

**CITY OF SAINT PAUL**  
**BOARD OF ZONING APPEALS RESOLUTION**  
**ZONING FILE NUMBER: 17-214989**  
**DATE: December 4, 2017**

WHEREAS, on November 8, 2017, under Zoning File No. 17-214989, John Rupp (“Appellant”), owner of that property commonly known as 79 Western Avenue North (the “Property”) and legally described as “Woodland Park Addition to St Ex S 101 84 Ft; The E 14.34 Ft Of Lot 17 & The W 10.25 Ft Of Lot 18 Also Ex W 10. 25 Ft & Ex S 85 Ft Lot 18 & Ex S 85 Ft; Lot 19 & The E 2.35 Ft Of S 85 Ft Of Lot 19 & Ex Ne Tri Part; The W 31.25ft Of Lot 20 All Lying Below Pla,” duly filed an appeal from an October 30, 2017 administrative decision of the Zoning Administrator (“Administrator”) in which the Administrator determined that an area of the Property, described generally for the purposes of this appeal as the “West Addition” was, for zoning purposes, never legally established as “restaurant” space; and

WHEREAS, on December 4, 2017 and pursuant to Leg. Code § 61.601, the Board of Zoning Appeals (“BZA”) duly conducted a public hearing on the said appeal where any person interested in the matter was afforded an opportunity to be heard; and

WHEREAS, the BZA, upon the close of the said public hearing and based upon the files and records in this matter including the Administrator’s October 30, 2017 decision, a BZA staff report dated December 4, 2017 addressing Appellant’s appeal, and all the oral and written testimony presented during the said public hearing, as substantially reflected in the BZA’s minutes, made the following findings of fact:

1. Appellant is the current owner of the Property.
2. The Property is located in an RM3 residential zoning district.
3. Certain uses at the Property, including the “restaurant” and “bar” uses at issue here, appear to qualify as legal nonconforming uses provided the uses were established prior to the enactment of the 1975 zoning code amendments which no longer allow these uses as permitted principal or accessory uses in RM3 districts and the uses did not lose their nonconforming status due to discontinuance.
4. When the West Addition was constructed in 1976, the Property was owned by an entity which, for purposes of this appeal, is described herein as the “Squash Club.”
5. The Squash Club’s 1976 plans labeled the West Addition as a “future dining room.”
6. Uncontroverted testimony indicated that the West Addition remained “unoccupied and vacant” following its construction until 1987.
7. In 1987 the Squash Club obtained a building permit to install windows on the exterior wall of

the West Addition. The Club's approved building permit plans relabel the West Addition space previously identified as "future dining room" to "exercise room."

8. City records indicate that the "exercise room" contained exercise equipment on February 11, 2000 consistent with the Squash Club's building permit plans.
9. Appellant obtained ownership of the West Addition in 2001.
10. No evidence was provided indicating that the West Addition was ever established, used, occupied, or converted by the Squash Club into a "dining room" at any time pursuant to building permits issued prior to Appellant's ownership in 2001.
11. Appellant contends that he "incorporated" the West Addition into the Property's restaurant space after he obtained ownership of the West Addition space in 2001. As noted above, since 1975, a restaurant or bar is a nonconforming use in an RM3 zoning district.
12. Because the West Addition was never established, used, occupied, or converted into a "dining room" pursuant to building permits, Appellant cannot through self-determination "incorporate" the West Addition into "restaurant" space, especially when a restaurant use is a nonconforming use.
13. Appellant contends that a building permit issued for an existing nonconforming restaurant and bar located in the Property allowed him to "expand" the nonconforming restaurant and bar into the West Addition. The City's Building Official disagrees with Appellant's claim and has determined that the building permit in question is not applicable to the West Addition.
14. The opinion of the City's Building Official notwithstanding, the authority to approve the expansion of any nonconforming use is vested exclusively in the City's planning commission. Building permits cannot be used as a substitute for the City's zoning regulations. Likewise, the issuance of a building permit does not supersede the City's zoning regulations. Appellant's contention that the building permit constituted approval to expand a nonconforming use has no legal basis because Appellant has never obtained the planning commission's approval to expand a non-conforming use at the Property into the West Addition.
15. Appellant finally contends that the West Addition was established for use as a restaurant or bar based upon a 1976 liquor license. As noted under Finding no. 14, the authority to regulate and approve nonconforming uses lies exclusively with the planning commission. A liquor license cannot be used as a substitute for the City's zoning regulations. Likewise, the issuance of a liquor license does not supersede the City's zoning regulations. Appellant's contention that the liquor license constituted an approval to expand a nonconforming use has no legal basis because Appellant has never obtained the planning commission's approval to expand a non-conforming use at the Property into the West Addition.

NOW, THEREFORE, BE IT RESOLVED, based upon the files and records in this matter

including findings 1-15 above, the Board of Zoning Appeals hereby upholds the Zoning Administrator's October 30, 2017 determination that the West Addition to the subject Property was, for zoning purposes, never legally established as "restaurant" space; AND,

BE IT FURTHER RESOLVED; based upon the files and records in this matter, the appeal by John Rupp is hereby denied; and

BE IT FINALLY RESOLVED, upon adoption of this resolution by the BZA, a copy of it shall be immediately mailed to Mr. Rupp and provided to the City's building official.

**MOVED BY: Rangel Morales**  
**SECONDED BY: Trout-Oertel**  
**IN FAVOR: 6**  
**AGAINST: 0**

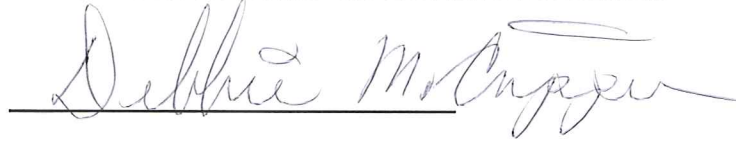
**MAILED: January 18, 2018**

**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, 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 December 4, 2017 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", is written over a horizontal line. The signature is in black ink and is positioned centrally below the board's name.

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