

**STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS  
FOR THE SAINT PAUL CITY COUNCIL**

In Re the Currency Exchange License  
Application of Unbank Company, LLP, for  
the Premises at 1614 White Bear Avenue

**FINDINGS OF FACT,  
CONCLUSIONS AND  
RECOMMENDATION**

The above-entitled matter came on for hearing before Administrative Law Judge (ALJ) Richard C. Luis, serving as hearing officer for the Saint Paul City Council on February 26, 2001, at 10:00 a.m. in Room 220 of the Saint Paul City Hall-Ramsey County Courthouse. The record was held open for submission of proposed Findings of Fact, Conclusions and Recommendation until February 28, 2001.

On January 30, 2001 the City issued a Notice of Hearing on the application which set a hearing date for February 12, 2001.<sup>[1]</sup> The hearing was re-scheduled to February 16, 2001 at the request of the Applicant,<sup>[2]</sup> and then rescheduled again for February 26, 2001.<sup>[3]</sup> The City's Notice of Re-Scheduled Hearing is dated February 15, 2001, and it also sets this matter for a public hearing in front of the City Council on March 7, 2001 in order to meet the sixty-day time requirement (See Minn. Stat. § 53A.04(a).) for the local governing body to communicate its approval or disapproval of issuance of the license to the Department of Commerce.

Virginia D. Palmer, Assistant City Attorney, 400 City Hall, 15 West Kellogg Boulevard, Saint Paul, MN 55102, appeared on behalf of the St. Paul City Office of License, Inspections and Environmental Protection (City, LIEP). Daniel N. Rosen, Rosen and Rosen, 150 South Fifth Street, Suite 3250, Minneapolis, MN 55402, appeared on behalf of the Applicant, Unbank Company, LLP.

**NOTICE**

This Report is a recommendation, not a final decision. The Saint Paul City Council will make the final decision after a review of the record and may adopt, reject or modify these Findings of Fact, Conclusions and Recommendation. Pursuant to Saint Paul Legislative Code § 310.05(c-1), the City Council will provide the Applicant an opportunity to present oral or written argument to the City Council before it takes final action during or after its hearing on March 7, 2001. Parties should contact the Saint Paul City Council Offices (651/266-8500) to determine the procedure for presenting argument.

## **STATEMENT OF ISSUE**

Has the Applicant shown by a preponderance of the evidence that it meets the requirements of the Saint Paul zoning code for a currency exchange license at its proposed business location?

Based on all the proceedings herein, the Administrative Law Judge makes the following:

## **FINDINGS OF FACT**

1. On January 11, 2001 the Department of Commerce forwarded an application for a currency exchange license to the City of Saint Paul. The application was submitted in the name of Unbank Company, LLP, for premises located at 1614 White Bear Avenue in Saint Paul.<sup>[4]</sup> The zoning classification of 1614 White Bear Avenue is B-2.

2. Unbank is a Limited Liability Partnership, incorporated in Minnesota. Gary A. Dachis and Stuart D. Tapper, President and Vice-President respectively, are each listed as 50% owners.<sup>[5]</sup> At the hearing, Stuart Tapper testified that Jean Williams would also have some ownership interest in the business of the proposed location.

3. Upon receiving the application from the State of Minnesota, the Office of License, Inspections and Environmental Protection for the City of Saint Paul sent notice of the license to neighborhood groups and notice was also published of the receipt of the application in accordance with Saint Paul Legislative Code § 381.02(a).<sup>[6]</sup>

4. The currency exchange is proposed to be located inside a strip mall located at Hillcrest Shopping Center on White Bear Avenue. The business will be located inside the building, which is on a parcel of property bounded by White Bear Avenue to the west, Gary Street to the east, Idaho to the north and Iowa to the south.<sup>[7]</sup> This piece of property is all identified as one parcel, with a single property identification number.

5. The Deputy Director of LIEP referred the application to Jeff Hawkins, a zoning specialist in the LIEP office, to determine whether the proposed location met the requirements of Saint Paul Legislative Code § 60.542.<sup>[8]</sup>

6. Section 60.542 sets out the principal uses permitted in a B-2 Community Business District. Subdivision (4) addresses currency exchanges, which are permitted when the "business (is) located at least one hundred (100) feet from any residential lot in a residential district or at least one hundred (100) feet from any residential lot occupied with a one-, two-, three-, four-, townhouse, or multiple-family dwelling, measured from the closest point of the building in which the business is located to the closest residential property line."

