



City of Saint Paul

Signature Copy

Resolution: RES 18-512

City Hall and Court
House
15 West Kellogg
Boulevard
Phone: 651-266-8560

File Number: RES 18-512

Memorializing the City Council's February 28, 2018 decision denying an appeal of a decision of the Board of Zoning Appeals regarding the establishment of a use at 79 Western Avenue North.

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 public hearing and based upon all the files and records in this matter including the Administrator's October 30, 2017 decision, the BZA's staff report dated December 4, 2017, and all the oral and written testimony presented during the public hearing, as substantially reflected in the BZA's adopted minutes, duly moved to deny the appeal and uphold the Administrator's October 30, 2017 decision, based upon the following findings set forth in BZA Resolution No.17-214989 which is incorporated herein by reference:

- "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."

WHEREAS, on December 14, 2017, pursuant to Leg. Code § 61.702(a) and under Zoning File No. 18-015901, Appellant duly filed with the City Clerk an appeal from the determination made by the BZA and requested a hearing before the City Council for the purpose of considering the actions taken by the said Board; and

WHEREAS, on February 21, 2018, pursuant to Leg. Code § 61.702(b), and upon notice to all interested parties, the City Council conducted a public hearing on the matter where all interested parties were given an opportunity to be heard and, upon the close of the public hearing and following deliberation on the matter, the Council moved to lay the matter over without making a decision on Appellant's appeal to February 28, 2018 in order to allow more time to examine the record in the matter; and

WHEREAS, on February 28, 2018, the matter of Appellant's appeal from the Administrator's determination was again taken up by the Council and follow discussion, the Council made the following decision; NOW, THEREFORE,

BE IT RESOLVED, having considered the variance application, the report of staff, BZA Resolution No. 17-217989 and having heard all the statements made and having reviewed the records in the matter, the Council hereby upholds the decision of the BZA and finds that the Appellant has failed to demonstrate error in the facts or findings of the BZA in its decision to uphold the Administrator's October 30, 2017 determination that the "West Addition" of the subject property was, for zoning purposes, never legally established as "restaurant" space and that the Council hereby adopts the findings set forth in BZA Resolution No. No. 17-214989 as its own in support of this decision. *

AND BE IT FURTHER RESOLVED, for the above stated reasons, Appellant's appeal in this matter is hereby denied; and,

BE IT FINALLY RESOLVED, that the City Clerk shall immediately mail a copy of this resolution to Appellant John Rupp, the Zoning Administrator, the BZA and the Planning Commission.

At a meeting of the City Council on 3/28/2018 this resolution was adopted.

Yea: 6 Councilmember Bostrom, City Council President Brendmoen,
Councilmember Thao, Councilmember Tolbert, Councilmember Noecker,
and Councilmember Henningson

Nay: 0

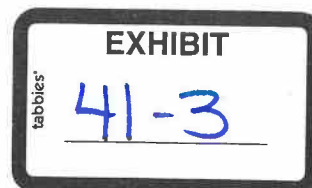
Absent: 1 Councilmember Prince

Vote Attested by Trudy Moloney
Council Secretary Trudy Moloney

Date 3/28/2018

Signed by Mayor Melvin Carter III
Melvin Carter III

Date 4/3/2018



FILE

17-214989

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

October 30, 2017

John Rupp
Commonwealth Properties
The Commodore Restaurant
79 N. Western Ave.
Saint Paul, MN 55102

Re: 79 N. Western Ave.
Proposed Expansion Area West of the Commodore Restaurant

Dear Mr. Rupp:

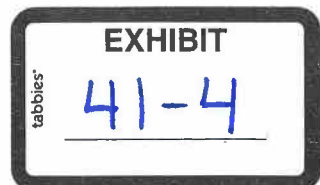
This letter is in response to your request to allow the interior space west of the existing Commodore Restaurant to also be used as dining room space for the restaurant/bar. Your claim is that this space was issued a building permit for use as a restaurant/bar in 2012. Building Official Steve Ubl disagrees with your claim and has determined that the permit issued did not include the space in question. That disagreement is not a zoning issue and I have no authority to intervene. Additionally, the space included in the original liquor license obtained by the previous owner is irrelevant for zoning purposes.

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 zoning districts.

