

1



APPLICATION FOR ZONING VARIANCE  
 Department of Safety and Inspections  
 375 Jackson Street  
 Suite 220  
 Saint Paul, MN 55101-1806  
 General: 651-266-9008  
 Fax: (651) 266-9099

(K) VISA # 815.00

RECEIVED

JUL 27 2015

By: City of St Paul DSI

Zoning office use only  
 File Number: 15-144069  
 Fee: \$ 815.00  
 Tentative Hearing Date: 08/17/15  
 Section(s) 65.535(a)  
 City agent YD 1A77A

APPLICANT

Name JACOB BERNSTEIN Company IMPERIAL VAPOR  
 Address ~~841 GRAND AVENUE~~ 1323 SEMINARY AVE  
 City ST. PAUL ST MN Zip 55104 Phone 952-412-4992  
 Email imperialvapormn@gmail.com Fax \_\_\_\_\_  
 Property Interest of Applicant (owner, contract purchaser, etc) LEASEE  
 Name of Owner (if different) BILL WENDLER Phone \_\_\_\_\_

PROPERTY INFORMATION

Address / Location 841 GRAND AVE ST PAUL, MN 55105  
 Legal Description (attach additional sheet if necessary) \_\_\_\_\_  
 Lot Size 65 X 150 Present Zoning BC Present Use RETAIL  
 Proposed Use RETAIL

Variance[s] requested: SEPARATION REQUIREMENT BETWEEN "TOBACCO PRODUCTS" RETAIL

Supporting Information: Supply the necessary information that is applicable to your variance request, provide details regarding the project, and explain why a variance is needed. Duplex/triplex conversions may require a pro forma to be submitted. Attach additional sheets if necessary.

Attachments as required:  Site Plan  Attachments  Pro Forma

Applicant's Signature

*[Handwritten Signature]*

Date

7/27

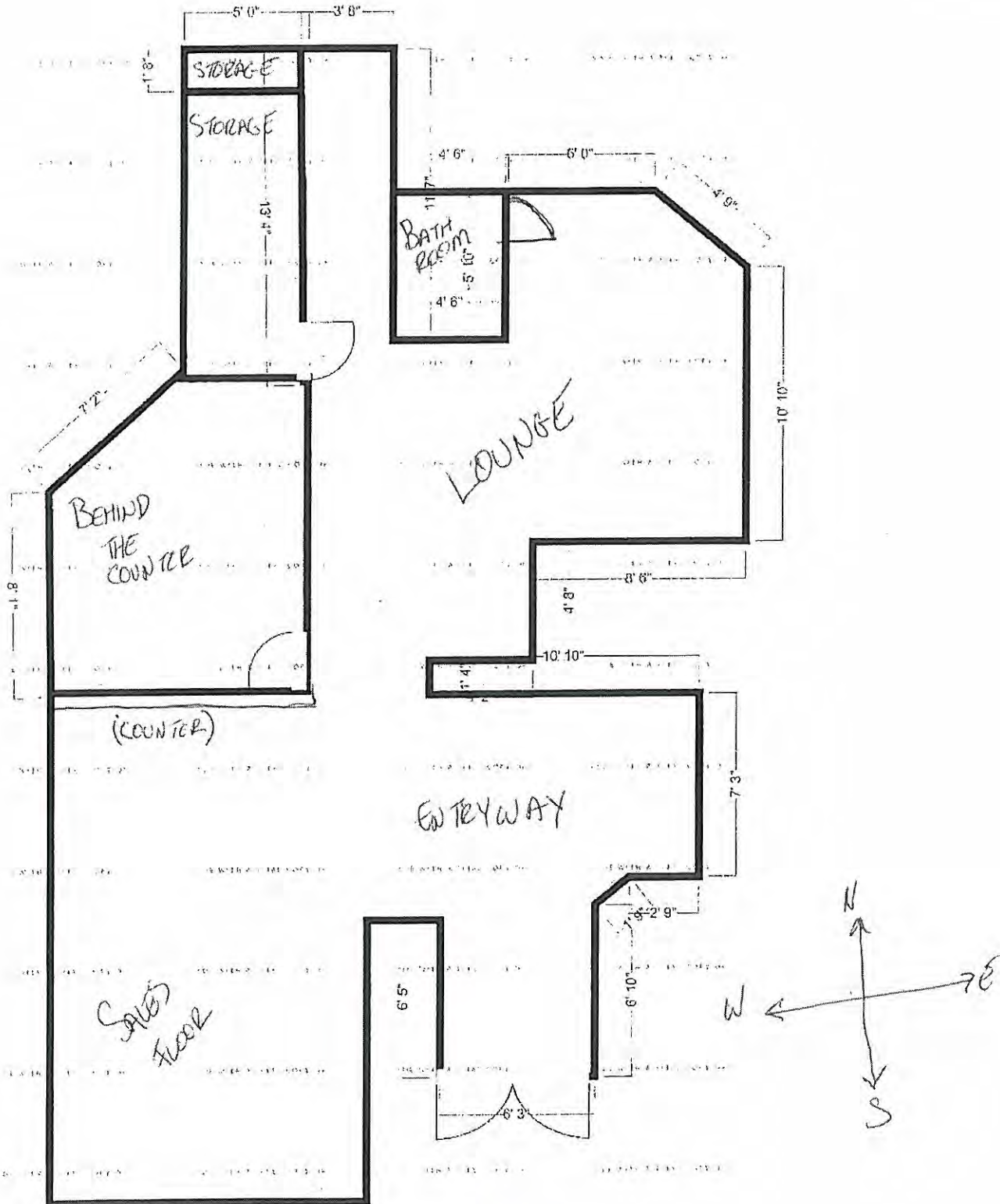
(1)

7/27/2015

final.jpg

841 Grand Avenue, Saint Paul MN 55105  
Imperial Vapor  
Daniel & Jacob Bernstein (952-412-4992)  
7/28/2015

**FILE**  
15-144069



(2)

FILE  
15-144069

**Zoning Summary Sheet\***

License ID# (Office Use) \_\_\_\_\_

In order for the Zoning Administrator to determine the classification of your business and to expedite your license application, this form must be completed and submitted with a floor plan and a site plan which is dimensioned and drawn to scale (see example site & floor plan formats below).

\*Zoning approval will not be granted for this license request without this information.

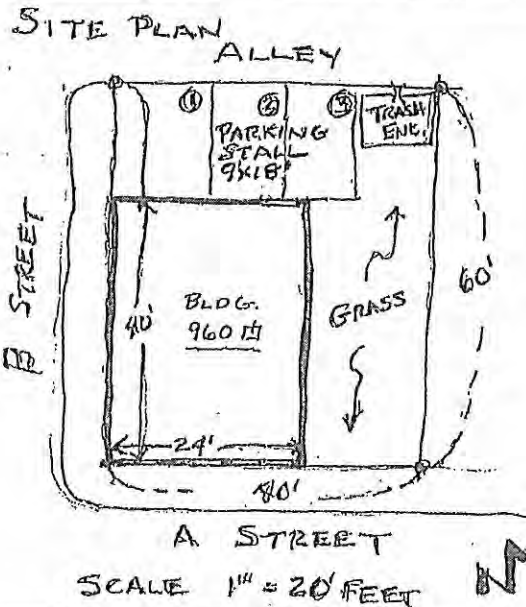
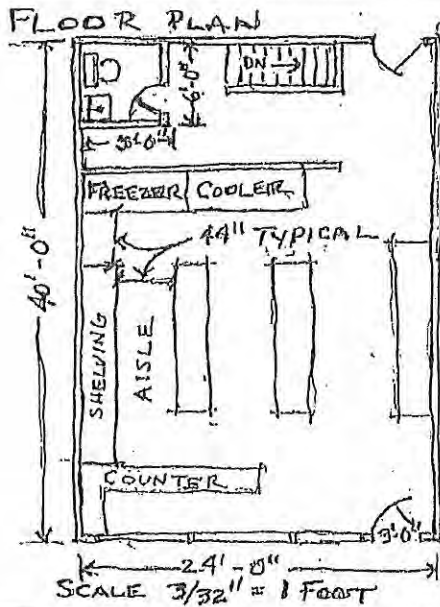
Business Address 841 Grand Ave St Paul MN 55105 Street Address Business Type Electronic Cigarette Retail

Business Name Imperial Vapor

Licensee/Owner Name: Jacob Maxim Bernstein Day Phone: 952 / 412 - 4442  
(Responsible Party) First Middle Maiden Last

Please answer questions 1 - 6. You will also need to answer questions 7 - 15 if you are applying for a restaurant license. Contact the zoning inspector at 651-266-9083 if you have questions about the information needed on this form.

<p>1. What is the gross floor area for this business? <u>2478</u> square feet.</p> <p>2. What was the previous use of this space? <u>Clothing Retail</u></p> <p>3. How many off-street parking spaces are provided for this business? <u>21</u></p> <p>4. How many different uses are in the building? <u>12</u></p> <p>5. What are these uses? <u>Electronic Cigarette Retail</u></p> <p>6. Do you own the property or are you leasing it? <u>Lease</u></p>	<p>7. Do you intend to have a drive-thru window? ___ yes ___ no</p> <p>8. Will you have a permanent menu board? ___ yes ___ no</p> <p>9. Do you intend to serve liquor? ___ yes ___ no</p> <p>10. Is this a restaurant associated with a Chain or franchised business? ___ yes ___ no</p> <p>11. Will customers pay for their food before consuming it? ___ yes ___ no</p> <p>12. Is a self-service condiment bar proposed? ___ yes ___ no</p> <p>13. Are trash receptacles provided for self-service bussing? ___ yes ___ no</p> <p>14. Will there be hard finished, stationary seating? ___ yes ___ no</p> <p>15. Are your main course food items Prepackaged ___ or made to order? ___</p>
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(3)



6/29/2015

FILE

15-144069

1. This variance allows us to promote public health by encouraging the community to engage in a safer alternative to smoking traditional cigarettes.
2. Grand Avenue is considered a mixed use corridor within the comprehensive plan. A small retail location would not only fulfill this plan, it would complement existing businesses and retail outlets.
3. Complying with the zoning provision without a variance presents several practical difficulties. Without a variance we would be forced to find a new location, which would not allow us to provide our services to the multitude of college students in the area. The area does not yet have an electronic cigarette retailer, and though tobacco retailers are present they do not provide similar services or products. By being the first business of this kind in the area, we will have a unique opportunity to provide a new kind of service in this industry. Without a variance, we will not open, and money already being spent on products we offer will continue to leave the neighborhood.
4. Our location is within a half mile of Stogies on Grand, another tobacco retailer. There are no locations within our operating area for which we would not need a variance for this reason.
5. Under Minnesota law our business will be classified as tobacco retail. This use is permitted, and other tobacco retailers already operate successfully and beneficially within the area.
6. No modifications to the building aesthetic will be made. Electronic cigarettes have become an accessory-like social activity for many people. Our business will not alter the character of an area where the main attractions are accessory shopping and social gathering.

