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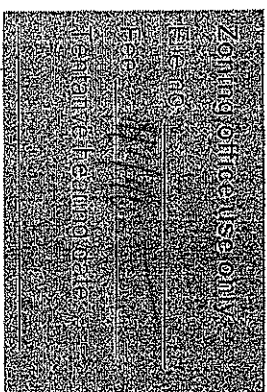
4490 -

JAN 19 2012

APPLICATION FOR APPEAL



Department of Safety and Inspections
375 Jackson Street, Suite 220
Saint Paul, MN 55101
651-266-9008



APPLICANT

Name Summit Hill Association - Mark Berkow, President
Address 860 St. Clair Ave.
City St Paul Zip 55105 Daytime phone 612-334-2604
Name of owner (if different) SHA : 651-222-1222

PROPERTY LOCATION

Address 860 St. Clair Ave, St Paul, MN 55105
Legal description: _____
(attach additional sheet if necessary)

TYPE OF APPEAL: Application is hereby made for an appeal to the:

Board of Zoning Appeals City Council

under the provisions of Chapter 61, Section _____, Paragraph _____ of the Zoning Code, to appeal a decision made by the _____

on _____ 200____ File number _____
(date of decision)

GROUND(S) FOR APPEAL: Explain why you feel there has been an error in any requirement, permit, decision or refusal made by an administrative official, or an error in fact, procedure or finding made by the Board of Zoning Appeals or the Planning Commission.

Please see Attached January 18, 2012 Summit Hill Association letter.

(attach additional sheet if necessary)

Applicant's signature Mark Berkow Date 1/19/12 City agent _____

Summit Hill Association

District 16 Planning Council
860 Saint Clair Avenue
Saint Paul, Minnesota 55105
Telephone 651-222-1222
Fax 651-222-1558
www.summithillassociation.org
e-mail: summithill@visi.com

January 18, 2012

Councilmember Dave Thune
City Hall, 15 W. Kellogg Blvd., Suite 310B
St. Paul, MN 55102

Dear Councilmember Thune:

The Summit Hill Association ("SHA") believes that there was an error in fact, procedure and finding made by the Board of Zoning Appeals, on December 27, 2011, when that body approved a 7-parking space variance for Mr. Kevin Vanderaa and his business, Cupcake, to relocate from his current location to 949 Grand Avenue. With this letter, SHA is filing an appeal of that BZA decision.

While SHA is excited and generally supportive about the prospect of Cupcake coming to the neighborhood, it is our position, that the SHA received inaccurate information from BZA Staff leading up to the Dec. 27th BZA hearing in that we were told that no action would be taken on this parking variance application on December 27, 2011 and that the matter would be laid over for two weeks. Because of this misinformation, the SHA did not send an authorized representative to the hearing. Had we done so, we believe that inaccuracies as to SHA's position on this matter made in public testimony and therefore the misconceptions drawn by the members of the Board of Zoning Appeals, would have been corrected by the SHA representative; and the BZA would then have had complete and accurate information upon which to act.

Further, the Board of Zoning Appeals approved the 7-parking space variance despite city zoning code requirements for establishing a required shared-parking agreement, and the Oct. 11, 2011 BZA Staff Report which recommended that the Cupcake variance application be denied in its current form. SHA similarly noted the conflicts that this variance would have with current Summit Hill/District 16 Neighborhood Plan policies which are part of the City's Comprehensive Plan, without additional action taken by the applicant.

The chronology of the matter of the Cupcake parking variance application is as follows:

- The SHA - Zoning and Land Use Committee hearing on Oct. 12, 2011 and the decision of SHA to agree with the BZA Oct. 11, 2011 Staff Report calling for the denial of the parking variance and to recommend denial to the BZA (see attached summary of the Oct. 12, 2011 SHA hearing);
- October 17, 2011 - 1st scheduled hearing date with BZA;
- October 31, 2011 - BZA continued the matter for 2 weeks until 11/14/11 to allow the applicant to prepare a parking study;
- No BZA hearing on November 14, 2011 - continued Cupcake to November 28, 2011;
- November 28, 2011 - BZA continued until 12/12;

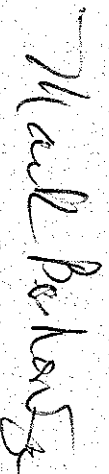
- December 12, 2011 - BZA continued until 12/27;
- December 27, 2011 - BZA voted to approve the variance with conditions;
- January 9, 2012 - BZA approved the approval resolution for Cupcake

The Summit Hill Association – Zoning & Land Use Committee met on January 17, 2012 to discuss the December 27, 2011 Board of Zoning Appeals' (BZA) decision to approve a 7-parking space variance at 949 Grand Avenue for Mr. Kevin Vanderara and Cupcake which he intends to relocate to this address.

A motion was made and seconded that this Committee (speaking for the full SHA Board of Directors according to our policies) appeal the Dec. 27, 2011 BZA decision to approve the parking variance. The Motion carried 3-1, with one abstention.

If you have any questions about the discussion or recommendation, you may contact me or Jeff Roy, SHA Executive Director, at (651) 222-1222. As always, we appreciate your on-going efforts to sustain a strong and vibrant Summit Hill neighborhood.

Sincerely,



Mark Berhow, President
Summit Hill Association/District 16 Planning Council

cc: City Council Members: Bostrom, Brendmoen, Carter, Lantry, Stark and Tolbert
Joyce Maddox, Chair of BZA
Wendy Lane, DSI Zoning Manager
Corinne Tilly, BZA Staff
Pat Lindgren, Ward 2

Attachment

Summary of October 12, 2011 SHA – Zoning & Land Use Committee Hearing - Cupcake Parking Variance Application for 949 Grand Avenue

The Summit Hill Association – Zoning & Land Use Committee held the original neighborhood hearing regarding this matter on October 12, 2011 with Mr. Kevin Vanderaa representing Cupcake, a business currently located on University Avenue. Due to the construction for the Central Corridor, Mr. Vanderaa decided to relocate his business to 949 Grand Avenue. Mr. Vanderaa signed a 5-year lease with the owner of 949 Grand Avenue to set up the same business and level of service/products currently at the University site. This would include the sale of wine and beer as well as sandwiches, desserts, etc.

SHA understood that Mr. Vanderaa would have sufficient parking at this new site if Cupcake was only a bakery and sandwich shop. But, as the applicant wanted to include beer and wine service in his business model, Cupcake would then be required under city code to provide an additional 7 off-street parking spaces. The Zoning & Land Use Committee encouraged Mr. Vanderaa to adjust his business plan to go without beer & wine service, but he indicated that that would not be possible. The Committee let the applicant know that members were very supportive of his business and encouraged him to talk with nearby property owners to develop a shared-parking agreement that would eliminate the need for this major parking variance.

The Zoning & Land Use Committee had already received the Oct. 11, 2011 BZA Staff Report regarding the Cupcake application in which BZA staff Mr. YaYa Diatta recommended "denial" based on his determination that the applicant had met only one out of six findings required by the city zoning code for approving a variance (see attached BZA report).

Given the fact that Mr. Vanderaa would not consider changing his business model, and had not been able to find and establish any type of share-parking proposal, to date, with property owners within the city-required 500-foot distance from 949 Grand Avenue requiring Planning Commission approval - the Committee's recourse was to agree with the BZA staff report and recommend denial as well.

In taking this action, the Committee was also acting in agreement with the spirit and language of the current Summit Hill Neighborhood Plan and thereby the City Comprehensive Plan; specifically, Policies G6 –Commercial Spillover (mitigation) and P9c - Parking Supply – Oppose Parking Variances.