

MINUTES OF THE ZONING COMMITTEE
Thursday, August 2, 2018 - 3:30 p.m.
City Council Chambers, 3rd Floor
City Hall and Court House
15 West Kellogg Boulevard

PRESENT: Baker, DeJoy, Edgerton, Fredson, Rangel-Morales, and Reveal
EXCUSED: Lindeke and Ochs
STAFF: Josh Williams, Samantha Langer, Allan Torstenson, and Peter Warner

The meeting was chaired by Commissioner Edgerton.

Starbucks - 18-026-074 - Modification of site plan for existing coffee shop with drive-through sales, 234 Snelling Ave N, SE corner at Marshall

Chair Edgerton stated the case was laid over at the July 19, 2018, Zoning Committee meeting and the public hearing is closed.

Josh Williams summarized the staff report with a recommendation of approval with conditions for the modification of the Starbucks site plan. District 13 recommended denial, and there were no letters in support, and 43 letters in opposition. He noted that the representatives of Starbucks submitted a letter that restates what was in the testimony on July 19, 2018. Starbucks is willing to work with the City and County to improve the issues. Mr. Williams also stated that Public Works staff are discussing possibilities with Ramsey County, and have identified some concerns related to truck turning movements and overall volume of traffic at the intersection, but no decisions have been made at this point. Everything is still under evaluation.

In response to Commissioner Reveal, Mr. Williams confirmed that he believes this is an improvement to the current situation. He also confirmed that the question before the Committee at this time is not regarding revocation of the Conditional Use Permit (CUP).

Upon questions from Commissioner DeJoy regarding enforcement of the conditions proposed on this matter, Mr. Williams stated that enforcement is carried out by the Department of Safety and Inspections (DSI). It is their role to ensure that the conditions are met. If they are not met the issues would be reviewed by the Zoning Administrator.

Commissioner Fredson moved approval with conditions of the modification of site plan. Commissioner Reveal seconded the motion.

Chair Edgerton explained the reason for the lay over at the last meeting. There was a motion for approval that failed due to lack of a second. There was not a subsequent motion of denial. The Committee members against the motion felt that there weren't sufficient improvements to the site plan. The Committee members in favor believed that this was an improvement to what exists at the site currently.

Commissioner Reveal stated she wasn't able to be available for the vote at the last meeting. She does support the motion to approve because it is a marginal improvement. She also stated she wants the opponents to understand that they have the right to go to DSI and assert that a condition of the permit is being violated. DSI has the obligation to investigate and act on it internally or bring it to the Zoning Committee for review. At this point, to her understanding, there have been no formal complaints. She would like staff to help the community understand the process if they have any issues with a permit. The question before the Committee at this time is not to amend or revoke the CUP, but they are able to vote in favor of a site plan that she believes is an improvement over the current situation and monitor it.

Commissioner Rangel Morales stated that Commissioner Ochs and Lindeke are not here today and he would like to voice concerns that he had heard from them at the Planning Commission. There are a significant number of letters from the community, all in opposition. In reading through them it is evident a lot of them have predicted that something like this would occur in this area. A lot of them share the same concern that this will not fix anything and that their views are being ignored. Commissioner Rangel Morales stated he believes that given the investment made by the company it would be prudent to allow them to try and fix the area. He intends to vote in favor of the site plan.

Commissioner Baker stated that he tried to move forward at the last meeting with a motion to approve, but received no second. He stated that the modifications may not answer all of the questions received from constituents, but in doing nothing, we aren't moving forward to any resolution. Approval would allow us to start fixing problems at the site. Starbucks seems to be willing to work with the City to find resolutions.

Commissioner DeJoy stated that the conditions seem a little vague and don't specifically state time periods AM peak period for the traffic control officer or specific months that the collapsible tubes would be in place or removed for snow removal.

Mr. Williams stated that the time periods for the traffic control officer can vary. It is generally in the 7:00 a.m. to 9:00 a.m. time range, but it can shift a little from day to day. The practice currently is from 7:00 a.m. to 9:00 a.m. It would be reasonable if the Commissioners want to be more specific about the time range.

Commissioner Reveal stated that they did discuss the issue of the seasonality and the bollards and because the condition stated it has be approved by Ramsey County and/or the State we assumed that would be discussed at that level and at the appropriate time when weather conditions arise.

Commissioner Fredson stated he listened to the audio file of the past meeting. He believes the City screwed up in granting the CUP in the first place. Clearly there are problems that need to be addressed and they have a responsibility to fix the problems. It is premature to discuss revoking the CUP because they are in a position to at least try to solve these problems. In regard to the median, we need to be mindful that it is a real barrier and long enough so that people aren't taking a risk and going around it.

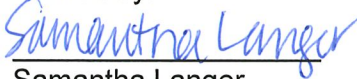
Commissioner Fredson said he would be open to an amendment to add specific peak times, but he doesn't feel it is necessary. He feels the combination of the City and Starbucks attention to this issue will be sufficient. Starbucks is going to try to aim and please the community as well as their customers.

Commissioner Baker completely understands the concerns of the community members on this issue, but what is before the Committee today is a little different than some of the concerns they have raised.

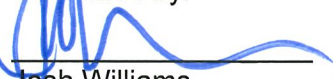
The motion passed by a vote of 6-0-0.

Adopted Yeas - 6 Nays - 0 Abstained - 0

Drafted by:


Samantha Langer
Recording Secretary

Submitted by:


Josh Williams
City Planner

Approved by:


for Dan Edgerton
Chair

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STAFF: Alena DeGrado, Samantha Langer, Allan Torstenson, and Peter Warner

The meeting was chaired by Commissioner Edgerton.