FILE  
15-144069

Imperial Vapor Statement  
8/4/2015  
Daniel & Jacob Bernstein

There has been concern in regard to our application for a zoning variance at 841 Grand Avenue. We would like to take this opportunity to help clarify.

1. Imperial Vapor will NEVER sell tobacco products, including but not limited to: cigarettes, cigars, chewing tobacco, nasal tobacco, or loose leaf tobacco.
2. Imperial Vapor will not allow tobacco products to be used on premises; even outside where it would be permitted by law.
3. Imperial Vapor will sell only electronic cigarettes and their components, as well as the liquid that the cigarettes vaporize. While this liquid contains nicotine, it is not a tobacco product. It contains no known carcinogens or additives found in cigarettes.
4. Use of electronic cigarettes will be encouraged on premises. To dissipate the vapor produced, our building is equipped with two window mounted air conditioners, two floor mounted smoke dissipators, and three ceiling mounted circulating fans.
5. Imperial Vapor is looking into the viability of adding an HVAC system to allow for even more efficient and quiet dissipation of any vapor produced on premises.
6. Dozens of reputable scientific studies have found that there is no risk to second hand inhalants of e-cigarette vapor. These studies, along with many others, can be found at <http://mnvapers.com/health-studies/>

We're grateful for this opportunity to help educate the public about this new technology. Any further questions can be addressed by contacting us at:

Imperial Vapor  
841 Grand Avenue, St Paul MN 55104

[imperialvapormn@gmail.com](mailto:imperialvapormn@gmail.com)

or by contacting Jacob Bernstein directly on his cell phone, (952) 412-4992.

(5)

**BOARD OF ZONING APPEALS STAFF REPORT**

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**TYPE OF APPLICATION:** Major Variance **FILE #**15-144069

**APPLICANT:** JACOB BERNSTEIN

**HEARING DATE:** August 17, 2015

**LOCATION:** 841 GRAND AVENUE

**LEGAL DESCRIPTION:** Summit Park Addition Tost Pa W 25 Ft Of Lot 2o And All Of Lot 19 Blk 18

**PLANNING DISTRICT:** 16

**PRESENT ZONING:** BC; Sign-Grand Special Sign District

**ZONING CODE REFERENCE:** 65.535(a)

**REPORT DATE:** August 4, 2015 **BY:** Yaya Diatta

**DEADLINE FOR ACTION:** September 24, 2015

**DATE RECEIVED:** July 27, 2015

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A. **PURPOSE:** The applicant is requesting a variance of the separation requirement between tobacco products shops in order to open a new tobacco products shop. The zoning code requires a tobacco products shop to be located at least one-half mile (2,640 feet) from another tobacco products shop. The proposed tobacco products shop would be located 1,282 feet from a similar shop at 961 Grand Avenue for a variance request of 1,358 feet.

B. **SITE AND AREA CONDITIONS:** This is a 65 by 150-foot lot with a building that has had retail sales in the first floor and there are two dwelling units in the upper floors. Alley access to a three-car detached garage and surface parking spaces along the east side of the lot exist.

Surrounding Land Use: Commercial uses to the west, commercial, mixed uses and multifamily residential uses to the south, multifamily residential uses to the east and single family uses to the north.

C. **BACKGROUND:**



On August 11, 2010, the City Council adopted an ordinance (Ord. #10-777) amending the zoning code to define tobacco products shops and require a separation between them in order to differentiate businesses whose primary purpose is to sell tobacco that may offer product sampling from the majority of businesses that sell tobacco and tobacco-related products as only a portion of their more general commercial/retail business.

In April of 2013, the Saint Paul City Council adopted an ordinance (Ord. #13-8) that regulates e-cigs the same as tobacco products to mirror state law limiting their sale to retailers that have tobacco licenses and prohibiting the sale of e-cigs to those under 18.

**D. ZONING CODE CITATION:**

**Sec. 65.535. - Tobacco products shop**

A retail establishment with a principal entrance door opening directly to the outside that derives more than ninety (90) percent of its gross revenue from the sale of loose tobacco, plants, or herbs and cigars, cigarettes, pipes, and other smoking devices for burning tobacco and related smoking accessories and in which the sale of other products is merely incidental. "Tobacco products shop" does not include a tobacco department or section of any individual business establishment with any type of liquor, food, or restaurant license.

*Standards and conditions:*

No tobacco products shop shall be located within one-half (½) mile (2,640 feet) of another tobacco products shop.

**E. LICENSE CODE CITATION:**

**Sec. 324.03 Definition**

(4) Tobacco means, any products containing, made, or derived from tobacco that is intended for human consumption, whether chewed, smoked, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means, or any component, part, or accessory of a tobacco product, including, but not limited to, cigarettes, cigars; cheroots; stogies; periques; granulated, pug cut, crimp cut, ready rubbed, and other smoking tobacco; snuff; snuff flour; Cavendish; plug and twist tobacco; fine-cut and other chewing tobacco; shorts; refuse scraps, clippings, cuttings and sweepings of tobacco, and other kinds of forms of tobacco. Tobacco includes electronic cigarettes containing or delivering nicotine for the purposes of licensing and regulation under this chapter.

MN Stat. 462.357, Subd. 6 was amended to establish new grounds for variance approvals effective May 6, 2011. Required findings for the requested variance, consistent with the amended law, are as follows:



## F. FINDINGS:

1. *The variance is in harmony with the general purposes and intent of the zoning code.*

The applicant wants to open a new tobacco products shop called Imperial Vapor at this location but the zoning code requires a tobacco products shop to be located at least one-half mile (2,640 feet) from another tobacco products shop. There is a tobacco products shop already operating 1,282 feet away from this site at 961 Grand Avenue, Stogies on Grand. The applicant is requesting a variance from the separation requirement in order to open his business at 841 Grand Avenue.

According to the applicant, Imperial Vapor would only be selling e-cigs (electronic cigarettes) and their components along with liquid that the cigarettes vaporize, which the applicant contends as containing nicotine but no carcinogens. E-cigs come in a variety of flavors, ranging from tobacco to cappuccino and caramel apple pie. Some e-cigs deliver lobelia, an herb that has similar properties to nicotine.

According to the applicant, this would be a neighborhood oriented retail store intended mostly for customers who live or work in the immediate area. Since the building is located on a bus route and within walking distance to many restaurants and retail stores, the applicant estimates that a significant number of the customers would be walk-ins. Therefore, the traffic impact would be minimal and relatively similar to the retail use that previously operated in this building. Additionally, the proposed business would be operating in an existing building and no exterior alteration to the building or to the site would be made.

This request would not detract from the intent of the BC business converted zoning district, which is intended to allow businesses with minimal traffic impact to operate in existing residential structures within commercial areas, and at the same time to retain the visual character of the building forms and open space associated with residential uses. This finding is met.

2. *The variance is consistent with the comprehensive plan.*

There are a number of businesses on this commercial stretch of Grand Avenue. The Comprehensive Plan (Strategy 1.46) "encourages retail establishments located in close proximity to each other" because the concentration "creates a synergy that benefits all businesses" resulting in more opportunities to attract new businesses as well expand existing ones. The proximity of multiple businesses allow customers to walk between the different destinations without having to drive between them.

Additionally, Imperial Vapor is a locally owned and operated business which is intended to be primarily pedestrian-oriented. This is the type of business encouraged for pedestrian-oriented neighborhoods. The Economic Strategy of the Comprehensive Plan includes creating a climate conducive to economic self-

sufficiency and growth by fostering economic development activities and attracting businesses to Saint Paul. This request is in keeping with Strategy 1.46 of the Comprehensive Plan and its goal to support local businesses. This finding is met.

- 3. The applicant has established that there are practical difficulties in complying with the provision that the property owner proposes to use the property in a reasonable manner not permitted by the provision. Economic considerations alone do not constitute practical difficulties.*

The applicant contends that without a variance, he would be compelled to find another location, which would take away the opportunity to provide a healthy alternative to traditional cigarettes to area customers. He also states that this business is the first of its kind on Grand Avenue; therefore, this is an opportunity to provide a new type of service in this area. However, these are not difficulties making compliance with the separation requirement impractical or unreasonable. There are other locations on Grand Avenue or elsewhere in the City that would not be within one-half mile of the existing tobacco products shop. This finding is not met.

- 4. The plight of the landowner is due to circumstances unique to the property not created by the landowner.*

The applicant contends that his plight is due to the existence of Stogies on Grand, another tobacco products shop within one-half mile from this location. This reason has nothing to do with the applicant's property as required under this finding. Therefore, this finding is not met.

- 5. The variance will not permit any use that is not allowed in the zoning district where the affected land is located.*

A tobacco products shop is a permitted use in the BC, business converted zoning district and the requested variance will not change the zoning classification of the property. This finding is met.

- 6. The variance will not alter the essential character of the surrounding area.*

This request to operate a tobacco products shop within one-half mile from a similar shop will not alter the essential character of the area. This finding is met.

**G. DISTRICT COUNCIL RECOMMENDATION:** Staff has not received a recommendation from District 16.

**H. CORRESPONDENCE:** Staff received emails from owners of the properties at 829 and 847 Lincoln Avenue and a resident at 63 Avon Street South in opposition to the variance. Staff also received an email from a resident at 834 Summit Avenue raising concerns about the proposed use.

- I. **STAFF RECOMMENDATION:** Based on findings 3 and 4, staff recommends denial of the requested variance.



FILE  
15-144069

**Diatta, YaYa (CI-StPaul)**

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**From:** val cohn <valcohn@msn.com>  
**Sent:** Sunday, August 09, 2015 12:39 PM  
**To:** Diatta, YaYa (CI-StPaul)  
**Subject:** 841 Grand Avenue.....

I and I hope all of my neighbors *oppose* granting the variance for another store selling tobacco products on Grand near our homes. There must be better uses for that space that would be more appropriate.

Thanks you.

Val Cohn  
612-720-2148

829 Lincoln Ave -

**CITY OF SAINT PAUL  
BOARD OF ZONING APPEALS RESOLUTION  
ZONING FILE NUMBER: 15-144069  
DATE: August 17, 2015**

WHEREAS, Jacob Bernstein has applied for a variance from the strict application of the provisions of Section 65.535(a) of the Saint Paul Legislative Code pertaining to the separation requirement between tobacco products shops in order to open a new tobacco products shop. The zoning code requires a tobacco products shop to be located at least one-half mile (2,640 feet) from another tobacco products shop. The proposed tobacco products shop would be located 1,282 feet from a similar shop at 961 Grand Avenue for a variance request of 1,358 feet in the BC zoning district at 841 Grand Avenue. PIN: 022823420126; and

WHEREAS, the Saint Paul Board of Zoning Appeals conducted a public hearing on August 17, 2015 pursuant to said application in accordance with the requirements of Section 61.601 of the Legislative Code; and

WHEREAS, the Saint Paul Board of Zoning Appeals based upon evidence presented at the public hearing, as substantially reflected in the minutes, made the following findings of fact:

- 1. The variance is in harmony with the general purposes and intent of the zoning code.*

The applicant wants to open a new tobacco products shop called Imperial Vapor at this location but the zoning code requires a tobacco products shop to be located at least one-half mile (2,640 feet) from another tobacco products shop. There is a tobacco products shop already operating 1,282 feet away from this site at 961 Grand Avenue, Stogies on Grand. The applicant is requesting a variance from the separation requirement in order to open his business at 841 Grand Avenue.

