



**APPLICATION FOR APPEAL**

Department of Planning and Economic Development  
Zoning Section  
1400 City Hall Annex  
25 West Fourth Street  
Saint Paul, MN 55102-1634  
(651) 266-6589

RECEIVED IN D.S.I.

OCT 15 2012

Zoning Office Use Only  
File #: 12-116607  
Fee: 440.00  
Tentative Hearing Date:  
7 NOV 2012

**APPELLANT**

Name Raymond and Susan Cantu  
Address 115 Rose Avenue West  
City St. Paul St. MN Zip 55117 Daytime Phone Home 651-488-2308

**PROPERTY LOCATION**

Zoning File Name Approval of Site Plan 12-090127 Reemo Gas Pump relocation at  
Address / Location 1200 Rice Street 1200 Rice Street

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

**Planning Commission**, under provision of Chapter 61, Section 701, Paragraph c of the Zoning Code, of a decision made by the Planning Administrator or Zoning Administrator

OR

**City Council**, under provision of Chapter 61, Section 702, Paragraph a of the Zoning Code, of a decision made by the Planning Commission

Date of decision: October 5, 20 12 File Number: 12-101-937

**GROUND FORS 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 Planning Commission.

11 pages attached

Attach additional sheets if necessary

Appellant's Signature Raymond Cantu Date 10/14/12 City Agent C. TILLEY

Grounds for Appeal:

The Planning Commission Resolution<sup>1</sup> made as a finding of fact that the appeal filed had three main issues; these issues are more fully detailed in the original appeal.

**Issue one:**

**“All Actions/interactions with the neighborhood by District 6 Council, Zoning Committee, and the Planning Commission were predicated on the plans for a new building.”**

The original appeal fully documents and references that Conditional Use Permit (CUP) 12-045-151 approved in May 2012 applied to new construction.

The Planning Commission found as fact that “Relocating the gas pumps does not require a new conditional use permit. Therefore, the conditional use permit approved in May, 2012, does not apply to the current proposal for relocating the gas pumps.”, this finding does not dispute the appellants claim.

During the Zoning Committee’s public hearing on September 27, 2012 the appellant distributed a copy of the *City of Saint Paul’s Code of Ordinances Part II of the Legislative Code, Section 61.505<sup>ii</sup> – Conditional use permits, automatic expiration*. This section of the City Code states **“If the lot area of a conditional use is subsequently reduced in size, the conditional use permit shall automatically expire.”** Any CUP issued prior to the taking of land (lot reduction) for the project has automatically expired and the only CUP for this property is the one issued in May of 2012.

**The appellant asserts that the CUP issued in May 2012 is not applicable to a pump relocation plan and the Planning Commission Resolution does not dispute this; there is no other CUP authorizing the use of this location as an auto convenience mart as the previously issued CUP is expired. The Planning Commission erred in denying the appeal.**

**Issue two:**

**“The approval letter of August 24 gives no indication that the site plan was reviewed by Ramsey County and Saint Paul Public Works and if the issues of traffic safety were addressed.”**

The appeal noted that two site plans were denied on July 11, 2012 citing safety concerns, and questioned how those concerns were addressed. It specifically asked how a plan that was unsafe in July could be considered safe in August.

The Planning Commission Resolution is unnecessarily vague and non-responsive to the concerns raised in the appeal. City staff have not responded to a request by the appellant for documents that would detail the safety concerns that resulted in the rejection of the first two site plans. The third site plan should have gone through the exact same path as the first two including the site plan reviewer and same agencies that rejected the first plans due to safety concerns.

It is imperative that the neighborhood be assured that any site plan approved will not negatively impact any of the benefits of the multi -million dollar taxpayer investment toward traffic calming at this intersection.

