



Legislation Text

File #: RES 12-538, **Version:** 1

Memorializing Council Action taken February 15, 2012 granting the appeals of the Summit Hill Association and McClay Alton Real Estate, LLC, to a decision of the Board of Zoning Appeals which had granted a parking variance to Kevin D. VanDeraa for property located at 949 Grand Avenue.

WHEREAS, on September 1, 2011, Kevin D. VanDeraa ("Applicant") made application to the Board of Zoning Appeals ("BZA"), under BZA File No. 11-282-158, for a variance from the strict application of Leg. Code § 63.207 parking requirements for property commonly known as 949 Grand Avenue and legally described as Summit Park Addition Tost Pa Lot 22 Blk 27, PIN 022823310077; and

WHEREAS, Applicant requested a variance from Leg. Code § 63.207's off-street parking requirements in order to obtain a beer and wine license. The previous use at the said address required (3) off-street parking spaces. Leg. Code § 63.204 provides "[w]hen any existing use within a structure changes to a new use which requires more off-street parking spaces than the existing use as determined by section 63.207, then the additional off-street parking spaces must be provided." The new use proposed by Applicant requires ten (10) off-street parking spaces. There is no space on the site for additional parking. Accordingly, Applicant sought a variance of (7) parking spaces; and

WHEREAS, on October 3, 2011, the BZA considered the said application as new business however, at the Applicant's request for more time to secure additional parking, the matter was duly laid over to October 31, 2011. The BZA took up the matter on October 31, 2011, but laid the matter over this time to allow the Applicant to prepare a parking study. In the meantime, on November 1, 2011, pursuant to Minn. Stat. § 15.99, the City provided via U.S. Mail written notice that the City was extending the time period for review of the application by an additional 60 days. On December 12, 2011, the matter was laid over by the BZA to December 27, 2011, upon the Applicant's written request to extend the time limit for review under Minn. Stat. § 15.99 for the purpose of allowing the Applicant more time to secure off-street parking and submit parking agreements to the BZA in support of his application; and

WHEREAS, on December 27, 2011, the BZA again conducted a public hearing on the said application, and upon the conclusion of the hearing moved to approve the variance and directed staff to prepare a resolution incorporating the BZA's reasons for approving the variance; and

WHEREAS, on January 9, 2012, the BZA adopted Resolution No. 11-282158 in which the Applicant's requested variance was granted based upon the following findings of fact:

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

This finding can be met. The Applicant wants to open a new restaurant along Grand Avenue with a capacity of thirty-seven (37) seats. In addition to serving cupcakes, other bakery items as well as sandwiches, salads and small plates, the restaurant desires to also serve beer and wine. When a restaurant serves beer and wine, the zoning code requires more parking. Because the proposed site only has three (3) off-street parking spaces and ten (10) are required, a parking variance is necessary. If beer and wine are not served, the site has adequate off-street parking.

The Applicant has proposed to take steps to address the parking shortfall. The Applicant will provide bicycle parking in the front and rear of the building. This will reduce the Applicant's parking shortfall from seven (7)

spaces to six (6) pursuant to Legislative Code § 63.210(b). The Applicant has also entered into a lease agreement for six (6) parking spaces with Anderson Cleaners. However, the lease provides that these six (6) spaces can be reduced to four (4) spaces if Anderson determines it needs extra spaces. In addition the parking lot for Anderson Cleaners is located approximately three hundred (300) feet from Cupcake. Accordingly, the parking agreement cannot be accepted as a shared parking agreement under the strict provision of the code as these spaces are considered required parking spaces for Anderson. Nevertheless, if the Applicant ensures that his employees use the Anderson site spaces instead of the three (3) spaces on site or public street parking in the immediate vicinity of the proposed restaurant, and provided that the lease agreement for six (6) parking spaces is maintained so long as the proposed restaurant serves beer and wine, the general purposes and intent of the code can be met because the lease serves to lessen congestion on the public streets immediately surrounding the proposed restaurant. However, if Anderson reduces the available spaces provided under the lease to less than six (6) spaces, the Applicant must immediately inform the City so that a determination can be made whether the reduced parking for the restaurant adversely impacts properties surrounding it due to increased parking or traffic congestion.

2. The variance is consistent with the comprehensive plan.

This finding is met. This parking variance is generally consistent with the comprehensive plan goals to support businesses that would provide opportunities for employment.

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 met. The Applicant wants to lease space in an existing commercial building with limited on-site parking. The commercial space has been vacant for some time. The use proposed by the Applicant is a permitted use in this zoning district. Because of the mixture of commercial and residential uses on this well established portion of Grand Avenue, it is not possible to provide on this site the additional parking required under the zoning code. In order to lessen the impact of the proposed use on the surrounding properties, the Applicant has obtained an agreement with a nearby business to share parking spaces that the business does not presently need. Although this agreement cannot be treated as a shared parking agreement under the strict provisions of the code and given the lack of available off-street parking on this particular portion of Grand Avenue, the parking agreement, provided it is maintained so long as the Applicant serves beer and wine, is a reasonable attempt to comply with the off-street parking requirements of the code.

