

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

RESOLUTION NUMBER 2776

**BOARD OF ADJUSTMENT AND APPEALS
RESOLUTION DENYING VARIANCES
FOR DOLLAR GENERAL**

WHEREAS, Acre Real Estate Holding LLC (“Applicant”) is the applicant 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. Pursuant to Minn. Stat. § 462.257, subd. 6(2), the City Council as the Board of Adjustment and Appeals is authorized to hear requests for variances from the requirements of the zoning ordinance.

5. 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.

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

7. 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.

8. 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.

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

10. 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.

11. 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. * * *

12. 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.

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

14. The granting of variances within the City is governed both by the City Code and State Statutes.

15. 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. "Practical difficulties," as used in connection with the granting of a variance, means that the property owner proposes to use the property in a reasonable manner not permitted by the zoning ordinance; the plight of the landowner is due to circumstances unique to the property not created by the landowner; and the variance, if granted, will not alter the essential character of the locality. Economic considerations alone do not constitute practical difficulties.

16. 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.

17. 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.

18. The Applicant's request to construct a new building on the Property requiring multiple variances is not in harmony with the general purposes and intent of the City Code. The Applicant has not shown an undue hardship or that peculiar conditions on the Property warrant deviating from the setback and front yard requirements of the City Code. The Applicant created the alleged hardship by limiting itself to only three predetermined building plans for the Proposed Use, none of which fit on the Property.

DECISION

NOW, THEREFORE, BE IT RESOLVED by the City of Cannon Falls Board of Adjustment and Appeals and based upon the information received and the above Findings:

1. The City Council does hereby deny the requested Setback Variance; and
2. The City Council does hereby deny the requested Parking Variance.

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