



## Legislation Details (With Text)

**File #:** RES 22-1272 **Version:** 1  
**Type:** Resolution **Status:** Passed  
**In control:** City Council  
**Final action:** 8/17/2022

**Title:** Memorializing the City Council's decision to grant an appeal from a decision of the Planning Commission to approve an application to reestablish a non-conforming use permit for auto sales at 847 Hudson Road.

**Sponsors:** Amy Brendmoen

**Indexes:**

**Code sections:**

**Attachments:**

Date	Ver.	Action By	Action	Result
8/19/2022	1	Mayor's Office	Signed	
8/17/2022	1	City Council	Adopted	Pass

Memorializing the City Council's decision to grant an appeal from a decision of the Planning Commission to approve an application to reestablish a non-conforming use permit for auto sales at 847 Hudson Road.

WHEREAS, on February 2, 2022, Elite Auto Sales LLC ("Applicant") duly applied to the Saint Paul Planning Commission ("Commission") under Commission Zoning File No. 22-036-982 for a reestablishment of nonconforming use permit for auto sales pursuant to Leg. Code §§ 62.105 and 62.109(e) for property commonly known as 847 Hudson Road [Parcel Identification Number No. 33.29.22.32.0156] and legally described as Lot 1, Block 68, Subdivision of Block 68, Lyman Dayton's Addition by H.A. Boardman; and

WHEREAS, on February 24, 2022, the Commission's Zoning Committee duly conducted a public hearing on the said application in accordance with Leg. Code § 61.303 during which all people present were given an opportunity to be heard; and

WHEREAS, at the close of the said public hearing, the Zoning Committee, notwithstanding the recommendation of staff to deny the requested permit for the reasons set forth in the report of staff dated February 17, 2022, by a unanimous vote, moved to recommend to the Commission that the Applicant's reestablishment of nonconforming use permit for auto sales permit be approved based upon all the testimony and records presented to the Zoning Committee; and

WHEREAS, on March 4, 2022, the Commission took up the Zoning Committee's recommendation to approve the said permit application and, by a unanimous vote, moved approval of the said application, based upon the following findings of fact as set forth in Planning Commission Resolution No. 22-15 which is incorporated herein by reference and including certain specified conditions imposed upon the permit application approval as set forth herein below:

1. Section 62.109(e) states: *When a legal nonconforming use of a structure, or structure and land in combination, is discontinued or ceases to exist for a continuous period of more than one (1) year, the planning commission may permit the reestablishment of a nonconforming use if the commission*

*makes the following findings:*

- (1) *The structure, or structure and land in combination, cannot reasonably or economically be used for a conforming purpose.* This finding is met. The structure is a single-story building with a garage bay door and a small office space and surrounding surface parking, originally designed for a service station.
- (2) *The proposed use is equally appropriate or more appropriate to the district than the previous legal nonconforming use.* This finding is met. The proposed outdoor auto sales use and the previous auto repair use are both first permitted in the B3 General Business District with a conditional use permit.
- (3) *The proposed 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 can be met. The site contains four curb cuts, three of which are very wide (in excess of 30' width) and connect to the parking area. Removal of at least one curb cut would improve the safety of individuals walking adjacent to the site, especially if it is one of the curb cuts along Hudson Road. Such curb cut removal should be a condition of any approval, so long as it abides by Historic Preservation regulations. Also, auto sales are usually limited by the Zoning Code to B3 General Business and IT-I2 Industrial districts, with a minimum lot size of 15,000 square feet. In order to prevent neighborhood detriment on this small 4835 sq. ft. triangular lot in a residential setting, the number of vehicles for sale should be limited and storage of vehicles on the street should be prohibited.
- (4) *The proposed use is consistent with the comprehensive plan.* This finding is met. The District 4 Plan Summary (2009) calls for the reuse, rather than demolition of existing commercial buildings (Strategy C3) as well as fostering neighborhood-scale commercial (Strategy C8.2). The Gold Line Station Area Plans call for a "pedestrian orientation in any new development/redevelopment." However, this is a reestablishment of a nonconforming use, not a development or redevelopment. Both plans are adopted as addenda to the Comprehensive Plan.
- (5) *A notarized petition of at least two-thirds of the owners of the described parcels of real estate within one hundred (100) feet of the subject property has been submitted stating their support for the use.* This finding has been temporarily suspended by a Mayor's Executive Order related to the pandemic."

AND, WHEREAS, as noted above, the Commission approval of the said permit was subject to the following conditions:

1. The site plan shall be reviewed and approved by DSI prior to establishment of the use.
2. The site layout shall be in substantial conformance with the application materials except as revised through site plan review in order to comply with City Code requirements.
3. There shall be no auto repair conducted on the site.
4. There shall be no vehicles associated with the use parked on adjacent streets, besides those for short-term (not overnight) customer use. No employee nor for-sale vehicles may be parked on the adjacent streets.
5. Heritage Preservation Commission (HPC) approval for any exterior changes.
6. The driveway curb cut closest to the intersection shall be eliminated, unless the HPC declares otherwise.