HRA - 18-079-298 - Rezone from RT2 townhouse to T2 traditional neighborhood, 623 and 629 Whitall Street, between Payne Avenue and Edgerton Street

Alena DeGrado presented the staff report with a recommendation of approval for the rezoning. She stated District 5 had not responded, and there were no letters in support or opposition.

Rick Howden, Project Manager in Planning and Economic Development with the City of Saint Paul stated he hopes to get the rezoning on these properties and market these for development.

No one spoke in support or opposition. The public hearing was closed.

Commissioner Anne DeJoy moved approval of the rezoning. Commissioner Elizabeth Reveal seconded the motion.

Commissioner Baker stated he is glad to see this because any time we continue to see the revitalization within Payne Avenue it is a great thing. He is appreciative that the Housing and Redevelopment Authority is moving forward with development.

The motion passed by a vote of 6-0-0.

Adopted Yeas - 6 Nays - 0 Abstained - 0

Drafted by:


Samantha Langer
Recording Secretary

Submitted by:


Alena DeGrado
City Planner

Approved by:


for Dan Edgerton
Chair

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STAFF: Pang Moua, Samantha Langer, Allan Torstenson, and Peter Warner

The meeting was chaired by Commissioner Edgerton.

KBD Investments LLC - 18-084-202 - Rezone from OS office service to B2 community business, 877 White Bear Avenue N, NW corner at Stillwater

Pang Moua presented the staff report with a recommendation of approval for the rezoning. She stated District 2 recommended approval, and there were no letters in support or opposition.

In response to Commissioner Reveal regarding a parking variance granted by the Board of Zoning Appeals, Ms. Moua stated that the current zoning and proposed zoning has the same parking criteria of one parking space per 400 square feet. They would require a variance under either zone.

Allan Torstenson stated that they needed the variance because they wanted to add office space to the building.

Upon inquiry from Commissioner Edgerton, Ms. Moua stated the applicant is interested in the rezoning to provide more flexibility for uses in the building. He intends to use the first floor for a tattoo parlor and lease out the basement as office space.

The applicant, Brett Hesly, 403 Totem Road, Saint Paul, stated they were looking for a little more flexibility and to be able to rent the upper level. He owns a business where they rent out residential properties and they will use the lower level space as general office space.

Chuck Repke, District 2 Community Council spoke in support of the rezoning. He provided some background on the site. When they did the White Bear Avenue Study they down zoned any of the properties that didn't have parking that were office uses. This was a dentist office at the time and it was a deliberate attempt by the Council to gain some control on White Bear Avenue with the places didn't have parking as they changed uses. This particular site is adjacent to several B2 uses so they do not have any issues with this application because it is a continuation of the B2 zoning district.

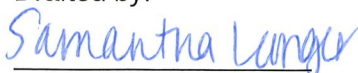
No one spoke in opposition. The public hearing was closed.

Commissioner Anne DeJoy moved approval of the rezoning. Commissioner Elizabeth Reveal seconded the motion.

The motion passed by a vote of 5-0-0.

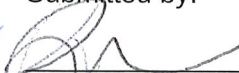
Adopted Yeas - 5 Nays - 0 Abstained - 0

Drafted by:




Samantha Langer
Recording Secretary

Submitted by:



Pang Moua
City Planner

Approved by:



for Dan Edgerton
Chair

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EXCUSED: Lindeke
STAFF: Bill Dermody, Samantha Langer, Allan Torstenson, and Peter Warner

The meeting was chaired by Commissioner Edgerton.

The Summit Center for Arts and Innovation - 18-084-109 - Historic use variance for the Summit Center for Arts and Innovation, including music and art related education, public programs and events, and spiritual/church related services and receptions, including weddings and memorial services, 1524 Summit Ave, SW corner at Saratoga Street

Bill Dermody presented the staff report with a recommendation of approval for the Historic Use Variance. He stated District 14 recommended approval with concerns about hours of operation and parking, and there were 19 letters in support, and 8 letters in opposition.

In response to Commissioner Reveal, Mr. Dermody confirmed that site plan review would not address hours of operation. They would discuss parking requirements.

Upon inquiry by Commissioner Baker concerning noise enforcement, Mr. Warner stated that the established noise ordinance in the City is enforced by the Police Department. The Department of Safety and Inspection (DSI) is the department charged with determining decibel levels at property lines. The possibility exists that the Zoning Committee could impose some noise regulations.

At questions from the Commissioners, Mr. Dermody explained that the approved conditional use permit (CUP) earlier this year was for the St. Paul Conservatory of Music and that addressed uses related to art and music education. Church services have also continued at this site, but were not part of the CUP. The uses for this application are different. They include receptions, weddings and memorial services.

Commissioner Reveal asked if these uses were all allowed when it was in operation as a church. Mr. Dermody explained that we allow a church and related uses without specifying what they are. We tend to allow these types of uses to occur at churches at least implicitly and he does not believe it has never been addressed explicitly.

In response to Commissioner Rangel-Morales, Mr. Dermody stated that the church went out of operation around three years ago. They have a parking lot that only has twelve parking spaces. While in operation as the church there was likely to be maximum use of street parking whenever there was an event or service.