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

This finding is met. The subject property contains an existing commercial building that is properly zoned for the proposed use. The property has limited off-street parking with no room to provide additional parking on site. This is a condition that was not created by the property owner.

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. A restaurant with wine and beer is a permitted use in this zoning district. If granted, the requested variance will not change or alter the zoning classification of this property.

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

This finding is met. There already are a number of restaurants and other businesses that operate with limited off-street parking along Grand Avenue. Provided the Applicant maintains the parking agreement for six (6) spaces with the nearby business as presented to the Board, the requested variance, if granted, will not alter

the essential character of the surrounding area.

WHEREAS, as provided under Leg. Code § 61.107 for the purpose of meeting the spirit and intent of the code, to ensure compliance with the code and to protect adjacent properties, Resolution No. 11-282158 imposed the following conditions on the variance:

1. The Applicant must maintain a lease for the use of six (6) parking spaces in the Anderson Cleaners parking lot located at 978 Grand/54 South Chatsworth. The terms of this lease must be substantially similar to the lease presented by the Applicant at the public hearing. A copy of the lease in effect must be provided to the Department of Safety and Inspections which reserves the right from time to time to make inquiries as to the terms and status of the lease.
2. The spaces in the existing parking lot behind the building at 949 Grand must not be used by employees of the restaurant; restaurant employees must use the Anderson Cleaners parking lot.
3. The Applicant must obtain a fence permit to install, and maintain, a fence along the west property line of 949 Grand Avenue in order to separate its existing parking lot from that of the adjacent property. The fence shall be installed after a site plan review approval by the Department of Safety and Inspections.
4. The Applicant must install bike racks in the front and rear of the property no later than June 1, 2012.
5. The Applicant must provide signs in the Anderson Cleaner's parking lot to inform the public that customers for Cupcake can park there.

WHEREAS, upon the BZA's adoption of its Resolution No. 11-282158, the resolution was mailed to the Applicant on January 10, 2012; and

WHEREAS, on January 19, 2012 and pursuant to Leg. Code § 61.702(a), the Summit Hill Association and McClay Alton Real Estate, LLC, collectively hereinafter "Appellants," each duly filed with the City Clerk an appeal from the BZA's determination and requested a hearing before the City Council for the purpose of considering the BZA's actions; and

WHEREAS, upon notice to the parties and pursuant to Leg. Code § 61.702(b), a public hearing was duly conducted by the Saint Paul City Council on February 15, 2012, where all interested parties were afforded an opportunity to be heard; and

WHEREAS, having heard the statements made during the said public hearing and having considered the variance application, the report of staff, and all the records, minutes, and the BZA's resolution, the Council of the City of Saint Paul does hereby

RESOLVE, that the decision of the BZA in this matter is hereby reversed based upon the following finding of error in the facts, findings or procedures of the BZA as set forth in BZA Resolution No. 11-282158:

1. BZA Finding No. 1, that the variance would be in harmony with the general purposes and intent of the zoning code is in error. The parking lease agreement submitted by Applicant, and considered by the BZA in its decision, does not meet the specific requirements for shared parking agreements under Leg. Code § 63.304. Although the BZA found that the parking agreement could help meet the zoning code's stated goal of reducing congestion, the BZA's interpretation of the requirements, especially in light of the specific requirements for shared parking agreements is not in harmony with the general purposes and intent of the code.
2. The City's shared parking ordinances were adopted after careful study that allowed for expanded parking options as specified by the code. The parking lease agreement submitted by the Applicant in support of the

variance application is not a valid shared parking agreement and does not provide adequate assurance to the City that the Applicant's use, or any subsequent use with a beer and wine license, will not increase congestion in the area.

3. BZA Finding No. 4, that the variance is needed due to the unique circumstances of the property and not created by the landowner is in error. The Applicant needs a variance from the zoning code to operate with a beer and wine license. The Applicant does not need a variance to open a restaurant without a beer and wine license and currently has sufficient parking spaces for such retail restaurant use. Granting the requested variance exceeds the general purpose and intent of the zoning code for this neighborhood.

IT IS FURTHER RESOLVED, that the appeals of Mark Berhow of the Summit Hill Association and McClay Alton Real Estate, LLC, be and is hereby GRANTED; and be it

FINALLY RESOLVED, that the City Clerk shall mail a copy of this resolution to Kevin D. VanDeraa, Mark Berhow of the Summit Hill Association, McClay Alton Real Estate, LLC, the Zoning Administrator, the Planning Commission, and the BZA.