

Cheek # 076190
\$815.00 Front counter



APPLICATION FOR ZONING VARIANCE
Department of Safety and Inspections
375 Jackson Street
Suite 220
Saint Paul, MN 55101-1806
General: 651-266-9008
Fax: (651) 266-9099

RECEIVED IN D.S.I.

APR 13 2012

Zoning office use only

File Number: 12-046263
Fee: \$ 815.00
Tentative Hearing Date: 5/14/12
Section(s) 63.319(a)
City agent Y. Dutta

APPLICANT

Name David Cossetta Company Cossetta's, Inc. and Bocce, LLC
Address 211 West Seventh Street
City Saint Paul St. MN Zip 55102 Daytime Phone 651-222-3476
Property Interest of Applicant (owner, contract purchaser, etc) Owner
Name of Owner (if different) N/A Phone _____

PROPERTY INFORMATION

Address / Location 211 West Seventh Street
Legal Description See attached
(attach additional sheet if necessary)
Lot Size 1.1 acres Present Zoning B-5 Present Use Cossetta's Market and Restaurant
Proposed Use Cossetta's Market and Restaurant

Variance[s] requested: Variance from stormwater requirements of Section 63.319.

Supporting Information: Supply the necessary information that is applicable to your variance request, provide details regarding the project, and explain why a variance is needed. Duplex/triplex conversions may require a pro forma to be submitted. Attach additional sheets if necessary.

Attachments as required:

- Site Plan Attachments Pro Forma

Applicant's Signature

[Handwritten Signature]

Date April 13, 2012

LEONARD
STREET
AND
DEINARD

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150 SOUTH FIFTH STREET SUITE 2300
MINNEAPOLIS, MINNESOTA 55402
612-335-1500 MAIN
612-335-1657 FAX

ERIC H. GALATZ
612-335-1509 DIRECT
ERIC.GALATZ@LEONARD.COM

April 13, 2012

VIA HAND DELIVERY

Zoning Administration
Department of Safety and Inspections (DSI)
375 Jackson Street, Suite 220
Saint Paul, MN 55101

Re: Variance Application for Property Located at 211 West Seventh Street, Saint Paul

To the Board of Zoning Appeals:

Please accept this letter on behalf of David Cossetta, Cossetta's, Inc. and Bocce, LLC (collectively, the "**Petitioner**") in support of the attached Application for Zoning Variance (the "**Application**"). The Petitioner is submitting this Application in order to complete its expansion of the existing market and restaurant operations (the "**Project**") at 211 West Seventh Street (the "**Site**").

We are re-submitting this Application, which we originally submitted on March 26, 2012, to correct the reference to the Section of the Code from which we seek a variance. We originally requested a variance from Code Chapter 52, Stormwater Runoff, on instructions Mr. Cossetta received from City Staff. On instructions from YaYa Diatta, we are re-submitting under Section 63.319, Stormwater Runoff, which incorporates Chapter 52 by reference.

In his April 10 letter returning the original Application, Mr. Diatta noted that the Application may be outside the jurisdiction of the BZA because the Petitioner is party to a Development and Loan Agreement with the Housing and Redevelopment Authority of the City of Saint Paul, which required the Petitioner to install the stormwater retention system in order to meet "sustainability undertakings." This is not true. The Development and Loan Agreement, in Exhibit J, Item 7(b), requires the Petitioner to comply with the determination of the City site plan approval process, as follows:

Exhibit J, Item 7(b), requires the Petitioner to comply with the determination of the City site plan approval process, as follows:

(b) Rate Control: 1.64 cubic feet per second (cfs)/acres disturbed or such other rate as is approved in the site plan approval process;

(underlining added). Exhibit J clearly defers to the zoning and planning process to determine the appropriate Rate Control standard. This Rate Control standard is the measurement that determines the need for the stormwater detention system. The BZA clearly has authority to grant a variance to that standard.

The Project is currently under construction. The variance is required to avoid substantial risk of harm to existing improvements and to avoid unnecessary costs and delays. We respectfully ask that the Board accept this re-submittal and place this Application on its agenda for Monday, April 16.

