## INFORMATION COVER SHEET

ITEM#

ZONING FILE # 14-331173 APPLICATION TYPE: Appeal of #14-316432

FOLDER NAME: 344 Summit Ave Hotel Appeal

OWNER NAME AND ADDRESS:

OWNER TELEPHONE NUMBER:

**344 S A LLC** 6 5<sup>th</sup> St. W.Ste 900 St. Paul MN 55102

APPLICANT NAME & ADDRESS

APPLICANT TELEPHONE NUMBER#

Summit Avenue Residential Preservation Assn.

(612) 414-3790

1358 Summit Ave. St. Paul MN 55105

REPRESENTATIVE NAME AND ADDRESS:

REPRESENTATIVE TELEPHONE NUMBER #:

OTHER INTERESTED PARTY NAME AND ADDRESS:

OTHER INTERESTED PARTY TELEPHONE #

John Rupp 366 Summit Ave. St. Paul MN 55102

ADDRESS OF PROPERTY AND PROPERTY LOCATION:

344 Summit Avenue Between Western and Virginia

LEGAL DESCRIPTION: see file

PIN: 012823130056

PURPOSE:

Appeal of Planning Commission approval of a conditional use permit for reuse of a large structure for a hotel

DATE RECEIVED: 9-16-14

FINAL ACTION DATE:

EARLY NOTIFICATION SEND DATE: 9-18-14 HEARING DATE: To be scheduled

LAND USE MAP:

ZONING MAP: 15

PRESENT ZONING: RT2/R2 LOT AREA TOTAL: 52708 sq ft

PLANNING DISTRICT: 8

WARD: 2

PLANNER: Hilary Holmes

PLANNERS TEL: (651) 266-6612

NOTES:

HISTORY: #07-228217 (bldg. warning DSI); #03-314150 (Irvine Ave Plan); #14-316432 (CUP)

## **APPLICATION FOR APPEAL**

Department of Planning and Economic Development Zoning Section 1400 City Hall Annex 25 West Fourth Street

Zoning Office Use Only File #: 14-331

Fee:

Tentative Hearing Date:

	aul, MN 55102-1634 66-6589	# 012823130056
APPELLANT	Address CO 155 X SUMMIT	
PROPERTY LOCATION	Zoning File Name 344 Sumt "Bouka Address / Location 344 Summt Ave	
TYPE OF APF	PEAL: Application is hereby made for an appeal to the:  Planning Commission, under provision of Chapte Zoning Code, of a decision made by the Planning  OR  City Council, under provision of Chapter 61, Sect of a decision made by the Planning Commission	Administrator or Zoning Administrator
Date of decision	on: Planning Coun 9/5, 20 14	File Number: 14-316-432
GROUNDS FO refusal made to Commission.	OR APPEAL: Explain why you feel there has been an erby an administrative official, or an error in fact, procedure or f	rror in any requirement, permit, decision or finding made by the Planning

Please see settled

Attach additional sheets if necessary

Appellant's Signature

K:cmartine/ped/forms/pcappforappeal Revised 8/27/08

15 September, 2014

## The Summit Avenue Residential Preservation Association (SARPA) respectfully appeals the following:

The Planning Commission's September 5<sup>th</sup> decision to grant a Conditional Use Permit (CUP) to 344 Summit Avenue to act as a boutique hotel.

The resolution of the Planning Commission granting the application of John Rupp for a conditional use permit to operate a commercial business at 344 Summit Avenue was incorrect as a matter of procedural fairness, as a matter of law and fact and as a matter of public policy. The house at 344 Summit started life as a home and remained a home for decades. In 1950, one of many periods in the history of Summit Avenue when the residential character of Summit Avenue was under attack, it became the home of the College of Visual Arts—a non-residential use permitted in its zoning district. That period came to an end when the College ceased operations.