For zoning purposes, I am concerned about what the most previous use of this space in question was. Sec. 62.102 of the Saint Paul zoning code states that the burden of proof establishing a nonconforming use "shall be on the property owner." I have not received proof from you that the most recent use of this space was for a restaurant. You 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. On the other hand, it appears that the area was used for the squash club based on: 1) The plans approved by the Heritage Preservation Commission for the windows along the south wall of the space in question, dated Aug. 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, and 2) Photos in our file show the space in question with exercise equipment in it, dated February 11, 2000.

You obtained this space in 2001; it was used for the squash club at some time prior to your acquisition. Although it was originally designed for future dining room space, it was never legally established as space for a restaurant. A squash club is a nonconforming health/sports club and a restaurant/bar is another type of nonconforming use. To change from one type of

An Equal Opportunity Employer



John Rupp
October 30, 2017
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a nonconforming use to a different type of a nonconforming use requires a change of nonconforming use permit from the planning commission as specified under Sec. 62.106(b). Since this space has been vacant for more than one year, a reestablishment of nonconforming use permit is required as specified under Sec. 62.106(h). Both can be handled under the reestablishment of nonconforming use permit. In addition, off-street parking will need to be evaluated.

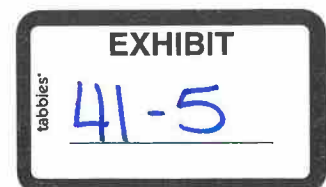
If you believe this decision is made in error, you may file an appeal with the Board of Zoning Appeals within ten days as allowed under Sec. 61.701. There is a filing fee of \$547.

Sincerely,

Wendy Lane

Wendy Lane
Zoning Administrator
651-266-9081

c: Therese Skarda
Steve Ubl
Dan Niziolek
Yaya Diatta
Allan Torstenson



The following is an appeal to the Board of Zoning Appeals to correct errors contained in the Wendy Lane's letter of October 30, 2017 (attached).

Background

- It is not my "claim" that the space in question was issued a building permit in 2012; it is a fact that a permit was issued on August 30, 2012 - Permit #20 12 017614. A copy of the permit is attached (A).
- The Permit clearly indicated the area of the interior alterations, which included the west dining room and a new service bar within it. Steve Ubl's position that the west dining room was not included is simply not true. The permit and attached plan are clear. I should note that the city records do not include this permit that city issued - a clear administrative error which results in there being no record of a permit for the area in question, even though the city admits there is one. (B)
- The permit stated that there was "No" "Change/Expansion of Use". (A)
- The city agrees that the area in question has had a liquor license since 1984 covering it and the rest of the bar and restaurant complex. A letter from Bob Kessler (attached confirms) that in 1991 the area in question was covered by the Commodore liquor license - even though the space may have had exercise equipment in it then or earlier. (C).
- Work began in August of 2012 and was completed in the fall of 2015 in reliance on the above permit. The area in question was inspected regularly by a variety of city officials over this three year period. No notice of any zoning issues was ever made by the city since 2001 (or ever for that matter); until after the area was approved for a temporary occupancy permit, was opened, and Steve Ubl then sent a letter on October 26, 2015 saying that the west expansion space was not allowed to be used for restaurant use, in spite of the fact that the permit that his department issued in August of 2012 said that it was.

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Wendy Lane Statements

- "For zoning purposes, I am concerned about what the most previous use of the space in question was". "I have not received proof from you that the most recent use of the space was for a restaurant." Response – this statement is an error. It has been used as part of the restaurant since its purchase in 2001- without objection from the city or any evidence to the contrary.
- "you obtained the this space in 2001; it was used for the squash club at some point prior to your acquisition." Agreed, but that does not change its permitted restaurant use, and there is no city record that the restaurant zoning use changed by request of the property owner, by operation of law when exercise equipment was placed in it or for any other reason, nor any action by the Planning Commission changing its use.
- "Although it was originally designed for a future dining room space it was never legally established as a space for a restaurant". This is an error. Wendy agreed that it was originally designed and built for future dining room use. It was in fact legally established for restaurant use when the liquor license was issued for the space in 1976 – 41 years ago, and the license has covered this area continuously since then. Section 62.102 states that "a use or structure will be presumed legally conforming if it can be demonstrated by clear and convincing evidence that"... "the use or structure was allowed in its location at the time it was established". The facts confirm, and the city does not dispute, that the use was allowed by the fact that the liquor license has covered this area since the construction was completed, and that the structure itself was permitted for restaurant use when it was built.
- "Since the space has been vacant for more than one year". Error. The space has been continuously part of the current restaurant operation since 2001 and continuously licensed and occupied since 1976.

