



**APPLICATION FOR APPEAL**

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

Zoning office use only

File no. ~~10-917471~~ 10-917471

Fee \$435

Tentative hearing date:

11/17/10

**APPLICANT**

Name: Wilkerson & Hegna, PLLP – Kyle Hegna, Esq.  
Address: 7300 Metro Blvd., Suite 300  
City: Edina                      St.: MN      Zip: 55439      Daytime phone: 952-897-1707  
Name of owner (if different): 2446 University Ave. L.L.C.

**PROPERTY LOCATION**

Address: 2446 University Ave., St. Paul, MN  
Legal description: See Attached Exhibit A.

*(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 702, Paragraph a) of the Zoning Code, to appeal a decision made by the Planning Commission

on October 22, 2010.      File number: 10-797-728  
*(date of decision)*

**GROUND 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.

SEE ATTACHED EXHIBIT B.

*(attach additional sheet if necessary)*

Applicant's signature

Date 10-29-10

City agent

Tom Beach

**EXHIBIT B**

**GROUNDS FOR APPEAL**

**WILKERSON & HEGNA, P.L.L.P.**

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OUR FILE NO 25169

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JOANN K. BERG  
JOAN N. YOUNG

October 29, 2010

**VIA U.S. MAIL**

Saint Paul City Council  
C/O Tom Beach  
15 Kellogg Blvd., West  
Room 310  
Saint Paul, MN 55102

**RE: 2446 UNIVERSITY AVENUE  
GROUNDS FOR APPEAL OF A DECISION BY THE PLANNING  
COMMISSION  
FILE NO.: 10-797-728**

**I. GROUNDS FOR APPEAL**

The grounds for this appeal include, but are not limited to the following: The parking on the 2446 University Avenue property has been used this way since the building was constructed approximately fifty (50) years ago. The City previously provided its approval of the parking for 2446 University Avenue. If there is any issue with the use of the parking spaces, it is a private dispute between the 2446 University Avenue property owner and the neighboring property owner, and does not and should not involve the City.

## II. FACTUAL BACKGROUND

### a. *Property History*

2446 University Ave., L.L.C. (“2446 University”) owns the property at issue in this appeal, located at 2446 University Avenue, Saint Paul, MN 55114 (the “Property”). In 2004, Site Plan 04-147310 (the “Plan”) was submitted to the City of Saint Paul (the “City”) in order to obtain approval to create several parking spots located on the east side of the Property. The Plan was approved by Zoning Specialist Tom Beach (hereinafter “Mr. Beach”) in a letter dated October 31, 2004. The approval was subject to certain conditions, including site improvements, permits from four different City departments, along with a time limit for completion and an inspection. The parking spaces were constructed, the Plan was approved and the parking spaces have been used ever since without incident. Moreover, the area occupied by the parking spaces has been used to park vehicles since the building was constructed approximately fifty (50) years ago. In a letter dated August 12, 2010, Mr. Beach rescinded his approval of the Plan based on objections from the owner of the neighboring property located at 2420 University Ave. (hereinafter “2420 University”). Pursuant to section 61.701 of the Saint Paul City Municipal Code, 2446 University filed this appeal challenging Mr. Beach’s decision. The only reason the Zoning Committee Staff has given in support of its request to deny the appeal is because “. . . the only access to [the] parking spaces is across the adjacent property.”<sup>1</sup> The Planning Commission upheld the decision of the Zoning Committee Staff, and pursuant to section 61.702(a) of the Saint Paul City Municipal Code, 2446 University filed this appeal challenging the Planning Commission’s decision.

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<sup>1</sup> Zoning Committee Staff Report, ¶ H.

### III. ISSUE

1. Was Mr. Beach within his authority to rescind his 2004 site plan approval of the parking spaces and require 2446 University to obtain an easement from 2420 University?