According to the applicant, Imperial Vapor would only be selling e-cigs (electronic cigarettes) and their components along with liquid that the cigarettes vaporize, which the applicant contends as containing nicotine but no carcinogens. E-cigs come in a variety of flavors, ranging from tobacco to cappuccino and caramel apple pie. Some e-cigs deliver lobelia, an herb that has similar properties to nicotine.

According to the applicant, this would be a neighborhood oriented retail store intended mostly for customers who live or work in the immediate area. Since the building is located on a bus route and within walking distance to many restaurants and retail stores, the applicant estimates that a significant number of the customers would be walk-ins. Therefore, the traffic impact would be minimal and relatively similar to the retail use that previously operated in this building. Additionally, the proposed business would be operating in an existing building and no exterior alteration to the building or to the site would be made.

This request would not detract from the intent of the BC business converted zoning district, which is intended to allow businesses with minimal traffic impact to operate in existing residential structures within commercial areas, and at the same time to retain the visual character of the building forms and open space associated with residential uses. This finding is met.

2. *The variance is consistent with the comprehensive plan.*

There are a number of businesses on this commercial stretch of Grand Avenue. The Comprehensive Plan (Strategy 1.46) “encourages retail establishments located in close proximity to each other” because the concentration “creates a synergy that benefits all businesses” resulting in more opportunities to attract new businesses as well expand existing ones. The proximity of multiple businesses allow customers to walk between the different destinations without having to drive between them.

Additionally, Imperial Vapor is a locally owned and operated business which is intended to be primarily pedestrian-oriented. This is the type of business encouraged for pedestrian-oriented neighborhoods. The Economic Strategy of the Comprehensive Plan includes creating a climate conducive to economic self-sufficiency and growth by fostering economic development activities and attracting businesses to Saint Paul. This request is in keeping with Strategy 1.46 of the Comprehensive Plan and its goal to support local businesses. This finding is met.

3. *The applicant has established that there are practical difficulties in complying with the provision that the property owner proposes to use the property in a reasonable manner not permitted by the provision. Economic considerations alone do not constitute practical difficulties.*

The applicant contends that without a variance, he would be compelled to find another location, which would take away the opportunity to provide a healthy alternative to traditional cigarettes to area customers. He also states that this business is the first of its kind on Grand Avenue; therefore, this is an opportunity to provide a new type of service in this area. However, these are not difficulties making compliance with the separation requirement impractical or unreasonable. There are other locations on Grand Avenue or elsewhere in the City that would not be within one-half mile of the existing tobacco products shop. This finding is not met.

4. *The plight of the landowner is due to circumstances unique to the property not created by the landowner.*

The applicant contends that his plight is due to the existence of Stogies on Grand, another tobacco products shop within one-half mile from this location. This reason has nothing to do with the applicant’s property as required under this finding. Therefore, this finding is not met.



5. *The variance will not permit any use that is not allowed in the zoning district where the affected land is located.*

A tobacco products shop is a permitted use in the BC, business converted zoning district and the requested variance will not change the zoning classification of the property. This finding is met.

6. *The variance will not alter the essential character of the surrounding area.*

This request to operate a tobacco products shop within one-half mile from a similar shop will not alter the essential character of the area. This finding is met.

NOW, THEREFORE, BE IT RESOLVED, by the Saint Paul Board of Zoning Appeals that the request to waive the provisions of Section 65.535(a) to allow a new tobacco products shop to be located 1,282 feet from a similar shop at 961 Grand Avenue, on property located at 841 Grand Avenue and legally described as Summit Park Addition Tost Pa W 25 Ft Of Lot 2o And All Of Lot 19 Blk 18; in accordance with the application for variance and the site plan on file with the Zoning Administrator.

***IS HEREBY DENIED.***

**MOVED BY:** Ward

**SECONDED BY:** Porter

**IN FAVOR:** 5

**AGAINST:** 0

**MAILED:** August 18, 2015

**TIME LIMIT:**

No decision of the zoning or planning administrator, planning commission, board of zoning appeals or city council approving a site plan, permit, variance, or other zoning approval shall be valid for a period longer than two (2) years, unless a building permit is obtained within such period and the erection or alteration of a building is proceeding under the terms of the decision, or the use is established within such period by actual operation pursuant to the applicable conditions and requirements of the approval, unless the zoning or planning administrator grants an extension not to exceed one (1) year.

**APPEAL:**

Decisions of the Board of Zoning Appeals are final subject to appeal to the City Council within 10 days by anyone affected by the decision. Building permits shall not be issued after an appeal has been filed. If permits have been issued before an appeal has been filed, then the permits are suspended and construction shall cease until the City Council has made a final determination of the appeal.

**CERTIFICATION:**

I, the undersigned Secretary to the Board of Zoning Appeals for the City of Saint Paul, Minnesota, do hereby certify that I have compared the foregoing copy with the original record in my office; and find the same to be a true and correct copy of said original and of the whole thereof, as based on approved minutes of the Saint Paul Board of Zoning Appeals meeting held on August 17, 2015 and on record in the Department of Safety and Inspections, 375 Jackson Street, Saint Paul, Minnesota.

SAINT PAUL BOARD OF ZONING APPEALS



Debbie M. Crippen  
Secretary to the Board

MINUTES OF THE MEETING OF THE BOARD OF ZONING APPEALS  
CITY COUNCIL CHAMBERS, 330 CITY HALL  
ST PAUL, MINNESOTA, AUGUST 17, 2015

PRESENT: Mmes. Bogen and Porter; Messrs. Courtney, Ward and Wilson of the Board of Zoning Appeals; Mr. Warner, City Attorney; Mr. Diatta and Ms. Crippen of the Department of Safety and Inspections.

ABSENT: Joyce Maddox\*, Thomas Saylor\*

\*Excused

The meeting was chaired by Gloria Bogen, Co-Chair.

Jacob Bernstein (#15-144069) 841 Grand Avenue: The applicant is requesting a variance of the separation requirement between tobacco products shops in order to open a new tobacco products shop. The zoning code requires a tobacco products shop to be located at least one-half mile (2,640 feet) from another tobacco products shop. The proposed tobacco products shop would be located 1,282 feet from a similar shop at 961 Grand Avenue for a variance request of 1,358 feet.

Mr. Diatta showed slides of the site and reviewed the staff report with a recommendation for denial.

Seven letters were received opposing the variance request and five e-mails in support of the variance request were received.

One letter was received from District 16 regarding the variance request.

The applicant **JACOB BERNSTEIN**, 1323 Seminary Avenue, was present with **RALPH BERNSTEIN**, 13601 McGinty Road East. Jacob Bernstein stated that he was going to allow Ralph Bernstein to do the talking. Ralph argued that although this business is classified as a tobacco products shop, the shop will not sell any tobacco products; it is an e-cigarette shop and in 2013, e-cigarettes were classified as tobacco products for the purposes of licensing and regulation. The shop will sell only two things, e-cigarette devices that are not pre-loaded and it will sell the e-cigarette liquid. He contended that while the liquid may contain nicotine it does not have to contain nicotine. He continued that nicotine by itself is not a tobacco product nor are the physical devices that the store will sell. Mr. Bernstein contended that the concern about a second tobacco shop and the fact that they will not be selling tobacco products has been obscured. He further contended that the two owners of this shop have looked and there are not any locations available outside of the half mile perimeter that will still keep them in their target market. They have done a lot of work locating their market and where their market is located in the Summit-Hill area because of the proximity of a number of colleges, as well as the demographics of the people who live in that area. He argued that any other place outside this area will not meet their marketing, their business plan or their financial projection. Mr. Bernstein contended that if they did locate an alternate property within the location of 841 Grand, it is likely that they would probably require a zoning change just because of the nature of the neighborhoods around it. He contended that coming back for a zoning change seems like a larger issue rather than asking for the variance.

Mr. Bernstein commented that he read the letters from neighbors that are concerned and one of the concerns was the smell, it was compared to Stogies on Grand, having a tobacco smell in the air because people are outside smoking. This shop will not sell tobacco products; there will not be any burning of tobacco. There is no outside use of their product. Their plan calls for indoor use of the product and inside use only. There will not be people hanging around the patio.

Mr. Ward stated that the concern is that in granting a variance, the variance stays with the address. Even though this is an e-cigarette shop the owner would have a tobacco license. This would mean that at any



point in time that being a holder of that license, if the financial model did not prove profitable for the holder then having that variance and having that license could then go into selling loose tobacco and tobacco products. That is the concern that Stogies on Grand or any other tobacco shop would have, because there is not a separation between e-cigarettes and other tobacco products. Mr. Ward continued that because e-cigarettes can contain nicotine, the nicotine is what is regulated by the ATF(Alcohol, Tobacco & Fire Arms), and the state of Minnesota. He continued that he knows this because he is a former owner of an e-cigarette shop in the City of St. Paul.

Mr. Bernstein stated that what has been offered by the applicants is to give a letter of agreement, whatever would satisfy the Board, the City and Stogies to say that for the length of time that they are the resident company in that location they will not sell those products. They are willing to put enough teeth in the agreement up to and including vacating their license if they violate the agreement. They are very committed to selling e-cigarettes only.

Mr. Ward questioned Mr. Warner that once a license is issued it cannot be scaled back. Once someone has that license it gives the authority to exercise the full extent of that license. Mr. Warner stated he does not understand the question. Mr. Ward stated if he has a license how can he then write a document restricting him from doing something that he is legally allowed to do. Mr. Warner stated he does not have any idea about the licensing aspects; licensing regulates things that zoning does not. If licensing allows that fine, but zoning does not allow "contract zoning," it does not allow deals to be struck to modify the zoning code.

Mr. Courtney asked Mr. Warner if the Board could pass this variance with the conditions that they are only going to sell e-cigarettes and they are not going to smoke them outside. He further questioned what the purpose of the law is. Mr. Warner stated that the Board can always add conditions to the approval of a variance. He thinks that condition would be reasonable; however, he would have to think about it, because he does not know how it fulfills the spirit and intent of this particular zoning code; which is to establish separation between uses. Mr. Warner stated that the purpose of the law is exactly that, to establish a separation between the uses. The St. Paul zoning code is written to establish separation between uses in the city rather than concentrate them. For an example, Minneapolis has concentrated their adult businesses in one location of the city. Looking through St. Paul's Zoning Code there are all sorts of uses that are defined where they can locate and they are defined through separation requirements, which is why St. Paul has this particular requirement. The City of St. Paul has looked at this use and they have decided that a half mile is a reasonable distance for these businesses to be separated.

