



## Legislation Details (With Text)

**File #:** RES 12-1647 **Version:** 1

**Type:** Resolution **Status:** Passed

**In control:** City Council

**Final action:** 9/5/2012

**Title:** Memorializing Council Action taken on August 1, 2012 granting the appeal of Roberta Bonoff on behalf of Creative Kidstuff located at 1074 Grand Avenue.

**Sponsors:** Dave Thune

**Indexes:**

**Code sections:**

**Attachments:**

Date	Ver.	Action By	Action	Result
9/12/2012	1	Mayor's Office	Signed	
9/5/2012	1	City Council	Adopted	Pass

Memorializing Council Action taken on August 1, 2012 granting the appeal of Roberta Bonoff on behalf of Creative Kidstuff located at 1074 Grand Avenue.

WHEREAS, Roberta Bonoff, on behalf of Creative Kidstuff ("Creative"), did under DSI Zoning File No. 12-077595, apply to the Board of Zoning Appeals ("BZA") for a variance from the strict application of Leg. Code § 64.745 whose provisions constitute the Grand Avenue Special Sign District ("GASSD"), for the purpose of installing various new business signs on Creative's store commonly known as 1074 Grand Avenue (PIN No. 022823320098) and legally described as Summit Park Addition Tost Pa E 19 92/100 Ft Of Lot 1o And All Of Lot 9 Blk 38; and

WHEREAS, GASSD's regulations limit the size of business signs to 80-square feet. Presently, Creative's signage totals 103-square feet in the form of one wall-sign and one projecting-sign. Creative proposes to remove these signs and replace them with three wall-signs and one projecting-sign. A portion of the new signage proposed by Creative consisted of two animal caricatures which would flank either side of Creative's doorway on Grand Avenue. The total size of the two caricatures is 190-square feet. Overall, the square footage of all the signs proposed by Creative totals 225-square feet for a variance of 145-square feet; and

WHEREAS, on June 25, 2012, the BZA conducted a public hearing on Creative's variance application pursuant to the requirements of Leg. Code § 61.601. At the hearing, BZA staff recommended denial of the variance with respect to the two caricature signs. At the close of the public hearing, the BZA, based upon the files and evidence presented, moved to deny the variance application based upon the following findings and conclusions as set forth in BZA Resolution No. 12-063863 which is incorporated herein by reference:

1. *The variance is in harmony with the general purposes and intent of the zoning code.*

This finding is not met. The intent of the Grand Avenue Special District Sign Plan is to provide strong, clear identification of businesses and to reduce the clutter and chaotic diversity of signage that impairs the effectiveness of business signs. This property is allowed a maximum of 80-square feet of signage and 103-square feet is existing. Therefore, the maximum allowable signage is already exceeded by 23-square feet. The applicant's request for an additional 145-square feet of signage over the maximum allowable of 80-square

feet for a total of 225-square feet of signage is not in keeping with the above stated purpose and intent of the code.

This request does not conform to the provisions of Leg. Code § 64.207, the findings necessary for sign variances, as follows:

a. *The variance is due to unusual conditions pertaining to sign needs for a specific building or lot.* This condition is not met. According to the applicant, the two tall cat signs are considered sculptural elements that are an integral part of the brand identity and not signage. The applicant further states that the brand identity is a way to break from the sea of sameness she sees all over the country with malls having the same mass market tenants. As a specialty retailer, she needs to be just that - special, which is the way this business competes against larger companies.

The code's definition of a sign is clear and unambiguous and does not make a distinction between what the applicant deems as a sculptural element that is part of a brand identity and signage. Other than the applicant's intent to give a special look to this storefront, there is nothing unusual about this property to justify her request for this amount of signage.

b. *The signs would not create a hazard.* This condition is not met. The proposed wall sign on the sign band and the projecting sign would be replacing the existing signs; therefore, they would not cause any more distraction than the existing signs. However, the tall cat signs which would be as tall as the front facade of the building could be a source of attraction and distraction for drivers and pedestrians on this busy commercial strip on Grand Avenue. The proposed tall cat signs could create a hazard.

c. *The signs would not be objectionable to adjacent property owners.* This condition is met. No objections to this request have been raised from adjacent property owners.

d. *The signs would not adversely affect residential property through excessive glare and lighting.* This condition is met. There are no residential properties facing the signs.

e. *The signs are in keeping with the general character of the surrounding area.* This condition is not met. Even though located in a commercial area, the proposed cat signs are not in keeping with the general character of the surrounding area. There are no other properties with similarly tall signs in the immediate area.

2. *The variance is consistent with the comprehensive plan.*

This finding is not met. The goal of Chapter 3.11 of the Comprehensive Plan is to encourage the coordination of business signs to achieve greater consistency among business signs and signs of community interest and to reduce visual clutter. Coordinated signage will enhance the city's appearance and potentially make retail shopping districts safer by reducing the distractions for motorists. The tall cat signs are not in keeping with the above stated intent of the code; they could increase distraction for motorists on Grand Avenue.

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.*

This finding is not met. The existing 96-square foot sign on the sign band and the 7- square foot projecting sign would be replaced with a 31-square foot sign on the sign band and a 4-square foot projecting sign, leaving 68-additional square feet of signage available. Other than the business branding concept and the applicant's desire to create a unique storefront, there are no practical difficulties that would make compliance with the code unreasonable.

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

This finding is met. This property is located in a B2 zoning district where the code allows a maximum signage of two times the lot frontage which in this district is 160- square feet. The Grand Avenue Sign District Plan was amended under Council Resolution File (#09-832) adopted in August of 2009 resulting in the reduction of the amount of allowable signage from 160-square feet to 80-square feet for this property in the overlay sign district. This is a circumstance unique to the property not created by the landowner. Had this amendment not occurred, the requested amount of signage would not have been as substantial.

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

This finding is met. Business signs are considered accessory signs that are permitted in the B2 zoning district. The requested variance would not change the zoning classification of the property.

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

This finding is not met. Although located in a commercial area, the proposed cat signs which are as tall as the height of the building facade are not in keeping with the general character of the surrounding area which consists mainly of signs smaller in size than the proposed cat signs.

WHEREAS, on July 3, 2012, Roberta Bonoff, in DSI Zoning File No. 12-077595 and again on behalf of Creative, duly filed with the City Clerk pursuant to Leg. Code § 61.702, an appeal from the BZA's June 25, 2012 determination and requested a hearing before the City Council for the purpose of considering the actions taken by the BZA; and

WHEREAS, on August 1, 2012 and upon notice to affected parties, a public hearing was duly conducted by the City Council pursuant to Leg. Code § 61.702(b) where all interested parties were given an opportunity to be heard; and

WHEREAS, at the close of the public hearing, the City Council, having heard the statements made during the hearing and having considered the variance application, the report of staff, and all the records, minutes, and the BZA's resolution in this matter: DOES HEREBY

RESOLVE, that the City Council hereby reverses the decision of the BZA in this matter, based upon the following findings:

The Council finds that the animal caricatures proposed by Creative do not constitute a "sign" or a "business sign" as those terms are defined under the zoning code and thus are not subject to code's sign regulations. AND BE IT FURTHER RESOLVED, based upon the finding above, that the appeal of Roberta Bonoff on behalf of Creative Kidstuff be and is hereby granted; and, be it

FINALLY RESOLVED, that the City Clerk shall immediately mail a copy of this resolution to Roberta Bonoff on Creative's behalf, the Zoning Administrator, the Planning Commission and the BZA.