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Title: Memorializing a decision of the City Council granting the appeal of Donald Buckrey, d/b/a More4ABuck, and authorizing a change of nonconforming permit, with conditions, to operate an auto repair and an outdoor auto sales business at 1176 Dale Street North.

Sponsors: Amy Brendmoen

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Memorializing a decision of the City Council granting the appeal of Donald Buckrey, d/b/a More4ABuck, and authorizing a change of nonconforming permit, with conditions, to operate an auto repair and an outdoor auto sales business at 1176 Dale Street North.

WHEREAS, on July 17, 2014, Don Buckrey, d/b/a More4ABuck, Inc. ("Applicant"), in PED Zoning File No. 14-308-882, made application to the Saint Paul Planning Commission ("Commission") pursuant to Leg. Code § 62.109(c) for a change of nonconforming use permit for the purposes of operating an auto repair and an outdoor auto sales business on property commonly known 1176 Dale St. North [PIN No. 252923220068] and legally described as Como Prospect Addition Lots 23 Thru Lot 29 Blk 1; and

WHEREAS, on July 31, 2014, the Commission's Zoning Committee, in accordance with the requirements of Leg. Code § 61.303, duly conducted a public hearing on the said permit application at which all persons present were given an opportunity to be heard and, at the close of the public hearing, moved to lay the matter over to August 28, 2014 in order to obtain from staff additional information regarding permit and license violation allegations; and

WHEREAS, on August 28, 2014, the Zoning Committee received a revised staff report dated August 21, 2014 which provided additional information regarding permit and license violation allegations, still recommended approval of the requested change of nonconforming use permit and added additional compliance conditions to requested nonconforming use permit; and

WHEREAS, the Zoning Committee, following discussion of the revised staff report, moved to recommend on a 4-2-1 vote that the Applicant's nonconforming use permit be denied for the reasons stated on the record as noted in Committee's meeting minutes which are adopted herein by reference with instructions to staff to prepare a draft resolution to that effect for consideration before the full Commission meeting on September 5, 2014; and

WHEREAS, on September 5, 2014, the Commission took up the Zoning Committee's recommendation to deny the Applicant's nonconforming use permit application and, following discussion of the matter and based upon all the reports and records presented to its Zoning Committee, duly moved to deny the said nonconforming use application based upon the following findings of fact as set forth in Planning Commission Resolution No. 14-54:

"1. The applicant, Don Buckrey of More 4 A Buck, has applied for a change of nonconforming use permit to change the mix and layout of auto repair and outdoor auto sales at 1176 North Dale Street from what is specified in conditions of the existing conditional use permit for the site. The existing special condition use permit approved in 1999 specifies a total of 50 parking spaces with 35 parking spaces for for-sale cars on the north side of the building, six parking spaces for cars awaiting repair or pick-up or employee parking on the east side of the building, and eight spaces for customer and employee parking on the south side of the building, including one handicapped space. It also specifies that no cars shall be parked on the Dale Street frontage of the site, except the seven cars in the first row of for-sale cars in the north lot. The applicant proposes to change the use and layout of parking spaces (totaling 45) on the site to be as follows:

b) Seven (7) spaces for customers and employees on the south side of the building and three (3) spaces for customers and employees at the southeast corner of the building;

c) Four (4) spaces for customer parking to the north of the building;

d) Ten (10) spaces for vehicles for sale (including seven (7) spaces along the Dale Street frontage); and

e) Twenty-one (21) spaces for cars waiting for repair on the northeast corner of the lot.

2. Leg. Code § 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. The existing use is auto repair and outdoor auto sales. The proposed use is auto repair and outdoor auto sales. Both the auto repair and the outdoor auto sales are auto-oriented uses first permitted as conditional uses in the B3 General Business District, which is what this property was zoned through 2010. The neighborhood has a mix of uses, including other auto-related uses, commercial uses, railroad right-of-way, and single-family homes across Dale Street. The auto repair use has been in place since 1955. The outdoor auto sales use has been in place since 1999.

b. The traffic generated by the proposed use is similar to that generated by the existing nonconforming use. This finding is met. The proposed change to the existing nonconforming use is related to the number of cars and where they are parked on the lot. The applicant states that the number of cars will be reduced from 50 to 45, and the layout of the spaces for cars will change.

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 not met. While the proposed use is

complementary to the existing use of the site, based on testimony the use has had a detrimental impact on the neighborhood. The applicant has not proved that the use does not endanger the public health, safety, or general welfare. Based on conflicting testimony and property and permitting records, it is unclear what the uses on the site are and whether all uses are permitted on the site. The applicant has not consistently been in compliance with the conditions listed on the existing conditional use permit from 1999 or the existing business license issued by the Department of Safety and Inspection in 2010, and therefore is detrimental to the neighborhood.

d. The use is consistent with the comprehensive plan. This finding can be met. The use is consistent with Saint Paul Comprehensive Plan (2010) strategy LU-1.7, "Permit neighborhood serving commercial businesses compatible with the character of Established Neighborhoods." This use is located within an "established neighborhood" and provides a service to the community. It is also located within a "mixed-use corridor" and as such meets strategy LU-1.24, "Support a mix of uses on Mixed-Use Corridors." It also may be consistent with the District 6 Plan (2010) strategy LU-5.1, "Encourage existing auto related businesses to upgrade the appearance of their buildings and properties," if the applicant fulfills his intent to provide additional fencing around the property. In the 2006 Loeb Lake Small Area Plan, Commercial Strategy 3 states, "The northeast corner is occupied by an auto repair shop. Redevelopment of this corner is unlikely in the near future due to the small parcel size and recent investments to improve the building. The plan encourages the property owner to improve the appearance of the building and the lot. In the long-term, the site could be developed into general commercial or a mix of commercial and housing." Commercial Strategy 6 states, "The plan encourages existing, viable auto businesses to stay, upgrade their appearance, and continue to serve the neighborhood, but discourages the growth of new auto businesses." If the applicant provides additional fencing around the property and maintains the building in good repair, this condition is met."