Ms. Porter asked if the code distinguishes between the e-cigarettes and cigarettes or are they the same. Mr. Diatta replied that they are the same in the zoning code. Ms. Porter further questioned that an MOU(Memorandum of Understanding) is not binding any more than a handshake. Mr. Warner replied, legally that is correct.

Mr. Ward stated that Mr. Bernstein's marketing study mentioned in his argument that this business has to be located on this site due to his particular plan. He stated that it has been his experience that a lot of e-cigarette users now will buy the hardware or the juice online and in particular the hardware. He asked if they had explored marketing online in order to supplement where the business may be located. Mr. Jacob Bernstein replied yes he has, but the online business they may conduct does not detract from their desire or the necessity of their shop being located at 841 Grand Avenue. He continued that there are several factors why they chose that intersection that are more than financial or marketing. But as far as the online component, he thinks regardless of whether they choose to operate an online business which is what he thinks they would do to supplement their business rather than sell traditional tobacco. He stated he does

not understand how that figures into the separation agreement. They could run an online business no matter where they are physically located. He contended that their business will not do as well if it is not located at 841 Grand Avenue. He stated that is not how to run a successful e-cigarette business. Contending that it would hurt his business and the community they intend to serve.

Ms. Bogen stated that the applicant has stated that their business needs to be located in this location which is about a quarter of a mile away from Stogies, which is about half as far as they need to be. She continued that part of their reasoning for their location has to do with the colleges in the area, what colleges are located near 841 Grand Avenue that they could not get closer to by moving another quarter mile away from Stogies. Mr. Jacob Bernstein replied as a college student he could promise that locating a store next to the campus is a way to get students to not shop at the store. This location is near several local spots that are full of students and full of people that live in half-way houses that do not drive, it is full of their market targets in a way that moving even a quarter mile in either direction is not.

Mr. Ralph Bernstein stated that the only reason that this conversation is taking place is because e-cigarette shops are artificially regulated by the same regulation that governs tobacco shops. If e-cigarettes were licensed under another license we might not be having this discussion. He contended that the way they want to sell the e-cigarettes, they almost do not meet the definition as defined in the statute. They don't contain tobacco products. The devices that will be sold here do not contain any tobacco products because they are sold empty. That is half of the definition, the second half of the definition is that they contain nicotine; it is possible to have an e-cigarette device operating with no nicotine present in which case they meet neither of the definitions of tobacco products in the statutes. Ms. Bogen asked are they saying that they are not going to be selling anything with nicotine in it. Mr. Ralph Bernstein replied, no that is not what he is saying. He stated what he is saying is that there is a thin connection between e-cigarettes and tobacco products. Going back to Mr. Courtney's question, what is the intent of the law? Since e-cigarettes did not come under the statute until 2013, there was obviously some thought as to whether e-cigarettes could be regulated separately and for whatever reason the City decided to regulate them under the tobacco licensing. He contended that there is a tenuous similarity between a true tobacco product with all its known health problems, the smell of it burning and an e-cigarette device and juices. Ms. Bogen questioned if Mr. Bernstein is contending that nicotine is not a product of the tobacco plant? Mr. Ralph Bernstein replied no, it is a product in tobacco. Ms. Bogen continued it is a drug that elevates heart rate and elevates blood pressure and it is regulated by states and the Federal Government, to not allow anyone under age of 18 from using that drug. Mr. Jacob Bernstein replied that were these regulations written today by a combination of people who know the law and know the industry, the laws would not be written this way to allow for a smoother and more equal representation of what each industry does. He thinks that these laws were written before many of the shops in the state were open and they were written before technology had progressed to the point it is at now. He stated that looking at the way the industry is regulated under this code is a catch-22.

Mr. Courtney stated that it seems to him that the applicants are arguing that the April 2013 law is wrong or the City Council did not know what they were doing. Mr. Bernstein replied that he is saying that although the City Council decided in April of 2013 to have e-cigarette shops regulated under the same rule, that it was simply because of the presence of nicotine rather than because they are tobacco products. He contended that there is no similarity between Stogies on Grand and Imperial Vapor, but for the fact that they are both regulated by the same law. Stogies on Grand sells flammable tobacco products that include carcinogens, tar and all the things that are in flammable tobacco products. Imperial Vapor wants to sell devices through which you can vaporize liquid made from vegetable glycerin that may or may not contain some amount of nicotine. He contended that there is very little similarity between what Stogies on Grand sells and what Imperial Vapor wants to sell. Mr. Courtney stated that there are some

similarities, people are going to go there and they are going to smoke cigars or e-cigarettes and there is going to be traffic that is associated with that, there are some similarities between the two types of businesses. Mr. Ralph Bernstein stated that the similarities are that at Stogies they are smoking at Imperial Vapor they are Vaping. What is coming out of their mouth is not smoke. It is in no way smoke, nothing has been combusted, it is vapor. That does not necessarily contain nicotine. Mr. Bernstein contended that it is a tenuous similarity. It is made from vegetable glycerin so it could be bad for your cholesterol, because margarine is made from vegetable glycerin also.

Ms. Bogen stated that the definition of tobacco in our ordinance also includes chewing tobacco and there is no smoke derived from it either. Mr. Bernstein replied but there are all the other things in chewing tobacco that are in combustible tobacco which are not present in e-cigarette juice. Ms. Bogen stated that they are all in the same definition, she does not see anything tenuous between the two, and they all have nicotine and are all under that definition. Mr. Bernstein stated that it is legal artifice that they are.

Adin Lynch, 135 Lafond Avenue, stated that he thinks that e-cigarette shops provide some sort of progression to the negative connotations to traditional cigarettes. People that smoke regular tobacco products might find that e-cigarettes have less of the carcinogens and since it acts as an alternative to smoking he thinks that it is almost productive.

Daniel Bernstein, 445 Upton Avenue. Ms. Bogen questioned if that is Minneapolis. Mr. Bernstein replied yes, but he is connected to the applicant. He stated that the specific character of the neighborhood has been brought up and there are two bars on the corner and a third less than a block away and there is a liquor store toward Stogies on Grand. He contended that to say that these types of adult businesses are not already in the neighborhood is not a statement of fact. To paint this as an intersection with a day care and a kid's toy store and a candy shop is erroneous. The devices that they sell fit very much with the accessory level of shopping that is already present. Aside from the other adult oriented businesses that are present there the accessory presence is very fitting with what the business model and the product selection that would be offered at Imperial Vapor. Mr. Ward stated that when the City Attorney was speaking about adult businesses, he was not talking about eating or drinking, he was referring to book stores, nudity and dancing. Mr. Bernstein stated which would not be associated with our location. Mr. Ward continued but none of those businesses exist at that location or on Grand Avenue that is what the City Attorney and the Board was referring to. Mr. Bernstein thanked Mr. Ward for the clarification, continuing that their business would also not be an adult business and their business fits with the other definition of adult business that is about being a grown person.

Charlie Schroeder, 1405 Jessamine Avenue, commented that it was mentioned that there would be similar customers as those brought in by Stogies, he wants to differentiate between the two different demographics that would be brought in. He stated that he is not someone that would shop at Stogies on Grand. It is completely a different demographic that will be brought in by Imperial Vapor. He does not believe that it is a valid point that it would be adding to that type of traffic, because it is a different demographics of people.

Luke Bertzer, 1375 Lafond Avenue, stated that he wanted to state the difference between tobacco products and vaporizing products. He thinks it is like the difference between Taco Bell and Chipotle. They both sell burritos one is extremely unhealthy and the other is far healthier. It might not be healthy to eat five pounds of cheese and sour cream but the quality is vastly superior and is completely different than having a Taco Bell on the corner of Victoria and Grand. The people that purchase e-cigarettes are not the people that purchase big cigars. The demographic is completely different. He stated he would not go to Stogies on Grand, and he would not go to Grand Avenue to purchase tobacco products, however, now that



there might be an e-cigarette shop he might go in there and purchase vaporizing products. But not walk around and be vaping in front of kids or anything like that.

There was opposition present at the hearing.

Dan Sullivan 857 Lincoln Avenue, stated he lives around the block from the proposed site of Imperial Vapor, he thinks that some of the arguments are a bit weak. A tenuous connection is still a connection for whatever it is; it is included in the law. The setback was put in place for a reason to separate these businesses to limit the types of traffic that frequent these businesses. As a neighbor in this area with children and being affected by these businesses he strongly opposes the variance. The business plan that argues that they need the college traffic and being further from the college traffic is absurd and serving the neighborhood community is also something that is in question. As a neighbor at the recent Neighborhood Night Out block party there was unanimous opposition from the neighborhood closest to this proposed business. As mentioned by Mr. Diatta there are a number of letters in opposition from the neighbors. He thinks that should be taken into account when a business aims to serve a neighborhood and people in the neighborhood do not wish to be served.

Armath Prosch, 821 Lincoln Avenue, stated that she opposed this first because of accessibility, even though e-cigarettes are not tobacco and nothing is burned. The evidence about e-cigarettes is scant and what is available is inconclusive. She does not think that it can be said that the product is benign. She would rather not have two of these shops in the neighborhood close together she thinks this is the spirit of the zoning rule, to keep these further apart because we think it is not a good thing for the communities. Smoking, tobacco and e-cigarettes are linked and she hopes that they continue to be linked and hopes that e-cigarettes are a way to quit smoking and do not become a way to use the nicotine drug. She contended that the neighborhood is a good place to come for nice clothes, good food and to her this just does not seem to be something good for the neighborhood and the character of the people who shop there.

Mr. Jacob Bernstein stated that it is very easy to talk about support, demographic and market but for the most part that is what he has done. The people that spoke are a small sampling of his demographic and his market. He contended that there are people that will come before the Board and say that there is no market in this location, that the entire neighborhood is opposed. They are ignoring a significant portion of the market because they do not agree with it. That does not seem to him to be a very good reason to block a business from opening.

Mr. Courtney stated that he is voting against this because finding four says that the plight of the land owner is due to something unique to the property not created by the land owner. That is what he is focusing on, not the use. Mr. Bernstein stated he does not understand how this is a problem that he has created. Mr. Courtney replied, unique to the property not created by the land owner, addressing Mr. Bernstein that he is the one that decided that he has to be located at 841 Grand Avenue with a business that is not allowed there. The City Council can pass a law that says, the City is going to treat e-cigarettes are the same as cigarettes. Mr. Bernstein replied it is not a problem created by the property either. Mr. Courtney replied by you as the property owner, are deciding how you want to use the property. Mr. Bernstein stated he appreciates that and he understands his point, but his counter point is that "that is not what it says", it says it is a plight created by the property, but the Board has agreed with them several times that this is not a plight created by the property, if anything it was created by a lack of understanding and a lack of distinction between two types of markets which is the point that they have made over and over.

Hearing no further testimony, Ms. Bogen closed the public portion of the meeting.



