

OCT 23 2014



APPLICATION FOR APPEAL

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

Zoning office use only
File no. <u>14-341-455</u>
Fee <u>440.00</u>
Alternative hearing date
<u>7/1/14</u>

APPLICANT

Name Steve and Jenny Virkus
 Address 937 Lincoln Ave
 City St. Paul St. mn. Zip 55105 Daytime phone 612-967-3038
 Name of owner (if different)

PROPERTY LOCATION

Address 814 Grand Ave, St. Paul, mn 55105
 Legal description: Mixed commercial / Residential
 (attach additional sheet if necessary)

TYPE OF APPEAL: Application is hereby made for an appeal to the:

Board of Zoning Appeals City Council

under the provisions of Chapter 61, Section 63.207, Paragraph of the Zoning Code, to appeal a decision made by the Board of Zoning Appeals on October 13, 2014. File number: 14-315.255.
 (date of decision)

GROUND FOR APPEAL: Explain why you feel there has been an error in any requirement, permit, decision or refusal made by an administrative official, or an error in fact, procedure or finding made by the Board of Zoning Appeals or the Planning Commission.

This appeal is based on the clear errors made by the Zoning Board in not granting a parking variance to 814 Grand Ave. Applicants have two parking spots and need one additional parking spot, which was the basis of the variance and denied. (See Attached)

(attach additional sheet if necessary)

Applicant's signature

Date 10.23.14 City agent

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Attorney For Applicants

Grounds for Appeal Relative to 814 Grand Ave Variance

The Board's decision to grant one of the applicant's two variances, the violation of relative to waiving the setback ordinance, but denied applicant's variance for one parking spot is clear error, abuse of discretion, clearly arbitrary and capricious.

For the record, the facts set forth in the Resolution are incorrect. Applicants did not build the addition on the garage. The addition to the garage was built by the previous owners, not the applicants. The Board's recitation of the facts is wrong.

The applicants asked for one variance to waive the setback violation of section 66.331(k) relative to the violation setback created the garage addition built, by the previous owner. The Board granted that variance. Yet, the Board denied the variance of the violation of a section 63.207 for one more parking spot, the violation also created by the previous owner.

The basis for the Board's decision to deny the parking variance is clear error, an abuse of discretion and contrary. The Board granted a variance for one parking spot based on ***"the plight of the landowner is due to circumstances unique to the property but not created by the landowner."*** On the one hand, the Board expressly states in the Resolution relative to the violation of the setback ordinance, ***"this circumstance is unique to the property and it was not created by the applicants."*** Then contradicts the basis it used for granting the setback variance. The Board states in the same paragraph 4, ***"It is a buyer's responsibility to do their due diligence prior to the purchase of any property. In this case, the purchaser (applicants) apparently failed to investigate the approved use of the property and the plight was self-created by the applicants."***

Applicants have in good faith worked with the City to get these variances for two years. They are paying for violations the previous owner made. The legislative intent of a variance is to allow an exception to an ordinance. Throughout the hearings applicants have attended and sat through, it witnessed the Board regularly grant variances to purchasers of houses and buildings that did not meet ordinances: violations created by the former owners. It is error, arbitrary, capricious, and abuse of discretion for the Board to grant variances to other buyers of property with violated ordinances, and now in applicants' case apply the standards that, "it is a buyer's responsibility to do their due diligence prior to the purchase of any property." It is error for the Board to grant



applicants a variance on the setback when they allegedly didn't use due diligence to discover that violation, but then deny the parking variance under the exact circumstance.

For these reasons, it was error in procedure and fact to deny applicants variance for one parking spot. It was arbitrary, capricious, and an abuse of discretion to hold applicants to a standard others have not been held. The factual error in the Resolution is that the applicants did not create these violations.

3