Our appeal is based on the fact that commercial hotel use is explicitly disallowed in the RT2 residential zoning area. Such a use is only allowed in more intensive zoning areas (T1 if specifically located within a transit zone, which this property is not, otherwise B3). The exception within residential zoning codes for the re-use of buildings over 9,000 square feet applies only to uses otherwise approved within that zoning category (see the asterisks on the attached City of Saint Paul form); this was confirmed at a recent meeting in which City Attorney Peter Warner went on record as saying that any use not stated within the zoning code language was explicitly disallowed (please note that there is no zoning code definition for a "boutique residential hotel," but in consultation with other cities such as Seattle and Cambridge, such proposals have been considered simply as hotels.) It is not meant to introduce more intensive uses within the zoning, as that would in essence serve as illegal spot rezoning. Thus, the decision of the Planning Commission is in error and should be overturned out of hand.

Were this use actually to be allowed, we find a number of issues with the findings of the second staff report, as revised and distributed shortly before the BZA meeting of August 28.

Indeed, we find fault with the essence and timing of that revised report; its late distribution, and replacement of the original report dated 8/21, precluded appropriate public review and participation.

The decision of the Planning Commission is based on an unfair and procedurally flawed public hearing process before the Zoning Committee. The Zoning Committee is legally obliged to have a public hearing on any application for a conditional use permit and the Planning Commission in its resolution stated that its decision was "based on evidence presented to its Zoning Committee at the public hearing." Given the fundamental importance of the public hearing it is

plain that such public hearings are not just for show. The public must be given a fair and meaningful opportunity to understand the issues and address them to the Zoning Committee. This is especially important here where the Planning Commission that makes the ultimate decision does not hold a separate hearing nor allow testimony or other input; here the public was denied its right.

The city staff report forms an essential part of the public hearing process and is perhaps the most important part of the material presented to the committee. Therefore it is essential for the public to know the content of that report enough in advance of the public hearing to allow them to analyze it and prepare responses for presentation the committee at that public hearing if need be. In this case the staff report was prepared and available to the public on August 21 a week before the public hearing on August 28. The staff report found that this application for a conditional use permit did not meet almost all of the legally required conditions for granting it. The public, including SARPA, could reasonably conclude that that would be the evidence presented by the city staff to the committee on those matters. Here however, on August 28 at the last hour, the city staff issued an amended report that gutted most of its original findings. At least three of them were summarily changed from "condition unmet" to "condition met." There was no meaningful opportunity for the public to understand the purported rationale for these complete reversals nor to react to them before the zoning committee, nor was there any explanation of what caused the staff to change its position. SARPA's Minnesota Data Practices for data that would allow the public to get to the bottom of this irregular and prejudicial turn of events have not yet been answered. For the above reasons the process which undergirds the Planning Commission's resolution is improper and illegally deprives the public of its right to a public hearing and the resolution should be reversed.

However, we have a number of counter-findings to the amended staff report, which are as follows:

The conversion and re-use of a structure over 9,000 square feet must meet the following standards and conditions:

a) The planning commission shall find that the structure cannot reasonably be used for a conforming use.

The REVISED report finds that residential re-use is "unreasonable." However, the same finding reports on three properties in the immediate area, of similar size, that have been converted into 2-3 unit residential properties. Were this to be the case, the individual properties would be 4,500-2,250 feet each, certainly not unreasonable sizes in today's real estate market. In his letter to the Zoning Committee Kit Richardson documented twenty-one specific instances—by address of homes in excess of 9,400 square feet. SARPA notes that recently both 490 Summit (a former reception house) and 1317 Summit (a former meditation center) have recently been restored to residential use, and 280 Summit is recent new residential construction of a similar size. St. Paul should not allow a home on Summit that could reasonably be a residence(s) to be turned into a non-

permitted commercial use without real evidence—not just speculation—that such a residential use was not "reasonably possible."

This condition is NOT met.

b) The planning commission shall find that the proposed use and plans are consistent with the comprehensive plan.

The staff report finds this condition to be NOT met. SARPA agrees that it is not consistent with the comprehensive plan.