The Project has received all necessary governmental approvals and construction commenced during the first week of July 2011. In order to offset some of the extraordinary costs of redevelopment of the urban site, and to facilitate the redevelopment of a blighted area of the City, the City of Saint Paul, through its Housing and Redevelopment Authority, is providing economic assistance for the Project, including tax increment financing, a low interest loan, and a forgivable loan, pursuant to a Development and Loan Agreement dated June 22, 2011. During construction the Petitioner's engineers and other Project consultants raised concerns related to the approved stormwater management for the Project (the "**Stormwater Management Concerns**"). In particular, the Petitioner's consultants are concerned that the proposed on-site underground water detection facilities may have an adverse impact on the Petitioner's adjacent below grade food storage and preparation facilities. Further, the proposed underground stormwater detention system is inconsistent with best practices for stormwater management. Due to the Stormwater Management Concerns, the Petitioner is submitting the attached Application and requesting a variance to the stormwater management requirements for the Project.

Requested Approval

The Petitioner is submitting this Application to vary from the approved stormwater management plan for the Project and Section 63.319 of the Saint Paul City Code of Ordinances (the "**Code**") to no longer require the Petitioner to install a new stormwater retention system at the Site.

Site Description and Basis of Application

David Cossetta purchased the Site by contract for deed on January 23, 1987, and now, through Bocce, LLC, is the fee owner. Through Cossetta's, Inc., David Cossetta operates Cossetta's Italian Market and Pizzeria at the Site. As of July 1, 2011, the Site consisted of a three-story

building of approximately 16,956 gross square feet and an adjacent surface parking lot having approximately thirty-nine (39) parking stalls. The Site is zoned B-5 and is bounded by Chestnut Street on the southwest and West Seventh Street on the southeast.

In July 2011, the Petitioner commenced improvements to the Site. As illustrated on the attached site plan, the Petitioner is expanding the building on the Site and moving its parking function to land at 212 Smith Avenue North – across the alley from the Site. The Petitioner intended to construct a new stormwater retention system for the Project as required by the City until the Petitioner’s engineers and consultants notified the Petitioner that: (1) the location of the required stormwater retention system would be above and adjacent to the food processing area on the Site; (2) the cumulative run-off from the adjoining two lots, west and north of the Site, could result in a flow exceeding the capacity of the required stormwater retention system and back-up into the food processing area on the Site; and (3) the location of bedrock and limestone near grade level at the Site substantially increases costs of excavation and limits options for relocating the underground stormwater retention system to a location that poses less of a risk to the below grade food-processing area.

The Petitioner respectfully requests a variance from the approved stormwater management plan for the Project and the strict requirements of Section 63.319 of the Code because it is impossible to comply with the new stormwater retention system requirement without significant risk that the new system may cause flooding of the below grade food-processing areas, due to the available location of the proposed system (given the lay-out and size of the Site), the historical use of the Site, and the collective run-off entering the Site from the adjoining two lots.

If the City grants the variance, stormwater will flow from the re-configured parking lot and paved areas to the City streets and stormwater sewer system as it did before construction of the Project, without increased burden on City systems.

Variance Findings

The above-requested variance meets all of the following criteria established by the Code for granting a variance:

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

The Site is currently zoned B-5 and all of the proposed land uses are permitted within the B-5 zoning district. Section 63.319 - Stormwater Runoff, require parking lot design “in accordance with best management practices” including but not limited to Chapter 52, Stormwater Runoff.” The stated purpose of Chapter 52 is “to control stormwater pollution along with soil erosion and sedimentation in the city.” The proposed variance will not change conditions from those existing before construction. The proposed variance will allow the Petitioner to develop the Site in a manner that is consistent with the Code and adjacent development and with the general purposes and intent of the City’s

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zoning code. The proposed variance will alleviate any concerns that the new stormwater retention system will actually cause back-up at the Site and alleviate any liability concerns of the City and the Petitioner due to such potential back-up. The proposed variance is appropriate given the continued use of the Site as an Italian market and restaurant and therefore comports fully with the general purposes and intent of the Code.

2. The variance is consistent with the comprehensive plan.

The proposed variance for the Site is a reasonable use and is consistent with the comprehensive plan. The use of the Site as an Italian market and restaurant is permitted in the B-5 zoning district and meets all current planning goals for the area. The purpose of the variance is to allow development that is consistent with the Code and the comprehensive plan, the primary goals of which are to promote sound economic development within the City. The City has recognized the importance of the Project to the City, and the consistency of the Project with City's comprehensive plan and economic goals, by providing economic assistance for the Project. The variance will serve the City's economic goals by reducing the cost of redevelopment and protecting the City's investment against the risk of future water damage.