Mr. Ward stated that this is a zoning issue it is not a tobacco or nicotine issue, it is not a use issue of how a product is used. This is all about "can I get a variance because the law says I need to be x-number of feet and I'm not x-number of feet so let me open up a business that is not in compliance with the law. He continued lets go back to some of the stuff we heard. Yes he understands what e-cigarettes are. Are they carcinogenic, maybe, maybe not some of the evidence is still out. As Mr. Bernstein stated it is vegetable glycerin, distilled water and flavoring. You need an electronic device that provides an electrical current that runs across a filament that is soaked in the solution in order to produce the vapor. It is a water vapor that comes out, is it going to kill somebody, who knows, he does not know. All kinds of drugs that were supposed to be benign 40-50 years ago, now we are finding out that stuff does have negative effects, but they were presumed to be safe at the time. We are not here to argue that point and that particular business is a very unique business, a different type with a different demographic and there is a totally different people that "vape" versus those that smoke. Again that is not why this Board is here. The Board is discussing the zoning, the separation and that is the issue that is at hand. Mr. Ward continued that he did not hear an argument for being able to get around finding 3, which says that "the applicant has established that there are practical difficulties in complying with the provision, that the property owner proposes to use the property in a reasonable manner not permitted by the provision. Economic considerations alone do not constitute practical difficulties." This is all economics, being the owner of a vapor shop himself, people come from all over. There are not that many shops in the Twin Cities there are only so many licenses because it is regulated and again even in cities outside of St. Paul it is still regulated by distance. Once someone has the license if they decide they do not want to sell e-cigarettes anymore and want to sell tobacco the license gives them the ability to do that. Based on finding three he would say no because it does not meet the requirement. Finding four says that the plight of the land owner is due to circumstances unique to the property and not created by the land owner. They can move anywhere, there are people that "vape" all over the Twin Cities. He stated that when he opened his shop he looked at locations where there weren't any trying to fill a hole. People came from all over, people drove from Forest Lake and from Bloomington he does not believe that this shop has to be at this location. That is what his customer base told them.

Mr. Ward moved to deny the variance and resolution based on findings 3 & 4.

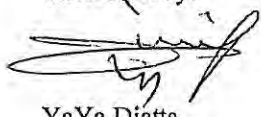
Mr. Courtney stated that he actually agrees with the applicant and wishes that the Board were in a position to grant the variance, but they do not meet the requirements. The City Council made a decision back in 2013 and to grant this variance this Board would have to ignore that decision. He is sympathetic; however, he does not think the Board should ignore what the City Council has passed into law.

Ms. Porter stated that she is voting against this because the applicants do not meet the separation requirement, it is a zoning issue.

Mr. Wilson asked if this is a question of is that law applicable in this in this case.(?) Ms. Bogen stated that she thought it was interesting that the three speakers that were supporting them were located at 1375 Lafond, two of them and at 1405 Jessamine Avenue for the third speaker are a mile to three miles away from this shop. She thinks that they could move another quarter of a mile away and be closer to the speakers.

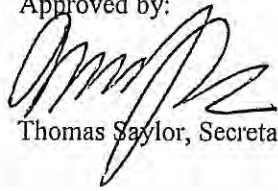
Ms. Porter seconded the motion, which passed on a roll call vote of 5-0.

Submitted by:



YaYa Diatta

Approved by:



Thomas Saylor, Secretary

FILE  
15-144069



## City of Saint Paul

### Signature Copy

Ordinance: Ord 13-8

City Hall and Court  
House  
15 West Kellogg  
Boulevard  
Phone: 651-266-8560

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File Number: Ord 13-8

Amending Chapter 324 of the Saint Paul Legislative Code pertaining to electronic cigarettes.

THE COUNCIL OF THE CITY OF SAINT PAUL DOES ORDAIN:

#### SECTION 1

\*\*\*

Section 324.03 of the Saint Paul Legislative Code is hereby amended to read as follows:

#### **Sec. 324.03. - Definitions.**

The following words and phrases, as used in this chapter, shall, for the purposes of this chapter, have the meanings respectively ascribed to them in this section, except in those cases where the context clearly indicates a different meaning:

- (1) *Cigarette paper and cigarette wrapper* means and includes any paper or other substance or materials, except tobacco, used as a wrapper or cover for a cigarette, as herein defined.
- (2) *Sale* means and includes any transfer, conditional or otherwise, of title or possession.
- (3) *Sale at retail* means and includes all sales except those where the merchandise is sold for the purpose of resale by a person principally engaged in selling merchandise for resale.
- (4) *Tobacco means*, any products containing, made, or derived from tobacco that is intended for human consumption, whether chewed, smoked, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means, or any component, part, or accessory of a tobacco product, including, but not limited to, cigarettes, cigars, little cigars; cheroots; stogies; periques; granulated, plug cut, crimp cut, ready rubbed, and other smoking tobacco; snuff; snuff flour; cavendish; plug and twist tobacco; fine-cut and other chewing tobacco; shorts; refuse scraps, clippings, cuttings and sweepings of tobacco, and other kinds and forms of tobacco. Tobacco includes electronic cigarettes containing or delivering nicotine for the purposes of licensing and regulation under this chapter. Tobacco products excludes any tobacco product that has been approved by the United States Food and Drug Administration for sale as a tobacco cessation product, as a tobacco dependence product, or for other medical purposes, and is being marketed and sold solely for such an approved purpose.
- (5) *Tobacco-related devices* means cigarette papers or pipes for smoking.
- (6) *Tobacco vending machine* means a machine for vending tobacco by the insertion of a coin.

(23)

SECTION 2

Section 324.07 of the Saint Paul Legislative Code is hereby amended to read as follows:

(e) Sale of tobacco and tobacco-related products to minors prohibited.

(1) Whoever sells or furnishes tobacco or tobacco-related devices to a person under the age of 18 years is guilty of a misdemeanor for the first violation. Whoever violates this section a subsequent time within five years of a previous conviction under this section or Minnesota Statutes sections 609.685 and 609.6855 is guilty of a gross misdemeanor.

(2) It is an affirmative defense to a charge under this subdivision if the defendant proves by a preponderance of the evidence that the defendant reasonably and in good faith relied on proof of age as described in section 340A.503, subdivision 6.

(f) Exceptions.

(1) Notwithstanding section (e), individuals exempted under Minnesota Statutes section 609.685 are also exempt from this section.

(2) The penalties in this section do not apply to a person under the age of 18 years who purchases or attempts to purchase tobacco or tobacco-related devices while under the direct supervision of a responsible adult for training, education, research, or enforcement purposes.

(g) Any violation of this chapter shall subject the licensee to provisions of chapter 310 and section 324.11 of the Saint Paul Legislative Code.

SECTION 3

Section 324.09 of the Saint Paul Legislative Code is hereby amended to read as follows:

No person under the age of eighteen (18) years shall purchase tobacco or tobacco-related devices, as those terms are defined by Minnesota Statutes, Section 609.685, subdivisions 1(a) and 1(b), using a driver's license, a Minnesota identification card, or other form of identification which is false, fictitious, altered or counterfeited as to age or any other material fact of identification. Use of false identification to purchase tobacco or tobacco-related products is a misdemeanor.

SECTION 3

Section 324.10 of the Saint Paul Legislative Code is hereby amended to read as follows:

No person under the age of eighteen (18) years shall purchase, use or possess tobacco or tobacco-related devices, as those terms are defined by Minnesota Statutes, Section 609.685, subdivisions 1(a) and 1(b). Possession of tobacco or tobacco-related devices by a minor is a petty misdemeanor.

SECTION 5

This Ordinance shall take effect and be in force thirty (30) days following its passage, approval and publication.



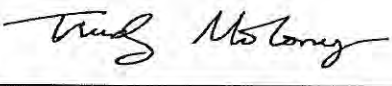
FILE  
15/4/069

At a meeting of the on , this Ordinance was Signed.

**Yea:** 6 Councilmember Bostrom, Councilmember Brendmoen, Councilmember Carter III, Councilmember Stark, Councilmember Thune, and Councilmember Tolbert

**Nay:** 0

**Absent:** 1 City Council President Lantry

Vote Attested by   
Council Secretary Trudy Moloney

Date 4/24/2013

Approved by the Mayor   
Chris Coleman

Date 4/29/2013

(25)

FILE



**MANNILLO WOMACK  
& ASSOCIATES**

550 Gilbert Building  
413 Wacouta Street  
Saint Paul, MN 55101-1957

15-144069

November 19, 2004

Mr. Bill Wengler  
East Mall Associates  
857 Grand Avenue  
Saint Paul, MN 55105

**RE: 841 Grand Avenue**

Dear Bill;

As we discussed, I have collected as much information on 841 Grand Avenue as I was able to access. Please recognize that the following information is to the best of my knowledge and that it has not been personally verified. The rental income stream was confirmed with Deb, but most of the other information was taken from a 1998 appraisal of the property.


**RENTALS:**

Building Sector	Rented Space	Gross Monthly Rent
Basement Retail	1197 SF	\$1000.00
First Floor Retail	1281 SF	Owner occupied
Second Floor - 1 Bdrm Apartment	600 SF	\$740.00
Third Floor - 1 Bdrm Apartment	714 SF	\$875.00
Garage	504 SF	\$800.00
<b>TOTAL</b>	<b>4296 SF</b>	<b>\$3415.00</b>

The appraisal lists the gross building area as 4,389 square feet (including the basement). All of the leases in the building have gone beyond their lease terms and the tenants are occupying the space on a month-to-month basis. There were some security deposits, as well as original first/last month rent requirements, that were associated with the leases. Based upon my conversations with Deb, these items do not appear significant and she will research which of the tenants - if any - would still have any offset to future rents due.

Bill, I am attaching four pages from the 1998 appraisal that contain some general background data on the property. Give me a call if you need any more information, or if there are any questions about the information provided herein.

Respectfully yours,

  
Don Womack, Broker  
Office: 651.292.4922  
Fax: 651.292.0014  
Email: [don@mannillowomack.com](mailto:don@mannillowomack.com)

(26)

FILE  
 15-144069

**SITE DATA**

The site has been inspected for its locational attributes and physical characteristics, which are summarized below, followed by the conclusion.

SIGNIFICANT SITE ATTRIBUTES	
Land Area	65' x 150' = 9,750 Square feet
Shape	Rectangular
Zoning	B-2C, Community Business District
Drainage	Adequate
Access/ Exposure	There is good access to the site with a center turn lane from Grand Avenue. There is excellent exposure to Grand Avenue
Topography	Generally level
Land Stability	No evidence of settlement
Water Damage	There was minimal water marks in the ceiling, however, according to the owner the problem has been amended and a new roof is in place
Utilities Available	All public
Parking	Approximately 15 on-site spaces with street parking available
Flood Zone	Zone X, Non hazard area, Community Panel #275248 0005 D, Dated August 3, 1989
Streets	Grand Avenue is a two lane bituminous road. There is also an alley in the rear, or northern portion, of the site.
Curb & Gutter	Concrete
Street Lights	Public pole mounted
1996 Traffic Counts	10,500 Vehicles pass the subject on Grand Avenue over a 24 hour period
Easements/ Encroachments	None noted that may have an adverse effect to value

**Site Conclusion**  
 Based on our site inspection, the site has locational attributes and physical characteristics typical of other mixed use properties on Grand Avenue. The site has good exposure to Grand Avenue and convenient access with a center turning lane. In addition, the subject also has on-site parking which is lacking for retail properties on Grand Avenue. There is also convenient access to the Interstates 94 and 35E. There are no adverse economic conditions foreseen.