At questions from the Commissioners, Mr. Dermody deferred to the applicant about whether or not tickets would be sold for events at this property. He explained that whether or not this is classified as commercial or institutional technically is not of importance. It is a question of whether it is in conformance with the Comprehensive Plan which allows both. Mr. Torstenson

added that historic use variances (HUV) are different from any other variance. The key is to provide a reasonable and compatible reuse of a church in a designated historic area and that allows for an expansion of uses.

The applicant, John Rupp, 366 Summit Avenue, explained that when they applied for a CUP to move the St. Paul Music Conservatory into this building the neighbors they were required to contact were in 100% in support. When applying for the HUV the Community Council was unanimously in favor with one abstention. The Heritage Preservation Commission was in favor with one negative vote. This building is designed to be a community meeting space. It could last a thousand years if it is carefully taken care of, and the question becomes how do you pay to take care of it? The Episcopal Archdiocese could not repair this building and the property has been for sale for several years. It has suffered severe deterioration. No one has come forward that is interested in providing the financial support to save this building. He has had past experience with these types of reuses. He was contacted by the members of the University Club of Saint Paul at the time the club was going bankrupt and asked if he could save it as an ongoing community meeting place. Fortunately it has been very successful and has been an enormous asset to the neighborhood. He believes this building could also contribute and be successful in this neighborhood. This is an extremely special building and the use that he is proposing honors the efforts of past parishioners and community members to save this building. It has the possibility to be a one of a kind venue with world class acoustics. There are several letters of support from leading artists and performance organizations.

Harry Chalmiers, 487 Portland Avenue, Saint Paul, spoke in support. Mr. Chalmiers stated that in the six months he has been working with John to bring the Summit Center for Arts and Innovation to fruition, he has had the opportunity to speak with a large number of artists, performing arts organizations, city officials and committees, and residents and they have received overwhelming support for the reuse of this historic building. The building is known to have best acoustic environment in the City of Saint Paul, possibly in the Upper Midwest. The letters of support reinforce this and show that there is a great deal of enthusiasm of bringing this back into operation. This would be a cause for celebration. This would be preserving a valuable historic structure by creating a neighborhood center where people share spiritual and cultural experiences through live performance events, educational opportunities and public discourse. It is a creative place that can spark new vitality in our community by stimulating imagination, collaboration and original work. He has heard very few objections, but he has heard a couple of objections to it frequently. He wants to assure that the concerns of parking and noise are taken very seriously by this organization. Noise ordinances are very easily enforced. There is a handheld device that measures decibel levels and they guarantee that they will operate within the legal noise ordinances. They are working on a parking plan to do the best they can collaborate with other businesses to do shared parking. There will be street parking as well.

Phil Martineau, 1474 Summit Avenue, Saint Paul, spoke in opposition. He said this isn't a church it is a business facility. This afternoon he visited several churches in the area and the proposed usage and hours are not consistent or compatible with the other churches in the area. He also visited the St. Paul College Club and the German American Club and this proposed venue is not consistent or compatible with either of those facilities. It is compatible with the applicant's business model of combining his businesses. He showed the University Club and W.A. Frost and said that in many respects what is going on here is the applicant is proposing a

usage that is a nightclub in a residential area. The application speaks to usage of the outdoor area and this is an extension of the W.A. Frost model. This would be within 30 feet of houses. Outside usage of this site is absolutely not appropriate or consistent with prior historic or current usage of the site. He would suggest that the hours of operation be 10:00 p.m. There would need to be onsite management to this property for safety.

Bob Morrison, 1649 Summit Avenue, Saint Paul, spoke in opposition. He is a member of the Summit Avenue Residential Preservation Association (SARPA) and his comments will be representing the board. Mr. Morrison referenced the letter SARPA submitted (see attached). The comments were prepared by their Land Use Counsel Tammera Diehm at Winthrop & Weinstine.

Upon questions from the Commissioners, Mr. Morrison explained the detrimental impact to the area. He stated that the historic preservation chapter of the Comprehensive Plan the applicant indicated referred to HPC Policy 5.3 that there is an obligation to improve the economic viability of the site. What they failed to do was look at the impact that the site would have on the immediate and surrounding neighborhood and the overall conservation district which is Summit Avenue. The main thing is this is not a church. A church operates once a week and what is being proposed is a use that is seven days a week and 365 days a year. That is going to have an impact on the immediate and surrounding area. It will subsequently impact the historic district as a whole. He stated he wasn't specifically aware of events such as weddings happening in this building when it was a church. He is aware of the other churches in the area having these events, but they were independent activities.

Tom Darling, 445 Summit Avenue, Saint Paul, spoke in opposition. He stated he is also a member of SARPA. He has lived on Summit Avenue for over 30 years and fully aware of its significance and its uniqueness. They are very concerned about what this is going to do to Summit Avenue. This church didn't need to be saved. It doesn't need to have this intensive reuse. Mr. Rupp, who is a business man and developer, paid attention to the price that was being asked and when it got low enough he bought it to make it a business entity. Now he says you have to allow me to use this as a commercial operation because otherwise my investment will be for naught. The variance provisions of the code states that economic considerations are not sufficient and you can't consider the plight of the owner that he has created himself. If Mr. Rupp wouldn't have taken this building out of that realm of a church the Episcopal Church of America could have put another church in the building. They opposed the CUP for the music school and they were told they couldn't bring up this prospective new use and now the HPC and the staff are referring to fact that there is a music school there and using that as a justification of this use. That is fundamentally unfair. This is an unlimited use being proposed and over the top. He also mentioned that in all fairness they should be allowed more than three minutes to speak in order to voice all of their concerns.