**The resolution does not fully address how zoning standard 61.402 (c) (7) regarding vehicular and pedestrian safety has been met and the appellant has been denied access to any information that may substantiate the appeal.**

**Issue three:**

**“District 6 Council scheduled a meeting on August 28, 2012 to review the site plan relocating the gas pumps and discuss the project changing from new construction to a building rehabilitation. Neighborhood citizens were informed on August 27, 2012 a site plan had been approved on August 24,2012.”**

The Planning Commission found as fact that the District 6 Council “...requested additional time for neighbors to review the plan.” The August 28 meeting was held and the District Council submitted a letter<sup>iii</sup> to the Zoning Commission on September 19, 2012 fully supporting the appeal and outlining additional issues including parts of the sub-area plan District 6 Planning Council Comprehensive Plan that District 6 felt were not satisfied.

Staff should have granted the additional time requested by District 6. The Staff Report and subsequent Planning Commission Resolution indicate the owner’s concern that he had lost the “ability to sell gasoline”. It was inevitable that the taking of property for the street widening would result in the loss of the gas pumps. The eminent domain process addressed any loss or damages resulting and the owner was fully compensated.

The issue of a timely site plan review to address owner’s loss should not have outweighed the concerns of the District Council/neighborhood in this case. The zoning staff approved the site plan when only four days remained before District 6 was to meet and discuss the proposed site plan.

District 6 staff was at the public hearing and addressed the Zoning Commission but there were no questions or discussion of their concerns. The Zoning Committee Staff Report, the basis for the decisions made by the Zoning Committee and Planning Commission Resolution, clearly indicates it was prepared before the recommendation and support letter from District 6 was submitted.

The Americans with Disabilities Act requires an accessible route as noted in 61.402 (c) (10). The site plan approved is an alteration (as opposed to a parking lot restriping) and should meet this requirement. The approved site plan does not include an accessible route. The Planning Commission erred in finding this requirement was met.

**The appellant asserts that the Planning Commission’s Resolution finding that “The site plan complies with zoning standards and all other applicable ordinances of the City.” per 61.402c is in error.**

**The Planning Commission’s decision relied solely on the Zoning Committee Staff Report resulting in errors of fact, finding, and procedures and the appellant asks that the City Council grant the appeal filed on September 4, 2012.**

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<sup>i</sup> Planning Commission Resolution 12-65

<sup>ii</sup> City of Saint Paul, Minnesota, Code of Ordinances Part II – Legislative Code Title VIII Zoning Code Chapter 61

<sup>iii</sup> District 6 letter in support of the appeal

city of saint paul  
planning commission resolution

file number 12-65

date October 5, 2012

WHEREAS, Raymond and Susan Cantu have filed an appeal (#12-101937) of a decision by the Zoning Administrator to approve the site plan (#12-090127) for the relocation of the pump island and gas pumps submitted by Bilal Alsadi of Rice Street Market, on property located at 1200 Rice St, Parcel Identification Number (PIN) 302922220172, legally described as Stinsons Rice Street addition Subj To Esmt Lots 10, 11 And Lot 12 Blk 2, under the provisions of §61.701(b) of the Saint Paul Legislative Code; and

WHEREAS, the Zoning Committee of the Planning Commission, on September 27, 2012, 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 appeal filed by Raymond and Susan Cantu lists three main issues as the basis for the appeal.  
**The city's responses to the issues raised in the appeal are shown in bold, indented text.**
  - "All actions/interactions with the neighborhood by District 6 Council, Zoning Committee, and the Planning Commission were predicated on the plans for a new building."

**As explained in the history, the original site plan application submitted in July, 2011, did show a proposal to demolish all the structures on the existing site and then construct a new and larger building with pump islands, gas pumps, and a canopy.**

**1200 Rice Street is located in the B2 community business zoning district. An auto convenience market in the B2 zoning district requires a conditional use permit. Per Zoning Code Section 61.503(d), when the building containing a conditional use is torn down and a new building is constructed, the change to the conditional use requires a new conditional use permit. This conditional use permit was approved subject to conditions.**

