Legislation Text

File #: RES 14-1390, **Version:** 1

Memorializing City Council action taken July 9, 2014 denying an appeal by Getten Credit Co. of a determination of the Zoning Administrator relative to Getten's use of property at 1338 Bayard Avenue.

WHEREAS, on or about April 15, 2014, the City's Zoning Administrator duly informed Mr. Dennis P. Getten, d/b/a Getten Credit Co. at 1338 Bayard Avenue, [hereinafter "Getten"] that Getten's use of the Bayard Avenue property constituted an "alternative financial establishment" as defined in Leg. Code 65.611 and not an "office use" permitted under the Bayard Avenue's exiting certificate of occupancy; and

WHEREAS, for zoning purposes, alternative financial establishments are first permitted in B3 zoning districts. The property at 1338 Bayard Avenue, legally described as Hacketts Sub Of B4 Lex Park 5 Lot 15 [PIN: 102823430094] is located in an R4 single-family residential district. Accordingly, the Zoning Administrator's letter advised Getten to immediately cease using the property to operate an alternative financial establishment as it was prohibited under the Zoning Code; and

WHEREAS, on April 25, 20114 and pursuant to Leg. Code § 61.701(c), Getten, under Zoning File No. 14-199046, duly filed an appeal from the Zoning Administrator's April 15, 2014 determination that Getten's use on the subject property was a prohibited alternative financial establishment and requested a hearing before the Board of Zoning Appeals ("BZA"); and

WHEREAS, on May 28, 2014, pursuant to Leg. Code § 61.701(a), the BZA duly conducted a public hearing where all interested parties were afforded an opportunity to be heard and, at the conclusion of the hearing, based upon all the files and evidence presented at the hearing, as substantially reflected in the minutes, made the BZA denied Getten's appeal concluding that the Zoning Administrator's decision was not in error based upon the following findings of fact as set forth in BZA Resolution No. 14-199046, which is hereby incorporated by reference:

"1. In March, 2014, the Department of Safety and Inspections (DSI) was informed that Getten Credit Co., located at 202 Snelling Avenue North, was moving to 1338 Bayard Avenue. A DSI Inspector investigated this information and found that Getten Credit Co. had already moved and was operating at 1338 Bayard Avenue which is located in the R4 one family residential zoning district.

1338 Bayard Avenue was zoned for residential use prior to 1975 and has historically been a mixed commercial -residential building. A December 2006 certificate of occupancy inspection indicated that there were no residential tenants in any portion of this two-story building and that a commercial use was occupying both floors. The commercial occupancy of the entire building was a violation of the zoning code. In 2007, a legal non-conforming use permit to expand this existing commercial use to the second floor was approved by the Planning Commission, See PC Resolution No. 07-043-352. The current Certificate of Occupancy for 1338 Bayard Avenue is for an office (low-rise) "B" occupancy. For zoning purposes, Getten Credit Co. is not considered an office use.

According to the Minnesota Department of Commerce, Getten Credit Co. is classified as a "licensed regulated lender." Zoning Code § 65.511 defines an "alternative financial establishment" to include a "regulated loan company." A "licensed regulated lender" and a "regulated loan company" are one in the same: alternative financial establishments. Regulated loan companies are not permitted uses in the R4 zoning district.

Likewise, a regulated loan company is not an "office use" allowed under the 2007 non-conforming use permit.

2. The applicant is appealing the order stating that the Zoning Administrator erred in determining that Getten Credit Co.'s present use of the property is not an office use permitted under the 2007 non-conforming use permit. Although Getten Credit Co. may operate like an office, the specific nature of the use meets the definition of an alternative financial establishment. Leg. Code § 60.104 states that "the particular shall control the general." Getten Credit Co. operates as an alternative financial establishment which is a more particular use than a general office use. Alternative financial establishments are first permitted in a B3 zoning district with a conditional use permit while an office use is first permitted in T1 zoning district.

3. The applicant is appealing the order stating that the Zoning Administrator erred in determining that Getten Credit Co. is not properly licensed to conduct business at 1338 Bayard Avenue. As of the April 15, 2014, enforcement letter, the Zoning Administrator had confirmed with the Minnesota Department of Commerce that Getten Credit Co. held a current registered lender license to operate at 202 Snelling Avenue North. Getten Credit Co. did not have a current registered lender license to operate at 1338 Bayard Avenue. In addition, as of the date of this staff report, no information has been submitted which would have verified that the Minnesota Department of Commerce has issued a license to Getten Credit Co. at 1338 Bayard Avenue.

Whether Getten Credit Co. possessed a licensed from the Minnesota Department of Commerce to operate at the Bayard Street address is irrelevant as to whether there is a zoning violation. An alternative financial establishment is not permitted at this location. The existence of a state license is irrelevant to the existence of a zoning violation." and

WHEREAS, on June 6, 2014 and pursuant to Leg. Code § 61.702(a), Getten, under Zoning File No. 14-295648, duly filed an appeal with the City Clerk from the BZA's determination and requested a hearing before the City Council for the purpose of considering the actions taken by the BZA; and

WHEREAS, on July 9, 2014 the City Council, pursuant to Leg. Code § 61.702(b), duly conducted a public hearing on the Getten appeal where all interested parties were given an opportunity to be heard; and

WHEREAS, The City Council, having heard the statements made, and having considered the appeal application, the report of staff, the record, minutes and resolution of the BZA, does hereby

RESOLVE, that the Council, finds no error in the BZA's decision in this matter, hereby upholds the original determination of the Zoning Administrator with respect to Getten's use of the subject property and, accordingly, denies Getten's appeal; and

BE IT FURTHER RESOLVED, that the Council hereby adopts the BZA's findings as its own in support of this decision; and,

BE IT FINALLY RESOLVED, that the City Clerk shall immediately mail a copy of this resolution to Brian Alton Attorney at Law on behalf of appellant Getten, the BZA, the Zoning Administrator and the Planning Commission.