

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

RESOLUTION NUMBER 2775

**RESOLUTION DENYING CONDITIONAL USE PERMIT
FOR DOLLAR GENERAL**

WHEREAS, Acre Real Estate Holding LLC (“Applicant”) applied for a conditional use permit (“CUP”), a variance from off-street parking requirements (“Parking Variance”), and a variance from the front setback requirement (“Setback Variance”) for property located in the City of Cannon Falls and 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;

WHEREAS, on May 13, 2024 and June 10, 2024, the Planning Commission held public hearings and considered the Applicant’s CUP, Parking Variance, and Setback Variance applications, recommending approval;

WHEREAS, on June 18, 2024, the City Council considered the matter, passed motions to approve CUP, Parking Variance, and Setback Variance, and directed the City Attorney to draft findings;

WHEREAS, on July 2, 2024, the City Council adopted Resolution 2767 approving the CUP with conditions, Resolution 2768 approving the Setback Variance with conditions, and Resolution 2769 approving the Parking Variance with conditions;

WHEREAS, on July 5, 2024, pursuant to Cannon Falls City Charter § 2.05, subd. 3, Mayor Matt Montgomery submitted written objections to the City Council’s approval of Resolutions 2767, 2768, and 2769 to the City Attorney and City Administrator; and

WHEREAS, on July 23, 2024, the City Council reconsidered its decisions regarding Resolutions 2767, 2768, and 2769.

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

FINDINGS

1. The Applicant is requesting a CUP for the proposed development of a Dollar General retail establishment on the Property (the “Proposed Use”).
2. The Applicant is also 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 Use. The Applicant is seeking an 11.3 foot reduction in the front setback requirement from 25 feet to 13.7 feet.

3. The Applicant is also requesting a variance from City Code § 152.259, which requires at least one off-street parking space for each 200 square feet of floor area of a retail establishment for the Proposed Use. The Applicant is seeking a 9-space reduction in required parking spaces from 48 to 39 spaces.

4. 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.

5. The Property is currently zoned R-B, Residential Business. The land surrounding the Property is zoned R-B, Residential Business.

6. 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.

7. Cannon Falls City Charter § 2.05, subd. 3 states:

Subd. 3. An ordinance or a resolution adopted by the Council before it takes effect must be promptly presented to and approved by the Mayor. The Mayor approves the ordinance or the resolution by signing it and filing it with the City Administrator. If the Mayor does not file the signed ordinance or resolution with the City Administrator within five days, Sundays, Saturdays and holidays excluded, the ordinance or resolution is deemed approved. If the Mayor does not approve the ordinance or resolution, the Mayor must return it to the City Administrator with the Mayor’s written objections for presentment to the Council at its next regular meeting or at a special meeting called for the purpose of reconsidering the ordinance or resolution. At that meeting, the vote by which the ordinance or resolution was adopted is deemed to be reconsidered. If, upon reconsideration, five Council members vote to approve the ordinance or resolution, it is adopted notwithstanding the Mayor’s disapproval.

8. Mayor Montgomery timely submitted written objections to Resolutions 2767, 2768, and 2769 to the City Administrator.

9. On July 23, 2024, after reconsideration, four (4) Councilmembers voted to approve Resolution 2767, three (3) Councilmembers voted to approve Resolution 2768, and three (3) Councilmembers voted to approve Resolution 2769 and the Resolutions have not been approved as the requisite five (5) votes to override the Mayor’s objections were not received.

10. Minn. Stat. § 15.99, subd. 2(b) states:

When a vote on a resolution or properly made motion to approve a request fails for any reason, the failure shall constitute a denial of the request provided that those voting against the motion state on the record the reasons why they oppose the request. * * *

11. Minn. Stat. § 15.99, subd. 2(c) states, in relevant part:

* * * If a multimember governing body denies a request, it must state the reasons for denial on the record and provide the applicant in writing a statement of the reasons for the denial. If the written statement is not adopted at the same time as the denial, it must be adopted at the next meeting following the denial of the request but before the expiration of the time allowed for making a decision under this section. The written statement must be consistent with the reasons stated in the record at the time of the denial. The written statement must be provided to the applicant upon adoption.

12. The time limit for a decision on the Applicant's Parking Variance and Setback Variance applications will not expire until August 16th, 2024.

13. Pursuant to City Code § 152.608, retail commercial activities in the B-2, Residential Business zone require a CUP.

14. City Code § 152.070 states:

The purpose of a conditional use permit is to provide the city with a reasonable degree of discretion in determining the suitability of certain designated uses upon the general welfare, public health and safety. In making this determination, whether or not the conditional use is to be allowed, the city may consider the nature of the adjoining land or buildings, the effect upon traffic into and from the premises or on any adjoining streets, and all other or further factors as the city shall deem a prerequisite of consideration in determining the effect of the use on the general welfare, public health and safety.

15. City Code § 152.072 states, in relevant part:

The Planning Commission shall consider possible effects of the proposed conditional use. Its judgment shall be based upon, but not limited to, the following factors:

(A) The proposed action has been considered in relation to the specific policies and provisions of and has been found to be consistent with the official City Comprehensive Plan;

(B) The proposed use is or will be compatible with present and future land uses of the area;

(C) The proposed use conforms with all performance standards contained in this code;

(D) The proposed use can be accommodated with existing public services and will not overburden the city's service capacity; and

(E) Traffic generation by the proposed use is within capabilities of streets serving the property.

16. City Code § 152.073 states, in relevant part:

As may be applicable, the evaluation of any proposed conditional use permit request shall be subject to and include, but not be limited to, the following general performance standards and criteria.

* * *

(D) Adequate off-street parking and off-street loading shall be provided in compliance with §§ 152.255 through 152.264 of this chapter. * * *

(P) The use complies with all applicable performance standards of the zoning district in which it is located and where applicable, any nonconformities shall be eliminated.

(Q) All additional conditions pertaining to a specific site are subject to change when the Council, upon investigation in relation to a formal request, finds that the general welfare and public betterment can be served as well or better by modifying or expanding the conditions set forth herein.

17. The Applicant is proposing to construct a 9,100 sq. ft. Dollar General store according to the Plans. The Proposed Use does not provide adequate off-street parking in compliance with City Code § 152.259 and does not comply with the minimum front setback required by City Code § 152.611. The Applicant has not shown that it is entitled to the Parking Variance and Setback Variances and therefore cannot satisfy the criteria for a CUP.

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:

1. The City Council does hereby deny the Applicant's request for a CUP.

ADOPTED by the City Council this 6th day of August 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