



**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 \$ 462-  
Received By / Date ASU 8/21  
Tentative Hearing Date 9/14/19

**APPELLANT**

Name(s) Seth Brand  
Address 1879 Hillcrest Ave City Saint Paul State MN Zip 55116  
Email shbrand11@gmail.com Phone 513-516-1261

**PROPERTY LOCATION**

Project Name Highland Village Montessori / 10K Architecture  
Address / Location 1886 Ford Parkway

**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 August 12, 20 19 File Number 19-062869

**GROUND FORS 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 letter*

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 *Seth Brand* Date 8/21/2019

Board of Zoning Appeals  
Dept. of Safety & Inspection  
Zoning Section  
375 Jackson Street, Suite 220  
Saint Paul, MN 55101

August 21, 2019

To Whom It May Concern,

My wife and I are writing this letter to appeal the decision made by the Board of Zoning Appeals to approve the variance application for 1886 Ford Parkway (File # 19-062869). We, in concert with our neighbors, believe there were errors in procedure, fact, and findings that led the board to a decision to approve the zoning variance being sought by the applicant and 10K Architecture.

To be clear, as a neighborhood, we do not object to the applicant's proposed use of the space, but we are adamantly against the size scale and capacity of the proposal, and the 50% parking variance it requires. We are, therefore, asking the City Council to reverse the Board's decision and deny applicant's requested variance.

### **Basis for Appeal**

The decision to approve the variance was based upon erroneous finding and aided by procedural errors and misinterpretation of fact as it relates to the resolution of support from the Highland District Council.

The procedural error occurred in the Board of Zoning Appeals hearing that took place on August 12<sup>th</sup>, 2019. The members of the Board indicated during that hearing that the public comment period closed on July 29<sup>th</sup>, 2019. However, on August 8, 2019, the Board received and accepted 2 emails in support and a letter from the Applicant. However, the Board did not allow for additional comment at the August 12, 2019 hearing, stating the public portion closed on July 29, 2019 (despite allowing additional information from the applicant) The recognition that further public opinion was received and taken into consideration indicates the public should have been allowed to speak at the on August 12<sup>th</sup>, 2019 in which the decision was made. This created bias in the decision process that should be remedied before closing the application.

The misinterpretation in fact occurred at the Highland District Council that took place on Monday August 5<sup>th</sup>, 2019. This hearing attracted a large coterie of individuals both for and against the application in question, which the letter sent by the District Council (the 'Resolution of Support the Parking Variance at 1886 Ford Parkway') recognized. However, the letter mischaracterized the group in support of the variance as neighbors of the development. These individuals stated at the meeting that they were customers of the applicant, and not neighbors of the facility, and they argued on the merits of the need for daycare in the area. There were so many individuals at the meeting, that individuals were only given one minute to speak, and there was no time allotted for discourse. This meant that a disproportionate amount of time was spent articulating the merits of the daycare itself, which was not in question in the application or by the

neighborhood. It distracted from the explicit purpose of the meeting, which was meant to discuss the parking variance. As a result, the modifications provided by the applicant, which was the basis for approval by the Board, did not address the concerns expressed by the neighbors of the development.

### **Erroneous findings and Issues with the Applicant's Proposed Modifications**

The Board erroneously found that there are practical difficulties in complying with the zoning provision. The Board also erroneously found the plight of the landowner is due to circumstances unique to the property not created by the landowner. Moreover, the Applicant provided several modifications to address concerns expressed in the Highland District Council meeting, however the issues most critical to the requested variance – the size and scale of the building and the actual parking needs related to the proposed daycare capacity– were not addressed adequately.

#### **Size and Scale:**

The Applicant declined to address the size and scale of the building because the current structure is designed within the bounds of the zoning requirements. We accept this to be true, however the lack of space for parking, and the necessity to seek a legal zoning variance, is not the result of unique characteristics of the property, but is created solely by Applicant through Applicant's proposed size, scale, and capacity of the desired daycare facility. It is clear given the applicants unwillingness to discuss the size and scale of the building, that the sole motive in this application is to increase revenue and profitability generated from the daycare – both are solely economic considerations. The size and scale, which is the primary cause of the need for increased staff and parking, cannot be linked to practical difficulties in complying with the zoning provision and economic considerations cannot constitute practical difficulties.