**One of the proposals for this new construction was to relocate the driveway a few feet north on Rice Street (closer to Maryland). Ramsey County would not approve the driveway relocation due to concerns with traffic safety at the intersection of Maryland and Rice.**

moved by Nelson

seconded by \_\_\_\_\_

in favor Unanimous

against \_\_\_\_\_

**As the Maryland Avenue road construction continued, City staff and the applicant continued discussions and reviews of site plan revisions trying to get a new building and pumps to fit on the site without relocating the driveways. During this time, the business owner lost the ability to sell gasoline to his customers because the reconstruction of Maryland Avenue left the gas pumps too close to the property line. Due to the loss of retail sales of gasoline and the proposed new construction stalemate, the applicant decided to scale back their proposal from constructing a new building to only relocating their pumps to get the fuel dispensing facilities back in operation.**

**Relocating the gas pumps does not require a new conditional use permit. Therefore, the conditional use permit approved in May, 2012, does not apply to the current proposal for relocating the gas pumps.**

- **"The approval letter of August 24 gives no indication that the site plan was reviewed by Ramsey County and Saint Paul Public Works and if the issues of traffic safety were addressed."**

**A copy of the site plan is distributed to City staff in various City departments, including Building, Fire, Heritage Preservation, Parks, Planning, Right-of-way, Sewers, Traffic, Water, Water Resources, and Zoning; and other governmental agencies, including District Councils, Ramsey County Public Works, Watershed Districts, and State of Minnesota Transportation Departments.**

**A meeting is setup for the applicant to explain their project and ask questions from staff. At this meeting staff shares their comments with the applicant and explains any revisions that need to be made to the site plan.**

**The applicant submitted revised plans (dated August 15, 2012) to address the comments shared at the meeting. The revised site plan met the city requirements, so staff issued an approval letter. The approval letter does not typically list each City department who has no further comments to the revised site plans.**

**The difference between the site plan denied on July 11 and the site plan approved on August 24 is that a WB-50 truck turning diagram was submitted to show that it is able to enter the property from Maryland Avenue traveling west, refuel the underground tanks with a clear view to the tanker valves and then exit the property on Rice Street traveling south. The plan also shows how vehicle maneuvering on the site is managed more effectively with the revised parking plan.**

- **"District 6 Council scheduled a meeting on August 28, 2012 to review the site plan relocating the gas pumps and discuss the project changing from new construction to a building rehabilitation. Neighborhood citizens were informed on August 27, 2012 a site plan had been approved on August 24."**

**District 6 Council was sent a copy of the revised site plan (dated July 19, 2012) on August 3, 2012. District 6 Council responded with a letter dated August 10, 2012 stating that there were some concerns with the use of the alley, tanker truck delivery and its affects on the customer parking spaces, and fencing around the perimeter and requested additional time for neighbors to review the plan.**

**When staff reviewed the site plan, the concerns shared by the District Council were**

**taken into consideration.**

- **The use of the alley was restricted to two employees only paved parking spaces**
- **Timing of tanker truck deliveries and customer parking spaces were reviewed and taken into account. A minimum of 5 parking spaces are required for this auto convenience market. A total of 8 parking spaces are proposed.**
- **The existing chain link fence along the alley is being replaced with a new wood fence. A new black wrought iron fence is being proposed to line the perimeter of the site along Maryland Avenue and Rice Street.**

**Staff must process site plans in a timely manner and when a site plan is found to be consistent with Zoning Code 61.402(c), staff approves the plan. Staff found that the revised site plan is consistent with the zoning code in addition to addressing concerns shared by the District Council and therefore approved the site plan.**

2. The site plan complies with zoning standards and all other applicable ordinances of the City.

61.402(c) Site plan review and approval. In order to approve the site plan, the planning commission shall consider and find that the site plan is consistent with:

