

BOARD OF ZONING APPEALS STAFF REPORT

MEMORANDUM

Date: December 4, 2017

To: Chair Bogen – City of Saint Paul Board of Zoning Appeals (BZA)

From: Jerome Benner II

Re: 79 Western Avenue North -Appeal of a decision made by the Zoning Administrator

Purpose: The property owner has submitted an appeal of a decision made by the Zoning Administrator stating the west dining room of the Commodore Restaurant was never legally established.

Section 61.701 of the zoning code states:

- (a) The board of zoning appeals shall have the power to hear and decide appeals where it is alleged by the appellant that there is an error in any order, requirement, permit, decision or refusal made by the zoning administrator in carrying out or enforcing any provision of this code.
- (b) The grant or denial of approval by the planning or zoning administrator of site plans, permits, similar use determinations or other matters that the planning commission has, by rule, delegated to the planning or zoning administrator is subject to appeal to the planning commission.
- (c) An appeal may be taken by any person, firm or corporation, or by any office, department, board or bureau affected by a decision of the planning or zoning administrator within ten (10) days after the date of the decision. The appeal shall specify the grounds of the appeal. The planning or zoning administrator shall forthwith transmit to the board or commission all of the papers constituting the record upon which the action appealed from was taken. An administrative appeal shall stay all proceedings, including criminal proceedings, in furtherance of the action appealed from unless the zoning administrator certifies to the board or commission, after notice of appeal has been filed, that by reason of facts stated in the certificate a stay would cause imminent peril to life or property, in which case the proceedings shall not be stayed otherwise than by a restraining order granted by a court of competent jurisdiction.

Background:

The property owner of the Commodore Restaurant claims a building permit was issued in order to expand the interior space west of the existing restaurant/bar into a dining room. The

Building Official disagrees with the claim and has determined that the permit issued did not include the space in question.

This site is located in a RM3 residential zoning district. As such, the use of the property for a restaurant, bar, and squash club are all nonconforming uses established under the pre-1975 zoning code when hotels and accessory uses were permitted in residential districts.

The property owner, hereby also described as the appellant, claims that the Zoning Administrator's decision was made in error and that the west dining room space has been used as part of the restaurant since its purchase in 2001.

Section 62.102 of the Saint Paul zoning code states that the burden of proof establishing a nonconforming use, "shall be on the property owner." City staff has not received proof from the property owner that the most recent use of the space in question was for a restaurant. The appellant provided a floor plan from 1976 when the addition was constructed showing this area as a future dining room, but no evidence that use as a dining room was ever established. Furthermore, plans were approved by the Heritage Preservation Commission for the windows along the south wall of the space in question, date August 7, 1987, were for the squash club and included a floor plan identifying the space as an exercise room, a storage room and two office rooms. City records also indicate that the space in question had exercise equipment in it, dated February 11, 2000.

The appellant obtained this space in 2001; it was used for the squash club at some time prior to the appellant's acquisition. Although the space was originally designed for future dining room space, it was never legally established as space for a restaurant. The appellant finds this to be in error because the Zoning Administrator agrees the space was originally designed and built for a restaurant, however, according to the appellant, it was legally established for a restaurant use when the liquor license was issued for the space in 1976, and the license has covered this area continuously since then.

A squash club is a nonconforming health/sports club and a restaurant/bar is another type of nonconforming use. The appellant finds this fact to be in error; he agrees that when he obtained the space it was previously used as a squash club, but believes that it does not change its permitted restaurant use, and there is no city record indicating that the use of the restaurant was ever changed by the property owner or any action by the Planning Commission.

Board of Zoning Appeals Decision:

Pursuant to Section 61.701(a) the BZA "must decide appeals where it is alleged by the appellant that there is an error in any order, requirement, permit, decision or refusal made by the zoning administrator in carrying out or enforcing any provision of this code." If the BZA finds that the Zoning Administrator erred in her decision, then the appellant would be permitted to expand the existing Commodore Restaurant into the space in question. On the other hand, if the BZA denies the appeal, the appellant would be required to apply for a change of nonconforming use permit from the planning commission as specified under Section 62.106(b) of the zoning code.

FILE

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Staff Recommendation:

Based on the evidence provided by the Zoning Administrator, staff recommends that the Zoning Administrator's October 30, 2017 determination regarding the expansion of the "west dining room" at 79 Western Avenue North was, for zoning purposes, not in error.