(27)

**WILLIAM K. CAMPBE & ASSOCIATES, INC.**  
 SUMMARY APPRAISAL COMPLETE REPORT

REAL ESTATE APPRAISAL  
 CONSULTING SERVICE

**FILE**  
 15-1446 09

**DESCRIPTION OF THE IMPROVEMENTS**

Improvement Chart	
Current use	Mixed use property with 2 retail and 2 apartment units
Style	Converted 2½ story Victorian
Year built, Age	1894
GBA	4,389 Square feet (including the basement)
NRA	3,792 Square feet (including the basement) / 4,296 Square feet including the garage
Above Grade Area	3,192 Square feet
Land to Building Ratio	2.0:1
Levels = 4 total	There are three levels above grade and a full basement level
Electrical	400 amp service
Foundation	Poured concrete
Exterior walls	Painted siding
Framing	Wood frame construction
Roof	Shingled, 240# asphalt, hip style
Sprinkled	None
Restrooms	Each apartment unit has a full bathroom. There is a ½ bath on the second level which services the main level retail area, and a ½ bath in the basement
Plumbing/ Fixtures	Interior iron or plastic piping, copper to the street Standard white porcelain fixtures
Heating/Cooling	Hot water heating, electric window air conditioners
On-site improvements	Paved bituminous drives and parking area, concrete curbs, gutters, and walks
FF & E	Not included

↙ NEW  
ROOF  
1997

↙ NEW  
BOILER  
1998



FILE  
15-144069

**THE IMPROVEMENTS (Continued)**

INTERIOR FINISH SCHEDULE			
SPACE DISTRIBUTION			
ITEM	BASEMENT	MAIN LEVEL RETAIL	UPPER LEVELS
Use	Dog grooming	Retail	2 Apartment units and common area on the second level
Square Footage	1,197 Square feet	1,281 Square feet	1,911 Square feet
Floors	Linoleum and painted concrete	Carpet and linoleum	Carpeted
Baseboard	Some vinyl baseboard	Carpet and vinyl	Wood
Trim	Minimal	Wood	Wood
Walls	Painted and papered	Painted and papered	Painted
Ceiling	7 1/2' clear acoustical tile	9' clear sprayed	Height varies, painted
Lighting	Indirect fluorescent	Electric track and fluorescent	Electric
Doors	Wood	Wood, glass entry	Wood
Windows	Awning windows	Sliding	Sliding

**DISCUSSION OF IMPROVEMENTS / SPECIAL FEATURES**

The subject property consists of Grand Paws pet grooming in the basement level, Shutterbug Photo Finishing on the main level, and the second and third level each have a one bedroom apartment. The second level consists of one 1-bedroom apartment, a 1/2 bath for main level use, and a storage area. The third level has one 1-bedroom apartment which is attic style with vaulted ceilings ranging from 2' to 12' and has two skylights. The basement level also has one washer and one dryer for tenant use. There is no charge to use these appliances. Each apartment has a refrigerator and range / oven. There is a garage on site which is currently being leased by Billy's on Grand Bar and Restaurant for storage and their coolers.

According to the owner there was a new roof put on the subject last year. The apartments and main level are equipped with two window air conditioners for each unit. There are motion detectors and door sensors for security on the main level and the smoke detectors are hard wired. There is exterior mounted lighting for the parking area.

**CONCLUSION OF IMPROVEMENTS**

The property has average to good levels of maintenance. Structurally the building appears to be sound. The owner's have maximized the functional use of the property by renting out all levels. The subject's Victorian style has very good curb appeal. The nearby commercial services and bus line enhances use as retail / apartments. The property is typical of other mixed use properties on Grand Avenue and benefits the neighborhood. There are no adverse economic conditions foreseen.

(29)

FILE  
15-197069

SUPPLEMENTAL LICENSE INFORMATION REQUIRED FOR THIS APPLICATION		
Business Manager if different from Applicant		
Manager's Name: <u>Daniel Ruben Bernstein</u> Mr Other Name(s) Used: _____ <small>First Middle Maiden Last Title</small>		
Home Address: <u>445 Upton Ave S Minneapolis MN 55405-4470</u> Home Phone: <u>612, 518-4482</u> <small>Street Number/Name City State Zip+4</small>		
Birth Date: <u>04/04/90</u> Place of Birth: <u>Baltimore, MD</u> Driver's License # <u>J480188152812</u>		
Other Person(s) to Appear on Business License (Circle Type: Shareholder Officer Partner )		
Name: _____ Other Name(s) Used: _____ <small>First Middle Maiden Last Title</small>		
Home Address: _____ Home Phone: _____ / _____ / _____ <small>Street Number/Name City State Zip+4</small>		
Birth Date: ____ / ____ / ____ Place of Birth: _____ Driver's License # _____		
Other Person(s) to Appear on Business License (Circle Type: Shareholder Officer Partner )		
Name: _____ Other Name(s) Used: _____ <small>First Middle Maiden Last Title</small>		
Home Address: _____ Home Phone: _____ / _____ / _____ <small>Street Number/Name City State Zip+4</small>		
Birth Date: ____ / ____ / ____ Place of Birth: _____ Driver's License # _____		
The following additional information is required for your application to be complete: (check if received)		
<input type="checkbox"/> Zoning Worksheet + Floor plan & Site plan.		
<input type="checkbox"/> Property Lease Agreement or Proof of Ownership		
<b>FALSIFICATION OF ANSWERS GIVEN OR MATERIAL SUBMITTED WILL RESULT IN DENIAL OF APPLICATION</b>		
I hereby state that I have answered all of the preceding questions and that the information contained herein is true and correct to the best of my knowledge and belief. I hereby state further that I have received no money or other consideration, by way of loan, gift, contribution, or otherwise, other than already disclosed in the application which I herewith submitted. I also understand this premise may be inspected by police, fire, health and other city officials at any and all times when the business is in operation.		
Applicant Signature (Required) _____		Title _____
		Date <u>6/25/15</u>

NOTE: GROCERY, RESTAURANT OR OTHER BUSINESS LICENSES, REQUIRING ENVIRONMENTAL HEALTH APPROVAL ARE SUBJECT TO AN ADDITIONAL CHARGE FOR THE ENVIRONMENTAL PLAN REVIEW OF YOUR FOOD SERVICE BUSINESS. YOU WILL BE INVOICED SEPARATELY FOR THIS CHARGE.

Revised 10/16/2013

(30)

FILE  
15-144069

**Diatta, YaYa (CI-StPaul)**

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**From:** Maggie Broner <maggie.broner@gmail.com>  
**Sent:** Wednesday, August 12, 2015 7:34 PM  
**To:** Diatta, YaYa (CI-StPaul)  
**Cc:** summithill@visi.com  
**Subject:** 841 Grand Ave. Hearing CONCERN.

Dear Yaya Diatta,

I am writing to oppose opening a tobacco product shop on 841 Grand. This shop will not benefit the wellbeing of the community that lives in this neighborhood. It also does not fit with the kind of businesses we seek to have in this beautiful street. We already have a tobacco shop on 961 Grand Ave.

Maggie Broner  
63 Avon Street South, unit 34 (one block from the intended tobacco place)  
St. Paul, MN 55105  
612-819-2334



FILE  
15-144069

**Diatta, YaYa (CI-StPaul)**

---

**From:** Eric Ernstene <ernsec@gmail.com>  
**Sent:** Sunday, August 02, 2015 1:30 PM  
**To:** Diatta, YaYa (CI-StPaul)  
**Subject:** File # 15 - 144069

I am writing about File No. 15-144069, the application for a variance of the separation requirement between tobacco product shops requested for 841 Grand Avenue by Jacob Bernstein. I am unable to attend the public hearing scheduled for 3:00 pm on Monday, August 17.

I live at 847 Lincoln Avenue, very near the proposed tobacco shop, and I am strongly opposed to the variance requested by the applicant. The cigar shop at 961 Grand Avenue already represents a significant neighborhood nuisance and detriment to the quality of life of the neighboring residents, and allowing the presence in the neighborhood of a second shop whose business involves the sale of what are known to be health-damaging products would have a major negative impact on the area. Already, residents are forced to avoid the stretch of sidewalk in front of 961 Grand in order to steer clear of the noxious second-hand smoke emanating from the patio in front of the store. The many drawbacks to allowing a second tobacco store so nearby, thus rendering yet another area of Grand Avenue inhospitable to residents, visitors, children and the elderly, far outweigh the financial interests of the applicant.

I encourage the Department of Safety and Inspections to reject the applicant's request for a variance.

Eric Ernstene  
847 Lincoln Ave.  
Saint Paul, MN 55105  
(651) 815-1842



FILE  
15-144069

**Diatta, YaYa (CI-StPaul)**

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**From:** Laura Atneosen <lauralee73@hotmail.com>  
**Sent:** Tuesday, August 04, 2015 11:10 AM  
**To:** summithill@visi.com; Diatta, YaYa (CI-StPaul)  
**Subject:** Zoning Appeal File # 15-144069; 841 Grand Avenue

Hello.

I have a few questions on the property at 841 Grand Avenue. I got a letter stating that Jacob Bernstein has requested a variance to be able to sell tobacco products at this location (which goes against the current zoning code). I am wondering if you can please tell me more about this. I live directly behind this property (at 834 Summit Avenue). I have a breathing disorder and a strong reaction to smoke. I have difficulty breathing when walking on Grand Avenue near the tobacco shop at 961 Grand Avenue, as the people sit outside and smoke cigars, and the smoke lingers there. I would never choose to live in a place where I am exposed to smoke, and I am concerned about this company coming in. If this new smoke shop is approved, will they be allowed to smoke cigars outside of it? What kind of tobacco products will they be selling?

Thank you!

Laura Atneosen  
[lauralee73@hotmail.com](mailto:lauralee73@hotmail.com)

FILE  
15-144069

### Certificate of Compliance Minnesota Workers' Compensation Law

**PRINT IN INK or TYPE.**

Minnesota Statutes, Section 176.182 requires every state and local licensing agency to withhold the issuance or renewal of a license or permit to operate a business or engage in any activity in Minnesota until the applicant presents acceptable evidence of compliance with the workers' compensation insurance coverage requirement of Minnesota Statutes, Chapter 176. The required workers' compensation insurance information is the name of the insurance company, the policy number, and the dates of coverage, or the permit to self-insure. If the required information is not provided or is falsely stated, it shall result in a \$2,000 penalty assessed against the applicant by the commissioner of the Department of Labor and Industry.

A valid workers' compensation policy must be kept in effect at all times by employers as required by law.

