

**CITY OF SAINT PAUL**  
**BOARD OF ZONING APPEALS RESOLUTION**  
**ZONING FILE NUMBER: 12-046263**  
**DATE: May 14, 2012**

WHEREAS, David Cossetta has applied for a variance from the strict application of the provisions of Section 63.319 of the Saint Paul Legislative Code pertaining to the stormwater runoff regulations that requires stormwater runoff from parking lots to be released into the City sewer system at a controlled rate in the B5 zoning district at 211 7th Street West. PIN: 062822230130; and

WHEREAS, the Saint Paul Board of Zoning Appeals conducted a public hearing on May 14, 2012 pursuant to said application in accordance with the requirements of Section 61.601 of the Legislative Code; and

WHEREAS, the Saint Paul Board of Zoning Appeals based upon evidence presented at the public hearing, as substantially reflected in the minutes, made the following findings of fact:

1. *The variance is in harmony with the general purposes and intent of the zoning code.*

This finding is not met. The applicant states that this site is zoned B5 and all proposed land uses are permitted within this zoning district. The applicant acknowledges that the purpose of the stormwater runoff regulation for which he is seeking a variance to control stormwater pollution along with soil erosion and sedimentation in the city.

With respect to stormwater, the zoning code establishes consistency across any and all land uses so that access and demands upon the public storm sewer system for drainage capacity are fairly apportioned. Thus, the overall drainage benefits provided by the public storm sewer system are equally shared. The public storm sewer system is municipal infrastructure which is owned, operated and maintained by the City in the public interest. Particularly, the public storm sewer system was separated from the public sanitary system decades ago and constructed new. The separated storm sewer system was designed on a foundation of projected runoff contributions by any property citywide, regardless of land use, which the zoning code supports in uniformity.

Therefore, the applicant's request to deviate entirely from the stormwater management plan by not providing any of the approved stormwater retention system is not in keeping with the purpose and intent of the code in promoting and protecting the public health, safety, aesthetics and general welfare of the community.

2. *The variance is consistent with the comprehensive plan.*

This finding is not met. The applicant states that the requested variance is reasonable because this business is permitted in this zoning district. The applicant further states that the city has recognized the importance of the project and its consistency with the comprehensive plan and economic goals by providing financial assistance for the project.

The comprehensive plan includes a chapter known as the Water Resources Management Plan (the Water Plan). The second strategy of the Water Plan is “reduce pollutant load to water bodies.” More specifically, item 2.9 of the Water Plan targets reducing “the negative impacts that parking lots in the city have on water quality and water resources.” Section 63.319 is directly related to addressing stormwater impacts from parking lots in the city. Additionally, the City’s Sustainable Building Policy is a significant tool to address the negative impacts targeted in the comprehensive plan.

- 3. The applicant has established that there are practical difficulties in complying with the provision, that the property owner proposes to use the property in a reasonable manner not permitted by the provision. Economic considerations alone do not constitute practical difficulties.*

This finding is not met. The applicant states that this site is part of an old historic neighborhood built long before the current zoning regulations and the building codes were in place. The site is urban, tight and condensed, which makes the construction and development of the project more difficult than new construction and that the City recognized those constraints by providing economic assistance for the project. The applicant states that the practical difficulties related to the configuration of the site, depth of bedrock, and the existing use of the below grade improvements are all factors that cannot be addressed by the City’s economic assistance.

The applicant states that he intended to construct the stormwater retention required by the City until his engineers and consultants notified him that the location of the system would be above and adjacent to the planned food processing area. He states that the runoff from the adjoining lots, west and north of the site, could result in a flow exceeding the capacity of their retention system and would back-up in the food processing area.

The applicant’s claim that water flow exceeding the retention system capacity would back-up into his food processing area has not been substantiated by any technical hydraulic analysis or engineering evaluation of grades, elevations, etc.

Further, the retention system in question is not an infiltration system which functions to soak water into the ground. Rather the retention system was designed as a self-contained temporary holding device that usually stores water for a relatively short period of time as it is



gradually released in to the municipal storm sewer system. The Alimentari system includes an identified surface emergency overflow that allows a controlled escape to the street for excess runoff.

The applicant listed some constraints and concerns associated with providing the retention system at this site. While the alleged difficulties may have some merit, other alternatives could have been explored by the applicant. For example, the applicant could have considered using porous pavers instead of asphalt at the newly paved North Lot or South Lot. In fact, a design option from the applicant's agents showed a detail of a porous paver system proposed at a total depth of less than three feet. However, the total amount of porous paver proposed was roughly only 20 square feet within approximately 12,000 square feet of impervious space within the South Lot. The applicant could have considered guidance provided by staff regarding stormwater landscaping in parking lot systems. Alternatively, a higher capacity retention system could be designed.