There was discussion of possibly allowing written testimony after the hearing due to people's apprehensions that they were not allowed enough time to state their concerns. Mr. Dermody also stated that there will also be another public hearing before the City Council on this application.

Simon Kennedy, 1525 Summit Avenue, Saint Paul, spoke in opposition. Mr. Kennedy brought a couple of pictures in as reference to traffic and parking. At any given day there is plenty of parking on Summit Avenue and it shuts down when the events happen. He has been blocked into his driveway when events are going on. Obviously there are not enough parking spaces and that is a major concern. There have been two cyclists killed on Summit Avenue because of traffic. There is a safety concern with the extreme traffic, parking issues and blocking of visibility. He and his neighbors have young children and he is very concerned about their safety. He said currently the noise isn't unbearable, but with more use of the facility he is concerned it could get worse. This is not good for the neighborhood.

Upon inquiry from the Commissioners, Mr. Kennedy further explained the pictures he showed that demonstrates how his car is blocked in on his property. He submitted the pictures for the record.

Kathryn Kennedy, 1525 Summit Avenue, Saint Paul, spoke in opposition. She stated they are located across from the property and there has been an instance when a car has completely blocked their driveway. They have a shared driveway with their neighbors and they both have children. She is concerned about visibility and safety for the children. When it was operating as Saint Paul's Episcopal Church the congregation was very small. They never had any parking issues. It wasn't until the new ownership and the new lease with City's Church that they started having issues. There have been parking issues almost every Sunday morning, and some on Wednesday. It has increased traffic. She is a real estate professional for thirteen years and one of the things that brings comfort to buyers, when they are paying quite a bit for properties on Summit Avenue, is that it is all residential except for a few nonprofits. The proposal set forth by the applicant is obviously a for profit proposal. The fact that they have the HPC to contend with any time they make any changes to their house adds another level of expense, but they do that because they want to maintain the legacy of these homes. She loves the church across the street, but they bought these houses knowing that it was purely residential and non-profits. We never would have bought our home thinking there were going to be parties going on from 7:00 a.m. until midnight seven days a week. She agrees with everyone that that is too late, especially with young children. They will never be able to have their windows open or be outside to have family gatherings. Also, when they bought their house thirteen years ago, their taxes were \$8,000 and now they are over \$22,000 so not to even be able to park in front of your own house or enjoy being outside is very concerning. A lot of neighbors weren't concerned with the proposal of just the music school, but this is a whole new layer and they are very concerned about this proposal.

Katherine Cairns, 1894 Summit Avenue, Saint Paul, spoke in opposition. Ms. Cairns said she is a member of SARPA and will be speaking on her own behalf. She referenced a letter she submitted.

Hella Lange, 1567 Summit Avenue, Saint Paul, spoke in opposition. She stated she is concerned about parking. It was mentioned that 28 spaces were required and that is not enough parking for church. Parking is an issue in the neighborhood. She objects to this proposal because of the lack of parking, the outdoor entertainment, and the liquor license. She is not objecting to indoor concerts. She is against the commercial aspect and the hours of operation

until midnight. They pay very high taxes and this will impact the property values. No one wants to live next to an entertainment center.

Rachel Westermeyer, 1935 Summit Avenue, Saint Paul, spoke in opposition. She stated she is a mile from the property so she is not as directly impacted like some of her neighbors. She is a member of the SARPA board, but speaking for herself today. She is a neighborhood advocate and is concerned about the impact this will have on the neighborhood. Her main concerns are the noise, parking, and commercial aspect of this proposal. She would like the Committee to table this application so some of these things can be researched. They haven't been given much time to look at this property. Today's staff report was much more robust than the previous application. If you have the ability to table this to look at the concerns brought up that would be very valuable for the neighborhood.

Upon inquiry from the Commissioners, Ms. Westermeyer explained that when she said we, she meant just in general for everyone she is speaking as a neighborhood advocate. She said that in regards to obtaining more parking information, this is a new use and everyone is concerned about parking. She said when you have that many issues with parking you can conduct a parking study. They haven't had time to really see what impact this will have on the neighborhood.

Benjamin Roberts, 1493 Grand Avenue, Saint Paul, spoke in opposition. The development at the church was a surprise to him. He believed the church would take some time to sell because it is a historic building and there would be limited uses to the building, but now he is finding that when the price is right the developers jump on it. They are skilled at being able to negotiate where it would come out in their favor, and one way of doing this is to apply for the HUV. Services that are supposed to be going in there are supposed to benefit the residents. He is concerned about the noise and traffic. Parking has been tolerable so far, but it is clear this commercial venture is a concern. The intensive use of the building will create some problems that don't currently exist. It won't allow the residents to live in a peaceful manner. He is concerned about the safety of cyclists and pedestrians.