7. Mr. Hawkins went to the property to measure the distance from the building to a house located across Gary Street, which was the nearest residential lot. The address of that property is 1818 Idaho Avenue East.

8. Mr. Hawkins consulted with Wendy Lane, the zoning manager for LIEP, to determine the appropriate way to measure. She advised him that the method of measurement in the code requires measurement from the outside wall of the building closest to the residential lot.

9. The distance from the easternmost end of the building to the fence line of the lot measured 56 feet. Based on that measurement, Mr. Hawkins denied zoning approval for the license application as it did not meet the requirements of the zoning code.<sup>[9]</sup> The point at which the measurement was taken is the back wall of the space occupied by Snyder's Drug Store, which has an address of 1620 White Bear Avenue. The building juts out approximately 65' farther to the east at that point than it does at the wall behind where the currency exchange business intends to locate.

10. The back outer wall of Snyder's is part of an addition that was built on at a later date than the original construction. The space in the addition is occupied by Snyder's and is partly used as commercial space and partly as storage. It is not a separate building.

11. Saint Paul Legislative Code §64.203 sets forth the procedure for applying for a variance from a zoning provision. Currently there is a one-year moratorium in existence for the White Bear Avenue Area, and the Applicant would be unable to apply for a variance from the distance requirements of the zoning code at this time. The moratorium is in effect at least to December 22, 2001.

12. Charles Repke, a representative of District 2 Community Council, the neighborhood organization for the area in which the business wishes to locate, appeared at the hearing in support of LIEP staff's interpretation of the zoning code. He testified that the community has an interest in consistent interpretation of the provisions of the code so that they can be aware of what types of businesses might be able to locate in any given building or area. He voiced concern that a business which would otherwise be prohibited at a location might be able to circumvent the provisions of the code by reconfiguring interior walls.

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

### **CONCLUSIONS**

1. The St. Paul City Council and the Administrative Law Judge have jurisdiction in this matter pursuant to Minn. Stat. § § 14.55 and 53A.02 and Saint Paul Legislative Code § § 310.05, 310.06 and 381.02.

2. The City of Saint Paul has fulfilled all relevant substantive and procedural requirements of law and rule.

3. The City of Saint Paul has given proper notice of the hearing in this matter, including proper notice in accordance with the requirements set forth in Minn. Stat. Chapter 53A and Saint Paul Legislative Code Chapter 381.

4. Saint Paul Legislative Code § 381.03(b)(10) provides that a currency exchange license may be disapproved if:

The applicant or its proposed business location does not comply with applicable zoning, building, fire and health codes.

5. Saint Paul Legislative Code § 60.542(4) permits currency exchange businesses in a B-2 Zone Community Business District “when located at least one hundred (100) feet from any residential lot in a residential district or at least one hundred (100) feet from any residential lot occupied with a one-, two-, three-, four-, townhouse, or multiple family dwelling, measured from the closest point of the building in which the business is located to the closest residential property line.”

6. The City’s zoning staff has consistently interpreted this ordinance to require measurement from the outside wall of the building in which the business is to be located closest to the residential property, and that interpretation is a reasonable one.

7. The addition to the Snyder’s store is not a separate building for the purposes of measuring the distance from the nearest residential lot, and Mr. Hawkins properly used a point on the eastern end of the addition as the point on the building from which to measure.

8. The proposed location of the currency exchange business does not meet the requirements of the Saint Paul Zoning Code.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

**RECOMMENDATION**

**IT IS RECOMMENDED** that the Saint Paul City Council deny approval of the currency exchange license application of Unbank Company, LLP, for the premises located at 1614 White Bear Avenue in Saint Paul.

Dated this 2<sup>nd</sup> day of March, 2001.

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RICHARD C. LUIS  
Administrative Law Judge

Reported: Taped, No Transcript Prepared.

**NOTICE**

Pursuant to Minn. Stat. § 53A.04, the Saint Paul City Council is required to forward its approval or disapproval of the license application to the Commissioner of Commerce of the State of Minnesota for the Commissioner's approval or disapproval. If the application is denied, the Commissioner shall mail notice of the denial and the reason therefor to the Applicant.