AND, WHEREAS, on March 13, 2022, the Dayton's Bluff District Council ("Appellant"), pursuant to Leg. Code § 61.701(c), duly filed an appeal from the Commission's March 4, 2022, decision and requested a public hearing before the City Council, which was set on for hearing on April 20, 2022, and assigned Council File No. APC 22-1; and

WHEREAS, on April 20, 2022, the Council of the City of Saint Paul duly conducted a public hearing on APC 22-1 where all persons interested were afforded an opportunity to be heard; and

WHEREAS, upon the close of testimony and the public hearing, the Council moved to lay over its deliberations on the matter to April 27, 2022; and

WHEREAS, on April 27, 2022, the City Council again moved to lay over its deliberations on the matter to May 4, 2022; and

WHEREAS, on May 4, 2022, the Council finally deliberated on the matter and, having considered the reports, minutes, and all the testimony in the matter including Planning Commission Resolution No. 22-15 and the February 17, 2022, staff report, and, based upon its deliberations, the Council of the City of Saint Paul; DOES HEREBY

RESOLVE, that the Commission's decision reflected in Commission Resolution No. 22-15 to approve a reestablishment of nonconforming use permit for auto sales at 847 Hudson Road was in error for the following reasons:

The site was developed with a gas station that opened in 1929. At some point, an auto-repair use began on the site. In 1975, the site was rezoned to RM2 Medium-Density Low-Rise Multiple-Family Residential which made the auto-repair use a legal nonconforming use. The site was again rezoned to its current RT1 classification in the 1980s. In 1999 the auto-repair use closed. The site has been vacant since 1999 and on the City's vacant building list since at least 2001.

In 2014 the Commission approved a reestablishment of nonconforming use permit ("RNCUP") for an auto repair use. However, the use was never established and, accordingly, the RNCUP permit expired in 2016. There was a request to extend the expiration of the 2014 RNCUP permit. This request was denied based on nonconformance with the Gold Line Station Area Plan that had been adopted in 2015 as an addendum to the Comprehensive Plan. In 2017, the Planning Commission approved another RNCUP for auto sales but that use also was never established and, accordingly, this permit expired in 2019. For approximately 20 years no use, either conforming or non-conforming, has taken place on this property.

In order to grant a RNCUP the five findings required under Leg. Code § Leg. Code § 62.109(e) must be met. The Planning Commission found that four of the five required findings had been met as Finding No. 5 had been suspended due to the Covid 19 pandemic.

The Commission's decision to approve the permit was contrary to the recommendation of Commission staff dated February 17, 2022, which had been to deny the RNCUP application based on finding No. 4 requiring that "the proposed use is consistent with the comprehensive plan." Staff recommended:

"This finding is not met. The District 4 Plan Summary (2009) calls for the reuse, rather than demolition, of existing commercial buildings (Strategy C3) as well as fostering neighborhood-scale commercial (Strategy C8.2). However, the Gold Line Station Area Plans (2015) call for a "pedestrian orientation in any new development/redevelopment." Auto sales uses are by nature not pedestrian-oriented uses, as evidenced by the fact that they are not permitted (by-right or conditionally) in any Traditional Neighborhood zoning districts. Both plans are adopted as addenda to the Comprehensive Plan."

The Commission did not adopt this recommendation and found instead that Finding No. 4 had been met

based upon a distinction that an application to permit the reestablishment of a non-conforming use is somehow different from a development or redevelopment. The Commission stated:

“This finding is met. The Gold Line Station Area Plans call for a “pedestrian orientation in any new development/redevelopment.” However, this is a reestablishment of a nonconforming use, not a development or redevelopment. Both plans are adopted as addenda to the Comprehensive Plan.”

The Council finds this distinction to be a distinction without any difference where, as here, there has been no use of the property for over twenty years. Under these circumstances any use proposed for a property that has not seen a use in two decades - notwithstanding whether that use is “conforming” or “non-conforming” - would then reasonably be said to constitute either a “development” or a “redevelopment” of the site.

The Council further notes, as did Commission staff, that the Gold Line Station Area Plan calls for a “pedestrian orientation in any new development/redevelopment” and that Commission staff correctly observed “that Auto sales uses are by nature not pedestrian-oriented uses.” For this reason, the Commission erred when it found that Finding No. 4 was met based upon its distinction that an RNCUP application is somehow different from any other zoning application to develop or redevelop the site.

The Council also finds that the Commission also erred in its Finding No. 3 which requires a finding that “the proposed use will not be detrimental to the existing character of development in the immediate neighborhood or endanger the public health, safety, or general welfare.” The Commission found that Finding No. 3 can be met provided “at least one curb cut [is removed which] would improve the safety of individuals walking adjacent to the site, especially if it is one of the curb cuts along Hudson Road. Such curb cut removal should be a condition of any approval, so long as it abides by Historic Preservation regulations. Also, auto sales are usually limited by the Zoning Code to B3 General Business and IT-12 Industrial districts, with a minimum lot size of 15,000 square feet. In order to prevent neighborhood detriment on this small 4835 sq. ft. triangular lot in a residential setting, the number of vehicles for sale should be limited and storage of vehicles on the street should be prohibited.”