*Under Title VIII of the Saint Paul City Code, Mr. Beach exceeded the scope of his authority by rescinding his 2004 approval of the parking spaces because the reasons for the rescission involves a private property dispute between 2446 University and 2420 University and the dispute is not a valid reason under the Zoning Code to rescind the approval. 2446 University does not have to obtain an easement in order to continue to use the parking spaces because 2446 University has lawful access to the parking spaces as they are located on the Property.*

### IV. ANALYSIS

#### a. *Standard of Review*

As a preliminary matter, it is important to note the standard of review that Minnesota courts use in reviewing the decisions of administrative agencies. In short, administrative agencies are prohibited from making decisions that are arbitrary and capricious.<sup>2</sup> An agency ruling is arbitrary and capricious if the agency (1) relied on factors not intended by the legislature; (2) entirely failed to consider an important aspect of the problem; (3) offered an explanation that runs counter to the evidence; or (4) the decision is so implausible that it could not be explained as a difference in view or the result of the agency's expertise.<sup>3</sup> Moreover, on appeal from a zoning decision, the courts determine whether the municipality's action was reasonable.<sup>4</sup> The decision by the municipality must be "legally sufficient and supported by the facts."<sup>5</sup> Zoning ordinances are strictly construed "against the city and in favor of the property owner."<sup>6</sup> In this case, the Planning Commission has failed to make a reasonable decision, and its conclusions are arbitrary and capricious because the Planning Commission has failed to consider important facts and has relied on factors that are outside the authority of the Planning Commission.

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<sup>2</sup> *VanLandschoot v. City of Mendota Heights*, 336 N.W.2d 503 (Minn. 1983).

<sup>3</sup> *In re Administrative Order Issued to Wright County*, 2010 WL 2650520.

<sup>4</sup> *Honn v. City of Coon Rapids*, 313 N.W.2d 409, 417 (Minn. 1981)

<sup>5</sup> *C.R. Investments, Inc. v. Village of Shoreview*, 304 N.W.2d 320, 325 (Minn. 1981).

<sup>6</sup> *Amcon Corp. v. City of Eagan*, 328 N.W.2d 66 (Minn. 1984).

**b. Saint Paul Zoning Code**

Title VIII, Chapters 60 through 69 of the Saint Paul City Municipal Code (the “Zoning Code”) governs Mr. Beach’s decision to approve, and then rescind, the Plan at issue on this appeal. To begin with, section 60.103 provides the intent and purpose of the Zoning Code. The intent and purpose of the Zoning Code is outlined in several paragraphs of section 60.103, but generally the primary purpose is “to promote and to protect the public health, safety, morals, aesthetics, economic viability and general welfare of the community” and “to regulate the location, construction, reconstruction, alteration and use of buildings, structures and land.”<sup>7</sup> Specifically as it applies to this appeal, the stated purpose of the Zoning Code is “[t]o lessen congestion in the public streets by providing for off-street parking of motor vehicles and for off-street loading and unloading of commercial vehicles.”<sup>8</sup> Furthermore, section 63.304 of the Zoning Code provides that parking location for nonresidential off-street parking “shall be...on the same zoning lot as the building it is intended to serve.”

**c. The Planning Commission has exceeded its authority under Title VIII**

Section 61.402 of the Zoning Code details the requirements for submitting a Site Plan Review, along with the standards of review and approval that must be used by the Planning Commission. In reviewing a site plan, the Planning Commission “shall consider and find that the site plan is consistent with: the City’s comprehensive plan, applicable ordinances, preservation of the City’s historical characteristics,” among other important considerations.<sup>9</sup> Nothing in the Plan violated the City’s comprehensive plan, local ordinances, or undermines the City’s historical characteristics.

Moreover, specifically at issue in this appeal, the planning commission must also consider: (i) protection of adjacent and neighboring properties through reasonable provision for such matters as surface water drainage, sound and sight buffers, preservation of views, light and air, and those aspects

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<sup>7</sup> See § 60.103(a) – (t); 60.103(a) and (d).

<sup>8</sup> § 60.103(g).