John Rupp responded to testimony. The reason they selected the hours of operation that they did is because this building is so acoustically unique they expect performing arts groups will want to practice. The arts organizations have funding problems and they would like to make the space available for practice in the morning hours. Other than a noon time chamber piece they don't expect there to be many performances if any before noon. He doesn't see the intensity being what people are concerned about. The church uses it now on some Wednesdays and on Sundays. Although they said they want to be able to use it throughout the week, it will not be used 365 days of the year from 8:00 a.m. until midnight. He is a business owner and has had between 7 and 10 million customers in the 43 years he has been in business and has essentially had no complaints from neighbors near his businesses. They don't have any concern that they are going to be anything other than an enormous asset to the neighborhood. Unfortunately, what they have had for a number of years was a bankrupt church congregation in a magnificent building that it couldn't afford, which was disheartening. It was for sale and no churches made offers at any price. The Diocese was willing to entertain any reasonable offer because they were desperate. It will be very expensive to manage this building and the rate of return for investors will be limited. Mr. Rupp noted that someone had concerns what was meant

by innovation. A recurring theme in the conversations with arts organizations is that their supporters are increasingly saying that they need to figure out how to operate like businesses. Arts organizations that think that they are going to have operating deficits every year and expect the philanthropic and foundation community to continue to support them are being told that is simply not the case. When he did his research there was no appetite for him to take this on as a nonprofit that would require ongoing financial support. A few years ago in Minnesota a corporate structure, a Public Benefit Corporation, was set up as an effort to try to respond to that. To figure out a way to have an arts organization operate in a way that is unique and it can become self-sufficient as they can without ongoing support. When they use the word innovation they are trying to figure out a way to expand their audience; to create an environment inside the church that has a broad range of events to attract a broad and diverse audience.

At questions from the Commissioners, Mr. Rupp said he would consider deferential standards for rehearsal and event hours of operation. They are in current conversations with Macalester College and other businesses about ways they could do shared parking for evenings and weekends. They need to have parking and want this to be successful. They also want to ensure they will be a good neighbor to the surrounding residential community. Mr. Rupp said their application specifically states what events they would like to do in this facility, but they can write more if that wasn't adequate. Mr. Rupp said that the school has moved into the facility and enrollment has gone up. They have almost 300 students. They will be long time tenants at this facility.

The public hearing was closed for verbal testimony.

Commissioner Reveal made a motion to leave the record open for written testimony until 5:00 p.m. on Friday, August 3, 2018. The applicant will have until 5:00 p.m. on Tuesday, August 7, 2018, to respond. Commissioner Ochs seconded. The motion passed by a vote of 7-0.

In response to Commissioner Regal-Morales, Mr. Warner said that this is a use variance unique to a historic property and it would attach to the property not the property owner.

Commissioner Regal-Morales expressed his concerns with the fact that if this property was sold to another person their intentions for use of the building could be different than the current owner's vision. That is why he would like the applicant to provide specific definitions as to what the uses allowed on the property would be so that it is clear, regardless of the owner, what is and is not allowed. He also understands the concerns of parking and traffic in the area, but the building has always had the capacity to hold 300 people.

Commissioner Elizabeth Reveal moved approval of the historic use variance. Commissioner Christopher Ochs seconded the motion.

In response to Commissioner Reveal, Mr. Warner, City Attorney, confirmed that the Commissioners have the ability to add conditions to a historic use variance.

Commissioner Reveal stated she is sympathetic to a condition on requiring a parking study. It is also reasonable to include a condition that has bounds on both the hours and the use. She believes it is important for performing arts organizations to figure out sustainable ways to exist.

After discussion regarding parking studies, specific uses of the property and hours of operation, the motion passed by a vote of 6-1-0 with the following added conditions: a condition to better define the proposed uses and/or their hours of operation in order to limit the neighborhood impact, especially by future operators, and a condition to potentially require a parking study if parking is found to be a problem, with proposed wording to be provided by staff at the Planning Commission on Friday, August 10, 2018.

Adopted Yeas - 6 Nays - 1 (DeJoy) Abstained - 0

Drafted by:


Samantha Langer
Recording Secretary

Submitted by:


Bill Dermody
City Planner

Approved by:


Dan Edgerton
Chair

ZF# 18-084-109



WINTHROP & WEINSTINE

August 2, 2018

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Zoning Committee of the Planning Commission
City of Saint Paul
25 West 4th Street
City Hall Annex, Suite 1400
Saint Paul, Minnesota 55102
Attn: Mr. Bill Dermody

VIA E-MAIL

Re: Historic Use Variance - Summit Center for Arts & Innovation

Dear Zoning Committee:

Our firm represents the Summit Avenue Residential Preservation Association (“SARPA”), an organization whose mission is to preserve the historic, residential and urban park character of Summit Avenue. This letter is submitted in opposition to the application for a historic use variance (the “Variance”) that was filed by the Summit Center for Arts & Innovation (the “Applicant”) for property located at 1524 Summit Avenue (the “Property”). Because the use that will result from the Variance is (a) not compatible with the existing uses in the surrounding area and the underlying zoning classification and (b) not consistent with the Comprehensive Plan (the “Comp Plan”) for the City of Saint Paul (the “City”), SARPA respectfully requests that Zoning Committee recommend that the Planning Commission deny the Variance.

Background and Standard of Review

The Applicant proposes to convert the former St. Paul’s Episcopal Church on-the Hill building and ground into the Summit Center for Arts and Innovation. According to the application materials, the use of the Applicant seeks to “create a one of a kind venue with world class acoustics and technical capabilities.”¹ Based on the Applicant’s own description, there is no dispute that the use of the Property will be significantly intensified – unlike a religious center that hosts occasional community events, the proposed reuse plan indicates that the Applicant intends to use the Property from 7 am until midnight, 7-days a week, 365 days a year. The proposed uses will include both public and private programs and events, a recording studio and rehearsal location, music, art and/or other related schools, and a variety of spiritual and church uses. It will be a place for weddings, memorial services and receptions and it will host outdoor events and community activities in a garden area. While the Application materials present a picture of a vibrant event center, and focus on the economic benefit of reuse to the owner, neither the Applicant nor City Staff effectively evaluate the impact of the intensification of use on the surrounding neighborhood or its consistency

¹ Historic Use Variance Application for The Summit Center for Arts and Innovation, revised June 25, 2018 (the “Application”), p.3.

with the City's Comp Plan, nor do they propose any strategies for addressing the impact that this reuse will have on the neighbors.