EXHIBIT

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17-214 989

And

- Wendy did not reconcile her letter with, or even mention, the fact that her department's determination in August of 2012 was that there was no "Change/Expansion of Use". The permit is in conflict with her findings. Since she never argued that from a zoning perspective the permit of August of 2012 was invalid as to the zoning determination, as a consequence her letter is in error, and the permit stands.

It is clear from the record that the City agrees that:

- this west area of the Commodore Bar and Restaurant was originally constructed for restaurant use;
- the west area has been continuously licensed since 1976;
- the city issued a building permit in August of 2012 that stated that there was "no change or expansion of use" in the west area;
- the city has produced no evidence that conflicts with the fact that the area in question has been part of the current restaurant operation since its purchase in 2001; was part of the previous owners restaurant from 1976 until 1984; and that no city action was ever taken to change its use from a legal non-conforming use allowing restaurant occupancy between 1984 and 2001.

As a consequence a re-establishment of non-conforming use permit is not required and the use of the westerly portion of the restaurant is a permitted use because it is legally non-conforming pursuant to Section 62.102.

EXHIBIT

41-8

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JAMES SCHEIBEL
MAYOR

FILE
17-214989
CITY OF SAINT PAUL
DEPARTMENT OF FINANCE AND MANAGEMENT SERVICES
DIVISION OF LICENSE AND PERMIT ADMINISTRATION

15 W. Kellogg
Room 203, City Hall
Saint Paul, Minnesota 55102

Alarm Permits 612-298-5143
Building Contractor Licenses 612-298-5144
Business Licenses 612-298-5056

February 28, 1991

Mr. John Rupp
The Commodore
79 North Western Avenue
Saint Paul, Minnesota 55102

Dear John:

This is a follow up to our meeting on February 1, 1991 regarding the liquor service area and entertainment concerns at the Commodore. We agreed that the liquor service area does include the area presently occupied by the squash club. On the other hand we did not agree on the entertainment issue. My contention is that an entertainment license is required if liquor is provided by the license holder (you). You should also note that the City Council is considering making this requirement more explicit by revising Chapter 411 of the Legislative Code. (I have enclosed a copy of recent correspondence on this matter)

During our discussion you recalled the existence of a letter from the pervious License Inspector that supposedly gave you permission to provide liquor and allow another private party to provide entertainment without the need for a license. You were to locate a copy of that letter since we can not find any such letter in our files. Since I have not heard from you regarding this matter I assume that you can not find a copy of the letter either. No License Inspector can authorize you to violate the law, or give you permission for activities which require a license. Such a letter, even if a copy were found, would not and could not waive the requirements of the licensing ordinance.

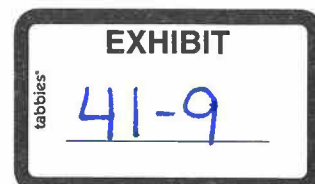
Therefore please be informed that it remains my opinion and that of the City Attorney that an entertainment license is required for the provision of entertainment on the licensed premises at the Commodore if liquor is provided by you as a licensed liquor holder. If complaints are received in the future we will be compelled to take appropriate enforcement action.

I hope you can appreciate our position.

Sincerely,

Robert Kessler
License & Permit Manager

cc: Mayor James Scheibel
Council President Wilson
Phil Byrne
Kris Van Horn & Mike Vruno



AGREEMENT

MM
Shen
This Agreement, made and entered into to be effective the 2nd day of December, 1984, by and between John R. Rupp ("Rupp") and the Commodore Condominium Corporation, a Minnesota corporation ("Commodore"), witnesseth as follows:

WHEREAS, it is the intention of the parties that Rupp is about to purchase and have transferred to him or an entity controlled by him, a certain on-sale liquor license (the "Liquor License"), currently in the name of _____, which services certain premises located in the Commodore Condominiums and adjacent property thereto;

WHEREAS, the adjacent property thereto, commonly referred to as the "Commodore Squash/Racquet Club" is owned and operated by Commodore;

WHEREAS, the parties desire that Commodore be permitted, pursuant to the terms and conditions provided herein, to continue to have the use of the Liquor License for the service of liquor at the Commodore Squash/Racquet Club.