<sup>9</sup> § 61.402 (c)(1), (2) and (3) (Factors such as energy conservation, sewer run-off needs, landscaping, site accessibility in accordance with ADA, and erosion control; such factors are inapplicable to this appeal).

of design which may have substantial effects on neighboring land uses; (ii) the arrangement of buildings, uses and facilities of the proposed development in order to assure abutting property and/or its occupants will not be unreasonably affected; and (iii) safety and convenience of both vehicular and pedestrian traffic both within the site and in relation to access streets, including traffic circulation features, the locations and design of entrances and exits and parking areas within the site.<sup>10</sup> The Zoning Code directs the Planning Commission to consider the above-listed factors – they are not mere suggestions.

*i. There is no substantial effect on 2420 University*

As to the first factor listed above, the Planning Commission simply cannot point to any substantial effects on the neighboring land use. There is an access easement along the neighboring property to the east of the Property. 2420 University's tenants actually park within the Access Easement cited in the Zoning Committee Staff Report, and they have done so for years. If 2420 University's tenants were to actually park within the small strip of land cited in the Staff Report, traffic flow through the Easement Area would be severely hampered.<sup>11</sup> All the current property owners have this land for access to parking in its current configuration for years without any problems. The Staff Report focuses on cars parked along the building on the Property, but there are several cars noticeably parked within the Access Easement, which appear to be vehicles from 2420 University.<sup>12</sup> Not only does this violate the Access Easement, but such parking violates section 63.304 of the Zoning Code.<sup>13</sup> As the parking is currently configured, there is simply *no effect* on 2420 University in order to reach the parking spaces on the Property.

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<sup>10</sup> § 61.402 (c)(4), (5) and (7).

<sup>11</sup> § 61.402 (c)(7) (Such an arrangement would not be safe or convenient and violate section 61.402(c)(7)).

<sup>12</sup> Zoning Committee Staff Report, Satellite Picture 2009; See Attached photos, 2010.

<sup>13</sup> "Off-street parking for other than residential use shall be . . . on the same zoning lot as the building it is intended to serve."

*ii. There is no unreasonable affect on 2420 University*

As to the second factor, there must be an unreasonable affect on the abutting property. 2420 University uses the Easement Area to park along the neighboring property's building, just as the Property uses its parking spaces. 2446 University's tenants do not block the access Easement Area for any extended period of time, nor is it used to store any materials. The affect on 2420 University is purely negligible. Somewhat outlandishly, the owner of 2420 has stated that he is considering "building a fence along the shared property line."<sup>14</sup> At the same time, the owner of 2420 University continues, as it has for years, to park in the Easement Area preventing use of the Easement Area for its intended purpose, for access and through-traffic. Notwithstanding possible Fire Code violations, such a fence would cause unnecessary congestion in the alley, and limit access for trucks and other vehicles accessing other portions of parking and loading docks within the Property. Put simply, the parking spaces at issue do not have a substantial effect on the neighboring land use, or create an unreasonable burden on the neighboring property. In fact, the effects of a few parking spaces are insignificant, and any issue over the location of an easement is a purely private dispute between neighbors. As the City Council can see, this creates a situation of the Planning Commission over stepping its authority and acting as a court of law if it rules on the rights of the property owners. Nothing in the Zoning Code authorizes the Planning Commission to rescind its approval based on the requirement that the property owner must obtain an easement to access her own property.

*iii. Use of the parking spaces is safe and convenient*

The third factor the City Council must consider is the safety and convenience of both vehicular and pedestrian traffic.<sup>15</sup> It is safe and convenient to allow 2446 University to use the parking spaces as currently configured because they allow 2446 University tenants to pull right up along side the Property and ease congestions in other areas. It is convenient for 2446 University tenants to continue

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<sup>14</sup> Zoning Committee Staff Report, ¶ G(6).

