



Legislation Text

File #: RES 14-1495, **Version:** 1

Memorializing the City Council's August 20, 2014 decision denying the appeal by Pergola Investments, LLC, of a Planning Commission decision to approve a conditional use permit for office use at 390-394 Dayton Avenue.

WHEREAS, on or about June 3, 2014, the St. Paul Domestic Abuse Intervention Project ("SPIP"), in PED Zoning File No. [14-293-465](#), duly applied for a conditional use permit ("CUP") to reuse a structure commonly known as 390 - 394 Dayton Ave, [PIN No's 012823210025 and 012823210026] and legally described as Kerns Addition to St Paul Ex S 22 Ft Lot 3 and 4 Blk 2 for office space pursuant to Leg. Code § 65.132 and a modification of Leg. Code § 65.132(e)'s petition requirement pursuant to Leg. Code §§ 61.501 and .502; and

WHEREAS, on July 1, 2014, the Planning Commission's Zoning Committee duly conducted a public hearing in accordance with the requirements of Leg. Code § 61.303 at which all persons present were given an opportunity to be heard and, at the close of the said hearing, the Zoning Committee recommended approval of the CUP and modification of the petition requirement; and

WHEREAS, on July 11, 2014, the Planning Commission, based upon all the evidence presented to its Zoning Committee at the public hearing as substantially reflected in the minutes, and all the records, files, and reports, approved SPIP's CUP application and request to modify the petition requirements based upon the following findings of fact as set forth in Planning Commission Resolution No. 14-41 which is incorporated herein by reference:

"1. Leg Code § 65.132 lists five standards and conditions that must be met for reuse of a nonresidential structure in a residential zoning district.

- a. The structure cannot be reasonably used for a conforming use. This condition is met. In 1995, the College of Visual Arts completely remodeled a two-story apartment building into a school building for its campus that included offices, art studio space, and a school library facility. The formal entrance for the building was shifted from the front of the building (facing Dayton Street) to the alley side of the building; the building now fronts onto the parking lot. Without a complete renovation of the building back into residential units or a permitted institutional user found, this building cannot reasonably be used for a conforming use.
- b. The proposed use and plans are consistent with the comprehensive plan. This condition is met. See Finding 2(a).
- c. The proposed use and structural alterations or additions are compatible with the surrounding neighborhood and land uses. This condition is met. The applicant is not proposing an addition to the building or any structural changes that would impact the surrounding neighborhood or land uses.
- d. Parking for the new use shall be provided in accordance with the requirements of Leg. Code § 63.200 for new structures. This condition is met subject to the applicant providing four bicycle parking spaces in a secured bicycle rack. Under Leg. Code § 63.207 an office use requires one off-street parking space for every 400 square feet of gross floor area (GFA). This structure has 4,579 sq. ft. of GFA (defined in Leg. Code § 60.207) and is required to have a minimum of eleven off-street parking spaces under Leg. Code § 63.206(b) and § 63.207(a). The parking lot to the east of the subject building has ten parking spots. Under Leg. Code § 63.210(b), bicycle parking may be substituted for up to ten percent of the minimum parking required under

Leg. Code § 63.207, at a rate of four bicycle parking spaces in a secured bicycle rack per off-street vehicle parking space. The applicant has agreed to provide four bicycle spaces in a secured rack, reducing the off-street vehicle parking requirement to ten spaces

e. Application for conversion or reuse shall include a notarized petition of two-thirds of the property owners within 100 feet of the property proposed for reuse. This condition is not met. The applicant has requested a modification to this requirement under Leg. Code § 61.502.

2. Leg. Code § 61.501 lists five standards that all conditional uses must satisfy:

a. The extent, location and intensity of the use will be in substantial compliance with the Saint Paul Comprehensive Plan and any applicable subarea plans which were approved by the city council. This condition is met. In the St. Paul Land Use Plan, Policy 1.48 supports a compatible mix of uses in close proximity, Policy 1.24 supports a mix of uses on mixed use corridors, and the future land use map shows this location as part of a Mixed Use Corridor along Selby Avenue. The use is also consistent with the District 8 Plan.

b. The use will provide adequate ingress and egress to minimize traffic congestion in the public streets. This condition is met. The existing parking lot will have adequate ingress and egress.

c. The use will not be detrimental to the existing character of the development in the immediate neighborhood or endanger the public health, safety and general welfare. This condition is met. The office use will not be detrimental to the existing character of the neighborhood. This educational facility has been integrated into the neighborhood from 1997 until the college ceased operations in 2013. The office use is expected to be open during typical business hours Monday through Friday from 8:00 a.m. to 4:30 p.m. with extended hours on Wednesdays and Thursdays from 5:30 p.m. to 7:30 p.m. to provide education/support groups.

d. The use will not impede the normal and orderly development and improvement of the surrounding property for uses permitted in the district. This condition is met. The office use proposed is similar to the previous institutional office and studio use.

e. The use shall, in all other respects, conform to the applicable regulations of the district in which it is located. This condition is met. This use will conform to the applicable regulations of the district within which it is located.