**MEMORANDUM**

Unbank maintains that because the premises of the proposed business itself are more than 100 feet from the nearest residential property, its application does not conflict with the City's zoning code. It argues that the building in question is a series of different addresses, and the relevant measurement should be from a point on the "original" wall of the building directly behind where the premises of the business would be located. This would result in the business being located more than 100 feet away from the property at 1818 Idaho Avenue East.

Wendy Lane, the zoning manager for LIEP, testified that the section of the Zoning Code applicable to currency exchanges was relatively recent, and was enacted to insure that there were separation requirements between businesses of this type and residential areas. The City's zoning staff has consistently interpreted this section of the ordinance to require that the measurement be from the portion of the outer wall closest to the residential area. In this instance, the eastern extension of the building on the Snyder's end of the strip mall is the closest portion of the building to the property at 1818 Idaho Avenue East.

Ms. Lane noted that a previous applicant, Pawn America, had been denied a currency exchange license at 1546 White Bear Avenue under the same provision of the zoning code applicable here. In that instance, Pawn America intended to operate space in the middle of the building but the measurement was taken from the side of the building, which was the wall closest to nearby residences. Pawn America withdrew its license application for a currency exchange.

The City's zoning staff has also denied an application for a billiard hall where the tenant space was in the middle of the building but the building's outer wall was only 17' away from the residential property line across an alley. The zoning code's separation requirements and measurement methods in the ordinance applicable to such establishments are the same as the requirements applicable to currency exchanges. In the billiard hall matter, the applicant applied for a variance to the Board of Zoning Appeals.

The Applicant's major factual argument, that the addition to Snyder's which brings the building within 100 feet of 1818 Idaho is, in fact, a separate building, has not been proven by a preponderance of the evidence. The only witness on that issue, Mr. Tapper, established that an addition was built but failed to provide any indication that the addition has an outside west wall standing free and apart from the outside east wall of the building that existed prior to the construction of the addition. Rather, the record implies strongly that the "original" (west portion) Snyder's and the addition (added to the east end of the "original" Snyder's) are, since the construction, all one building. It appears that the "original" back wall of the building, since the addition was finished, has simply become an interior wall.

The Applicant's other argument is that because the "footprint" of the premises proposed for the actual currency exchange business lies more than 100 feet from any part of the residential lot, there is no zoning code violation. The Administrative Law Judge cannot agree. A plain reading of the applicable ordinance provides for determination of the distance by measuring from the end of the "building", not from the business premises, to the edge of the nearest residential lot. As noted above, the relevant point from which to measure on the building in this instance is the back (east) wall of the addition to Snyder's. This methodology, while resulting here in a harsh impact on the Applicant, is not unreasonable because it provides certainty and a neutral consistency to the determination process. The harsh result(s) in individual cases are tempered by the opportunity to apply for a variance. In this instance, unfortunately for the Applicant, no variance seems possible now due to the moratorium on building permits along White Bear Avenue. This appears to leave the Council with no alternative to a literal application of the language of the ordinance.

The Applicant urges that it is unreasonable to deny its application because of its location within the walls of a larger building that reaches, at some distance away from its proposed location, to the proximity of a residential zone, in light of the fact that no distance issue would exist if its "footprint" was that of a free-standing building. The ALJ discounts this argument because it is immaterial. The facts of this case involve the boundaries of the "building" the Applicant hopes to occupy, which extends beyond the

proposed business premises. The issue raised by the Applicant, whether the ordinance is unreasonable as applied to applicants proposing to locate in strip malls or other large buildings, is beyond the jurisdiction of the Administrative Law Judge in this proceeding. Relief would be possible in most instances because of the opportunity to apply for a variance, but the moratorium seems to bar that for now at the location in question.

**R.C.L.**

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<sup>[1]</sup> City's Exhibit 2.

<sup>[2]</sup> City's Exhibit 4.

<sup>[3]</sup> City's Exhibit 5.

<sup>[4]</sup> City's Exhibit 1.

<sup>[5]</sup> *Ibid.*

<sup>[6]</sup> City's Exhibit 6.

<sup>[7]</sup> City's Exhibit 7.

<sup>[8]</sup> This was the section of the Saint Paul Legislative Code at the time the matter was referred to Mr. Hawkins. Since that time, the section has been renumbered, and is now Saint Paul Legislative Code § 60.542, but the wording has not been changed.

<sup>[9]</sup> City's Exhibit 3.