<sup>15</sup> § 61.402 (c)(7).

using the parking spaces as they have been used for years. The reason cited by Mr. Beach for revoking the Plan is based purely on a private property dispute and had nothing to do with the safety and convenience of the Plan.

***iv. The grounds for revocation are unreasonable under Minnesota law***

The Minnesota Court of Appeals has previously held that when a local municipality bases its zoning decision on grounds that are “private matters to be resolved by [private] parties,” the municipality does not have a reasonable basis on which to base their decision.<sup>16</sup> In *Odell v. City of Eagan*, the landowners sought a variance from the City of Eagan and were denied. The denial was based on the fact that the variance would violate a restrictive covenant within the subdivision. The Court found that fact to be an insufficient basis on which to deny the landowner’s application for a variance, because the City of Eagan did not have any authority to base its decision on purely private party interests, nor would the City of Eagan even be a party to that potential dispute between private parties.

*Odell* is similar to this case because Mr. Beach based his decision to rescind the parking spots based on the complaints of another private property owner, rather than under any legal authority. Title VIII does not give the City the authority to mandate that a private real estate transaction take place between two private property owners, under the veil of the zoning ordinance, that in no way furthers the purpose of the ordinance. If the owner of 2420 University has a problem with the parking spaces on 2446 University, then that is an issue to be taken up by 2420 University, not the City.

The requirement that 2446 University must obtain an easement from the neighboring property owners is arbitrary and capricious and not supported by law. Title VIII does not authorize or require the City to be the guardians of Ramsey County’s Recording Office, nor ensure that every piece of private property has the proper documentation on record in order to cross onto another’s land. If the

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<sup>16</sup> *Odell v. City of Eagan*, 348 N.W.2d 792 (Minn. App. 1984).



owner of 2420 University disputed 2446 University's use of the property, it would be up to them to initiate an action against 2446 University in court. Nowhere in Title VIII does it allow a zoning specialist to revoke a previously approved site plan due to the fact that a private real estate transaction has not taken place. Furthermore, the Planning Commission failed to even consider the actions of the owner of 2420 University, and question why it is acceptable to block the Access Easement in the first place. Cars have parked along the east side of the Property for over fifty years without issue. Notwithstanding a few blurry satellite pictures from unspecified dates, the Zoning Committee cannot provide any basis for its conclusion that no cars parked in the area. Simply put, the best they could do was state a year along with a blanket conclusory statement. Even worse, the Zoning Committee admits that their own satellite photos are "not clear," but then go on to state that there is "no evidence that cars have been parked in the area."<sup>17</sup> What is clear is that the Zoning Committee has taken sides in a private property dispute based solely on the complaints of a private citizen without any regard for the Zoning Code.

## V. CONCLUSION

In conclusion, the Planning Commission has reached an unreasonable and arbitrary conclusion in this matter. Not only has the Planning Commission failed to consider all facts in this matter, it has also failed to cite to applicable law justifying its decision. In fact, its decision runs counter to Minnesota law in that a municipality cannot make its zoning decision based on "private matters to be resolved by private parties."<sup>18</sup> The parking spaces comply with section 63.304 Zoning Code as the parking spaces are nonresidential, off-street parking, and they are on the same zoning lot as the building it is intended to serve. Certainly, keeping the parking spaces as they have been used will

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<sup>17</sup> Zoning Committee Staff Report, ¶ G(5).

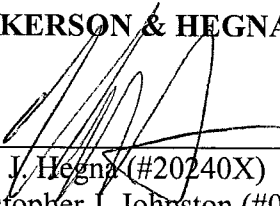
<sup>18</sup> See *Odell v. City of Eagan*, 348 N.W.2d 792 (Minn. App. 1984).

lessen congestion in the public streets by providing for off-street parking of motor vehicles and for off-street loading and unloading of commercial vehicles, as intended by the Zoning Code.<sup>19</sup>

Respectfully submitted,

**WILKERSON & HEGNA, P.L.L.P.**

10-29-10  
Dated

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<sup>19</sup> See § 60.103(g).