

**CITY OF CANNON FALLS
GOODHUE COUNTY, MINNESOTA**

RESOLUTION NUMBER 2768

**RESOLUTION GRANTING VARIANCE FROM FRONT SETBACK
FOR DOLLAR GENERAL**

WHEREAS, Acre Real Estate Holding LLC (“Applicant”) is the applicant for a variance from front setback requirements (“Setback Variance”) for property located in the City of Cannon Falls legally described on the attached Exhibit A (the “Property”);

WHEREAS, City staff studied the matter, made a report, and provided other information to the Planning Commission and City Council; and

WHEREAS, on May 13, 2024 and June 10, 2024 the Planning Commission held a public hearing and considered the Applicant’s Setback Variance application, recommending approval; and

WHEREAS, the City Council considered the matter at its June 18, 2024 meeting, receiving the recommendation of the Planning Commission, the report from City Staff, and other information.

NOW, THEREFORE, the City Council of the City of Cannon Falls makes the following:

FINDINGS

1. The Applicant is requesting a variance from City Code § 152.611, which requires a 25-foot minimum front setback for a retail establishment in the R-B, Retail Business zone, for the proposed development of a Dollar General store on the Property (the “Proposed Use”). The Applicant is seeking a reduction in the front setback requirement from 25 feet to 11.3 feet.
2. The Applicant submitted for City Council’s review and approval the plans for the Property drafted by CG Buchalter, LLC last dated April 12, 2024 (the “Plans”), which Plans are attached hereto as Exhibit B.
3. The Property is currently zoned R-B, Residential Business. The land surrounding the Property is zoned R-B, Residential Business.
4. Minn. Stat. § 462.357 grants to the City, for the purpose of promoting the public health, safety, morals and general welfare, the authority to regulate use of land within the City through zoning regulations.
5. The granting of variances within the City is governed both by the City Code and State Statutes.

6. Minn. Stat. § 462.357, subd. 6 allows variances only when they are in harmony with the general purposes and intent of the City Code and consistent with the City's comprehensive plan. Further, the Applicant must establish that there are practical difficulties in complying with the zoning ordinance.

7. City Code § 152.100 states:

The purpose of this subchapter is to provide for deviations from the literal provisions of this chapter in instances where their strict enforcement would cause undue hardship because of circumstances unique to the individual property under consideration, and to grant the variances only when it is demonstrated that the actions will be in keeping with the spirit and intent of this chapter.

8. City Code § 152.103 states:

The Board of Adjustment and Appeals shall not approve any variance request unless it finds failure to grant the variance will result in undue hardship on the applicant, and, as may be applicable, all of the following criteria have been met.

(A) Because of the particular physical surroundings, shape or topographical conditions of the specific parcel of land involved, a particular hardship to the owner would result, as distinguished from a mere inconvenience, if the strict letter of the regulations were to be carried out.

(B) The conditions upon which an application for a variance is based are unique to the parcel of land for which the variance is sought and are not applicable, generally, to other property within the same zoning classification.

(C) The purpose of the variance is not based exclusively upon a financial hardship, or a desire to increase the value or income potential of the parcel of land.

(D) The alleged difficulty or hardship is caused by this chapter and has not been created by any persons having an interest in the parcel of land and is not a self-created hardship.

(E) The granting of the variance will not be detrimental to the public welfare or injurious to other land or improvements in the neighborhood in which the parcel of land is located.

(F) The proposed variance will not impair an adequate supply of light and air to adjacent property, or substantially increase the congestion of the public streets or increase the danger of fire or endanger the public safety.

(G) The variance is the minimum action required to eliminate the hardship.

(H) The variance does not involve a use that is not allowed within the respective zoning district.

9. The Setback Variance request is in harmony with the general purpose and intent of the City Code and is consistent with the comprehensive plan. The variance and front setback reduction maintains a safe distance from Dakota St. W while allowing sufficient area for pedestrian and vehicle traffic on the Property and access to and from the Property. Further, Applicant requests the Setback Variance to maintain the Proposed Use, which is allowed with a conditional use permit ("CUP") under City Code § 152.608. The City granted the Applicant's request for a CUP by Resolution No. 2767 and granting the Setback Variance is consistent with the approved use of the Property.

10. There are practical difficulties on the Property. The "L" shape of the Property is irregular, unique to the Property, and not applicable to other parcels in the R-B, Residential Business zone. The shape of the Property creates a particular hardship to the Applicant in complying with the strict letter of the City Code with respect to the front setback for the Proposed Use.

11. Further, there are practical difficulties due to the railroad tracks and easement along the north side of the Property. The proximity of the railroad tracks to the Property is unique and creates a safety hazard not created by the Applicant. Reducing the front setback, which allows the Applicant to situate the building and parking lot farther away from the railroad tracks, is a reasonable way to protect the public health, welfare and safety.

12. The purpose of the variance is not based exclusively upon a financial hardship, or a desire to increase the value or income potential of a parcel of land.

13. Applicant's hardship is not caused by City Code ch. 152 or the Applicant but results from the irregular shape of the Property and location of the railroad tracks and easement.

14. Granting the Setback Variance will not be detrimental to the public welfare or injurious to other land or improvements near the Property or substantially increase congestion on public streets. The variance and reduction in front setback preserve a safe distance from Dakota St. W while allowing sufficient area for pedestrian and vehicle traffic on the Property and access to and from the Property.

15. The Setback Variance is the minimum action required to eliminate the hardships and does not involve a use that is not allowed in the R-B, Residential Business zone.

DECISION

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Cannon Falls and based upon the information received and the above Findings, that the City Council does hereby grant the Applicants request from City Code § 152.611 to allow the reduction in front setback from 25 feet to 11.3 feet as depicted on the Plans. The Setback Variance granted is only for the Proposed Use and Plans. The approval granted herein and this Resolution shall be subject to the following:

1. The variance granted herein shall be subject to the applicable provisions of City Code, including, but not limited to, City Code § 152.038 regarding expiration of zoning approvals.
2. The Applicant shall pay upon demand all expenses, determined by the City, that the City incurs in relation to this Resolution. Such expenses shall include, but are not limited to, staff time, engineering, legal and other consulting fees incurred in relation to this Resolution and the approval granted herein.
3. The Setback Variance shall be null and void in the event the City terminates the CUP granted pursuant to Resolution No. 2767, after notice and a hearing.

ADOPTED by the City Council this 2nd day of July 2024.

Matt Montgomery, Mayor

ATTEST: _____
Neil L. Jensen, City Administrator

EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

SITUATE IN GOODHUE COUNTY, STATE OF MINNESOTA:

LOTS 4, 5, 6, 7 AND 8, BLOCK 35, ST. CLAIRS TERRE HAUTE ADDITION, CANNON FALLS, GOODHUE COUNTY, MINNESOTA.

Tax ID: 52.480.0700

BEING THE SAME PROPERTY CONVEYED TO ACRE REAL ESTATE HOLDING, LLC, A LIMITED LIABILITY COMPANY, GRANTEE, FROM ROCHELLE GILLILAND AND DONNIE GILLILAND, MARRIED TO EACH OTHER, ANDREA TOMASKA, A SINGLE PERSON AND LINDSEY PRINK F/K/A LINDSAY TOMASKA AND JOSEPH PRINK, MARRIED TO EACH OTHER, GRANTOR, BY WARRANTY DEED RECORDED 9/29/2022, AS INSTRUMENT # A688613 OF THE GOODHUE COUNTY RECORDS.

END OF SCHEDULE A

EXHIBIT B

PLANS