Indications suggest that due diligence to explore reasonable alternatives thus avoiding practical difficulty constraints was minimized. Additionally, financial concerns have been presented several times. (Refer to Item D for a detailed history.) The applicant's request does not demonstrate that there are practical difficulties which are real and legitimate.

4. *The plight of the landowner is due to circumstances unique to the property not created by the landowner.*

This finding is not met. The applicant had ample interaction with City staff to understand the variety of options available to address the site design to meet stormwater management requirements. Many of the available options would require the applicant compromising a small portion of revenue-generating real estate such as parking lot stalls or rooftop dining for stormwater control. Other options such as porous pavers were contemplated but at such a small scale as to be ineffective. The pavers showed technical merit; it is unclear why that was not explored further.

The stormwater management plan which includes the water retention system was designed by the applicant and accepted as noted in the city's October 6, 2011 site plan review approval letter. The request to be exempt from providing the stormwater retention system designed by the applicant himself after a professional evaluation of the site and potential alternatives is a self-imposed hardship. It is a circumstance created by the applicant.

5. *The variance will not permit any use that is not allowed in the zoning district where the affected land is located.*

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This finding is met. The requested variance will not permit any use that is not allowed in this zoning district.

6. *The variance will not alter the essential character of the surrounding area.*

This finding is not met. The applicant is proposing to be exempt from providing any stormwater management plan. The City, through its comprehensive plan and related policies and zoning code, views the essential character of the surrounding area as one which is more benign upon the environment. Without a stormwater treatment mechanism, the requested variance will result in polluted quantities of storm water flowing uncontrolled to the public storm sewer system and ultimately the Mississippi River. While this would maintain the status quo regarding drainage patterns, it is not consistent with the desired essential character of the surrounding area.

NOW, THEREFORE, BE IT RESOLVED, by the Saint Paul Board of Zoning Appeals that the that the request to waive the provisions of Section 63.319 in order to allow an exemption from the stormwater runoff requirements on property located at 211 7<sup>th</sup> Street West; and legally described as Riceirvines Add B26 4146 53 Ex Alley Nely 4o Ft Of Lot 10 Blk 53; in accordance with the application for variance and the site plan on file with the Zoning Administrator.  
***IS HEREBY DENIED.***

**MOVED BY: Ward**  
**SECONDED BY: Wilson**  
**IN FAVOR: 5**  
**AGAINST: 2**

**MAILED: May 15, 2012**

**TIME LIMIT:** No decision of the zoning or planning administrator, planning commission, board of zoning appeals or city council approving a site plan, permit, variance, or other zoning approval shall be valid for a period longer than two (2) years, unless a building permit is obtained within such period and the erection or alteration of a building is proceeding under the terms of the decision, or the use is established within such period by actual operation pursuant to the applicable conditions and requirements of the approval,

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unless the zoning or planning administrator grants an extension not to exceed one (1) year.

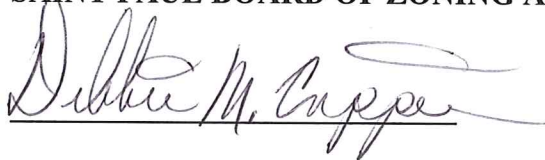
**APPEAL:**

Decisions of the Board of Zoning Appeals are final subject to appeal to the City Council within 10 days by anyone affected by the decision. Building permits shall not be issued after an appeal has been filed. If permits have been issued before an appeal has been filed, then the permits are suspended and construction shall cease until the City Council has made a final determination of the appeal.

**CERTIFICATION:**

I, the undersigned Secretary to the Board of Zoning Appeals for the City of Saint Paul, Minnesota, do hereby certify that I have compared the foregoing copy with the original record in my office; and find the same to be a true and correct copy of said original and of the whole thereof, as based on approved minutes of the Saint Paul Board of Zoning Appeals meeting held on May 14, 2012 and on record in the Department of Safety and Inspections, 375 Jackson Street, Saint Paul, Minnesota.

**SAINT PAUL BOARD OF ZONING APPEALS**

A handwritten signature in cursive script, reading "Debbie M. Crippen", written over a horizontal line.

**Debbie M. Crippen**  
Secretary to the Board