

JAN 03 2012



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 # 12-000904
Fee 440.00
Hearing date

APPLICANT

Name Walter Jirik
Address 1184 Dayton Avenue
City St. Paul St. MN Zip 55104 Daytime phone 612-775-8940 (work)
651-646-6401 (home)
651-366-2430 (cell)
Name of owner (if different)

PROPERTY LOCATION

Address 1170 Selby Avenue
Legal description: Anna E Ramsey Add EX Ave Lot 3 BIK 10
(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 _____, Paragraph _____ of the Zoning Code, to appeal a decision made by the Board of Zoning Appeals on December 27, 2011. File number: 11-306845
(date of decision)

GROUND(S) 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.

see attached 3 pages

(attach additional sheet if necessary)

Applicant's signature Walter Jirik Date 01/03/2012 City agent OT
1/3/2012

GROUNDS FOR APPEAL

The Board of Zoning Appeals' Staff Report (hereafter the BZASR) was deficient and misleading. Conclusions and findings were based on insufficient data and false premises and failed to consider the full intent and scope of the applicable codes. For example (using the section enumerations of the BZASR):

C. Background: The BZASR states, "In 2006, the Board of Zoning Appeals approved an 11 space parking variance for Pizza Luce to move into 1185 Selby Avenue subject to the condition that two lots, 1183 and 1185 Selby Avenue, are combined as a single parcel ... Pizza Luce has 8 parking spaces in the small lot (1183 Selby Avenue) next to its building."

Response: Pizza Luce currently has only 6 striped spaces, not 8. This, in itself, is a violation of the variance they applied for and received in May 2006. Based on zoning codes at the time, Pizza Luce should have been required to have at least 31 spaces. It was presumed at the time that there were 12 existing spaces and Pizza Luce would add 8 more spaces for a total of 20 spaces, thus reducing the number of required spaces to 20 from the code requirement of 31. Pizza Luce, however, has never had 20 parking spaces in the lot at 1183 Selby, nor does the space even allow for that many. To reiterate, Pizza Luce now has only six striped parking space at its facility, not 20.

The BZASR further states that "Pizza Luce acquired the house immediately west of its building and parking lot on the north side of Selby, at 1193 Selby, with the intent of enlarging the parking lot." The actual evidence contradicts this assertion. In fact, Pizza Luce acquired the property at 1193 Selby, not to expand their parking lot, but to enable them to turn their existing parking lot into an outdoor patio with seating for 24 patrons, complete with music piped to the outdoors. This is why Pizza Luce could not obtain sufficient support from the neighborhood to remove the house and rezone the property.

D. Code Citation:

The BZASR only references select sections of the Zoning Code, ignoring other relevant parts of the Code. The 1170 Selby Avenue lot is not suitable for a parking lot with 90 degree parking, even with the variances. The Code requires that a lot with 90 degree parking must have a minimum of 18' for parking and an additional minimum of 20' for maneuvering in and out of the parking space. The lot is 40 feet wide, measured from the brick wall of the building to the fence on the lot line to the west. A mere 1 foot clearance on each side of the parking lot barely addresses this requirement, much less the 24' that is recommended. Adding guard rails to protect the building and fence from damage effectively reduces the width of the usable space to under what is required.

Sec. 63.308 of the St Paul City Code states, "Access to all off-street parking facilities shall be provided by a maneuvering lane so that any vehicle leaving or entering the facility from or onto a public street shall be travelling forward." The code further requires that 90 degree parking must accommodate two-way traffic. The width of the lot and the proposed design makes this impossible. There is only room for one lane of traffic to both enter and exit the parking lot. At the very least, any car parked in the southernmost 2 or 3 stalls must back out of the parking lot onto Selby Avenue. Also, sight lines do not allow cars entering the lot to see if there is an available space until they have already entered the lot. If no space is available, they too must back out onto Selby Avenue. And cars waiting to enter the lot must block traffic on Selby while cars exit the lot.

If angle parking is used, all cars would have to back out of the lot onto Selby Avenue, since there is no way to exit the lot on the back end. The only type of parking this lot can accommodate is parallel parking along the fence, but this would allow for only 2 or 3 parking spaces.

