



Application for a Zoning Appeal

To/From BZA
Zoning Section
Dept. of Safety & Inspections
375 Jackson Street, Suite 220
Saint Paul, MN 55101-1806
(651) 266-9008

To/From Planning Commission
Zoning Section
Dept. of Planning & Econ. Dev.
1400 City Hall Annex
25 West Fourth Street
Saint Paul, MN 55102-1634
(651) 266-6589

Zoning office use only

File # 18-015901

Fee \$462-

Tentative hearing date:

JAN 17, 2018

Appellant Information

Name JOHN RUPP
On behalf of COMMODORE RESTAURANT
Address 79 WESTERN AVENUE NORTH SUITE 900 SAINT PAUL BLDG.
City ST. PAUL State MN Zip 55127 Daytime phone 651-492-2644
Email jcrupp@commonwealthproperties.com

Property Location

Project Name COMMODORE BAR AND RESTAURANT
Address 79 WESTERN AVENUE NORTH

Type of Appeal: Application is hereby made for an appeal to the:

- Planning Commission, under the provision of Chapter 61, Section 701, Paragraph C of the Zoning Code...
Board of Zoning Appeals (BZA), under the provisions of Chapter 61, Section 701, Paragraph C of the Zoning Code...
[X] City Council, under the provision of Chapter 61, Section 702, Paragraph A of the Zoning Code... #17-214992

Grounds of 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, finding, or procedure made by the Planning Commission or BZA.

RECEIVED

DEC 14 2017

By: City of St Paul DSI

(Attach additional information as needed.)

Appellant's signature

[Handwritten signature]

Date

12/14/17

City agent

[Handwritten signature]

MEMORANDUM

The Commodore - Restaurant Interior Alterations
79 Western Avenue North
St. Paul, MN 55038

Project No. 74803.010

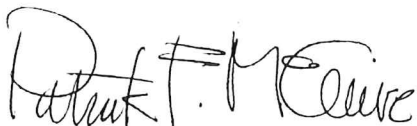
14 December 2017

Design/Build plans submitted for approval with Permit 20 12 017614, issued/dated 30 August 2012, include the following:

1. Clear delineation of Scope of Interior Alteration Work including the West Dining Room.
2. The area of the West Dining Room is included in determination of Occupant Load, Means of Egress/Egress Sizing and minimum number of Plumbing Fixture requirements.
3. New restrooms, Mens 126 & Womens 127, to meet the minimum number of Plumbing Fixture requirements. Additional restrooms would not be required without West Dining Room.
4. New Exterior Exit Stair to provide required Exit Access from West Dining Room.

The West Dining Room is clearly included with the submitted plans.

McGUIRE COURTEAU LUCKE ARCHITECTS, INC.



Patrick F. McGuire

cc: John Rupp, Commonwealth Properties

Grounds for Appeal to the City Council from the Decision of the Board of Zoning Appeals

The basis for this appeal to the City Council is the fact that serious misstatements and/or omissions of material facts were made in the Board of Zoning Appeals Staff Report to the Board of Zoning Appeals.

The stated "Purpose" of the appeal in the report was not accurate. The appellant has been trying since August of 2012 – **over 5 years** – to receive city approval for all of the work completed, and a permanent occupancy permit, pursuant to a building permit and zoning approval issued in August of 2012 (**which did in fact include the west dining room**), which was verbally approved for temporary occupancy in 2015 and opened then in reliance on that city approval. (See attached letter from the project Architect confirming that the West Dining Room was in fact included). Applicant asks the City Council to settle the current zoning issue as a necessary pre-condition to obtaining a permanent occupancy permit.

This is a zoning appeal. The zoning staff has not presented evidence that it, independent of the Building Official, erred in 2012 when it concluded that it had evaluated the zoning issues in the West Dining Room and found the were none. The Building Official's view of a zoning issues and whether or not building improvements can be completed in the West Dining Room is not only preposterous but irrelevant to this appeal.