In the eleventh hour revision of the staff report mentioned above, there is some reference to the Summit Avenue Plan, which was then dismissed out of hand since the plan had been decertified (we also note that this de-certification is objected to by SARPA). The unstated but obvious conclusion is that the comprehensive plan is less stringent than the Summit Avenue Plan. However, that conclusion is false for two reasons. First, a fair reading demonstrates that a commercial hotel on Summit is inconsistent with the comprehensive plan. Second, the history of the decertifying of the Summit Avenue Plan makes it plain that it was decertified not because the comprehensive plan provided fewer protections for Summit but rather that all of the protections in the Summit Avenue Plan were contained in the comprehensive plan. Thus, since a commercial hotel would have been inconsistent with the Summit Avenue Plan it is inconsistent with the comprehensive plan.

c) The planning commission shall find that the proposed use and structural alterations or additions are compatible with the surrounding neighborhood and land uses.

Any comparison to the previous institutional use (as explicitly allowed by the zoning code) that this finding makes is null and void. A college cannot be reasonably compare to a hotel; functional use is dissimilar. The property should be compared to its residential neighbors, and of course, was originally built as a residence.

A conditional use permit cannot be granted if the use is not compatible with the surrounding neighborhood. Here the Planning Commission ignored the surrounding residential neighborhood, instead simply stating that a commercial hotel would be a less intensive use than the college that used to be on the site. This is factually unsupported and is at best false logic.

A commercial hotel will have people coming and going at all hours of the day and night. It will either have limousines and taxicabs or personal vehicles jockeying its driveway coming in and out or parking on the street. Moreover, 344 Summit is no longer a college. That use for that building is no longer allowed. The true comparison if one must be made is between the permitted use now, a residence(s) and a commercial hotel and between the neighborhood now which is residential and a commercial hotel. Those true comparisons show that a commercial hotel is not compatible with the neighborhood and should not be

allowed. The Planning Commission used this same logic with respect to other conditions that must be met before a commercial hotel is permitted and it is equally fallacious in those contexts.

A conditional use permit cannot be granted if the use—here a commercial hotel—will be detrimental to the existing character of existing development in the neighborhood. The neighborhood is residential. A commercial hotel is a business. Adding a business to Summit Avenue (which is a residential street in a residential neighborhood) is, by its terms, detrimental to the neighborhood. The Planning Commission first attempted to avoid this basic fact by re-proclaiming that it is better than the college was — that argument was discussed above. Then the Planning Commission explained a commercial hotel is "sort of like" and "sort of similar "to a multi-family dwelling and that is permitted so why not a hotel. To state this argument is to refute it. As an initial matter there has been no request for a determination of similar use nor has any information related to such a determination been presented. More importantly, a hotel is not like a family dwelling in anything other than the most superficial way. People live in a family dwelling. They raise families in a family dwelling. They socialize with and bond with their neighbors who are also living and raising families. And they fight to keep their neighborhood residential. Hotel guests do none of those things. They are patrons of a business who have no stake in the protection of the neighborhood.

SARPA is not aware of a full business plan having been presented for the hotel, which might address some of the nuisance issues that the Planning Commission's decision gave a nod to, such as parking, on-site dining and liquor, or even management of the hotel from an off-site location a quarter-of-a-mile away. In this appeal, those concerns, though perhaps substantial, are immaterial to the main issue. Commercial use of Summit Avenue property is expressly forbidden, not only by the current RT2 zoning.

The use is dissimilar to surrounding land uses, and thus the condition is NOT met.

d) Parking for the new use shall be provided in accordance with the requirements of section 63.200 for new structures.

This condition is NOT met as currently proposed, but could be.

e) Applications for conversion or reuse shall include a notarized petition of two-thirds (2/3) of the property owners within one hundred (100) feet of the property

This condition is apparently met. SARPA notes that the width of both Summit and the nearby lots are so large as to exclude all but the closest properties; in another residential area, the number of signatures needed would be far higher.