The growth potential that the size and scale of the building allows should be treated as a critical fact because it would place the building in further breach of the zoned parking requirements. While the applicant has stated that they seek to double their student capacity from 41 to 82 students, the size of the proposed building allows them to increase the revised capacity significantly. The indoor facility requirements for a day care, as stated by the Minnesota Department of Human Services, is 35 sq ft per child. The proposed building, at 7,755 gross sq ft provides 95 sq ft per child (assuming 82 children at the daycare) – three times more space than is required. Given that the number of required parking spaces is in direct proportion to the number of staff needed to care for the children in the daycare, as the enrollment presumably increases over time, so will the number of staff that need parking. So, while today we are debating a 50% variance, the scale of the variance could easily increase over time with little to no accountability of the daycare to the community. This will create even further burden than what has been discussed so far. The excess of space for students also demonstrates ample room in the design to decrease scale to be in better compliance with zoning laws pertaining to parking, address neighborhood concerns, and still allow for growth of the business.

### Parking and the Alleyway:

The proposed scale and capacity of applicant's daycare will cause harmful encroachments on neighboring properties. The encroachments are inherent consequence of the increased vehicle traffic that will result from the proposed daycare capacity. The applicant proposed remediation to the concerns about parking for staff and parents and the congestion and safety of the alleyway. While we appreciate the proposals, none of them seem to be enforceable or include any accountability measures for the applicant, who to date has not demonstrated the ability to control the behavior of its parents or staff. The proposals ranged from asking parents to sign a letter indicating they would use the front entrance, to introducing signage to the alleyway to caution of children living in the area and to reinforce slow driving. For staff, they indicated they may provide public transit passes and encourage walking or biking to work.

For the sake of brevity, we will not walk through each proposal, however our overarching concern is that the solutions are short term fixes that are not enforceable for the long term. While asking parents to sign an agreement to pick up and drop off on Ford Parkway is a reasonable first step, there have not been any steps proposed that would make sure there is follow-through with enforcing this agreement. Given there is no spatial or structural barrier to prevent parents from dropping off in the alleyway, this relies on total compliance, which has not happened at the daycare to date. It's also worth considering that Ford may not have enough space for 82 (or more) sets of parents to pick up or drop off in front of the daycare where the road merges to a single lane. This will become particularly burdensome to parents in the winter when snow accumulates on the curb of Ford Parkway, making it difficult, and a possible safety hazard, to pick up and drop off on that street. This type of congestion will continue to present safety concerns both to families of the daycare dropping off and to the residents living on the block, which illustrates the need for a structural solution to the parking and traffic concerns.

With respect to staff parking, the remediation of providing public transportation passes and encouraging biking/walking to work may be reasonable for the profile of their current staff, but this will not always serve the needs of future hires. It is impossible to predict the profile of their staff in the long term, so by not fixing the underlying issue that they do not have the spaces required for their staffing needs, it creates a future state where staff would be forced to park on side streets, or on Ford, creating increased traffic in the neighborhood. This increased traffic could also burden the parents trying to pick up/drop off, potentially funneling them back to the alleyway where the issues of the parking variance begin as their current use results in double parking and safety hazards to the residents of the block. While this type of situation is hypothetical, it is meant to illustrate that by not addressing the underlying parking issues, the variance has the potential to create significantly more problems in the community in the future.

In addition to the long-term concerns mentioned above, it is not clear that there is an effective way for the neighborhood to hold the daycare accountable for issues that occur in the future. The lack of structure built into the proposals creates a solution that may address neighborhood concerns in the short term, but creates an environment that enables the same issues to return and grow in severity in the long term. It will place the burden on neighbors to file complaints with law enforcement and political representatives, which will be corrosive to the relationship of all stakeholders involved. If it is the goal of the applicant and the Board to address neighborhood

concerns, then more direct steps to remediation should be outlined if structural changes to the building's size and capacity will not be discussed.

### Conclusion

In conclusion, we appeal the Board's decision and demand the Council deny applicant's requested variance. Our demand relates directly to the errors in procedure, fact, and findings of the Board. The conversation leading up to the approval was mired with emotional discourse about the need for daycare, a topic that is not in question or up for consideration by the Board. The consideration for the approval of the zoning variance should be made in relation to the parking variance presented by the building's size and proposed daycare capacity, which is a significant reduction of 50% parking for staff, and may only increase given the growth potential enabled by the scale of the building.

Further, the impact of this decision is going to be most pertinently felt by the direct neighbors and the applicant, so should be addressed by those two parties prior to approval. The neighbors are concerned with the deterioration of the safety and character of the neighborhood and the inherent encroachments that will result from this proposal. The applicant is concerned with the evolution and growth of their daycare facility. Both concerns can be amicably addressed within the bounds of the properties in question if there is willingness to have a discourse about the size and capacity. If there is no willingness to address the size and capacity of the building, then the material breach of zoning requirements should be evaluated in concert with the context of the short and long term impact, which have not occurred to date.

Sincerely,

A handwritten signature in black ink, appearing to read "Seth Brand", with a long horizontal flourish extending to the right.

Seth Brand