NOW, THEREFORE, in consideration of the promises and covenants contained herein, and other good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereto hereby agree as follows:

MM
Rupp
1. Use of License. In the event the transfer of the Liquor License to Rupp is approved, and at the time of such transfer, Rupp hereby agrees to permit Commodore to use the liquor license at the Commodore Squash/Racquet Club. This permission is specifically conditioned upon the continued permission to do so by the City of St. Paul. Until the time of such transfer, Rupp will permit the continued use of the Liquor License by Commodore as such use has been in the past. *Commodore agrees to cooperate with Rupp in complying with all City requirements to allow the continued liquor service at the Commodore Squash/Racquet Club. Commodore will not exhaust their Rupp agreement.*

2. No Detriment to Use of License. The parties hereby mutually agree that neither party will take or permit any action which will impair or otherwise be detrimental to the continued use of the Liquor License, including, specifically, any action which will be in violation of any City ordinance or other rules and regulations specifically applicable to the keeping of the use of the Liquor License.

3. Insurance. It shall be the responsibility of Rupp to procure reasonable insurance coverage relative to the

EXHIBIT

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sale of intoxicating beverages under and pursuant to the liquor license. All costs relative to the obtaining and maintaining of such insurance shall be pro-rated to the parties by the carrier of such insurance, if reasonably possible. In the event it is not so prorated the cost thereof shall be divided seventy-five percent (75%) to Rupp and twenty-five percent (25%) to Commodore. At the request of Commodore, and subject to the approval of the insurance carrier at no extra cost to Rupp, the "Commodore Condominium Corporation", and "Thomond R. O'Brien" shall be named as beneficiaries of said insurance policies as their interest may appear, in which case, Rupp shall provide Commodore or said Thomond R. O'Brien with proof of such coverage.

4. Other Costs and Expenses. All other costs and expenses relative to the Liquor License, including, but not limited to, bond, transfer and renewal fees, shall be pro-rated between the parties by the entity charging such cost or expense, if reasonably possible. In the event it is not so possible, all such costs shall be divided seventy-five percent (75%) to Rupp and twenty-five percent (25%) to Commodore.

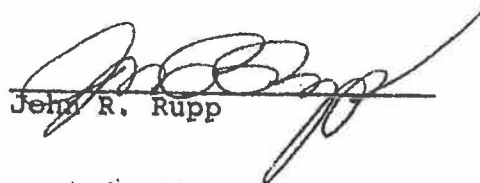
5. Payment and Default. In the event Rupp fails to pay any bond or license fees or insurance premiums thereby jeopardizing the continued availability of the Liquor License, he shall thereafter have forty-five (45) days to cure such default after notice thereof given by Commodore and if he fails to do so, Commodore may commence providing to have the Liquor License transferred to it. All payments to be made by either party hereto shall be made promptly upon request therefor, and in the event they are not so paid, the other party may (but shall not be required to) advance the funds to make any such payment at which time the amount of such advance shall be immediately due and payable to the party making the advance.

6. Transfer. In the event Rupp sells his business located on the premises and said business remains thereon, then Rupp's rights and obligations hereunder shall be binding upon and inure to the benefit of said transferee. In the event said business is liquidated, Commodore shall have the right of first refusal for the purchase of the liquor license at the market rate.

EXHIBIT

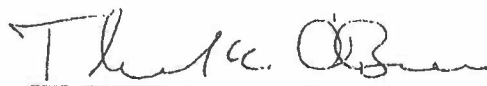
41-11

RUPP:


John R. Rupp

ag-jr/com(5)

COMMODORE CONDOMINIUM
CORPORATION

By: 
Thomond R. O'Brien,
its president

EXHIBIT

tabbies

41-12

FILE

17-214898

TOM BLANCK

ARCHITECT

SUITE 007
626 ARMSTRONG

(612) 292-1534
ST. PAUL, MN 55102

July 20, 1987

City of St. Paul
Heritage Preservation Commission
City Hall Annex
St. Paul, MN 55102
Attn. Mr. John Mannillo

2c

Dear Mr. Mannillo,

The Commodore Squash Club courts were built in 1976 of concrete block as an addition to the 1920 Commodore building. This addition, is sympathetic in massing and proportion to the Commodore, though not particularly so in terms of color and finish.