In addition, there are five standards that "ALL conditional uses MUST satisfy." SARPA finds that the property meets none of them. The revised staff report feels

that it does not meet at least two of them, which should have triggered an automatic denial.

a) The extent, location and intensity of the use will be in substantial compliance with the Saint Paul Comprehensive Plan and any applicable subarea plans which were approved by the city council.

The revised staff report finds this condition is NOT met. SARPA agrees (see above).

b) The use will provide adequate ingress and egress to minimize traffic congestion in the public streets.

The revised staff report finds this condition is NOT met. SARPA agrees (see above).

c) The use will not be detrimental to the existing character of the development in the immediate neighborhood or endanger the public health, safety and general welfare.

SARPA feels this to be the crux of the matter. This condition is NOT met. Commercial use of Summit Avenue is not, and should not, be allowed, and would indeed be detrimental to the existing residential character of the neighborhood Were this proposal to be granted, the City would have no principled rationale for turning down other commercial uses on Summit — whether than be a funeral home, a boutique clothing store, or a steakhouse.

d) The use will not impede the normal and orderly development and improvement of the surrounding property for uses permitted in the district.

This condition is NOT met; see discussion of residential property above.

e) The use shall, in all other respects, conform to the applicable regulations of the district in which it is located.

This condition is NOT met as it is not residential.

Summit Avenue is unique in this nation. Stretching from the Mississippi River to the Cathedral, though four wards and several neighborhoods, it is the longest and best-kept Victorian residential street in the country. In 2008 the American Planning Association, through its Great Places – Great Streets, program recognized the city of Saint Paul for its efforts to retain the historic character and residential nature of Summit Avenue. Summit Avenue is regarded as the city's greatest draw for heritage tourism, a \$200+-billion dollar national industry, in which studies have found that participants stay longer, return more often, and spend more money than similar, non-heritage-oriented visitors.

Allowing this hotel may seem a little thing in entire scheme of Summit Avenue but it is not. It is really a big thing because of what it portends. This is not the first attack in the battle of business to commercialize Summit Avenue but it is the most serious in recent memory and if the City Council does not overrule the Planning Commission here the assault will begin again in earnest. Summit Avenue is too precious a resource to squander.

Every other major city, from New York to Detroit to San Francisco, once had a similar kind of street, but has lost them due to commercial intrusion. We urge the City Council to protect this outstanding resource, and to honor existing zoning, by overturning the Planning Commission decision and disallowing commercial hotel use of 344 Summit.

city o	f saint paul
plann	ing commission resolution
file nu	umber <u>14 – 57</u>
date	September 5, 2014

WHEREAS, John Rupp, File # 14-316-432, has applied for a conditional use permit for reuse of a large structure for a hotel under the provisions of §65.132 and §61.501 of the Saint Paul Legislative Code, on property located at 344 Summit Ave, Parcel Identification Number (PIN) 012823130056, legally described as Dayton And Irvines Addition Ex Part Of Vac Alley Bet Lots 21 & 22 Blk 69 Desc As Fol Beg At Nw Cor Of Alley Th Sely On WI Of Alley 202.13 Ft Th Nely At Ra 12.5ft Th Nwly Par With Sd WI To NI Of Alley Th Sw To Beg & Swly 35ft Of Lot 19 & All Of Lot 20 & Lo; and

WHEREAS, the Zoning Committee of the Planning Commission, on August 28, 2014, held a public hearing at which all persons present were given an opportunity to be heard pursuant to said application in accordance with the requirements of §61.303 of the Saint Paul Legislative Code; and

WHEREAS, the Saint Paul Planning Commission, based on the evidence presented to its Zoning Committee at the public hearing as substantially reflected in the minutes, made the following findings of fact:

- 1. The application is for a conditional use permit for reuse of a large structure as a hotel at 344 Summit Avenue. The applicant proposes to convert the 18,000 square foot building from the previous college classroom use into a 10-unit fully-furnished luxury hotel. Individual units will have kitchens and bathrooms. The hotel will have shared common areas including a living room, library, office, and kitchen. The side yard will be maintained as open space. The application states that there will be no banquet facility uses at this property, and that no exterior changes are proposed. The application also states that no more than four of the hotel rooms and/or suites would be rented for periods of more than one year.
- 2. The applicant has applied for modification of the parking requirement in § 65.132(d).
- 3. In addition to Planning Commission approval of the conditional use permit, building and fire code approvals through the Department of Safety and Inspections are required for the proposed use. Any exterior changes would require approval by the Heritage Preservation Commission.
- 4. § 65.132 provides for conversion or reuse of residential structures of over 9,000 square feet gross floor area and structures such as churches and schools for uses that would otherwise be nonconforming in a residential zoning district subject to the following standards and conditions:
  - a) The planning commission shall find that the structure cannot reasonably be used for a conforming use. The building is approximately 18,000 square feet. Conforming uses in

moved by	Nelson
seconded by	
in favor	14
against3	Makarios, Oliver, Nelson)

the RT2 residential district include up to four dwelling units, religious and educational institutions, and specified congregate living uses.

Within the last decade three nearby large historic houses have been converted to a conforming number of dwelling units as follows:

Address	Previous # units	Current # units	Square footage per unit	Off-street parking spaces
318 Summit	10	2	~5,244 sf; 2,000 sf	4
322-324 Summit	12	3	5,110 sf; 3,408 sf; 2,686 sf	6
340 Summit	9	2	~ 8,110 sf; 2,000 sf	5

It appears that an existing garage at the rear of the house might accommodate one or two cars, and that three to four parking spaces could be reasonably accommodated in the area of the existing garage if the garage were substantially restructured or removed. Adding parking in the side yard would be undesirable and probably unrealistic because it would compromise the gardens and historic ruins from an original house there and there are associated grading issues. Any of these exterior changes would require Heritage Preservation Commission approval.

The house is so large that reuse for only one to two dwelling units is unreasonable. It is also unreasonable to expect that converting the building into three or four condo units of 4,000-6,000 square feet each, or converting it for other conforming uses, would be marketable with the limited off-street parking that is reasonably possible on the site. This condition is met.

- b) The planning commission shall find that the proposed use and plans are consistent with the comprehensive plan. The proposed use is consistent with Comprehensive Plan Heritage Preservation Chapter Strategy 4 to preserve and protect historic resources and Strategy 5 to use historic preservation to further economic development. The proposed hotel, with individual units that have kitchens and bathrooms, is fairly similar to multifamily dwellings that are permitted in the RT2 district except that they would be rented for shorter periods and would not be a permanent residence for those who rent the units. The shared common areas including a living room, library, office, and kitchen in the hotel are also not unlike shared spaces in many apartment buildings. Therefore, the character of the proposed use is consistent with the description of the "established neighborhood" designation for this location in the Comprehensive Plan Land Use chapter. This condition is met.
- c) The planning commission shall find that the proposed use and structural alterations or additions are compatible with the surrounding neighborhood and land uses. The applicant is not proposing any exterior alterations or additions. The proposed 10-unit hotel will be a less intensive use than the previous institutional use as a classroom building of Saint Paul College of Visual Art. This condition is met.
- d) Parking for the new use shall be provided in accordance with the requirements of section 63.200 for new structures. The off-street parking requirement for the hotel use is three spaces (one space per three occupancy units). The applicant plans to maintain the side yard as open space and gardens. It would challenging to add parking to the side yard due to grading and issues associated with ruins from an original house in the side yard. It appears that three to four parking spaces could be reasonably accommodated in the area of the existing garage at the rear of the house if the garage were substantially