Commission Finding 3 is also erroneous for two reasons: First, there is no guarantee that any curb cut will be removed because the site is within a Historic Preservation District and must abide by those regulations. Second this 4835 sq. ft. site does not meet the 15,000 sq. ft. lot size minimum required for auto sales in zoning districts in which the use is first permitted. The Council finds that approving what in essence is an area variance via an RNCUP application on a site having no use in the previous 20 years underscores that the proposed use, by definition, is a use detrimental to the existing residential character of development in the immediate neighborhood which endangers health, safety, and general welfare of the public.

AND, BE IT FURTHER RESOLVED, for the reasons set forth above, the Commission’s Findings No.s 3 and 4 were in error and, accordingly, Appellant’s appeal from the Commission’s decision to approve a RNCUP permit to allow an auto sales business at 847 Hudson Road, as forth in Commission Resolution No. 22-15, is hereby granted; AND

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

In order to grant a RNCUP the five findings required under Leg. Code § Leg. Code § 62.109(e) must be met. The Planning Commission found that four of the five required findings had been met as Finding No. 5 had been suspended due to the Covid 19 pandemic.

The Commission’s decision to approve the permit was contrary to the recommendation of Commission staff dated February 17, 2022, which had been to deny the RNCUP application based on finding No. 4 requiring

that “the proposed use is consistent with the comprehensive plan.” Staff recommended:

“This finding is not met. The District 4 Plan Summary (2009) calls for the reuse, rather than demolition, of existing commercial buildings (Strategy C3) as well as fostering neighborhood-scale commercial (Strategy C8.2). However, the Gold Line Station Area Plans (2015) call for a “pedestrian orientation in any new development/redevelopment.” Auto sales uses are by nature not pedestrian-oriented uses, as evidenced by the fact that they are not permitted (by-right or conditionally) in any Traditional Neighborhood zoning districts. Both plans are adopted as addenda to the Comprehensive Plan.”

The Commission did not adopt this recommendation and found instead that Finding No. 4 had been met based upon a distinction that an application to permit the reestablishment of a non-conforming use is somehow different from a development or redevelopment. The Commission stated:

“This finding is met. The Gold Line Station Area Plans call for a “pedestrian orientation in any new development/redevelopment.” However, this is a reestablishment of a nonconforming use, not a development or redevelopment. Both plans are adopted as addenda to the Comprehensive Plan.”

The Council finds this distinction to be a distinction without any difference where, as here, there has been no use of the property for over twenty years. Under these circumstances any use proposed for a property that has not seen a use in two decades - notwithstanding whether that use is “conforming” or “non-conforming” - would then reasonably be said to constitute either a “development” or a “redevelopment” of the site.

The Council further notes, as did Commission staff, that the Gold Line Station Area Plan calls for a “pedestrian orientation in any new development/redevelopment” and that Commission staff correctly observed “that Auto sales uses are by nature not pedestrian-oriented uses.” For this reason, the Commission erred when it found that Finding No. 4 was met based upon its distinction that an RNCUP application is somehow different from any other zoning application to develop or redevelop the site.

The Council also finds that the Commission also erred in its Finding No. 3 which requires a finding that “the proposed use will not be detrimental to the existing character of development in the immediate neighborhood or endanger the public health, safety, or general welfare.” The Commission found that Finding No. 3 can be met provided “at least one curb cut [is removed which] would improve the safety of individuals walking adjacent to the site, especially if it is one of the curb cuts along Hudson Road. Such curb cut removal should be a condition of any approval, so long as it abides by Historic Preservation regulations. Also, auto sales are usually limited by the Zoning Code to B3 General Business and IT-I2 Industrial districts, with a minimum lot size of 15,000 square feet. In order to prevent neighborhood detriment on this small 4835 sq. ft. triangular lot in a residential setting, the number of vehicles for sale should be limited and storage of vehicles on the street should be prohibited.”

Commission Finding 3 is also erroneous for two reasons: First, there is no guarantee that any curb cut will be removed because the site is within a Historic Preservation District and must abide by those regulations. Second this 4835 sq. ft. site does not meet the 15,000 sq. ft. lot size minimum required for auto sales in zoning districts in which the use is first permitted. The Council finds that approving what in essence is an area variance via an RNCUP application on a site having no use in the previous 20 years underscores that the proposed use, by definition, is a use detrimental to the existing residential character of development in the immediate neighborhood which endangers health, safety, and general welfare of the public.

AND, BE IT FURTHER RESOLVED, for the reasons set forth above, the Commission's Findings No.s 3 and 4 were in error and, accordingly, Appellant's appeal from the Commission's decision to approve a RNCUP permit to allow an auto sales business at 847 Hudson Road, as forth in Commission Resolution No. 22-15, is hereby granted;

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