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NOV 14 2018



Application for a Zoning Appeal

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

To/From Planning Commission
Zoning Section
Dept. of Planning & Econ. Dev.
1400 City Hall Annex
25 West Fourth Street
Saint Paul, MN 55102-1634
(651) 266-6589

Zoning office use only
File # 18-122975
Fee \$462
Tentative hearing date:

Appellant Information

Name George Hark
On behalf of M & A Hark, Inc.
Address 675 Stinson Blvd
City Mpls State MN Zip 55413 Daytime phone 612-986-5230
Email George@harksc.com

Property Location

Project Name Speedy Dale Tobacco Shop
Address 589 Dale St N

Type of Appeal: Application is hereby made for an appeal to the:

- Planning Commission, under the provision of Chapter 61, Section 701, Paragraph C of the Zoning Code, of a decision made by the Planning Administrator or Zoning Administrator on (date of decision)
Board of Zoning Appeals (BZA), under the provisions of Chapter 61, Section 701, Paragraph C of the Zoning Code, to appeal a decision made by the Zoning Administrator on (date of decision)
City Council, under the provision of Chapter 61, Section 702, Paragraph A of the Zoning Code, of a decision made by the Planning Commission or the Board of Zoning Appeals (BZA). 18-113695 (file number)

Grounds of 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, finding, or procedure made by the Planning Commission or BZA.

SEE ATTACHED

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NOV 14 2018
By: City of St Paul DSI

(Attach additional information as needed.)

Appellant's signature [Signature] Date 11/14/18 City agent [Signature]

**SPEEDY MARKET DALE**  
**589 Dale Street North**  
**Saint Paul, Minnesota 55103**

14 November 2018

Dear Council members,

City of Saint Paul Council members we appreciate that you will take the time to review our appeal. We very much appreciate that you respect that our 25 Years of service doing business in the community is our priority. Our business plan is to continue to invest in this Community and be active members. In fact, our proposed plan serves to enforce the spirit of the new ordinance by protecting our children from being exposed to tobacco products nor able to obtain them.

We are appealing to the City Council, of a decision made by the Board of Zoning Appeals, File 18-113695.

There has been an error by the BZA in ruling to deny our request for a variance at 589 Dale St N, a location we have owned and operated since 1993. We now further add to our variance application letter that was reviewed by the BZA additional factors why our variance should have been granted.

In particular, we refer to prior variances granted to 1196 Rice St Tobacco (File #18-069917) and 1724 W University Ave (File #18-092702), both dealing with separation requirements between tobacco stores.

- The staff report states that the separation requirement is in place to prevent over concentration of tobacco product shops in a specific area. 589 Dale St N is located in the Frogtown Neighborhood where there is no concentration of tobacco shops. To the North and Northwest of the store, there is no tobacco stores for at least 2 miles; as well if you travel west (along University) all the way to Midway/Snelling area. The only distance issue is 440 University Ave located in the Summit/University Neighborhood. To say there is any concentration would not be correct. This is found when comparing the different neighborhoods that each stores services.
- The majority, if not all, the 440 University Ave patrons will live in the Summit-University Neighborhood or frequent the area for public transportation. Our 589 Dale patrons do not have commonalities with the 440 University Sun Market customers, due to the different neighborhoods each store operates in, and our site being North of University/Metro Line and West of Dale.
- In July 2018, the BZA Allowed both locations at 1196 and 956 Rice St to co-exist in the same area and along the same street, which is surely causing more concentration of tobacco shops than our location would. Our location has no neighborhood similarities to 440 University Ave, would take double the walking distance that it would take customers to walk between both Rice St shops. Both Rice St locations serve the same neighborhood and no matter if you walk or drive, it's the same distance between both. For the BZA to find that allowing our establishment to open could further diminish the purpose of the separation requirement is neither correct or consistent with the finding in the 1196 Rice St variance approval.