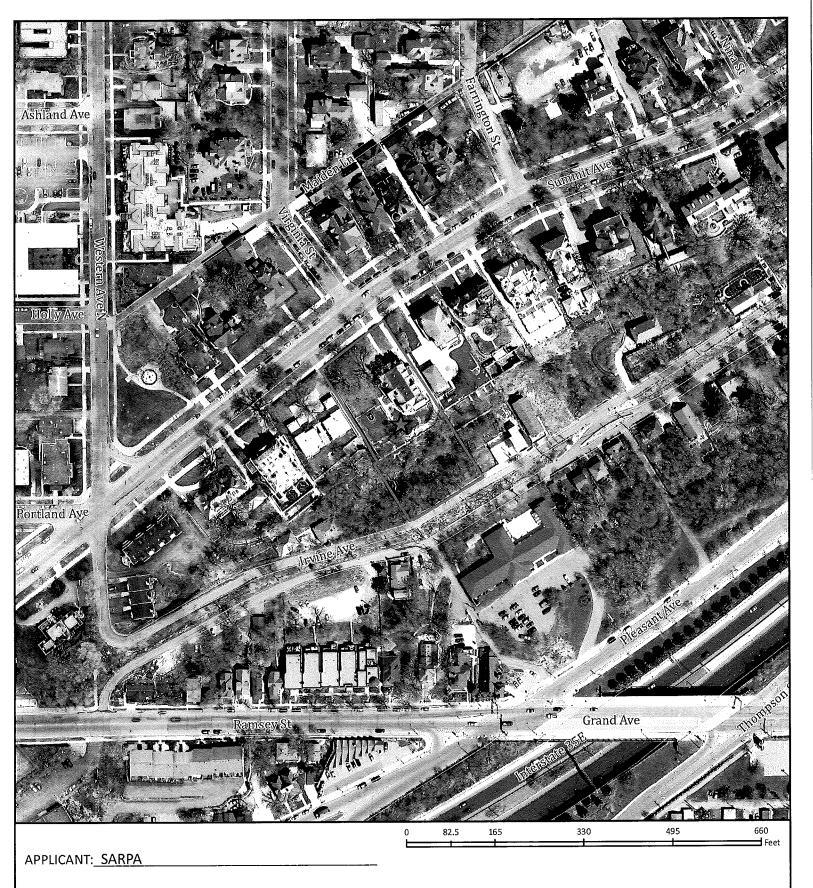
- restructured or removed, and that this condition can be met subject to the condition that such parking is provided. This is contingent on application to and approval by the Heritage Preservation Commission.
- e) Applications for conversion or reuse shall include a notarized petition of two-thirds (2/3) of the property owners within one hundred (100) feet of the property proposed for the reuse, site plans, building elevations, and landscaping plans, and other information which the planning commission may request. This finding is met. The petition was found sufficient on August 5, 2014: 15 parcels eligible; 10 parcels required; 11 parcels signed. After August 5, 2014 three additional parcels were submitted as signed.
- 5. §61.501 lists five standards that all conditional uses must satisfy:
  - a) The extent, location and intensity of the use will be in substantial compliance with the Saint Paul Comprehensive Plan and any applicable subarea plans which were approved by the city council. The proposed use is consistent with Comprehensive Plan Heritage Preservation Chapter Strategy 4 to preserve and protect historic resources and Strategy 5 to use historic preservation to further economic development. The proposed hotel, with individual units that have kitchens and bathrooms, is fairly similar to multi-family dwellings that are permitted in the RT2 district except that they would be rented for shorter periods and would not be a permanent residence for those who rent the units. The shared common areas including a living room, library, office, and kitchen in the hotel are also not unlike shared spaces in many apartment buildings. Therefore, the character of the proposed use is consistent with the description of the "established neighborhood" designation for this location in the Comprehensive Plan Land Use chapter. This condition is met.
  - b) The use will provide adequate ingress and egress to minimize traffic congestion in the public streets. The proposed use will produce less traffic and demand for on-street parking than the previous institutional use as a Saint Paul College of Visual Art classroom building. Given the current layout of the property, vehicles using the driveway need to back out onto Summit Avenue, which could be difficult with the volume of cars driving and parking on Summit Avenue. It may be possible to provide for vehicles using the driveway and/or garage to turn around so that they would be traveling forward as they enter Summit Avenue. This condition can be met subject to the condition that the driveway be changed to provide for all non-commercial vehicles to exit forward onto Summit Avenue.
  - c) The use will not be detrimental to the existing character of the development in the immediate neighborhood or endanger the public health, safety and general welfare. There is a mix of institutional, commercial, and residential uses along Summit Avenue. Between Western Avenue and Dayton/Old Kellogg Boulevard the large historic homes are predominately residential in use. Changing the use of the house from the previous college use to the proposed hotel use is less intensive than the previous institutional use. The proposed hotel, with individual units that have kitchens and bathrooms, is fairly similar to multi-family dwellings that are permitted in the RT2 district except that they would be rented for shorter periods and would not be a permanent residence for those who rent the units. The shared common areas, including a living room, library, office, and kitchen in the hotel are also not unlike shared spaces in many apartment buildings. This condition is met.
  - d) The use will not impede the normal and orderly development and improvement of the surrounding property for uses permitted in the district. There are no exterior changes proposed for the property. The impact of the hotel use will be less than the previous use