Both the City and the Appellant agree that the from a Zoning perspective, the West Dining Room was legally established as a dining room in 1976 when a building permit was issued to construct the BUILDING in which it was to be located, and the liquor license covering the adjacent pre-existing Commodore Bar and Restaurant (which opened in 1920) was expanded to cover the new dining room. Both the City and the Appellant agree that from a Building Permit perspective no permits to complete the required INTERIOR WORK in the West Dining Room" to allow it to be occupied as restaurant, or any other use for that matter, were ever issued until 2012. In fact no permits were issued between 1976 and 2012 that would allow the Room to be occupied at all!

Both the Zoning Administrator and the Zoning Staff failed to make the distinction between the zoning issue and the building permit issue. Example: the report mentions that the HPC approved windows in 1987 – eleven years after the building was constructed. The report failed to mention that the windows were the ones that were approved for a restaurant, not a club use in 1976, and that today they are in place in the West Dining Room with no modifications. The staff report also failed to mention that in 1987 no BUILDING PERMITS were issued to install the approved windows that were installed anyway, nor were there any building permits approved to construct any interior improvements for use a squash club exercise room.

It is important to note that the staff report also failed to mention that in order for the West Dining Room to be occupied for any use in 1987 – given that eleven years had passed since the room was approved for restaurant use (contingent on approved building plans), any new use would require a change of legal non-conforming use. No such change was ever requested or approved. The staff report goes on to say that in 2000 there was exercise equipment in the room failing to point out that there was no legal basis for using the room as an exercise room.

The Staff reports argument is that apparently all the Commodore Squash Racquets Club needed to create an approved use is to move exercise equipment into a room without zoning approval and with no building permits - an absurd argument.

Staff incorrectly characterized Appellants position concerning the exercise equipment in the West Dining Room 17 years ago as having some bearing on this. It is irrelevant.

Contrast the staff's argument about the Club use with Appellants steps to obtain all required approvals. Appellant submitted plans in 2012 to complete the interior work required to finally allow it to be used as a restaurant dining room, after owning it and using it for other restaurant uses since 2001. Both Zoning and Licensing approved the proposed use along with construction approval, and issued numerous permits for the work in the West Dining not just to Appellant, but to subcontractors working in that room as well.

Apparently in 2012, when the zoning was approved, the zoning staff could have required a "reestablishment of a legal non-conforming use" proceeding, but it didn't. Since Applicant had been told by the city that there had been a valid liquor license covering the West Dining Room without interruption since 1976, and the city had never allowed a license to be issued for a location without approved zoning, it seemed reasonable to the Appellant the proceeding was not necessary.

The Appellant has owned the original Commodore Bar and Restaurant since 1984 and the West Dining Room since 2001. Appellant has never received any notifications of any kind that it would not be allowed to occupy the West Dining Room as a dining room that was covered by the liquor license it has had for over 30 years!. Appellant always understood that to occupy the West Dining Room for customer dining room use the interior work planned in 1976 would finally need to be completed, and it has been now, subject to final inspections that the city refuses to make.

The Commodore reopened after its remodeling in 2015 with rave reviews. It won the Charlie Award for the best restaurant design in the Twin Cities for 2016. It is one of the great historic iconic restaurants of the city. If the city prevails in demanding that there has been "a change of use" it is the Building Official's stated intention to close the West Dining Room immediately – threatening John Rupp personally with criminal prosecution if he refuses to do so - and require that the work that has been completed and repeatedly inspected in the entire restaurant (all of which he agrees was permitted except the West Dining Room) be torn apart to install additional improvements that were not originally required in the permit. Both of these demands will destroy the business. The city has no legal or frankly moral right to take the positions it has taken in this matter.

This appeal come before the council because in the city now there is no longer any place to go to negotiate matters of this sort – a problem much bigger than just the issue.

The Appellant asks the City Council to reject the Board of Zoning Appeals and Zoning Administrators incorrect decisions and allow the dining room - that was originally intended to be a dining room, has been licensed for over 40 years, that was completed at great expense while being repeatedly inspected by the city, and approved to open - to stay open. On behalf of others trying to invest in the city, many known to Appellant, who are also caught in other insane situations – Appellant also asks the City Council on their behalf to look into the permitting process and make long overdue changes.