3. The applicant has established that there are practical difficulties in complying with the provision, that the property owner proposes to use the property in a reasonable manner not permitted by the provision. Economic considerations alone do not constitute practical difficulties.

The Site is part of an old and historic neighborhood – one built long before the current zoning regulations and building codes were in place. The Site is urban, tight and condensed, which makes the construction and development of the Project more difficult than new construction. Although economic considerations alone do not constitute practical difficulties, the economic impact of the Site conditions illustrate the extent of the practical difficulties. The City has recognized the extent of the practical difficulties by providing economic assistance for the Project. The practical difficulties related to the configuration of the site, depth of bedrock, and the existing use of the below grade improvements are all factors that cannot be addressed by the economic assistance.

The Petitioner intended to construct a new stormwater retention system for the Project until Petitioner's engineers notified the Petitioner that: (a) the location of the required stormwater retention system would be above and adjacent to the food processing area on the Site; and (b) that the cumulative run-off from the lots west and north of the Site could result in a flow exceeding the capacity of the required stormwater retention system and back-up into the food processing area on the Site. In addition, as set forth in the geotechnical reports attached hereto as Exhibit E, the location of bedrock and limestone at the Site limits alternatives available for locating the stormwater retention system to other portions of the Site that would not threaten the below grade food preparation areas.

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Existing Site conditions create practical difficulties in complying with the approved stormwater management plan for the Project, Section 63.319 and the standard of Chapter 52 of the Code that are incorporated in Section 63.319. The facts that (a) the Petitioner has used the Site as a restaurant for decades, (b) the City has approved the Project, and (c) the City has provided economic assistance for the Project all demonstrate the use is reasonable. Failure to grant the proposed variance will result in undue hardship to the Petitioner and deprive the Petitioner of a reasonable use of the Site.

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

The “plight” relates to the Petitioner’s desire to expand the current restaurant, market and catering operations at the Site to levels that are appropriate for the Site, while improving the traffic and parking conditions at the Site. The Petitioner has been using the Site as an Italian market and restaurant for years. The City recently changed its stormwater regulations and adopted a new “Sustainability Policy” that the Petitioner fully supports and agreed to comply with as a condition of the City’s approval of the Project.

During construction of the Project, however, new information was made known to the Petitioner that negates any benefit a new stormwater retention system would have for the Project. As a result, the requirement of a new stormwater retention system for the Project is an unsound decision for both practical and economic reasons because of its potential to actually cause back-up and flooding into the Petitioner’s below grade food preparation area. For these reasons, the City’s requirement that the Petitioner install a new stormwater retention system for the Project creates a substantial hardship.

These circumstances, plus the tightly-developed, historic nature of the surrounding area, are unique to the Site and are circumstances that the Petitioner did not create. Due to these special conditions, literal enforcement of the Code will result in undue hardship to the Petitioner and deprive the Petitioner of a reasonable use of the Site.

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

The variance will not permit any use that is not allowed in the zoning district affecting the Site. The Site is currently zoned B-5 and all of the proposed land uses are permitted within the B-5 zoning district. The variance will, in fact, allow the Petitioner to proceed with a Project that is allowed and is being encouraged by the City.

6. The variance will not alter the essential character of the surrounding area.

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The variance will allow the Petitioner to develop the Site in a manner that is consistent with adjacent development and will enhance the essential character of the surrounding area by redeveloping an under-developed area with new construction that is consistent with the scale and character of the surrounding area. The Project will also enhance surrounding property values (which are commercial). The variance itself will maintain existing conditions, by directing surface water to City streets and stormwater catch basins in the streets. The proposed variance will minimize the potential for back-up at the Site due to run-off from adjacent lots and the existing use of the Site, and will have no effect on the essential character of the surrounding area.

Exhibits


The following materials are enclosed for your consideration:

1. Application for Zoning Variance;
2. Site Plan;
3. Survey;
4. Opinion of American Engineering Testing, Inc. regarding the proposed stormwater retention system for the Project; and
5. Geotechnical report(s) for the Project prepared by American Engineering Testing, Inc.