The Saint Paul City Code (the "Code") establishes the findings and review process for historic use variances, specifically noting that the following five (5) findings must be made in order to approve this type of variance:

- (1) *The proposed use is reasonable and compatible with the historic use(s) of the site or that the new use is consistent with section 73.04(5) of this chapter.*
- (2) *The proposed use complies with the adopted preservation program, and the United States' Secretary of the Interior's Standards for Rehabilitation, as applicable.*
- (3) *The historic use variance is necessary to alleviate practical difficulties unique to the heritage preservation site that prevents its use in a manner consistent with its historic use or that the new use is consistent with section 73.04(5) of this chapter, and that these difficulties were not created by the applicant.*
- (4) *The proposed use is compatible with existing uses in the surrounding area and the underlying zoning classifications in the area.*
- (5) *The proposed use is consistent with the comprehensive plan.²*

The Code requires the Planning Commission to hold a public hearing for the purpose of making findings regarding the application's consistency with the Comp Plan and the application's compatibility with the underlying zoning classifications in the surrounding area (findings number 4 and 5 above).³

Importantly, the Variance that you are being asked to consider today is different from many variance applications that you review because it requests a variance from the permitted "use" of the property. Most variances are "area" variances through which applicants request flexibility related to dimensional requirements in the Code such as setbacks or lot coverage. A "use variance" is less common and, because it attempts to effectively change the zoning of a parcel of property without going through the otherwise required rezoning process, Minnesota courts have been careful to put limits on the ability of a local government to grant this type of exception to

² Code Section 73.03.1(c)

³ Code Section 73.03.1(e). While this letter will address the two factors that must be evaluated by the Zoning Committee and Planning Commission, it should be noted that SARPA believes that the Application fails to meet the other required findings and, since the City Council is charged with reviewing "all materials relative to the case" by copy of this letter, SARPA urges the City Council to re-examine the findings made by the Historic Preservation Commission as additional evidence as to why the Variance should be denied.

established code requirements.⁴ Because of the change in use, it is even more important that the Planning Commission, and the Zoning Committee, consider whether the proposed use is consistent with the underlying zoning and with the adopted Comp Plan. As outlined below, the proposed intensification of the use of the Property, under the Variance, is not compatible with the existing uses or the underlying zoning classification, nor is it consistent with the Comp Plan and because of this, the Variance should be denied.

I. The proposed use is not compatible with existing uses or the underlying zoning classifications in the area.

The Staff Report indicates that the proposed use is compatible with existing uses in the surrounding area and the underlying zoning classifications in the area because “the proposed institutional use is compatible with the institutional uses nearby to the west and those permitted in the RM1 zoning district.”⁵ The Staff Report further states that “parking impact is anticipated to be similar to the church use.”⁶ SARPA respectfully disagrees with both of these statements and the accompanying staff analysis because (a) the Variance would allow an intensification of use on the Property that far exceeds what otherwise exists in the RM1 district, and (b) the parking impact of the proposed use far exceeds the impacts associated with the prior church use.

By definition, the RM1 district is a low density, multi-family residential district that allows certain civic and institutional uses. According to Section 65.200 of the Code, these uses include schools, colleges, universities, nonprofit institutions of higher learning and religious, social and cultural institutions. SARPA acknowledges that the proposal for the reuse of the Property includes some of these uses and, because of this, the Applicant contends that the proposed use is consistent with RM1 type uses. However, there are some very important differences between the proposed use and other “similar” uses in the surrounding area.

Specifically, SARPA has reviewed the non-residential uses along Summit Avenue and notes the following:

1. *Similarity to existing religious uses.* Excluding the subject Property, there are nine (9) churches currently operating on Summit Avenue. All of these churches are tax-exempt organizations and none of them have a liquor license. The primary use of each of these buildings is to provide a place of worship for their members. Importantly, all nine (9) religious properties operate close to peak capacity one day each week – typically on Sundays and the intensity of use of these buildings is significantly less during all other times. While these buildings may occasionally host a wedding or a funeral, they do not market themselves as a for-profit event center. Finally, most of these other locations have sufficient, dedicated parking for these events.

⁴ See *In re Stadsvold*, 754 N.W.2d 323, 329 (Minn. 2008).

⁵ Staff Report p.2.

⁶ *Id.*

2. *Similarity to existing educational uses.* Excluding the music school that exists at the subject Property, there are five (5) schools (including colleges or universities) with at least some portion of their facilities located on Summit Avenue. All of these other schools are operated as tax-exempt institutions and all have a primary purpose of meeting the educational needs of their students. These educational facilities only operate at peak capacity for nine (9) months each year and all of them have addressed the parking needs of their students and teachers by building or allocating dedicated parking areas. Although the larger institutions such as St. Thomas and Macalester offer occasional ancillary activities such as concerts, and also occasionally offer food and beverage for their students, these activities are held in sites scattered around their campuses and generally off of Summit Avenue.
3. *Similarity to existing civic or cultural centers.* The Germanic-American Institute and the American Association of University Women's St. Paul Club are probably the best examples of civic organizations or cultural centers operating on Summit Avenue. Both are tax-exempt organizations that hold occasional events to support their specific missions. Neither of these properties holds a liquor license and both have restrictions on hours of operation as well as on the size, scope and frequency of their events. Both have maximum capacity of approximately 200 people and the Germanic-American Institute offers dedicated parking.