AND, WHEREAS, on September 12, 2014 and pursuant to Leg. Code § 61.702(a), the Applicant, in PED Zoning File No. 14-331-238, duly filed an appeal from the Commission's September 5, 2014 determination and requested a hearing before the City Council for the purpose of considering the actions taken by the Commission; and

WHEREAS, the matter was duly set on for public hearing before the City Council on October 15, 2014 at which time, at the request of the Applicant's counsel, the matter was continued to November 5, 2014 as the Applicant was unable to appear before the Council; and

WHEREAS, on November 5, 2012, with the Applicant now in attendance, the City Council, pursuant to Leg. Code § 61.702(b), duly conducted a public hearing on the Applicant's appeal where all interested parties were given an opportunity to be heard and, at the close of the public hearing, the Council, having heard the statements made and having considered the application, the reports of staff and all the records including the Commission's resolution, does hereby

RESOLVE, that the Council of the City of Saint Paul pursuant to Leg. Code § 61.704 hereby reverses the decision of the Planning Commission in this matter, based on the following findings of the Council:

1. The Council finds error in the Commission's Finding No. 2(c) as set forth in Planning Commission Resolution No. 14-54 which constituted the sole basis for denying this application. On balance and in recognition that the Applicant's operation is an on-going nonconforming use, the Council finds that the Applicant's new operating scheme will improve both the appearance of the site as well as how the site functions. For these reasons, the Council therefore adopts that version of Finding No. 2(c) as set forth in the revised staff report dated August 21, 2014 (and presented to the Zoning Committee on August 28, 2014) and substitute it for Finding No. 2(c) presently set forth in Resolution No. 14-54. With this substitution, all of the

findings required to grant the Applicant's change of nonconforming use permit are met.

AND, BE IT FURTHER RESOLVED, that the Applicant's appeal be and is hereby granted for the above reasons; and

BE IT FURTHER RESOLVED, with this approval of the Applicant's change of nonconforming use permit, the Council, pursuant to its authority to make any "order, requirement, decision or determination as ought to be made" under Leg. Code 61.704, hereby imposes the following conditions on the Applicant's change of nonconforming use permit. In doing so, the Council notes that these conditions are based largely upon the conditions recommended by staff in its revised staff report dated August 22, 2014 which had recommended approval of the Applicant's permit application. In imposing conditions here, the Council adopts herein by reference the facts and findings set forth in the revised report as the basis for imposing conditions on this approval.

A. The following conditions imposed upon the change of nonconforming use permit must be completed either prior to the change of nonconforming use or no later than seven (7) months from November 6, 2014 if a specific aspect of the condition cannot be met because weather conditions prevent painting, paving, or landscaping. These conditions shall otherwise be observed while the nonconforming use is continued:

1. All federal, state, and City agencies with regulatory duties have approved for occupancy, operations, or licensure, the building and any businesses within it.
2. The building shall be painted and maintained.
3. Parking areas and driveways shall be paved with a permanent, durable and dustless surface, and striped for parking according to an approved site plan. Driveways and maneuvering lanes measuring at least 20-feet wide shall be maintained on the site. No more than 45 parking spaces shall be striped. No vehicle shall be parked outside of the striped areas. The 7 spaces along the Dale Street frontage are reserved specifically for vehicles displaying "for sale" signage. No vehicle other than a "for sale" vehicle may be parked along the Dale Street frontage.
4. Trash shall be stored in a covered dumpster as shown on an approved site plan.
5. A decorative fence and a four-foot wide landscaped area with screening landscape material shall be installed along the Dale Street frontage of the property. Fencing generally shall consist of durable materials (aluminum or wrought iron) no taller than six-feet, and shall be maintained regularly. Fencing along the Dale Street frontage may not be higher than four-feet and cannot consist of cyclone or chain link fence. Fencing along the north and east sides of the property may be a standard cyclone or chain link fence with no "privacy strips."
6. A site plan must be submitted to and approved by the Zoning Administrator for this change of nonconforming use permit. The site plan shall be in substantial agreement with the site plan submitted and approved as a part of this application and must depict the parking-lot striping, landscaping and the required decorative fencing.

B. The following conditions imposed upon the change of nonconforming use permit shall be observed while the nonconforming use is continued:

1. All “for sale” vehicles parked outdoors must be completely assembled with no parts missing. All vehicles parked outdoors awaiting repairs shall not have major parts missing. “Major parts missing” shall include, but not be limited to: tires, wheels, doors, bumpers, body panels. All vehicles parked outdoors awaiting repairs shall be repaired or moved within 96-hours of receipt.
2. Vehicle salvage is not permitted.
3. Sales of used vehicle parts is not permitted.
4. Vehicle body repair or vehicle body spray painting is not permitted.
5. Outdoor storage of vehicle parts, partially assembled vehicles, tires, hoists or other types of vehicle repair equipment is not permitted.
6. Vehicle repairs shall not take place outside of a walled and covered structure or in any public right-of-way.
7. All “for sale” vehicles must be clearly marked with signage identifying them as “for sale” vehicles.

AND BE IT FINALLY RESOLVED, that the City Clerk shall immediately mail a copy of this resolution to the Applicant, the Planning Commission, and the Zoning Administrator.