Please feel free to contact me with any questions or concerns. Thank you in advance for your consideration. A check made payable to the City of Saint Paul in the amount of \$815.00 for the Application fee is enclosed.

Very truly yours,

LEONARD, STREET AND DEINARD
Professional Association


Eric H. Galatz
Enclosures

cc: David Cossetta (via email, with enclosures)

Zoning Administration
Department of Safety and Inspections
April 13, 2012
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Exhibit A

Application for Zoning Variance

[See attached.]



AMERICAN
ENGINEERING
TESTING, INC.

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CONSULTANTS
· ENVIRONMENTAL
· GEOTECHNICAL
· MATERIALS
· FORENSICS

March 26, 2012

Mr. John Krausert, P.E.
Rehder & Associates, Inc.
3440 Federal Drive, Suite 110
Eagan MN 55122

Subj: Cossetta's Restaurant Addition
211 West 7th Street
St. Paul, Minnesota
AET Project No. 29-00666

Dear Mr. Krausert:

As requested by you, we have reviewed the storm water management plan at the subject project. As you know, American Engineering Testing, Inc. (AET) has performed both the geotechnical work and the project testing and is very familiar with the project.

It is our understanding that a water retention system is being required by the City of St. Paul. Based on our familiarity with the site, it is our firm's opinion that a water retention system could potentially result in a future liability. As can be seen in the attached photograph, the location of the proposed water retention system would be above and adjacent to the restaurant basement food processing area. The cumulative runoff from the two adjoining lots, west and north of the subject project, could result in a flow exceeding the capacity of the retention system. A failure of the system would result in a liability exposure for the City of St. Paul.

Sincerely,
American Engineering Testing, Inc.

Daniel M. Vruno, PE
Principal Engineer
MN License No. 42037
Phone: 651-659-1334
Fax: 651-647-2744
dvruno@amengtest.com

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DEPARTMENT OF SAFETY AND INSPECTIONS
Ricardo X. Cervantes, Director



CITY OF SAINT PAUL
Christopher B. Coleman, Mayor

375 Jackson Street, Suite 220
Saint Paul, Minnesota 55101-1806

Telephone: 651-266-8989
Facsimile: 651-266-9124
Web: www.stpaul.gov/dsi

April 10, 2012

David Cossetta
Cossetta's, Inc.
211 West 7th Street
Saint Paul, MN 55102

RE: Application for Zoning Variance at 211 West 7th Street.

Dear Mr. Cossetta:

As staff assigned to the Board of Zoning Appeals ("BZA"), I am in receipt of your Zoning Variance Application dated March 26, 2012 in which you request the BZA to grant a variance which would allow you to dispense with a requirement to install a stormwater retention system required under Legislative Code Chapter 52.

Pursuant to Minn. Stat. § 15.99, Subd. 3, and for the following reasons, I am returning your application and application fee because the application is generally incomplete. First, the BZA is without legal authority to grant the variance you requested. Stormwater management is regulated under Legislative Code Chapter 52. The BZA is authorized to grant variances only from the strict requirements of the Saint Paul Zoning Code. Chapter 52 is not part of the Zoning Code and the BZA has no authority to act upon a request for a variance from requirements that are not part of the Zoning Code.

It is possible for you to apply for a variance from the numeric stormwater runoff rate established under Leg. Code § 63.319. While this section is a part of the Zoning Code and thus may be varied by the BZA upon its determination that the requested variance meets all the required findings under the Code, it is also clear that the stormwater retention system referenced in your application was required to meet certain "Sustainability Undertakings" specified in the Development and Loan Agreement dated June 22, 2011. The BZA has no authority to modify the terms of the Development and Loan Agreement through the variance process because the terms of the Sustainability Undertakings are not a part of the Zoning Code. I am returning your application check under this letter. If you have additional questions relating to zoning at this site, please feel free to contact me at the address noted above.

Sincerely,

YaYa Diatta

Encl.

cc: Wes Saunders-Pearce, DSI
Wendy Lane, DSI

Kurt Schultz, PED
Martin Schieckel, PED

Peter McCall, CAO
Peter Warner, CAO

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