3. The planning commission may approve modifications of special conditions when specific criteria of Leg. Code § 61.502 are met. Leg. Code § 61.502 states: "Strict application of such special conditions would unreasonably limit or prevent otherwise lawful use of a piece of property or an existing structure and would result in exceptional undue hardship to the owner of such property or structure; provided, that such modification will not impair the intent and purpose of such special condition and is consistent with health, morals and general welfare of the community and is consistent with reasonable enjoyment of adjacent property."

The applicant has requested modification of the special condition in Leg. Code § 65.132(e), which requires the applicant to provide a notarized petition signed by two-thirds of the property owners within 100 feet of the property proposed for reuse. The circumstances of this application meet the criteria in Leg. Code § 61.502 criteria to modify the special condition in Leg. Code § 65.132(e) for a petition. Under the circumstances of this application, eliminating the petition as requested by the applicant is reasonable. Strict application of the petition requirement unreasonably limits and prevents an otherwise lawful use of the structure. In 1995, the building's use changed from an eight-unit apartment building to a building used for an institutional purpose, The College of Visual Arts. When the College acquired the building, it proceeded to convert its interior from residential use space into art studio spaces, offices, and other college-related uses. The College

also reversed the building's main entryway from Dayton to the rear (alley side) of the building. These renovations essentially eliminated the building's interior spaces for residential purposes by converting the building's functional use to institutional purposes. As it stands today, without a complete renovation of the building's interior back to residential units, or finding a permitted institutional use, the building cannot be lawfully used for a conforming residential use.

An underlying purpose of Leg. Code § 65.132 is to facilitate reuse of permitted nonresidential structures such as churches and schools in residential zoning districts, recognizing that there can be difficulty in finding occupants for reuse of such buildings. The use proposed by the applicant meets all of the conditions required for the conditional use permit except the special condition in Leg. Code § 65.132(e) for a petition. Compliance with the petition requirement would result in undue hardship for the owner of this structure. In order to meet the petition's "2/3's" requirement, the applicant must obtain signatures from the owners of fourteen of the twenty properties located within a 100-foot radius of the subject property. Two of these fourteen properties were undergoing ownership changes during the time period signatures were sought by the applicant. Another nine of the fourteen properties are owned by two individuals. Initially the applicant had asked the two property owners who control these nine properties to sign a petition supporting a rezoning application. These owners declined to sign the rezoning petition and the applicant represents that both property owners continue to refuse to sign the reuse petition. Without signatures from these two property owners, whether to rezone or reuse this large building given its current RM2 zoning classification, the building can only be used for residential uses or other institutional uses.

Modification of the petition requirement under the facts in this application will not impair the intent and purpose of the petition requirement. The proposed use of the building is very similar in character to the previous use and, in all likelihood, will be less intense in character than the previous use. The underlying purpose of the petition requirement is to provide notice to adjacent property owners of a proposed reuse. Given that the subject structure had been put to a use other than as a residential since 1995 and that the proposed new use is not substantially different from the previous reuse, strict adherence to the petition requirement in this case will not undermine the enjoyment of adjacent properties as they appear to have coexisted with full knowledge of the nonresidential property for nearly twenty years." and

WHEREAS, the Planning Commission, in its approval of SPIP's application, imposed the following condition on the CUP as set forth in Commission Resolution No. 14-41 which is also incorporated herein by reference:

"1. Four secure bicycle spots shall be provided and maintained." and

WHEREAS, on July 18, 2014, Pergola Management, LLC, ("Pergola") duly filed an appeal from the Planning Commission's determination in this matter pursuant to the provisions of Leg. Code § 61.702 (a) and requested a hearing before the City Council for the purpose of considering the Commission's actions; and

WHEREAS, on August 20, 2014, the City Council, pursuant to Leg. Code § 61.702(b) and upon notice to affected parties, duly conducted a public hearing on Pergola's appeal where all interested parties were given an opportunity to be heard; and

WHEREAS, at the conclusion of the said public hearing, having heard all the statements made and having considered the subject application, staff report, and all the records, minutes and recommendations of the Zoning Committee and the Commission's resolution, the Council of the City of Saint Paul does hereby

RESOLVE, Pursuant to Leg. Code § 61.704, the Council hereby affirms the decisions of the Planning Commission in this matter as the Council finds that Pergola has failed to meet its burden of proving any error in the facts, findings, or procedures of the Planning Commission in this matter and, accordingly, the Council adopts as its own the findings of the Planning Commission in this matter as set forth in Planning Commission

Resolution No. 14-41 in support of this decision upholding the Planning Commission's decision AND, BE IT

FURTHER RESOLVED, that the appeal of Pergola Management, LLC, for the reasons noted above, be and is hereby denied; AND, BE IT

FINALLY RESOLVED, That the City Clerk shall mail immediately mail a copy of this resolution to Pergola Management, LLC, the Saint Paul Intervention Project, the Zoning Administrator and the Planning Commission.