

Department of Community Planning and Economic Development – Planning Division**Appeal of the Zoning Administrator
BZZ-3962**

Applicant: Peter Watson, on behalf of Bettina Wilcox

Address of Property: 1004 Summit Avenue & 1784 Colfax Avenue South

Contact Person and Phone: Peter Watson, (612) 332-1406

Planning Staff and Phone: Joe Bernard, (612) 673-2422

Date Application Deemed Complete: March 11, 2008

Publication of Staff Report: March 21, 2008

Public Hearing: March 27, 2008

Appeal Period Expiration: April 7, 2008

End of 60 Day Decision Period: May 10, 2008

Ward: 7

Neighborhood Organization: Lowry Hill

Existing Zoning: R2B Two-family District

Appeal of the decision of the Zoning Administrator: Peter Watson, on behalf of Bettina Wilcox, is appealing the decision of the Zoning Administrator that the home occupation at 1004 Summit Avenue in the R2B Two-family District is in violation of the home occupation standards in section 535.450 of the Zoning Ordinance.

525.170. Appeals of decisions of the zoning administrator. All findings and decisions of the zoning administrator, planning director or other official involved in the administration or the enforcement of this zoning ordinance shall be final subject to appeal to the board of adjustment, except as otherwise provided by this zoning ordinance. Appeals may be initiated by any affected person by filing the appeal with the zoning administrator on a form approved by the zoning administrator. All appeals shall be filed within ten (10) calendar days of the date of the decision. Timely filing of an appeal shall stay all proceedings in the action appealed, unless the zoning administrator certifies to the board of adjustment, with service of a copy to the applicant, that a stay would cause imminent peril to life or property, in which case the proceedings shall not be stayed. The board of adjustment shall hold a public hearing on each complete application for an appeal as provided in section 525.150. All findings and decisions of the board of adjustment

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concerning appeals shall be final, subject to appeal to the city council as specified in section 525.180.

Background and Analysis:

On January 28, 2008 zoning enforcement staff issued a violation letter against the property in question following the investigation of repeated complaints regarding a home occupation. During investigation of the complaints, zoning enforcement staff observed a number of delivery vehicles and employees associated with the home occupation on the site. Home occupations are allowed and regulated by section 535.450 of the Minneapolis Zoning Ordinance.

In the attached violation letter, planning staff identified two conditions that the home occupation was in violation of, 535.450 (2) and (13) shown below:

535.450. Home occupation standards. Home occupations shall be subject to the following standards, except that licensed family day care and licensed group family day care shall be exempt from the provisions of sections (2), (6), (11), (12), (13) and (15):

- (2) Only the residents of the dwelling unit, and not more than one (1) nonresident employee, shall be employed by or engaged in the conduct of the home occupation on the premises. For the purpose of this section, "nonresident employee" shall include an employee, business partner, independent contractor or other person affiliated with the home occupation who is not a resident of the dwelling unit, but who visits the site as part of the home occupation. Not more than one (1) nonresident employee shall be permitted per dwelling unit or two-family dwelling, regardless of the number of home occupations.

- (13) The home occupation shall not generate excessive customer or client traffic that is detrimental to the residential character of surrounding properties or the neighborhood. For purposes of this provision, more than five (5) customers or clients per day may be determined to be an excessive and detrimental level of traffic. This number shall apply per dwelling unit, regardless of the number of home occupations, except that in the case of two (2) family dwellings, the number shall apply to the two (2) family dwelling. The factors to be used for such a determination shall include but not be limited to:
 - a. The characteristics of the neighborhood, including land uses, lot sizes and lot widths.
 - b. Street type, width and traffic volumes.
 - c. The availability and location of off-street parking and the extent to which the home occupation contributes to on-street parking congestion.

“Black Design” is a marketing firm owned and operated by the property owner at 1004 Summit Avenue and 1784 Colfax Avenue South. The company serves as a retail strategy and marketing consultant for a number of recognizable businesses throughout the Twin Cities. On multiple occasions, vehicles licensed to employees of the company Black Design have been identified parked on Colfax Avenue South between Douglas Avenue and Summit Avenue. Vehicles belonging to both Wayne Talley and

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Rena DeBates were observed parked in front of the property by enforcement staff on January 22nd and January 23rd, 2008. Attached is a copy of an article dated May 12, 2006 from the *Minneapolis St. Paul Business Journal* referring to both Talley and DeBates as employees of Black Design. The appearance of more than one nonresident employee on the property is a violation of 535.450 (2) of the Zoning Ordinance.

Also attached are a number of photos documenting the traffic coming to and from the property. Vehicles licensed under employees of Black Design have been observed obstructing public walkways on repeated occasions. Repeated complaints have been logged with various city departments regarding the amount of traffic created by the uses on the property (please reference the attached log of 311 inquiries). Staff has determined that the amount of traffic related to the home occupation at this site is in direct conflict with the residential nature of the street and surrounding properties.

According to city property records, the property in question contains two dwelling units, one each at 1004 Summit Avenue and 1784 Colfax Avenue South. In the R2B Two-family District, a duplex is a permitted use. Staff requested that the applicant provide a basic floor plan of the building to verify the dwelling unit count and to also verify a legal location for the home occupation. Internet searches for the business return 1784 Colfax Avenue South as the address for the business. Along with the conditions noted in the violation above, the business must be located within the dwelling unit in which the business owner resides in accordance with 535.450 (5). As of the writing of this staff report, the applicant had yet to supply this information.

In addition to the home occupation violation sent out to Black Design, previous home occupation violations have been sent to the property for “A Cut Above Restoration Inc.” The business owner has not been able to supply planning staff with a legally established location for this business. Evidence from the property and business owner has also not been substantial enough to confirm removal of this business. A previous illegal home occupation at this property is further evidence that without regulatory action the activities taking place on this property are likely to continue in a manner inconsistent with city regulations.

Recommendation of the Department of Community Planning and Economic Development - Planning Division:

The Department of Community Planning and Economic Development Planning Division recommends that the Board of Adjustment **deny** the appeal the decision of the Zoning Administrator that the home occupation at 1004 Summit Avenue in the R2B Two-family District is in violation of the home occupation standards in section 535.450 of the Zoning Ordinance.

Attachments

1. Map of Area
2. Determination from the Zoning Office
3. Applicant’s Statement
4. Photos
5. *Minneapolis St. Paul Business Journal* article
6. 311 Inquiries
7. Correspondence and Neighbor Observations