- Unlike the Variance granted for 1196 Rice St Tobacco (File #18-069917) for its separation requirement between it and the Rice St Market/Minnoco, which are on the same exact street where there is no other way to measure but a linear line from property line to property line. In our case, it is not fair to measure the distance as the liner line from property line to property line, whether it be the corner or middle points of both properties, because that line would not be one that customers would use to visit the store whether by foot or car (cutting through houses, yards and lots).
- The nature of our location is and will always be a neighborhood store for the Frogtown community. The University Ave tobacco store is not similar to the Frogtown neighborhood we have been a part of for 25 years, our customers have voiced that view as well, and recently felt it after the ordinance became effective. Neighborhood Support has been intense since the new ordinance became effective on Nov 1<sup>st</sup>. Complaints about having to drive to multiple locations to purchase their goods, or having never heard of Sun Market, and when they do, they mention the liquor store across the street and would rather not be exposed to that area. During the BZA hearing, not one local neighbor showed up to oppose, while we had two customers show up to back up our managing and operating backgrounds, and state the difficulties in getting to the 440 University site. The only opposition came from two people who do not reside in the neighborhood or in the city of St. Paul.
- We are mainly a neighborhood store, and depend on a huge portion of neighborhood customers that walk, and if not granted, have no alternative but to walk to the nearest tobacco stores. That cold walk south and across the metro line can be brutal during the winter months, and our customers are already feeling it along with our business. Mentioned prior about the distance measurements and regarding our regular customers, some of which have been frequenting us for over 20 years, they would have to walk well over the ½ mile separation requirement, and if they lived on Thomas, it would be well over a mile walk. Making customers or older neighborhood seniors walk 15min in the cold each way, or during the summer months, would be taking away and harming a neighborhood family run store that has existed in harmony with the Frogtown neighborhood for 25 years.
- Our proposal to move all the cigarettes (menthol and non-menthol) and all other tobacco products, to the exclusive tobacco store, would be in line with the intentions of the ordinance passed by the city. That intention, outlined in the staff report, states that “limiting the sale of menthol cigarettes and other flavored tobacco to tobacco products shops is intended to discourage the exposure of these products to underage youth”. We believe in applying the ordinance, but further are proposing that we cancel our license in our gas station and convenience side, and transfer all of our products to the tobacco side. In the spirit of enforcing the true goal of this new ordinance, no youth will be allowed to purchase or even be exposed to youth targeted tobacco marketing. We will pull all tobacco related advertisements and signs out of our gas station and front doors, and will not allow anyone under the age of 18 to enter the tobacco store. That way any customer entering the gas station, deli or convenience store, and specifically the neighborhood youth, will not be exposed to any tobacco products at all.

- Moreover, our proposal keeps our business selling what it has legally sold since 1993, and we have no intention of increasing our product line or increase our current sales or adding any new use to the property. We are only trying to maintain our business value by creating the exclusive tobacco store. It has been 13 days since the passage of the menthol ban, we have records to show that our business is already down 42% overall, and the plight that the staff report stated we did not meet, has already occurred. That plight was found to be sufficient for the variance granted at the 1724 W University Ave, Little Grocery store (File#18-092702), which the staff report stated, “would be a plight to the landowner to cease the sale of one of his products and let the other business owner continue. The location of the convenience store in relation to the existing tobacco products shop is a circumstance unique to the property not created by the landowner.” In this case, the grocery and tobacco stores at 440 University and Rice St will be adding all the sales that we have lost, they will benefit from the ordinance, while we will take heavy losses. This is not a “self-created” plight like the staff report stated. Again, we are wanting to stay in line with the legislative intent of the ordinance, and this variance allows us both to meet this goal. Now referring to the variance for 1196 Rice St, the BZA used the same language as the staff report used in the 1724 W University Ave above, that is “It would be a plight to the landowner to cease the sale of one of his products and let the other business owner continue. The location of the convenience store in relation to the existing tobacco products shop is a circumstance unique to the property not created by the landowner.” Based on prior rulings of the BZA, it is “preferable that there be consistency” and looking at the 1196 Rice St and 1724 W University findings of plight to the owner, it would be consistent to say 589 Dale St would suffer extreme plight, some of which is already reflected in the last 13 days since the ordinance went into effect.
- We also did not hear any discussion about the financial hardships we will be incurring. We are aware that the variance application states financial hardship by itself can not be a practical difficulty, but the BZA did not give it any weight in its decision because it was never discussed during the hearing. Even though we stated the hardships that would be sustained, not one member acknowledged or followed up on it. The nature of a gas station business is unlike that of a grocery store or convenience store. Gas stations have fuel supply contracts with volume requirements, franchise fees, make low profits on gas sales, incur high environmental maintenance costs, and at this particular site have made very costly upgrades in equipment. The current site recently invested \$185,000.00 into underground work that added ethanol based fuels to the neighborhood. In installing this new equipment, we worked with the Biofuel association and the American Heart and Lung association in adding environmental awareness to the community. We mention the differences between a gas station and grocery store because of the last two variances granted by the BZA to Rice St Tobacco and the Little Grocery Store, both grocery stores that do not have the financial commitments or contracts that a gas station should.

Again, thank you for your time and courtesy.



George Hark



# RECEIPT

## CITY OF SAINT PAUL

DEPARTMENT OF SAFETY AND INSPECTIONS  
Fire Inspection Division  
375 Jackson Street, Suite 220  
Saint Paul, MN 55101- 1806  
Phone: 651- 266- 8989

Payment #: 1306784

Payment Date: November 15, 2018

Paid By: M AND A HARK INC  
675 STINSON BLVD  
MINNEAPOLIS MN 55413- 2762

Amount Paid: \$462.00

Payment Type: Cash

### Transaction Description

Project Location: 589 DALE ST N  
ST PAUL MN 55103- 1604

18- 122975

TYPE: CITY COUNCIL CASES

Total Square Feet of All Lot(s)	10000	Type of Appeal	BZA- Major Variance
Type of Appellant	Commercial, Industrial, Institutional	Date of City Council Hearing	Nov 28, 2018
City Council Mailing Date	Nov 18, 2018	Zoning Committee Abstentions	0
City Council Packet Mailing Date	Nov 21, 2018		

### FEES

Permit Fee	\$ 462.00
<b>TOTAL</b>	<b>\$ 462.00</b>