The owner, Commodore Squash Racquets Club, wishes to install windows in the window openings on the south face of the building. The window openings were designed in 1976 to match those of the commodore dining room, a 1929 addition to the building which is that portion immediately adjacent to the Squash Club.

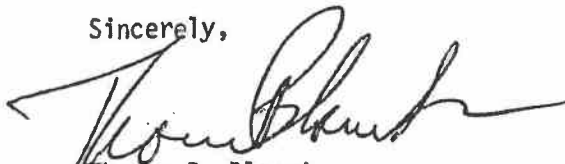
The Squash Club, being larger, necessitated additional windows. The large mull window units of the Dining Room were repeated and additional double hung units planned for either side. This arrangement is related stylistically to the "Chicago Window". The East Elevation of the Commodore displays 24 such window unit combinations.

The openings have been boarded up since construction in 1976. The trim color of the windows will match that of the Commodore, a dark "coffee" color. These window openings, being in effect the back side of the club and fronting on Holly Street, are at that point residential in character. They are not significant visual elements in the Commodore Complex. The general simplicity of all window detailing in the Commodore suggests that any elaboration of these windows would simply provide a visual focal point where it is not particularly needed.

The trim detailing, with the windows well recessed into the masonry wall, will tend to integrate the Squash Club building with its historic neighbor.

Please let me know if you have any questions.

Sincerely,


Thomas R. Blanck

File 19 N Western

EXHIBIT

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41-13

Rupp 4/2/12

B

no permit issued on 2/2/12 - PERMIT ISSUED ON 8/30/12
 CREWED 2/1/12
 DRAWING

★

79 WESTERN AVE N - University Club Restaurant / Bar / Meeting Rooms

02/02/2012 12 017614 Inspected B - Building Permit - Commercial - Remodel Contractor John Rupp Common Wealth Properties - HPC

79 WESTERN AVE N - Commodore Condo Assoc / Pkg Garage

01/12/2012 12 004282 Finaled RW - PW Right of Way Permit - Obstruction - Dumpster Contractor Dan Schmidt Schmidt Disposal & Recycling - PERMIT DATES JAN 12-16, 2012

09/30/2011 11 283126 Active/Issued B - Building Permit - Residential (Multi-Fam) - Repair Contractor Scott Walters Construction Inc

09/28/2011 11 281996 Approved HP - Heritage Preservation Cases - Administrative Review Applicant Scott Walters Construction - Replace six windows with Pella Precision Fit, Architect Series, double-hung clad windows in a brown color. The lites will be clear glass.

79 WESTERN AVE N - Commodore Squash Racquet Club

09/21/2011 11 278534 Closed PA - Parks Summary Abatement - Graffiti Owner Commodore Condominium Corp - Graffiti on side building.

09/21/2011 11 278533 Transferred - Closed CS - CSO Complaint - Graffiti - Complaint Graffiti on side building.

79 WESTERN AVE N - Commodore Condo Assoc / Pkg Garage

07/14/2011 11 250660 Finaled B - Building Permit - Residential (Multi-Fam) - Repair Contractor Elizabeth Fellman - COMMODORE, SUITE 206

06/23/2011 10 505983 History RS - Restaurant Inspection - High Risk - Routine Inspection Establishment The Commodore

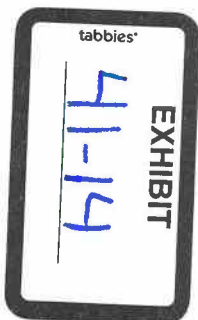
03/02/2011 11 104996 Active/Issued B - Building Permit - Commercial - Remodel Contractor Commonwealth Properties Inc - 1ST FLOOR

79 WESTERN AVE N - Commodore Squash Racquet Club

01/24/2011 11 008681 Closed GT - General Activity Tracking - Zoning Jan. 24, 2011 - The original site plan for the parking lot was approved in 1980[see address file]. The Commodore Condominiums, adjacent to the Squash Club, made some modifications to the access to their parking garage within their building, which altered the parking arrangement for the lot the Squash Club and Condo's share. Fire Prevention was concerned that the changes obstructed fire vehicle access. After review of the changes to the parking lot, it was determined that fire access was acceptable[see below]. I have attached a pdf of the revised site plan in the documents tab of this file. L Zangs 12/30/10 - Discussed with commercial inspector assigned to squash club and with fire engineering supervisor. Determined that this was not a fire lane and parking spaces are acceptable, closing RF. - MI