Sec. 63.314 (b) of the Code requires that "screening shall be provided consisting of a masonry wall or decorative fence (not including chain link) supplemented with landscape material, forming a screen a minimum of 3 feet in height...and not less than 50% opaque." This requirement, which is met by the solid wood fence along the west property line, as well as the shrubs along the Selby Avenue sidewalk, make it

impossible for drivers to see a pedestrian on the sidewalk until the car is actually on the sidewalk, especially if the car is backing out. This presents a serious danger to pedestrians, especially children and persons in a wheelchair. The Zoning Board seems to have ignored the fact that there are reasons for enforcing the code.

E. Findings:

1. The BZASR asserts, "The variance is in harmony with the general purposes and intent of the zoning code."

Response: If the purpose of the code is to promote safety and livability, the variance cannot be in harmony with the code.

It further states that, "Pizza Luce is not required to provide additional parking under the 2006 variance."

Response: Not only is the validity of that variance in question, but the variance was granted for a restaurant use only, prior to Pizza Luce's application for a liquor license. Sec. 63.204 of the Code states, "When any existing use within a structure changes to a new use which requires more off-street parking spaces than the existing use...then the additional required off-street parking spaces must be provided."

2. The BZASR states, "The variance is consistent with the comprehensive plan."

Response: Neither the BZA or the District Council has revealed what this Comprehensive Plan is, but granting these variances does not alleviate the parking and traffic problems Pizza Luce has brought to our neighborhood.

3. As stated elsewhere (see the first paragraph of comments under section D above), even with the variances, the lot is not suitable for a parking lot with 90 degree parking, as proposed in the Site Plan.

4. The BZASR states, "The plight of the landowner is due to circumstances unique to the property not created by the landowner."

Response: Pizza Luce created their own problems when they set out to impose their business plan on our neighborhood. Pizza Luce knew that their business plan would not conform to existing code, that it was more suited to a commercial area—such as downtown Minneapolis—than a residential neighborhood in Saint Paul. It appears Pizza Luce simply assumed it could apply for and receive variances from the Codes, regardless of what our neighborhood wanted. Those of us who have spent many years and countless dollars working to improve our homes and neighborhood should not now have to bear the consequences of Pizza Luce's arrogance and bad business decisions.

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

Fact: Zoning does allow for parking. However, compliance with the safety codes would only allow parallel parking, not 90 degree parking.

6. The BZASR states, "The variance will not alter the essential character of the surrounding area."

Response: Pizza Luce's presence has already negatively affected our neighborhood. The additional variances Pizza Luce is seeking would further dramatically alter the character, safety, and livability of the surrounding area in our neighborhood through increased traffic congestion on Selby, bright lights and noise late at night, as well as other safety concerns.

F. District Council Recommendation:

Response: The District Council recommendation should be disregarded based on the following sequence of events:

- The BZASR was dated 12/12/2011.
- The BZASR states that "the Union Park District Council met on December 13 and voted to support the variances. (This was the day **after** the BZASR was written.)
- The letter of support from the Union Park District Council is dated 12/14/2011 (**two days after** the BZASR was written).

The above seems to indicate a deliberate attempt to circumvent community input.

The Notice of the Public Hearing was sent out December 14, 2011. It was one page, accompanied by no other information, not even the site plan. Neighbors were also never notified about a meeting of the Union Park Land Use Committee, much less invited to voice concerns.

At the Hearing on December 27, 2011, the Board of Appeals expressed surprise that there was opposition to Pizza Luce's business plans. It is hard to conceive of why they should have been surprised, since they have heard previous testimony concerning Pizza Luce.

Certainly, the Executive Director of Union Park District Council and chair of the Land Use Committee, Sarah Kidwell, who wrote the letter of support for the variance, cannot claim to have acted out of ignorance of neighborhood concerns, since she has been intimately involved in community discussions—and objections—concerning Pizza Luce since at least 2007, when she was Executive Director of Lexington-Hamline Community Council. She has consistently promoted Pizza Luce's agenda.

G. Correspondence:

There can have been no correspondence, since our community **was not notified** of any variance request prior to the issuance of the BZASR.

H. Staff Recommendation:

Based on the above facts and considerations, the BZASR should have recommended denial of the variance requests.

We appeal to the City Council to consider our concerns, and vote to reverse the decision of the Board of Zoning to grant the two variances.