of-way into the business, shall be remain unobstructed from any interior or exterior signage, fixtures, or any other obstruction of any kind.

AND, BE IT FINALLY RESOLVED, that the City Clerk shall immediately mail a copy of this resolution to the Applicant [Syed Mahmood], the Appellant [Dayton's Bluff District 4 Community Council], the Zoning and the Building Administrators and the Planning Commission.