



## Legislation Text

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**File #:** RES 19-361, **Version:** 1

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Memorializing the decision to deny the appeal of George Hark, d/b/a M & A Hark, Inc. from a decision of the Board of Zoning Appeals denying a variance from the zoning code's separation requirements for tobacco product shops for property at 589 Dale Street North.

WHEREAS, on October 15, 2018, George Hark, d/b/a M & A Hark, Inc. ("Applicant"), duly applied to the Board of Zoning Appeals ("BZA") in BZA File No. 18-113695 for a variance from the strict application of the zoning code's separation requirements for tobacco product shops in order to open a tobacco products shop at property commonly known as 589 Dale Street North (PIN No. 352923140242) and legally described as Chute Brothers Division, No. 3 Addition, Lots 1 thru Lot 5 in the City of Saint Paul, Ramsey County, Minnesota; and

WHEREAS, the Applicant's proposed tobacco products shop would be 2,311 feet from an existing tobacco products shop. The zoning code requires 2,640 feet of separation between tobacco products shop. Based upon the distance between the existing shop and Applicant's proposed shop, the Applicant requested a variance of 329 feet; and

WHEREAS, on November 5, 2018, the BZA, in accordance with Legislative Code § 61.601, duly conducted a public hearing on the Applicant's variance request where all present were afforded an opportunity to be heard; and

WHEREAS, at the said public hearing the BZA received a staff report dated October 29, 2018 which contained a recommendation to deny Applicant's variance request together with testimony from the Applicant and others who spoke for or against the variance, as set forth in the BZA's adopted minutes which are incorporated herein by reference; and

WHEREAS, the BZA, upon closing the public hearing and based upon all the records and testimony received, duly moved to deny Applicant's variance request based upon the following reasons as set forth in BZA Resolution No. 18-113695, which is also incorporated herein by reference and which reads as follows:

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

The zoning code defines a "Tobacco products shop" as a retail establishment with a principal entrance door opening directly to the outside that derives more than ninety (90) percent of its gross revenue from the sale of loose tobacco, plants, or herbs and cigars, cigarettes, pipes, and other smoking devices for burning tobacco and related smoking accessories and in which the sale of other products is merely incidental. "Tobacco products shop" does not include a tobacco department or section of any individual business establishment

with any type of liquor, food, or restaurant license.

The applicant's business, Speedy Market, is an existing convenience store with a gas station. The existing store would remain and the proposal is to create a 450-square foot space where a new tobacco products shop would be established. The two stores would have their own entrance door opening directly to the outside and separated by walls within the same building.

The zoning code requires a tobacco-products shop to be located at least one-half mile (2,640-feet) from another tobacco products shop. Because there is an existing shop already operating 2,311 feet away from this site at 440 University Avenue West, the proposed shop cannot be established without the requested variance.

The T2 traditional neighborhood district is designed for use in existing or potential pedestrian and transit nodes. Its intent is to foster and support compact, pedestrian-oriented commercial and residential development that, in turn, can support and increase transit usage. It encourages, but does not require, a variety of uses and housing types, with careful attention to the amount and placement of parking and transitions to adjacent residential neighborhoods.

This proposal would allow two businesses on the same property to serve the immediate neighborhood and commuters that utilize the transit system. This request is in harmony with the general purposes and intent of the zoning code. This finding is met.

*2. The variance is consistent with the comprehensive plan.*

The Comprehensive Plan (Strategy 1.46) "encourages retail establishments located in close proximity to each other" because the concentration "creates a synergy that benefits all businesses" resulting in more opportunities to attract new businesses as well expand existing ones. The location of businesses within close proximity to one another allows customers to walk between the different destinations without having to drive.

Additionally, the applicant's proposed business is locally owned and operated. The Economic Strategy of the Comprehensive Plan includes creating a climate conducive to economic self-sufficiency and growth by fostering economic development activities and attracting businesses to Saint Paul. This request is in keeping with Strategy 1.46 of the Comprehensive Plan and its goal to support local businesses. This finding is met.

*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.*

The purpose of the separation requirement is to prevent the over concentration of tobacco products shops in a specific area. Access to tobacco products shops requires a minimum age of at least 18 years. Limiting the sale

of menthol cigarettes and other flavored tobacco to tobacco products shops is intended to discourage the exposure of these products to underage youth.

The applicant states that the existing tobacco products shop, Sunrise Tobacco, is located at 440 University Avenue West, which is a part of the Summit-University Neighborhood. Generally, the customers that frequent this store, live in this neighborhood. Additionally, it serves the commuters that use the Light Rail Transit System and local bus routes that are within close proximity to the store. The proposed shop would be north of University Avenue West and is a part of the Frogtown Neighborhood, having a different customer base.

The applicant suggests that because each store would be serving entirely two different neighborhoods of the City, it would be reasonable to allow the proposed shop within one half-mile of the existing tobacco shop.

However, staff does not believe the University Avenue demonstrably acts as a physical barrier that would justify a practical difficulty. Allowing the establishment of a tobacco products shop at this location could further diminish the purpose of the separation requirement. This finding is not met.

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

The need for the variance is prompted by the applicant's intent to establish the proposed use at this location. There is nothing unique to the property, therefore, the plight of the applicant is self-created. This finding is not met.

*5. The variance will not permit any use that is not allowed in the zoning district where the affected land is located.*

A tobacco products shop is a permitted use in the T2, traditional neighborhood zoning district and the requested variance will not change the zoning classification of the property. This finding is met.

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

This request to operate a tobacco-products shop within one-half mile from a similar shop will not alter the essential character of the area. This finding is met."

WHEREAS, on November 14, 2018, the Applicant, pursuant to Leg. Code § 61.702(a), duly filed with the City Clerk an appeal from the BZA's determination under BZA File No. 18-113695 and requested a hearing before the City Council for the purpose of considering the actions taken by the BZA; and

WHEREAS, on December 5, 2018, the City Council, pursuant to Leg. Code § 61.702(b) and upon notice to affected parties, duly conducted a public hearing on the said appeal where all interested persons were given an opportunity to be heard; and

WHEREAS, the City Council, having heard the statements made and having considered the Applicant's variance application, the report of staff, and all the records, minutes, and the resolution of the BZA presented during the public hearing; DOES HEREBY

RESOLVE, that the Council of the City of Saint Paul hereby upholds the decision of the BZA in this matter. The Council finds that the appellant has failed to meet its burden to demonstrate that the BZA erred in its facts and findings in this matter in denying the Applicant's request for a variance from the distance separation requirement for tobacco products shops; AND

BE IT FURTHER RESOLVED, based upon the finding above that the Applicant failed to show any error on the part of the BZA in reaching its decision, the Council hereby denies the Applicant's appeal and further, in support of this decision, the Council hereby adopts as its own the BZA's facts and findings as set forth above and in BZA Resolution No. 18-113695, especially findings 3 and 4; AND BE IT

FINALLY RESOLVED, that the City Clerk shall mail a copy of this resolution to the Applicant, the Zoning Administrator, the building official, the planning commission and the BZA.