- (1) The city's adopted comprehensive plan and development or project plans for sub-areas of the city.
- (2) Applicable ordinances of the city.
- (3) Preservation of unique geologic, geographic or historically significant characteristics of the city and environmentally sensitive areas.
- (4) Protection of adjacent and neighboring properties through reasonable provision for such matters as surface water drainage, sound and sight buffers, preservation of views, light and air, and those aspects of design which may have substantial effects on neighboring land uses.
- (5) The arrangement of buildings, uses and facilities of the proposed development in order to assure abutting property and/or its occupants will not be unreasonably affected.
- (6) Creation of energy-conserving design through landscaping and location, orientation and elevation of structures.
- (7) Safety and convenience of both vehicular and pedestrian traffic both within the site and in relation to access streets, including traffic circulation features, the locations and design of entrances and exits and parking areas within the site.
- (8) The satisfactory availability and capacity of storm and sanitary sewers, including solutions to any drainage problems in the area of the development.
- (9) Sufficient landscaping, fences, walls and parking necessary to meet the above objectives.
- (10) Site accessibility in accordance with the provisions of the Americans with Disabilities Act (ADA), including parking spaces, passenger loading zones and accessible routes.
- (11) Provision for erosion and sediment control as specified in the Minnesota Pollution Control Agency's "Manual for Protecting Water Quality in Urban Areas."

**These requirements are met.**

NOW, THEREFORE, BE IT RESOLVED, by the Saint Paul Planning Commission, under the authority of the City's Legislative Code, that the appeal (#12-101937) filed by Richard and Susan Cantu of a decision by the Zoning Administrator to approve the site plan (#12-090127) for the relocation of the pump island and gas pumps submitted by Bilal Alsadi of Rice Street Market located at 1200 Rice Street is hereby denied.

**St. Paul, Minnesota, Code of Ordinances >> PART II - LEGISLATIVE CODE >> TITLE VIII - ZONING CODE >>  
Chapter 61. - Zoning Code—Administration and Enforcement >> ARTICLE V. - 61.500. CONDITIONAL USE  
PERMITS >>**

**ARTICLE V. - 61.500. CONDITIONAL USE PERMITS**

[Sec. 61.501. - Conditional use permit, general standards.](#)

[Sec. 61.502. - Modify special conditions.](#)

[Sec. 61.503. - Conditional use permit, change requiring new permit.](#)

[Sec. 61.504. - Change to conditional use, no new permit required.](#)

[Sec. 61.505. - Conditional use permits, automatic expiration.](#)

**Sec. 61.501. - Conditional use permit, general standards.**

Before the planning commission may grant approval of a conditional use, the commission shall find that:

- (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.
- (b) The use will provide adequate ingress and egress to minimize traffic congestion in the public streets.
- (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.
- (d) The use will not impede the normal and orderly development and improvement of the surrounding property for uses permitted in the district.
- (e) The use shall, in all other respects, conform to the applicable regulations of the district in which it is located.

**Sec. 61.502. - Modify 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.

**Sec. 61.503. - Conditional use permit, change requiring new permit.**

A change to a conditional use requires a new permit when one (1) of the following conditions occurs:

- (a) A conditional use changes from one (1) conditional use to another conditional use.
- (b) The floor area of a condition use expands by fifty (50) percent or more. For a conditional use existing on October 25, 1975, expansion is the sum of the floor area of all the expansions since then. For a conditional use established after October 25, 1975, expansion is the sum of the floor area of all the expansions since being established. Floor area does not include floor area which is accessory to a principal use and which does not result in the expansion of a

principal use.

- (c) For a conditional use permit triggered by floor area, the floor area expands to be larger than the floor area that triggers the requirement for a conditional use permit for the first time; or if already larger than the floor area that triggers the requirement for a conditional use permit, the floor area expands by ten (10) percent or more.
- (d) The building containing a new conditional use is torn down and a new building is constructed, even if the new building contains the same or less floor area.
- (e) The principal use of a conditional use expands onto an abutting lot, such as a used car lot or a fast food restaurant building addition expanding onto an abutting lot.
- (f) The number of residents in a community residential facility increases, or the number of rooming units in a rooming or boarding house increases.
- (g) A college, university or seminary adds a school building or an off-street parking facility for its exclusive use outside of its approved campus boundary.