BUSINESS NAME (Individual name only if no company name used) <i>Imperial Vapor</i>	LICENSE OR PERMIT NO (if applicable)
DBA (doing business as name) (if applicable)	
BUSINESS ADDRESS (PO Box must include street address) CITY STATE ZIP CODE <i>841 Grand Ave St Paul Mn 55105</i>	

**YOUR LICENSE OR CERTIFICATE WILL NOT BE ISSUED WITHOUT THE FOLLOWING INFORMATION. You must complete number 1, 2 or 3 below.**

**NUMBER 1 COMPLETE THIS PORTION IF YOU ARE INSURED:**

INSURANCE COMPANY NAME (not the insurance agent)		
WORKERS' COMPENSATION INSURANCE POLICY NO.	EFFECTIVE DATE	EXPIRATION DATE

**NUMBER 2 COMPLETE THIS PORTION IF SELF-INSURED:**

I have attached a copy of the permit to self-insure.

**NUMBER 3 COMPLETE THIS PORTION IF EXEMPT:**

I am not required to have workers' compensation insurance coverage because:

I have no employees.

I have employees but they are not covered by the Workers' Compensation law. (See Minn. Stat. § 176.041 for a list of excluded employees.) Explain why your employees are not covered: \_\_\_\_\_

Other: \_\_\_\_\_

**ALL APPLICANTS COMPLETE THIS PORTION:**


I certify that the information provided on this form is accurate and complete. If I am signing on behalf of a business, I certify that I am authorized to sign on behalf of the business.

APPLICANT SIGNATURE (mandatory)	TITLE	DATE
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**NOTE:** If your Workers' Compensation policy is cancelled within the license or permit period, you must notify the agency who issued the license or permit by resubmitting this form.

This material can be made available in different forms, such as large print, Braille or on a tape. To request, call 1-800-342-5354 (DIAL-MN LIC 04 (11/08) Voice or TDD (651) 297-4198.

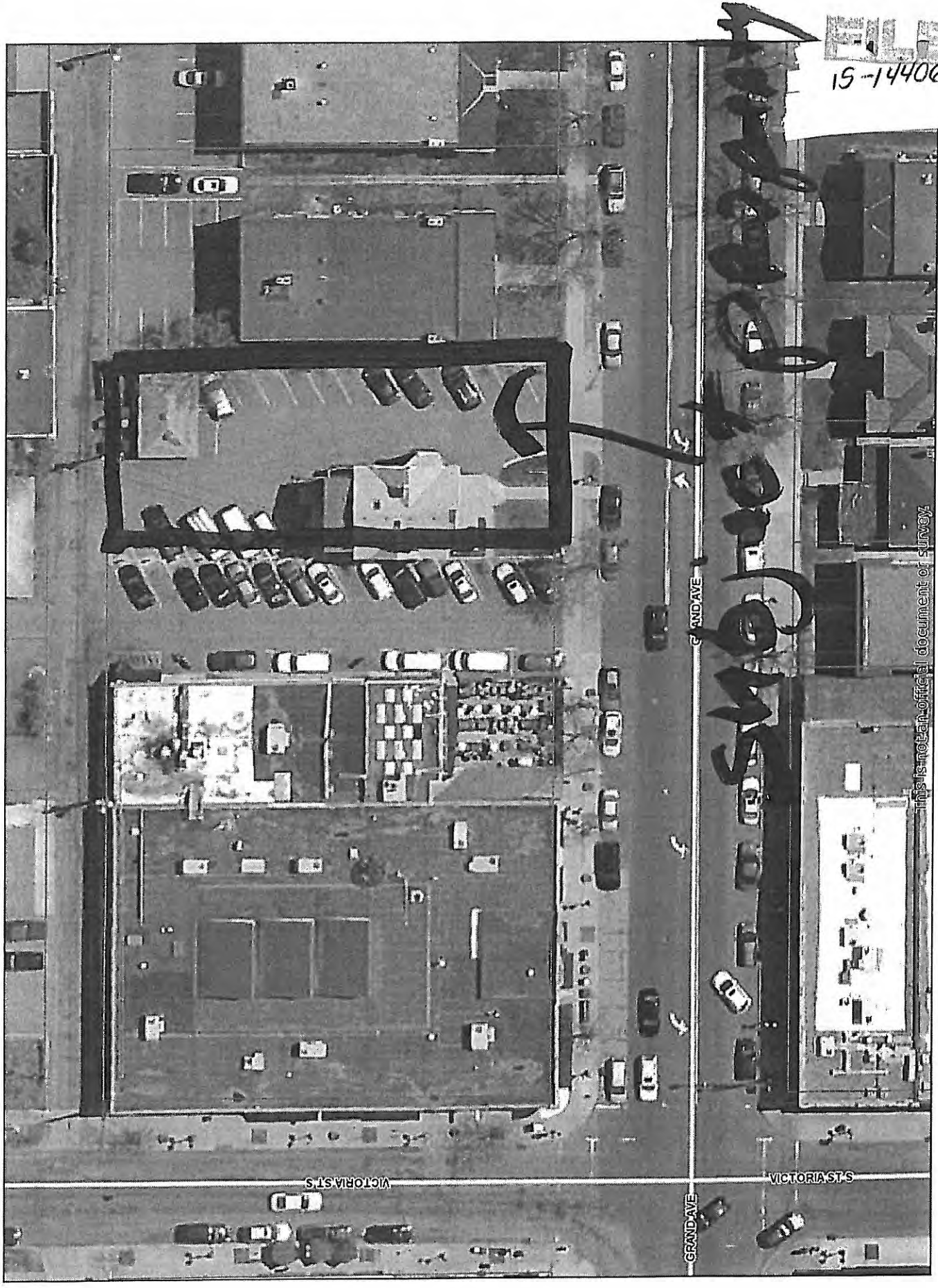
FILE  
15-144069

 <p><b>CITY OF ST. PAUL</b> DEPARTMENT OF SAFETY AND INSPECTIONS 375 JACKSON STREET, SUITE 220 ST. PAUL, MINNESOTA 55101-1806 Phone: 651-266-8989 Fax: 651-266-9124 Visit our Web Site at www.stpaul.gov/dsi</p>	<p><b>CLASS R LICENSE APPLICATION</b> LICENSES ARE NOT TRANSFERRABLE <i>Payment must be received with Each Application</i> <i>(This application is subject to review by the public)</i></p>	
Business Address <u>441 Grand Ave St Paul MN 55105</u> (Street number/name, direction, etc.)	Name on Business Sign (DBA) <u>Imperial Vapor</u>	Date <u>6/23/15</u>

Types of License(s) being applied for: (Office Use Only)	Fees
Total	

Licensee/Owner Name: <u>Jacob Maxim Bernstein</u> Mr Birth Date: <u>11 / 26 / 94</u> (Responsible Party) First Middle Maiden Last Title
Have you used any other names? (list them here) _____
Home Address: <u>1323 Seminary Ave St Paul MN 55104-5849</u> Home Phone: <u>952 412 4992</u> Street Number/Name City State Zip+4
Place of Birth: <u>Baltimore, MD</u> Driver's License # <u>HZ88033985118</u>
Business Phone: <u>612 518 4482</u> Fax: _____ E-Mail: <u>imperialvapormn@gmail.com</u>
Company Name: <u>Imperial Vapor</u> Circle Type: Corporation <input checked="" type="checkbox"/> Partnership <input type="checkbox"/> Sole Proprietorship <input type="checkbox"/>
Address (if different from Business Address): _____ Street Number/Name City State Zip+4
Preferred Mailing Address: <u>1323 Seminary Ave St Paul MN 55104</u>
Anticipated Date of Opening: <u>8 / 10 / 15</u>
Licensee Work History (list name, address and phone number of all employers for the previous 5 year period)
<u>E-Lig Crib 3007 Lyndale Ave S, Minneapolis, MN 55419 612-823-4545</u>
<u>Gan Shelanu 10500 Hillside Ln W, Minnetonka, MN 55305 952-545-2424</u>

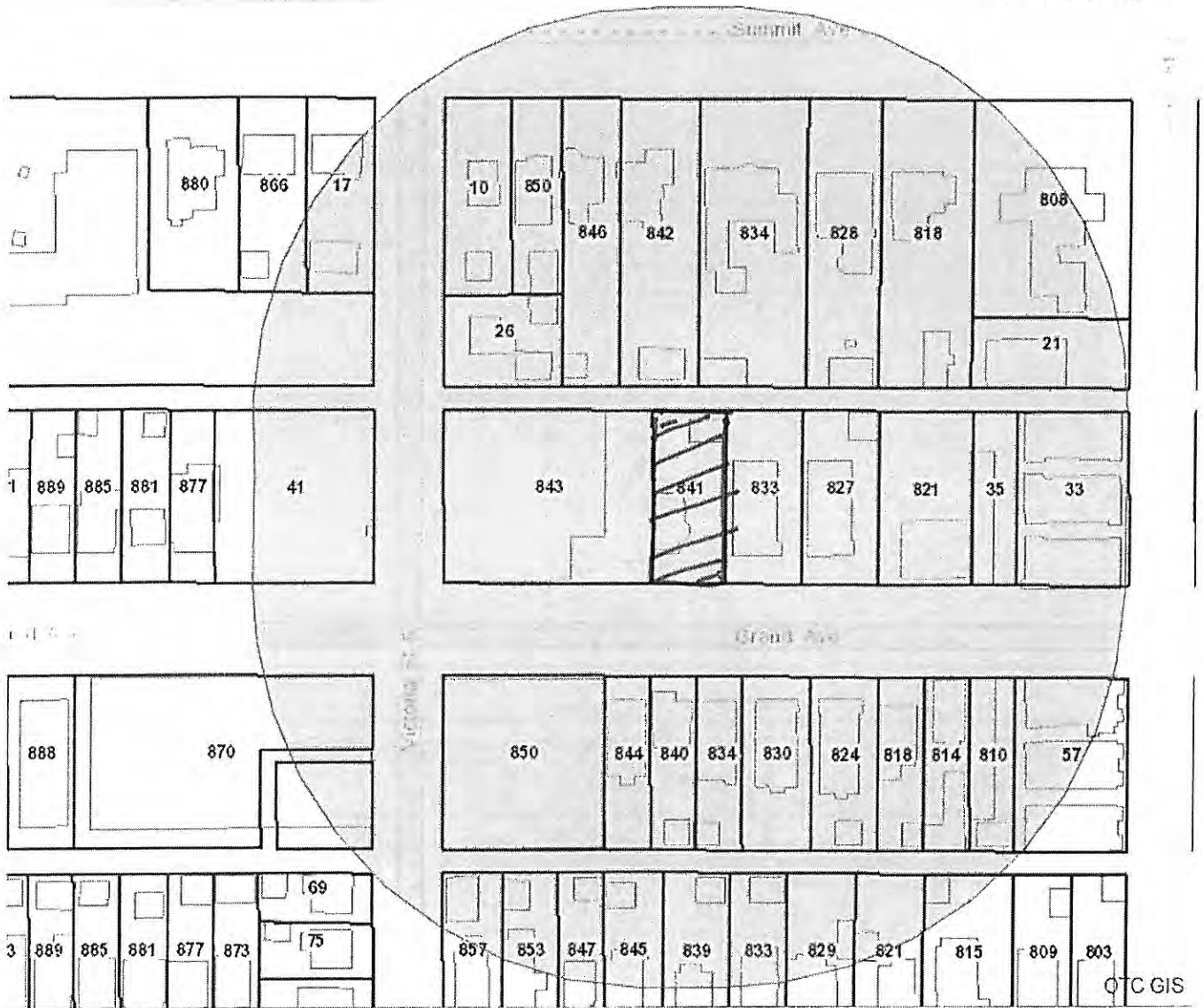
15-144069



This is not an official document of survey.