79 WESTERN AVE N - Commodore Condo Assoc / Pkg Garage

11/02/2010 10 917282 Closed RF - Referral - Citizen Complaint Owner Commodore Condo Assoc/Co Gittleman - SQUASH CLUB RESURFACED PARKING LOT AND ADDED 2 PARKING SPACES IN FIRE LANE

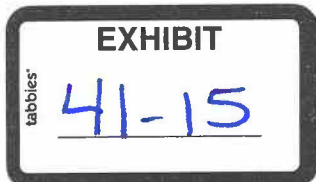


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Supp Exhibit T

79 WESTERN AVE. N.
UNIVERSITY CLUB
RESTAURANT / BOON/
MEETING ROOMS

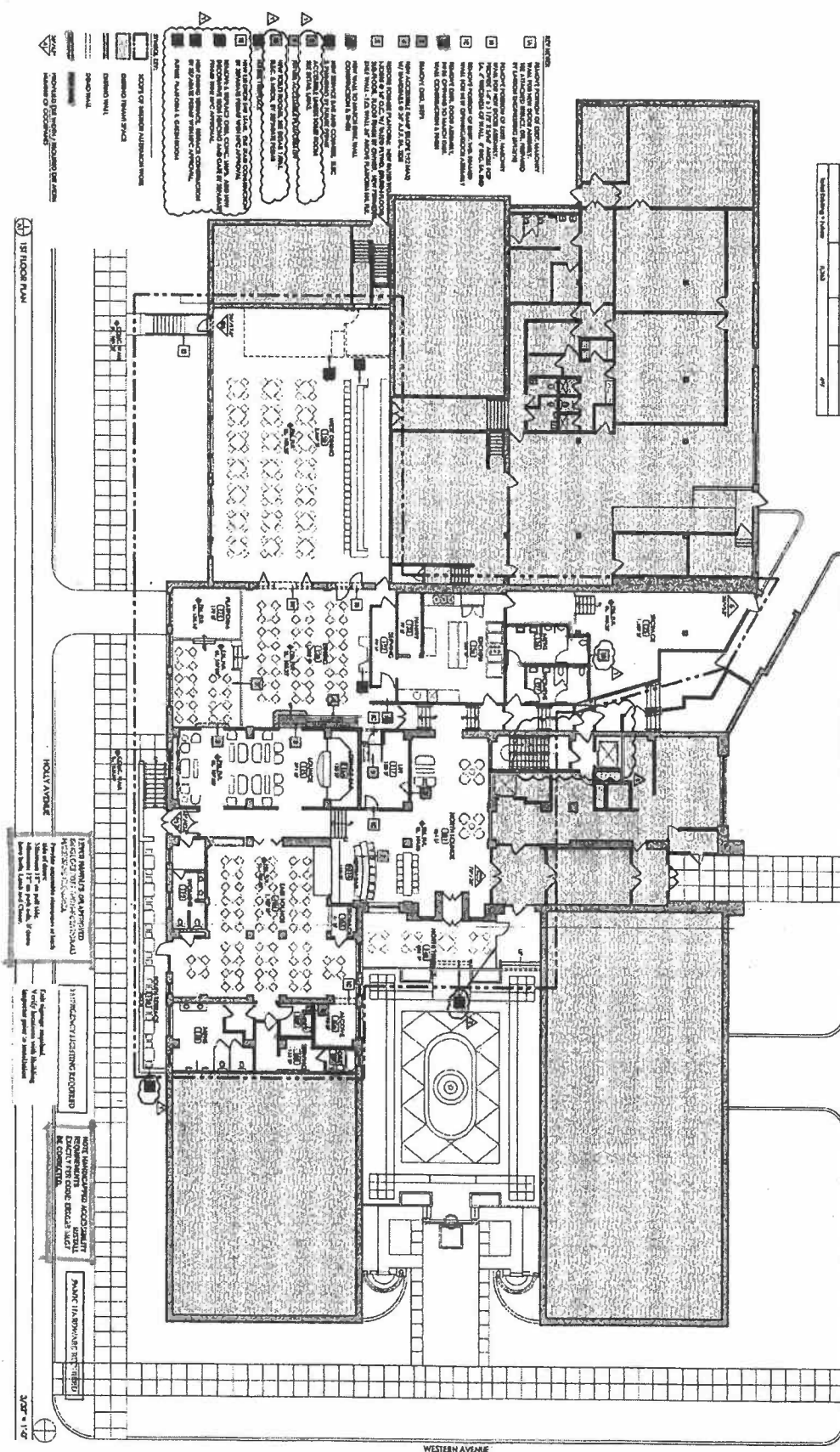
12/17/2012	<u>12 221048</u>	Approved	B - Building Permit - Residential (Multi-Fam) - Repair HP - Heritage Preservation Cases - Administrative Review	Contractor Scott Walters Construction Inc - UNIT #504 & #404 Applicant Scott Walters Construction Inc - Proposal to replace sixteen double-hung windows with Pella Precision Fit, Architect Series, double-hung windows in EnduraClad Brown. Contractor Schumacher Elevator Co Inc
11/08/2012	<u>12 209000</u>	Finald	EV - Elevating Device - Passenger - Commercial Modernization	Contractor Schumacher Elevator Co Inc
11/08/2012	<u>12 209006</u>	Finald	EV - Elevating Device - Passenger - Commercial Modernization	Contractor Schumacher Elevator Co Inc
10/11/2012	<u>12 115573</u>	Finald	B - Building Permit - Residential (Multi-Fam) - Repair	Contractor Scott Walters Construction Inc - UNIT #601
10/11/2012	<u>12 115803</u>	Approved	HP - Heritage Preservation Cases - Administrative Review	Applicant Scott Walters Construction Inc - Proposal to replace twelve double-hung windows with Pella Precision Fit, Architect Series, double-hung clad windows in a brown color. Contractor Timothy Eldridge Woodbury Mechanical Inc
09/27/2012	<u>12 110218</u>	Inspected	PG - Plumbing/Gasfitting/Inside Water Piping - Plumbing/Inside Water (All) - Residential Alter	Contractor Cardinal Remodeling Inc - UNIT 606, CONDO
09/26/2012	<u>12 109691</u>	Pending	PG - Plumbing/Gasfitting/Inside Water Piping - Plumbing/Inside Water (All) - Residential Alter	
09/17/2012	<u>12 106015</u>	Finald	B - Building Permit - Residential (Multi-Fam) - Remodel	
79 WESTERN AVE N - Commodore Squash Racquet Club				
09/12/2012	<u>12 104384</u>	Finald	E - Electrical Permit - Electrical - Residential Repair/Alter	Contractor Allied Electrical Contractors Inc