(C.F. No. 10-349, § 2, 4-28-10)

### **Sec. 61.504. - Change to conditional use, no new permit required.**

A change to a conditional use does not require a new permit but does require approval of a site plan when one (1) of the following conditions occurs:

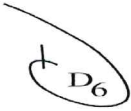
- (a) The floor area of a conditional use expands by less than fifty (50) percent. For a conditional use existing on October 25, 1975, expansion is the sum of the floor area of all the expansions since then. For a conditional use established after October 25, 1975, expansion is the sum of the floor area of all the expansions since being established. Floor area does not include floor area which is accessory to a principal use and which does not result in the expansion of a principal use.
- (b) An accessory use of a conditional use expands onto an abutting lot, such as a bowling alley's off-street parking lot expanding onto an abutting lot.
- (c) Off-street parking spaces are added in a parking lot, garage or ramp on the site of a conditional use.
- (d) An accessory structure is added to the site, such as a building to store salvaged motor vehicle parts being constructed on the site of a motor vehicle salvage operation.
- (e) A college, university or seminary adds a school building or an off-street parking facility within its approved campus boundary.

### **Sec. 61.505. - Conditional use permits, automatic expiration.**

Unless expressly provided by the planning commission, when a use requiring a conditional use permit is discontinued or ceases to exist for a continuous period of three hundred sixty-five (365) days, or when a conditional use changes to a permitted use not requiring a conditional use permit, the conditional use permit shall automatically expire. If the lot area of a conditional use is subsequently reduced in size, the conditional use permit shall automatically expire. If a conditional use becomes nonconforming and subsequently is discontinued or ceases to exist for a continuous period of three hundred sixty-five (365) days, the conditional use permit shall automatically expire. When an approved conditional use is not established in accordance with [section 61.105](#), or is established and subsequently changed to a conditional use requiring a new permit under [section 61.503](#), the conditional use permit shall automatically expire.

(C.F. No. 07-348, § 1, 5-9-07)





District 6 Planning Council

171 Front Avenue  
Saint Paul, MN 55117  
651-488-4485 fax: 651-488-0343  
district6ed@dist6pc.org

September 19, 2012

Zoning Committee of the Planning Committee  
15 West Kellogg BLVD  
Saint Paul, MN 55102

District 6 Planning Council wholeheartedly supports the appeal brought forth by Raymond and Susan Cantu and the neighborhood regarding the approval by zoning staff of 1200 Rice Street, 090127-Reemo Gas Station site plan.

In order to approve a site plan the City must consider and the plan must be consistent with findings set forth in Section 61.400.c.

***Site plan review and approval:*** In order to approve the site plan, the planning commission shall consider and find that the site plan is consistent with:

**The City's adopted comprehensive plan and development of project plans for sub-areas of the City**

This finding has not been satisfied. The site plan does not meet LU5.2 of the District 6 Planning Council Comprehensive Plan:

***Attractive commercial districts***

***LU5.1 Encourage existing auto related businesses to upgrade the appearance of their buildings and properties; discourage the growth of new auto related businesses.***

***LU5.2 Utilize the Rise Street Design Guidelines prepared by the Rice Street Guidelines Task Force in 2005, when existing buildings are renovated and improved***

The site plan does not call for a lighted canopy, the entire lot will not be repaved and any improvements are not consistent with the Rice Street Guidelines. District 6 has not seen any designs for upgrading the exterior visual quality of the building.

**The Land Use Chapter of the City of Saint Paul's Comprehensive Plan:**

**Promote Aesthetics and Development Standards:**

*As Saint Paul continues to revitalize itself and to grow, it must be an attractive place to live, work, and visit. This strategy provides a framework for design and aesthetics that will engage people and help integrate the built environment into the community.*

## **Commerce**

### ***1.45 Maintain and enhance retail commercial areas throughout the city by promoting standards that make them vital and attractive:***

- *Access to a broad range of goods and services;*
- *An anchor for surrounding residential neighborhoods;*
- *Safety for pedestrians; and*
- *Architectural elements that add interest at the street level.*

The applicant has ample opportunity when reconfiguring the site and when implementing improvements to follow elements that make the site interesting and above all ensure that the site plan considers and ensures pedestrian safety.

