

RESOLUTION NO. 114-2017  
INTRODUCED BY: Alexander

A RESOLUTION AUTHORIZING A VARIANCE FOR AN INDOOR SELF-STORAGE BUSINESS AT 641 RICHMOND ROAD.

WHEREAS, DealPoint Merrill, LLC (the "Applicant"), for property located at 641 Richmond Road in the City of Richmond Heights, filed an application with the Zoning Board of Appeals, Case No.823 requesting a variance to Section 1151.03 of the City's Zoning Code to permit an indoor self-storage use at the former Macy's department store building at the foregoing address located in a B-2 Regional Business Zoning District in the City which use is not listed as either a permitted or conditional use in that zoning district;

WHEREAS, pursuant to Section 1185.06 of the Zoning Code, at its October 18, 2017 meeting, the Zoning Board of Appeals ("ZBA") held a hearing with respect to this variance request and the vote by the Board regarding the recommendation to this Council for the variance resulted in a two-to-two tie;

WHEREAS, since no action was taken by the ZBA to recommend either the grant or the denial of the requested variance, this matter was heard *de novo* by the Planning and Zoning Committee of City Council at its regular meeting on November 7, 2017, at which time evidence was presented and arguments were made by the Applicant's representatives and witnesses, the Applicant's attorney, and one resident of the City, with respect to the variance request, and the Committee voted unanimously to recommend to the Council as a whole that the variance be granted with conditions;

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Richmond Heights, State of Ohio, that:

Section 1: This Council finds that given the fact that the Zoning Board of Appeals did not take any action with respect to the variance requested by DealPoint Merrill, LLC, it has jurisdiction under the Codified Ordinances of the City to render a final decision on the requested variance.

Section 2: This Council finds the application is supported by a preponderance of reliable, substantial and probative evidence and the applicant demonstrated an unnecessary hardship in complying with the use regulations of Section 1151.03 of the Zoning Code, and, therefore, grants the variance request of DealPoint Merrill, LLC based upon the following conclusions of fact:

- (a) The subject property which includes a substantial approximate 180,000 square foot floor area designed for retail has no economically viable uses which are permitted in the B-2 Regional Business District without the requested variance based on the unrefuted testimony of the Applicants witnesses which included the broker for the owner of the

property selling the property to the Applicant, the Applicant's real estate broker experienced in commercial real estate in the Greater Cleveland area for many years, and the testimony of a certified land use planner. The testimony supported the fact that the substantial building on the property is economically and physically obsolete for retail use due to its size and configuration and current retail and commercial business practices. Other than DealPoint Merrill, LLC's interest in purchasing the property for indoor self-storage, the property has had no potential buyers or lessees over the two and one half-year period that it has been vacant.

- (b) The variance being sought is the minimum which will afford relief to the Applicant because there are no other economically viable uses which are principally or conditionally permitted in the B-2 Regional Business District and the Applicant is proposing a plan for a minimum of 30,000 square feet of retail area to remain on the first floor of the two-story building on the property and to seek restaurant uses as out-lots on the property upon future zoning approvals by the City.
- (c) The essential character of this commercial neighborhood would not be substantially altered and adjoining properties would not suffer interference with their proper future development and rights as a result of the variance because the subject building can remain as a free-standing building regardless of the future re-purposing or redevelopment of the regional mall that it is connected to; the use of indoor self-storage will not infringe on the neighboring uses; the proposed plan, including potential retail uses, would serve as a catalyst for additional economic activity in the district; and the proposed indoor self-storage use is a low impact use which will not result in unreasonable noise, odors, hours of operation, traffic or other characteristics that may be incompatible with the essential character of the neighborhood.
- (d) The subject property has unique and exceptional circumstances and conditions such as the size and configuration of the substantial building on the property that do not lend the property to current retail, office and other commercial uses permitted within the Zoning Code and the variance being requested would be justified on any lot where similar circumstances prevail.
- (e) The hardship condition is not created by the actions of the Applicant or by the current owner of the property that is selling it to the Applicant but is created by the current and projected future commercial retail and office market in the Cleveland area, as well as nationally.

(f) The purpose, intent, and objectives of the Zoning Code and the City's proposed Master Plan would be observed and the public health, safety and general welfare would not be adversely affected by the granting of the variance because the proposed indoor self-storage use is generally consistent with the current conditionally-permitted warehouse use in that zoning district; the Applicant has proposed an "impact fee" to help off-set any loss of income tax by repurposing the property for indoor self-storage rather than full retail use of the property; the Applicant is proposing approximately 30,000 square feet of permitted retail space to continue to be available on the first floor of the subject building; the Applicant is proposing permitted restaurant uses on outlots on the property conditioned upon future zoning approvals by the City; and the proposed use for indoor self-storage is a low-impact use that will not have a negative effect upon the neighboring properties or the community as a whole.

Section 3: The grant of the requested variance for indoor self-storage use is conditioned upon the following:

(a) The Applicant's "impact fee proposal" which is as follows:

Commencing on the 25<sup>th</sup> month on the anniversary of the issuance of the Certificate of Occupancy for CubeSmart, the Applicant shall subsidize the current payroll tax (using the then current tax rate) by calculating the annual difference between what the retail tenants pay (who occupy the Macy's building) in the form of a payroll tax on an annual basis against a fixed guaranteed sum of \$20,000 per year payroll tax ("Payroll Cap") for a term of 5 years. This difference would be referred to as the Payroll Tax Subsidy by Applicant. The payment would be made by Applicant in arrears at the end of each quarter during the calendar year.

(b) The Applicant shall use its best efforts to lease the 30,000 square feet of retail space on the first floor of the subject building;

(c) The Applicant shall use its best efforts to secure one or more sit-down restaurants for out-lot developments on the subject property, which is further conditioned upon obtaining the zoning approvals for such developments by the City; and

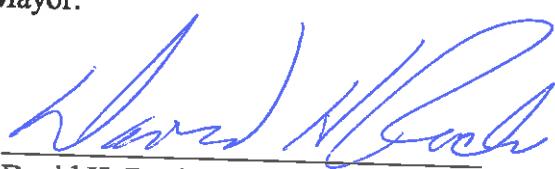
(d) The Applicant shall obtain and continue to maintain any legally-required approvals by neighboring property owners of the uses proposed for the subject property by the Applicant and any and all cross-access easements and reciprocal parking agreements.

Section 4: The Clerk is instructed to mail a copy of this Resolution to the Applicant by certified mail, return receipt requested.

Section 5: It is found and determined that all formal actions of this Council concerning and relating to the adoption of this Resolution were adopted in an open meeting of this Council, and that all deliberations of this Council and any of its committees that resulted in such formal action, were in meetings open to the public, in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

Section 6: This Resolution shall take effect and be in force from and after the earliest period allowed by law which, being an administrative act by this Council, shall go into effect immediately upon its passage and signature by the Mayor.

PASSED: 11/14/17

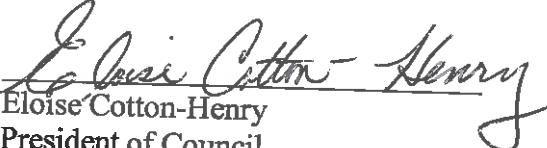


David H. Roche

David H. Roche, Mayor

APPROVED: 11/14/17

ATTEST: Betsy Traben  
Betsy Traben  
Clerk of Council



Eloise Cotton-Henry

Eloise Cotton-Henry  
President of Council