**FILE**  
15-144069



(37)

**FILE**  
15-144069

**Diatta, YaYa (CI-StPaul)**

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**From:** stogiesong@aol.com  
**Sent:** Monday, August 17, 2015 1:38 PM  
**To:** Diatta, YaYa (CI-StPaul)

My name is Mark Wolk owner of Stogies on Grand. I wanted you to have written documentation at the city council meeting today showing that I am not in favor of the Vapor shop opening within a half mile of my store. They have now told Gaba and Summit Hill association that I was endorsing that variance and that is not that case. We are a premium cigar store and are to often associated with Hookah, e-cigs, and vaping. These stores target underage kids and that is exactly what we are trying to stay away from. I do not want negative publicity on Grand Ave. We have spent too much time and energy repairing it over the last couple of years. Thanks for your consideration in this matter.

FILE  
15-144069

**Diatta, YaYa (CI-StPaul)**

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**From:** Jon Perrone <jon@grandave.com>  
**Sent:** Monday, August 17, 2015 1:40 PM  
**To:** Diatta, YaYa (CI-StPaul)  
**Subject:** Re: 4185381\_3039311\_04150718

Thank you Yaya.

Based off of this information, and the fact that we do not know enough about the business model, the Grand Avenue Business Association is currently not in support of the variance for Imperial Vapors.

We would like to see the applicant provided more data on the products being sold in the store and more specifics on the target market for the store.

Best regards,

Jon Perrone

*Executive Director  
Grand Avenue Business Association*

O - 651-288-0003  
C - 651-261-9968  
[www.grandave.com](http://www.grandave.com)

On Mon, Aug 17, 2015 at 1:17 PM, Diatta, YaYa (CI-StPaul) <[yaya.diatta@ci.stpaul.mn.us](mailto:yaya.diatta@ci.stpaul.mn.us)> wrote:

FILE  
15-1940.69

# Summit Hill Association

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District 16 Planning Council  
860 Saint Clair Avenue  
Saint Paul, Minnesota 55105  
Telephone 651-222-1222  
www.summithillassociation.org  
summithill@visi.com

August 14, 2015

Board of Zoning and Appeals  
City of St. Paul  
St. Paul City Hall  
15 Kellogg Blvd. West, St. Paul, MN 55102

Dear Board Members,

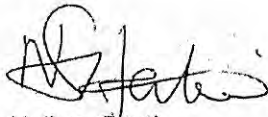
**RE: 841 Grand Avenue**

The Summit Hill Association's Zoning and Land Use Committee met on Tuesday August 11, 2015 to discuss the variance application concerning the above named property. The committee had previously put out notice within a 300 ft radius of the property to solicit community input and feedback. The committee received 3 written responses on the matter - 2 in opposition and 1 asking for clarification on how the business will be run. The applicants attended the meeting to answer questions from the committee and those raised from the community responses. There were no public verbal comments from the community at the meeting.

The committee chose to forward the decision making to the SHA board.

The SHA Board met on August 13, 2015. The applicants were present to answer further questions from the full board. One of the community members in attendance, spoke in support of the variance application. The board deliberated on the issue, and by a vote of 5-2 recommended denial of the variance application and were in agreement with city staff that findings 3 and 4 were not met.

Sincerely,



Nelima Sifati  
Executive Director, SHA



FILE  
15-144069

**Diatta, YaYa (CI-StPaul)**

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**From:** Preston Fuller <prestonfuller91@gmail.com>  
**Sent:** Monday, August 17, 2015 10:40 AM  
**To:** Diatta, YaYa (CI-StPaul)  
**Subject:** Re: Imperial Vapor

Mr. Diatta,

My address is 1629 Watson Avenue, Saint Paul Mn 55116.

Thank you,  
Preston D Fuller

On Monday, August 17, 2015, Diatta, YaYa (CI-StPaul) <[yaya.diatta@ci.stpaul.mn.us](mailto:yaya.diatta@ci.stpaul.mn.us)> wrote:

Good morning and thank you for your input. Can I please have your address for the record?

Thanks

**From:** Preston Fuller [mailto:[prestonfuller91@gmail.com](mailto:prestonfuller91@gmail.com)]  
**Sent:** Sunday, August 16, 2015 9:21 PM  
**To:** Diatta, YaYa (CI-StPaul)  
**Subject:** Imperial Vapor

Yaya Diatta

Office of Zoning and Inspections

Dear Mr Diatta,

As you know, Imperial Vapor is scheduled for a hearing tomorrow in response to their application for a Tobacco License. I recently just moved to this area, and have found that personally it is difficult to find E-cigarette equipment anywhere close. Unfortunately, the only vendors I have been able to locate in this area are all "Head Shops", if you will. Regretfully, the majority of "Head Shops" that I have had personal experience with, have all been extreme advocates of the use of Marijuana. This being said, I have been sober for over two years and would rather not subject myself to a drug related environment just to get E-cigarette equipment or E-liquid.

On a related note, Grand Avenue has one of the highest populations of sober houses in the twin cities. If a resident of one of these homes wanted to go buy some E-liquid, would it really be the best idea to send them into a "Head shop"? Imperial Vapor has the potential to be cornerstone business on Grand Avenue, bringing more foot traffic through other businesses, along with a safe, non intimidating environment for E-cig customers. I am very supportive of this business opening, and optimistic that it will bring nothing but more customers to other establishments as well. With an open mind I believe that it is easy to see that granting Imperial Vapor their Tobacco License is a sound decision.

Thank you very much for your time Mr. Diatta,

Respectfully,

Preston Deforest Fuller

**FILE**  
15-144069

**Diatta, YaYa (CI-StPaul)**

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**From:** Patty Stariha <pstariha@aol.com>  
**Sent:** Monday, August 17, 2015 10:22 AM  
**To:** Diatta, YaYa (CI-StPaul)  
**Subject:** Imperial Vapor

Hello,

I am writing to you to say that I support the Bernstein Brothers in their current business venture Imperial Vapor. This store will give citizens an alternative option to tobacco and will be a pleasant place for people to get together. This will generate tax dollars and I firmly believe in supporting small business owners. I visit the area frequently and am looking forward to be able to spend some time and money in a relaxing environment. I really hope that you will support this venture as well.

Thank you,  
Patty Stariha  
3096 E Station Rd.  
Superior, WI 54880

FILE  
15-144069

**Diatta, YaYa (CI-StPaul)**

---

**From:** Preston Fuller <prestonfuller91@gmail.com>  
**Sent:** Sunday, August 16, 2015 9:21 PM  
**To:** Diatta, YaYa (CI-StPaul)  
**Subject:** Imperial Vapor

Yaya Diatta  
Office of Zoning and Inspections

Dear Mr Diatta,

As you know, Imperial Vapor is scheduled for a hearing tomorrow in response to their application for a Tobacco License. I recently just moved to this area, and have found that personally it is difficult to find E-cigarette equipment anywhere close. Unfortunately, the only vendors I have been able to locate in this area are all "Head Shops", if you will. Regretfully, the majority of "Head Shops" that I have had personal experience with, have all been extreme advocates of the use of Marijuana. This being said, I have been sober for over two years and would rather not subject myself to a drug related environment just to get E-cigarette equipment or E-liquid.

On a related note, Grand Avenue has one of the highest populations of sober houses in the twin cities. If a resident of one of these homes wanted to go buy some E-liquid, would it really be the best idea to send them into a "Head shop"? Imperial Vapor has the potential to be cornerstone business on Grand Avenue, bringing more foot traffic through other businesses, along with a safe, non intimidating environment for E-cig customers. I am very supportive of this business opening, and optimistic that it will bring nothing but more customers to other establishments as well. With an open mind I believe that it is easy to see that granting Imperial Vapor their Tobacco License is a sound decision.

Thank you very much for your time Mr. Diatta,  
Respectfully,  
Preston Deforest Fuller



FILE  
15-144069

**Diatta, YaYa (CI-StPaul)**

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**From:** saul clayman <sclayman@hotmail.com>  
**Sent:** Monday, August 17, 2015 10:57 AM  
**To:** Diatta, YaYa (CI-StPaul)  
**Subject:** Re: Vape shop

2309 lyndale avenue south Minneapolis mn 55405

Sent from my iPhone

> On Aug 17, 2015, at 7:53 AM, Diatta, YaYa (CI-StPaul) <[yaya.diatta@ci.stpaul.mn.us](mailto:yaya.diatta@ci.stpaul.mn.us)> wrote:

>

> Can you please state your address for the record?

>

> -----Original Message-----

> From: saul clayman [<mailto:sclayman@hotmail.com>]

> Sent: Monday, August 17, 2015 6:55 AM

> To: Diatta, YaYa (CI-StPaul)

> Subject: Vape shop

>

> Just wanted to show my support for the vape shop Imperial Vaper. If they need a tobacco retail license to operate then give it to them (even though they're not selling tobacco). I really would like to be able to shop at this store. They have put a lot of time, money, and effort into trying to make their small business a reality, and I and a lot of other people would like to see their hard work come to fruition.

>

> -saul

>

> Sent from my iPhone

FILE  
15-144069

**Diatta, YaYa (CI-StPaul)**

---

**From:** Laura VandenBoom <laura.vandenboom@gmail.com>  
**Sent:** Monday, August 17, 2015 9:31 AM  
**To:** Diatta, YaYa (CI-StPaul)  
**Subject:** Re: Imperial Vapor support

383 Dayton Avenue #22  
St. Paul, MN 55102

Thanks for all you do,  
Laura

On Monday, August 17, 2015, Diatta, YaYa (CI-StPaul) <[yaya.diatta@ci.stpaul.mn.us](mailto:yaya.diatta@ci.stpaul.mn.us)> wrote:

Can you please state your address for the record?

**From:** Laura VandenBoom [mailto:[laura.vandenboom@gmail.com](mailto:laura.vandenboom@gmail.com)]  
**Sent:** Sunday, August 16, 2015 4:43 PM  
**To:** Diatta, YaYa (CI-StPaul)  
**Subject:** Imperial Vapor support

To Whom It May Concern:

I am writing in support of the young company Imperial Vapor, which is trying to open its doors in St. Paul but need a tobacco license. In my understanding, the products and merchandising they will be selling are tobacco-free, and while I understand Imperial Vapor's proximity to Stogie's on Grand, I believe they offer a different selection with healthier and cleaner alternatives to tobacco and should be allowed a license.

Please consider allowing Imperial Vapor to flourish as a new, small, and innovative business in St. Paul.

Thanks,

Laura VandenBoom