***1.47 Ensure that streets in compact commercial areas conform to the certain criteria: use of traditional urban building form, streetscape amenities, and traffic calming measures. Traditional urban building form and streetscape amenities should reflect the function of the street and the type of development on it by identifying and promoting the street as the center of a shopping district, no matter how large or small. Streetscape amenities should enhance the visibility of the storefronts or other buildings in the commercial area (see Policy T-3.1).***

Again the applicant has not investigated nor added additional amenities to any site redevelopment that reflects the neighborhood, there will be additional traffic both pedestrian and vehicular and the store is set back from the street due to the configuration of the lot. The redevelopment should reflect an establishment that is inviting and safe.

### ***1.53 Encourage changes to the design of existing auto-oriented commercial buildings and areas with elements of traditional urban form to minimize impacts on the pedestrian realm.***

The business includes fuel sales which make it an auto related industry. The site is located on the corner of Rice Street and Maryland Avenue which has a high level of pedestrian traffic. The site plan does not address the impact of the high level of traffic three types of businesses will generate and what the impact on pedestrians will be.

***The arrangement of buildings, uses and facilities of the proposed development in order to assure abutting property and/or its occupants will not be unreasonably affected.***

This finding has not been satisfied. The proposed employee parking will pose a hardship to the adjacent properties, there will be pedestrian foot traffic behind the building and will spill over into abutting properties. The parking spaces are at such an angle that easy access will be difficult. The curb will be removed, ensuring that even a small delineation between the site and alley will be removed. The plan should demonstrate separation of the site to neighboring properties allow easier access.

***Safety and convenience of both vehicular and pedestrian traffic both within the site and in relation to access streets, including traffic circulation features, the locations and design of entrances and exits and parking areas within the site.***

This finding has not been satisfied. The proposed site plan is inconsistent with traffic safety, standard tanker delivery, there will be issues with traffic rotation throughout the site, vying for space to park or wait for available parking spaces, with foot traffic, deli/retail customers and those who wish to purchase fuel. The site is not large enough to accommodate three separate and distinct businesses, fuel, retail and a deli. If cars are parked in any area other than designated parking spots, traffic circulation will not work. There have been past experiences with businesses that patrons do not always park in designated parking areas, therefore causing safety issues.

***Sufficient landscaping, fences, walls and parking necessary to meet the above objectives***

This finding should not have been satisfied. There is a need for additional parking; this is an irregularly shaped 11,831 square foot lot with three businesses operating under one umbrella. The proposed parking is insufficient for the usage. The employee parking should not be assigned to the rear/side of the building.

***Site accessibility in accordance with the provisions of the Americans with Disabilities Act (ADA), including parking spaces, passenger loading zones and accessible routes***

This finding has not been satisfied. The route into the store, with the current configuration and parking is unsafe for people with disabilities and limited movement. It is unacceptable that a patron who happens to utilize alternate modes of transportation be required to pass through the traffic flow area.

In conclusion, District 6 Planning Council and the neighborhood have continued concerns regarding safety and the negative impact this site plan has on adjacent properties as well as concerns over traffic and safety. District 6 has cited five findings that have not been met. While the neighborhood and District 6 is of the opinion that the site plan has not met requirements it may be understandable that language is open to interpretation, even text found within the City's Land Use Section of the Comprehensive Plan. However what should not be in dispute is the fact that the approved site plan neglects the very reason why the original site plan was not approved; the relocation of the pumps. In discussions District 6 and neighbors were told that a small tanker will visit the site, not the larger tanker. District 6 is of the opinion that there is no

guarantee that a smaller tanker will deliver fuel and even if a smaller tanker made deliveries, there still would be traffic issues.

We feel that in reviewing site plans the City should take a more cautionary role, this site plan does not meet even the lowest threshold of the referenced criteria. We respectfully ask that you grant the appeal.

Regards,

*Ray Andresen*

Ray Andresen  
Chairman, Board of Director's

*Jeff Martens*

Jeff Martens  
Chairman, Land Use Task Force

Cc: Ward 5  
North End Business Association  
Dan Zangs on behalf of the neighborhood