

William Sylvester

1463 Midway Pkwy Saint Paul MN 55108-2420

Sirs:

Living next to the Java Train is like living in a Walmart parking lot. My property line is less than a foot from their building. There is no distance to reduce the impact. No good option for a buffer. No fence or pleasant landscaping that you're likely to see in well governed communities.

Their customers seem to think my backyard is part of the commercial area. They leave litter ranging from paper bags, cups, beer bottles and little plastic bags of dog droppings. They use my backyard as a "cell phone booth", a smoking area, a place to have a picnics and a parking lot. Mostly a parking lot. I'm constantly begging people not to park on my property. I've had to debate truck drivers about their right to park on my property when making deliveries to the restaurant. I've had to beg a trash hauler not to leave a huge dumpster on my parking pad.

Since my property line is so close to their building. There isn't even enough room for the owners to maintain their building with out trespassing. This doesn't stop them and they don't have the decency to even ask my permission.

The area wasn't intended for this. The development is on a quiet side street. Kids use it for skateboarding. The foot print is to large for what they are doing now and they are purposing a three fold increase in seating. Three times as many people?

I don't think the owners are happy with the 10pm closing restriction. I think it's the next thing they'll ask to change. I think they want to stay open until at least 1am. This is a peaceful neighborhood that goes to bed early. With the exception of Midnight Mass at Christmas nothing else in the precinct is open past 7pm. 1am would be an enormous change.

Some claim this is a community business that it serves our neighborhood. But most of the people I see aren't my neighbors. As the business grows more and more people seem to be coming from outside the area. It's becoming a destination. Strangers come from all over to clog our side streets and park in every available spot - often illegally. They often fill all the parking on the side of my house. Then they fill all the spots in front of my house, then the parking in front of my neighbors house and on down the block to Bison.

I can show you a dozen seedy bars in Frog town that have similar problems - three on one corner alone. Most without parking and all creating real enduring blight. They risk the safety and morals of the area. They sap the strength of the area and condemn the neighborhoods to a substandard existence. They were all cute in the beginning. But now they just make enough money to insure they will forever continue to drag down the area.

This is the ugliest projects I've ever witnessed. The ugliest part is the greed. When the players who will be getting a little something extra if this project gets it's way, lose sight of the harm they are doing and forget that it is very easy to destroy something as wonderful as our

neighborhood.

Traffic

Traffic problems were mentioned in District 10 land use committee meeting including difficult access to the north frontage road of Midway Parkway and Bison Avenue on the west side of Pascal.

In addition there has been a problem for trash pickup for Holy-Childhood serious enough that the driver had to go into the coffee shop and ask a car driver who was illegally parked to move their car. Otherwise the truck couldn't make the turn into the church parking lot.

Emergency vehicles use Pascal in front of the development as the most efficient way to reach residences north of Bison. There is a constant risk to life and property because the large fire trucks and ambulances can get snagged by parked cars and traffic in front of this property.

Parking

The McDonald's on University has 22 off street parking places and two handicap parking places for 75 interior seats. This project is purposing 5 off street parking places with twice as many (150) seats and no accommodation for handicapped parking. To make matters worse the 5 spots purposed and accepted by DSI are virtually unavailable. Two are in garage stalls, two are use by the owners for one car and one truck. And often this summer a travel trailer. I've never seen a customer use either garage stall. The only time I saw either stall used was by the owner working on a project. Perhaps he uses it for a shop. All 5 are in the back of the building where few customers realize they exist. And even worse they have a 'conference center' in the basement which has enough room for perhaps 75-100 more seats that don't seem to count in the calculation.

Alcohol and Kids

There are so many problems when mixing alcohol and kids. I cringed when one woman testified in favor of the proposal of serving alcohol at ten in the morning. She said something like 'serving alcohol that early was a wonderful idea because being a mother of three boys is very stressful'. Fetal alcohol syndrome is the first thing that her comment brings to mind. Perhaps that why her situation is so difficult. The syndrome is so personally tragic and if that isn't enough it has staggering costs to local governments in both education and welfare. Not only that, but every rotten thing we do to kids, the verbal abuse, the emotional abuse, the physical abuse and the hard to mention sexual abuse are dramatically increased by alcohol. With the addition of alcohol our worst moments become horrible - even catastrophic to kids.

