



# ZONING APPEAL APPLICATION

To/From Board of Zoning Appeals  
Dept. of Safety & Inspections  
Zoning Section  
375 Jackson Street, Suite 220  
Saint Paul, MN 55101-1806  
(651) 266-9008

To / From Planning Commission  
Dept. of Planning & Econ. Devt.  
Zoning Section  
1400 City Hall Annex, 25 W 4<sup>th</sup> St.  
Saint Paul, MN 55102-1634  
(651) 266-6583

| Zoning Office Use Only |       |
|------------------------|-------|
| File #                 | _____ |
| Fee Paid \$            | _____ |
| Received By / Date     | _____ |
| Tentative Hearing Date | _____ |

## APPELLANT

|         |                               |                     |                                  |
|---------|-------------------------------|---------------------|----------------------------------|
| Name(s) | <u>Chad Cutshall</u>          |                     |                                  |
| Address | <u>2108 Lower St Dennis R</u> | City <u>St Paul</u> | State <u>MN</u> Zip <u>55116</u> |
| Email   | <u>cuts0005@gmail.com</u>     | Phone               | <u>6512741824</u>                |

## PROPERTY LOCATION

|                    |  |
|--------------------|--|
| Project Name       | <u>Tree House</u>  |
| Address / Location | <small>0 Madison St., Parcel Identification Number (PIN) 22.28.23.22.0080, legally described as South 100 feet of the east 263.4 feet of Lot 79, Lane's Edgcombe Hills</small> |

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

- Board of Zoning Appeals**, under provisions of Zoning Code § 61.701(c), of a decision made by the Zoning Administrator.
- Planning Commission**, under provisions of Zoning Code § 61.701(c), of a decision made by the Planning Administrator or Zoning Administrator.
- City Council**, under provisions of Zoning Code § 61.702(a), of a decision made by the Board of Zoning Appeals or the Planning Commission.

Date of decision December 9, 20 22 File Number # 22-104-395

**GROUNDS 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 Planning Commission or Board of Zoning Appeals. Attach additional sheets if necessary. **See attached.**

DEC 19 2022

If you are a religious institution you may have certain rights under RLUIPA. Please check this box if you identify as a religious institution.

Appellant's Signature  Date 12/19/22

The applications for Variance and Site Plan Approval of Trellis Treehouse Acquisition, LLC, Unaddressed Property North of 2319 West 7<sup>th</sup> Street, City Planning File Nos. 22-104-395; 22-116-859; and 22-104-315, were erroneously decided and would permanently and irreparably cause harm that is inconsistent with city ordinance, state law and Minnesota case law.

1. The proposed rezoning variance application was erroneously granted. The Trellis proposal requires extensive grading of steep slopes and construction of excessively tall retaining walls. These activities are strictly and categorically prohibited by the City's zoning ordinance. Accordingly, applicant seeks a variance from Section 63.111(b) of the City's zoning ordinance. This provision reads in relevant part as follows:

In reviewing residential development on slopes of greater than twelve (12) percent, the zoning administrator shall... consider the following requirements and standards:... Buildings should be designed to fit into the hillside without significant regrading to protect the stability of the slope and preserve existing trees while preventing excessively tall retaining walls and unattractive trough-shaped yards between buildings and retaining walls.

City Code § 63.111(b). The City lacks authority to approve the variance sought by applicant for two reasons. First, the requested variance is an unlawful "use variance" of the sort that is clearly prohibited under Minnesota law. Minnesota law allows "area" variances but prohibits "use" variances. *In re Stadsvold*, 754 N.W.2d 323, 329 (Minn. 2008), quoting *In re Appeal of Kenney*, 374 N.W.2d 271, 274 (Minn. 1985). This prohibition on "use" variances is expressly memorialized in both the Minnesota municipal zoning enabling statute and the City's own zoning ordinance. See Minn. Stat. § 462.362, subd. 6(2) (2022) (a municipality "may not permit as a variance any use that is not allowed under the zoning ordinance for property in the zone where the affected person's land is located"); and City Code § 61.601(e) (a variance may "not permit any use that is not allowed in the zoning district where the affected land is located").

Second, the variance application fails to satisfy at least three of the requirements necessary for the granting of a zoning variance under Minnesota's municipal zoning enabling statute and the City's own zoning ordinance.

1. The requested variance is not consistent with the comprehensive plan.
2. The plight of the landowner is not due to circumstances unique to the property. Impracticability of development due to the requirements stated in the zoning ordinance are not a "circumstance unique to the property" of the type necessary to justify a zoning variance..
3. The variance, if granted, would absolutely alter the essential character of the locality. If the slope is regraded, the bluff will never be able to be restored, altering the natural bluffs lining West 7<sup>th</sup> Street and the Shepard/Davern area.

2. The proposed site plan was erroneously approved. First, the proposal is not consistent with the City's comprehensive plan. Second, the proposal is manifestly inconsistent with the protection of environmentally sensitive areas, as it proposes extremely extensive grading (up to 70% grade in relation to the ordinance limitation of 12%) on a heavily wooded steep slope (something that would

only be possible through the granting of an improper variance). Finally, the proposal does not adequately protect adjacent property owners.

For these reasons, as well as all other reasons presented on the record, which is incorporated herein by reference, this appeal requests reversal of the Planning Commission's approval of the Variance and Site Plan Approval applications submitted by Trellis Treehouse Acquisition, LLC.