79 WESTERN AVE N - Commodore Condo Assoc / Pkg Garage				
07/27/2012	<u>12 086883</u>	Finald	B - Building Permit - Single Family Dwelling - Repair	Contractor Scott Walters Construction Inc - UNIT - 100
07/25/2012	<u>12 086445</u>	Approved	HP - Heritage Preservation Cases - Administrative Review	Applicant Scott Walters Construction Inc - Proposal to replace ten double-hung windows with Pella Precision Fit, Architect Series, double-hung clad windows in a brown color. Contractor Dovetail Renovation Inc - UNIT 303 The following "Trade" Permits are required for this project: Electrical, Plumbing,
07/17/2012	<u>12 082528</u>	Active/Issued	B - Building Permit - Single Family Dwelling - Remodel	Contractor Scott Walters Construction Inc - UNIT #602
07/16/2012	<u>12 081598</u>	Finald	B - Building Permit - Residential (Multi-Fam) - Repair	Applicant Scott Walters Construction - Proposal to replace twelve double-hung windows with Pella Precision Fit, Architect Series, double-hung clad windows in a brown color. Contractor Dan Schmidt Schmidt Disposal & Recycling - DUMPSTER IS ON HOLLY
06/22/2012	<u>12 080299</u>	Approved	HP - Heritage Preservation Cases - Administrative Review	
05/14/2012	<u>12 056017</u>	Finald	RW - PW Right of Way Permit - Obstruction - Dumpster	



FILE

[illegible]

Item	Unit	Quantity	Unit Price	Total
1. Material				
2. Labor				
3. Overhead				
4. Profit				
5. Total				

[illegible]

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EXHIBIT

41-16

16 October 2017

Wendy Lane
City of Saint Paul
375 Jackson, Suite 220
Saint Paul, MN 55101

Re: Commodore Hotel construction history (including the "West Dining Room")

Dear Ms. Lane:

The Commodore Hotel, 79 Western Avenue North, was constructed in 1920. The hotel originally included a six story section containing the hotel rooms, and a one story dining room. An attached one-story garage addition was built for the hotel in 1924; which was remodeled into classroom/offices in 1967 (DSI Building Permit history). Zoning application for a 24 space parking lot accessed from Holly Avenue was approved in 1972.