In comparison, if granted, the Variance will allow the subject Property to be used in a way that is quite inconsistent with the other religious, educational and civic / cultural institutions that exist in the surrounding area. The Applicant seeks to operate a church, a school and a cultural / social institution on a single site with outdoor entertainment / event space, serving food and liquor, and bringing large numbers of people to the Property from 7 am until midnight, 7-days a week, 365 days a year. Finally, unlike the other owners of similar properties in this district, the Applicant is not a tax-exempt entity. While the Applicant has reassured the City that the business entity he has selected requires a social investment component, the entity is undeniably operating for-profit. Because of this, the City cannot ignore the fact that a for-profit owner and operator is likely going to be motivated by maximizing the use of the Property, thereby increasing the intensity of uses. All of these facts support SARPA's position that the Application, as presented, will increase the intensity of use on this singular site to such an extent that it will go far beyond what would otherwise be allowed under the RM1 zoning classification, making the Variance an inappropriate deviation from the well-established Code standards.

II. The proposed use is not consistent with the comprehensive plan.

The Staff Report notes that the proposed use is consistent with both the Land Use Chapter and the Historic Preservation Chapter of the Comp Plan because:

- (1) *the Land Use Chapter of the Comp Plan designates the site as part of an "Established Neighborhood" and the Established Neighborhood designation*

allows for institutional use clusters at intersections of arterial and collector streets such as Summit and Snelling; and

*(2) the use is consistent with the Historic Preservation Chapter of the Comp Plan "as detailed in the HPC recommendation."*⁷

As a preliminary matter, we note that the Code designates the Planning Commission as the body that must evaluate whether an application is consistent with the Comp Plan. Because of this, a finding by the Heritage Preservation Commission ("HPC") that the proposed use is consistent with the Comp Plan is not a sufficient finding, nor is it even instructive to the Planning Commission or Zoning Committee. Regardless, the conclusions of the HPC are worth reviewing because they highlight the lack of depth of analysis that has been done in this case.

The HPC appears to have justified its support of the Variance request because one of the policy statements listed under a strategy heading in the Historic Preservation section of the Comp Plan is to "realize the full economic potential of key historic resources."⁸ The HPC, in its resolution, noted that "the plan for reuse of this structure will accomplish that goal while maintaining and protecting this valuable historic community resource."⁹ In providing this analysis, the HPC ignored several other fundamental provisions of the Historic Preservation section of the Comp Plan and tried to simplify what is actually a fairly complex analysis. To be clear, SARPA supports the City's efforts to preserve historic buildings and uses, and also supports efforts to realize the full economic potential of key historic resources. However, economic gain cannot come at the price of preserving and protecting the overall character of the Summit Avenue area. Recognizing full economic potential does not mean that an unreasonable intensification of use is appropriate, particularly when little effort has been made to reduce the impact of the intensification. Just as economic considerations cannot legally be used to satisfy a finding of practical difficulties in a variance analysis, the mere fact that a property owner could increase the economic potential of an historic building does not justify a use variance. In fact, in the same section of the Comp Plan that was cited by the HPC, there is an express acknowledgment that intensification of use is not something that should be taken lightly. In describing Historic Preservation Strategy 5, policy 5.1, the Comp Plan states, [o]ne of the most daunting challenges facing historic resources is knowing how to best change or intensify their use."¹⁰ In electing to change or intensify historic uses, the City must carefully consider the impact of the change in use on the surrounding neighborhood.

In addition, neither the Staff Report, nor the HPC findings address how the Variance, which results in an intensification of use, will impact other strategies contained in the Comp Plan. For example, Strategy 6 (Preserve Areas with Unique Architectural, Urban and Spatial Characteristics that Enhance the Character of the Built Environment) expressly seeks to preserve areas like Summit Avenue. It should be noted that, under Historic Preservation policy statement 6.3, all of Summit Avenue is considered a historically protected conservation district and, as a result, any re-

⁷ Staff Report p.2.

⁸ See Comp Plan HP p. 21, 5.3.

⁹ HPC June 29, 2018 minutes.

¹⁰ Comp Plan HP p. 21, 5.1.

development or reuse plans for sites or structures on the Avenue must ensure the continued protection of this unique urban space for the City.

Finally, the Land Use Chapter of the Comp Plan, as noted in the Staff Report, designates the Property as "Established Neighborhood." Staff notes that institutional use clusters are allowed at intersections of arterial or collector streets. However, in providing this information, the Staff Report fails to include the rest of the language in the Established Neighborhood section of the Land Use Chapter which is necessary to understand the context of the commercial uses that should be allowed. The full text states:

"Established Neighborhoods are characterized almost entirely by single-family houses and duplexes, as well as scattered small scale multi-family housing. Commercial areas at intersections of arterial or collector streets provide goods and services for residents of the immediate neighborhood."¹¹

The proposed reuse of this Property, as currently submitted, does not provide goods and services for residents of the immediate neighborhood. Instead, it seeks to draw visitors from far and wide and create a commercial use that far exceeds what was intended for Established Neighborhoods under the Comp Plan. Accordingly, if granted, the Variance would result in allowing an intensification of use that would not only fail to preserve the fundamental nature and character of Summit Avenue, but that is also inconsistent with the guidelines that have been established in multiple sections of the Comp Plan.