The Owners

Are the owners up to the task? They haven't done very well in the past. She started a flower shop that did not succeed. She tried a gift shop that failed too. The coffee shop wasn't successful enough so they had to expand it. They came to the community for more and more concessions. Each concession has cost the community.

Some Legal Issues

"In the case of *Krummenacher v. City of Minnetonka*, the Supreme Court narrowly interpreted the definition of "undue hardship" and held that the "reasonable use" prong of the "undue hardship" test is not whether the proposed use is reasonable, but rather whether there is reasonable use in the absence of the variance. This is a much stricter standard, which considerably limits variance opportunities."

Johnson v. City of Minneapolis broke some important ground concerning inverse takings. Under the United States Constitution takings have to be complete or at least some aspect or right has to be completely taken. In their case against Minneapolis, Johnson used a corresponding section of the Minnesota Constitution (Article 1 § 3) which includes the word "damage" that the United States Constitution does not. They were successful in gaining a judgment for the partial taking for damage to the value of their property.

There is unquestionable damage to the value, usefulness and my ability to enjoy my property and there are others in the same situation. In addition, this was done with reckless disregard for the property owner's constitutional rights and/or with evil intent in the meaning of U.S.C. 1983.

It is settled law that zoning changes, variances, conditional use permits and other land use concessions must be reasonable and would be granted others in a similar situation. This property has repeatedly received concessions that would not begin to meet this criteria. Further they were often passed in direct contradiction to recommendation of staff, the Planning Commission and Board of Zoning Appeals.

These include but are not limited to; a conditional use permit(s) that expanded instead of reduce non-conforming uses, change in zoning classification from R4 (One Family Residential) to B2 (Community Business) in violation of the principle of "Spot Zoning", several parking variances that combine to allow the owners to operate a significant restaurant with a hundred and fifty seats with only 'five' off-street parking places and no accommodation for handicap parking and an attempted to repealed an overlay district created by Minnesota State Law that restricted serving liquor within one half-mile of the Minnesota State Fair specifically initiated for them.

In land use cases members of the community have substantive and procedural due process rights to be informed and heard. They have rights that include enough information that would provide them with a clear, honest and complete understanding of the true nature of the development. A project must be presented clearly and honestly in a limited number of public meetings. The slow incremental process of this development with hearing after hearing and new business plan after new business plan have exhausted the citizens and as a result denied them these rights.

Jeffrey Fischbach of DSI has failed to confirm or deny the existence of a pending hard liquor license in addition to the Wine and Malt Beverage license considered here.

DSI enforcement of license conditions have been lax. I believe that the applicants have significantly exceeded the existing Restaurant (3) seating, have not maintained 5 off street parking places for the restaurant as I understand them and a lighted sign in the window on the south side of their building exceeds the 3-4 foot candle limit at the property line. The property

line is less than a foot from the building at that point.

It's doubtful that the parking configuration with two required parking spaces located in closed (and probably locked) garages stalls will pass legal scrutiny.

Closer attention should be made to the current consent petition. The petition for rezoning made earlier seemed to have some serious discrepancies. The priest of Holy Childhood is not a property owner, the ultimate owner is probably the Archdiocese, yet he seems to have signed for two properties on that earlier petition. Also the wife of the property owner on Simpson and Midway Pkwy did not sign. Only one person seemed to have signed for each property in this current petition even ones that had multiple owners. Further the forms use by city in some of the petitions place an inordinate burden on the signers to know all possible impacts that the change will have and little or no responsibility on the person collecting signatures to actually inform the signers.

Closer attention should also be made to the use of the 'Rule of 5'. There is strong indication that the 'Rule of 5' was used twice. In an e-mail from former D10 staff Susan McCall, she mentioned the 'Rule of 5' when they were opening the coffee shop/flower shop. It was definitely used when they expanded the coffee shop into the flower shop space several years later.

The Community Council endorsed a wine and beer until 10 pm. The land use committee specifically wanted the restrictions attached to the license. The same recommendation was approved by the District 10 Community Council. Currently the 10pm closing is tied to a parking variance which could easily be lifted.

Respectfully,

William Sylvester
1463 Midway Pkwy
Saint Paul, MN 55108
williamsylvester@gmail.com
651.649.0812







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