- as a college classroom building. The use is similar in character to multi-family residential uses permitted in the district. This condition is met.
- e) The use shall, in all other respects, conform to the applicable regulations of the district in which it is located. This condition is met.
- 6. §61.502 provides for modification of special conditions: The planning commission, after public hearing, may modify any or all special conditions, when strict application of such special conditions would unreasonably limit or prevent otherwise lawful use of a piece of property or an existing structure and would result in exceptional undue hardship to the owner of such property or structure; provided, that such modification will not impair the intent and purpose of such special condition and is consistent with health, morals and general welfare of the community and is consistent with reasonable enjoyment of adjacent property. The use shall, in all other respects, conform to the applicable regulations of the district in which it is located. The applicant has applied for a modification of the special condition in §65.132(d) regarding parking. The off-street parking requirement for the hotel use is three spaces (one space per three occupancy units). The applicant plans to maintain the side yard as open space and gardens. It would be challenging to add parking to the side yard due to grading and issues associated with ruins from an original house in the side yard. It appears that three to four parking spaces could be reasonably accommodated in the area of the existing garage at the rear of the house if the garage were substantially restructured or removed. Therefore, strict application of the special conditions related to required off-street parking would not limit or prevent otherwise lawful use of the property or the existing structure. Providing the required off-street parking of three spaces would not result in exceptional undue hardship. Modification of the off-street parking requirement would impair the intent and purpose of the special condition. The standards for modification of the special condition for off-street parking are not met.

NOW, THEREFORE, BE IT RESOLVED, by the Saint Paul Planning Commission, under the authority of the City's Legislative Code, that the application of John Rupp for a modification of condition §65.132(d), the parking requirement, is hereby denied; AND

BE IT ALSO RESOLVED, by the Saint Paul Planning Commission, under the authority of the City's Legislative Code, that the application of John Rupp for a conditional use permit for reuse of a large structure for a hotel at 344 Summit Ave is hereby approved, subject to the following conditions:

- 1) A minimum of three off-street parking spaces must be provided on the property, subject to approval by the Heritage Preservation Commission.
- 2) The property will not be used as a reception hall, banquet facility or assembly hall.
- 3) The applicant will acquire all necessary and appropriate licenses and permits prior to establishing the use.
- 4) All exterior alterations to the structures and site must be approved by the Heritage Preservation Commission.
- 5) No food or beverage service is to be offered to the general public.
- 6) Changes to the driveway to provide for all non-commercial vehicles to exit forward onto Summit Avenue.
- 7) All commercial vehicles providing delivery or services must be accommodated on site, without blocking travel, parking or bicycle lanes, or the public sidewalk.
- 8) All site work to accommodate conditions for this use must be approved by the appropriate entities and completed before the use is established.



APPLICATION TYPE: appeal

FILE #: 14-331173 DATE: 9/22/2014

PLANNING DISTRICT: 8

ZONING PANEL: 15

Saint Paul Department of Planning and Economic Development and Ramsey County