III. Conclusion.

In conclusion, we ask the Zoning Committee to recognize that it has an obligation to carefully review the request for a Variance and to determine if the Applicant has satisfied the requirements of the Code. In doing so, SARPA is confident that the Planning Commission will determine that the Application fails to satisfy the requirements of the Code and therefore, the Variance must be denied. SARPA supports the preservation of historic uses on Summit Avenue, and also supports efforts to invest in, and revitalize, this important part of the City. While the Applicant has outlined a use that successfully reuses an historic building, the City has a responsibility to ensure that the proposed use of the Property will not create an unacceptable burden on the surrounding area.

While the application for the Variance and the Staff Report focus on maximizing the economic use of the Property, neither (1) provide adequate consideration of the impacts of the proposed intensification of use on the health, safety and welfare of the surrounding areas, nor (2) adequately assess the consistency of this intensification of use with the underlying zoning and /or Comp Plan. As demonstrated above, the current Variance application fails to meet the standards that are required in order for the Planning Commission to approve the Variance. As a result, and for all of the reasons outlined above, SARPA respectfully requests that the Zoning Committee recommend

¹¹ Comp Plan, Land Use p.9 (emphasis added).

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denial of the Variance and direct staff to further explore ways that any intensification of use of this Property will protect the health, safety and welfare of the surrounding areas.

Very truly yours,

WINTHROP & WEINSTINE, P.A.

A handwritten signature in black ink that reads "Tammera R Diehm". The signature is written in a cursive style with a large initial "T" and a long horizontal flourish at the end.

Tammera R. Diehm

cc: Mr. Robert Morrison
Mr. Thomas Darling
Ms. Carolyn Will

15866470v2

18-084-109

Langer, Samantha (CI-StPaul)

From: shg_cairns <shg_cairns@cheqnet.net>
Sent: Thursday, August 02, 2018 9:23 AM
To: Dermody, Bill (CI-StPaul)
Cc: McMahan, Melanie (CI-StPaul)
Subject: Saint Paul Zoning Commission 8-2-18 hearing on 1524 Summit variance

RE: 1524 Summit Ave. zoning request

As a 30+ year resident and taxpayer at 1894 Summit Ave. in St Paul, I respectfully request that the Saint Paul Zoning Commission add the following conditions on the variance requested by the developer of the property at 1524 Summit Ave. for health and safety concerns and as precedent for any future development in this residential area. These conditions include the following:

- Please limit the activities, performances, "innovation center" use, educational services to the hours of 7:00am until 10:00pm;
- Please expand the on-site parking requirements to an additional 20 vehicles during building operating hours to bring the new expanded business use identified in the variance request of the building more into compliance with the other businesses and educational centers covered by St. Paul zoning and parking codes. Chapter 63 of the Zoning code covers the new and expanded uses requested in this variance for not only part time students, office, restaurant/bar, commercial assembly hall without fixed seating, and music hall.
- Please require that the conditions of the variance include specific limitations on the activities that can be conducted on site as part of the "innovation center". This nebulous function that is currently undefined could pave the way for additional rented office space, a production facility, charter school or other functions that require more parking and/or hours of operation.

Rationale for these Variance conditions for health and safety concerns:

--hours of operation capped at 7am until 10pm is requested for life-safety concerns of bicyclists attending activities at this facility during evening hours. The unfortunate deaths and injuries of bicyclists in the street at the juncture of the Snelling/Summit streets with the poorly designed access streets during evening hours and periods of high daytime traffic is a concern. City staff contend that more mass transit/non-car travel is expected by patrons of the church/innovation center. Thus increased bike travel and potential for bicyclist injury at this dangerous intersection can be expected if not mitigated and planned for in the zoning variance request. Additionally, this is a residential neighborhood. Our children and grandchildren (and homeowners/renters) are trying to sleep. Having events scheduled from 7am until midnight creates noise that is evident during the current church services and following the service with slamming car doors. Having the prospect of music and "innovation center" events til midnight on multiple nights during the week is not why we own/rent in this neighborhood. This is why we have a St Paul noise ordinance.

--expanded on-site parking is requested for several reasons. The nearby school within the same block, while having primarily daytime operation, creates injury zones during the day with increased traffic during drop-off/pick-up hours. While patrons are looking for on-street parking near the church, the end of school day dismissal of students seeking transport could create spaces for childhood injuries with additional church/innovation center cars seeking on street parking. A dedicated parking space during daytime hours Monday-Friday would decrease these injury zones.

--The expanded uses of the building as an "innovation center", while creative as a legal tool to expand the future scope and function of the building to meet the financial needs of this for-profit entity, does little to define the actual function of work that will be conducted on the location. Innovation Center use, once approved by this variance, could include 3D printer production of devices, music production during non-working hours by artists, office space rented to organizations or co-working space rented to multiple people during the hours of operation, secure Amazon drop

off/pick-up location, food/beverage production, and many more creative and profitable ventures. Again the impact of health safety concerns for the residents of the area depends on what is produced on location (3-D printed guns for example) or the increased frequency of drop-off/pick ups of deliveries during neighboring school hours, or increased use of/disposal of hazardous waste in a residential area.

Thank you for this opportunity to provide comments on this zoning variance for 1524 Summit Ave. I strongly request that conditions be placed on this variance to limit hours of operation to 7am to 10pm, to require at least 20 adjacent or nearby increased off-street parking spots and bike racks prior to variance approval and to limit the scope of this variance to that of music performance and church services and not approve expanded "innovation center" activities without another well defined variance request.

Katherine Cairns
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St Paul, MN 55105
651-690-1474