An addition was built to the hotel in 1976 on the site of the former 24 space parking lot. The new construction included squash courts (lower level) and future dining (upper level). The 1976 Commodore Hotel construction documents prepared by Michelson and Associates and permitted (DSI Building Permit history) identify the West Dining Room as "Future Dining Room" an A-2 Occupancy. The west dining room was built so that the floor elevation was the same as the adjacent 1920 dining room and kitchen to accommodate expansion of the bar and restaurant.

After a gas explosion in 1978, the Commodore closed and was extensively renovated beginning in 1980. The explosion delayed the planned opening of the west dining room that had been built in 1976. The 1980 Repair & Replacement documents prepared by Thomas Blanck and permitted (DSI Building Permit history) included a new Squash Club Lounge which further expanded commercial/liquor service area beyond the west dining room expansion of 1976. The 1980 document continues to identify the West Dining Room as "Future Dining Room" an A-2 Occupancy. The city accepted and approved the expansion of the liquor service area that then included the 1920 bar & dining room and the 1976 West Dining Room to include the lounge area in the squash club section of the hotel building, and approved the off street parking for the expanded area.

The Commodore Hotel liquor license dates back to the end of prohibition in the 1930's. The city approved licensed area was expanded in 1976 to include the West Dining Room construction and again in 1980 to include the lounge area of the squash club portion of the hotel building. It is my understanding that the liquor license has covered the west dining room continuously since 1976 and does today.

At some point after the 1980 renovation of the Commodore Hotel building was completed, the hotel was converted to condominiums and the squash club and 1920 dining room areas each became separate parcels, not included in the condominium. In 2001 (and subsequent court actions to clarify the legal description), the West Dining Room parcel was added to the 1920 dining room parcel.

FILE

17-214898

Wendy Lane
16 October 2017
Page 2 of 2

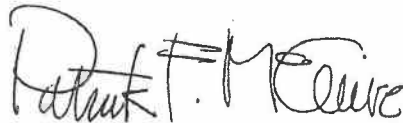
The documents prepared by MCL Architects, that were submitted and permitted by Permit 20 12 017614, clearly identify the "West Dining Room" as a dining room, an A-2 Occupancy. The City found that no 'change of occupancy' nor "expansion" existed at the time of the granting of the permit. The Permit was issued on August 30, 2012 based on a drawing dated 5/7/2012, but that permit does not appear in the City's electronic record of permits! To my knowledge to date, the city has failed to provide any evidence that its determination in 2012 was incorrect. The construction in this area of the building proceeded in reliance on that permit, sub-contractors also submitted permits and completed inspected work in this area, and it was fully inspected and approved verbally for a temporary occupancy permit before it opened in 2015.

The temporary installation of fitness equipment sometime before 2001 is permitted in an A-2 occupancy, because it is a lesser hazard. As a consequence this temporary use did not change the A-2 classification of the west dining room as a matter of law. No city records that I am aware of indicate any change of use from the originally permitted 1976 A-2 occupancy. No city action that I am aware of has ever been taken to reduce the liquor license service area to exclude the west dining room and/or to legally permanently reduce the allowed occupancy from and A-2 to A-3 (fitness center). The fact that there is a liquor license covering the West Dining Room, in my opinion further conforms the city's continued approval of its use as a dining room.

The current owner acquired the bar and restaurant in 1984, and at that time also acquired the liquor license that covered it, the West Dining Room, and the squash club lounge. The current owner acquired the West Dining Room in 2001 in reliance on the fact that his liquor license covered this area, and that no city records indicated it could not be used for its 1976 intended purpose as a dining room. It has been operated as a part of the bar and restaurant complex since then - with no city objection until 2015.

Our analysis supports the city's determination when it granted the permit in August of 2012; that there is no expansion or change of use including the West Dining Room.

Sincerely,



Patrick F. McGuire, AIA
MCL Architects, Inc.

cc: John Rupp, Owner

EXHIBIT

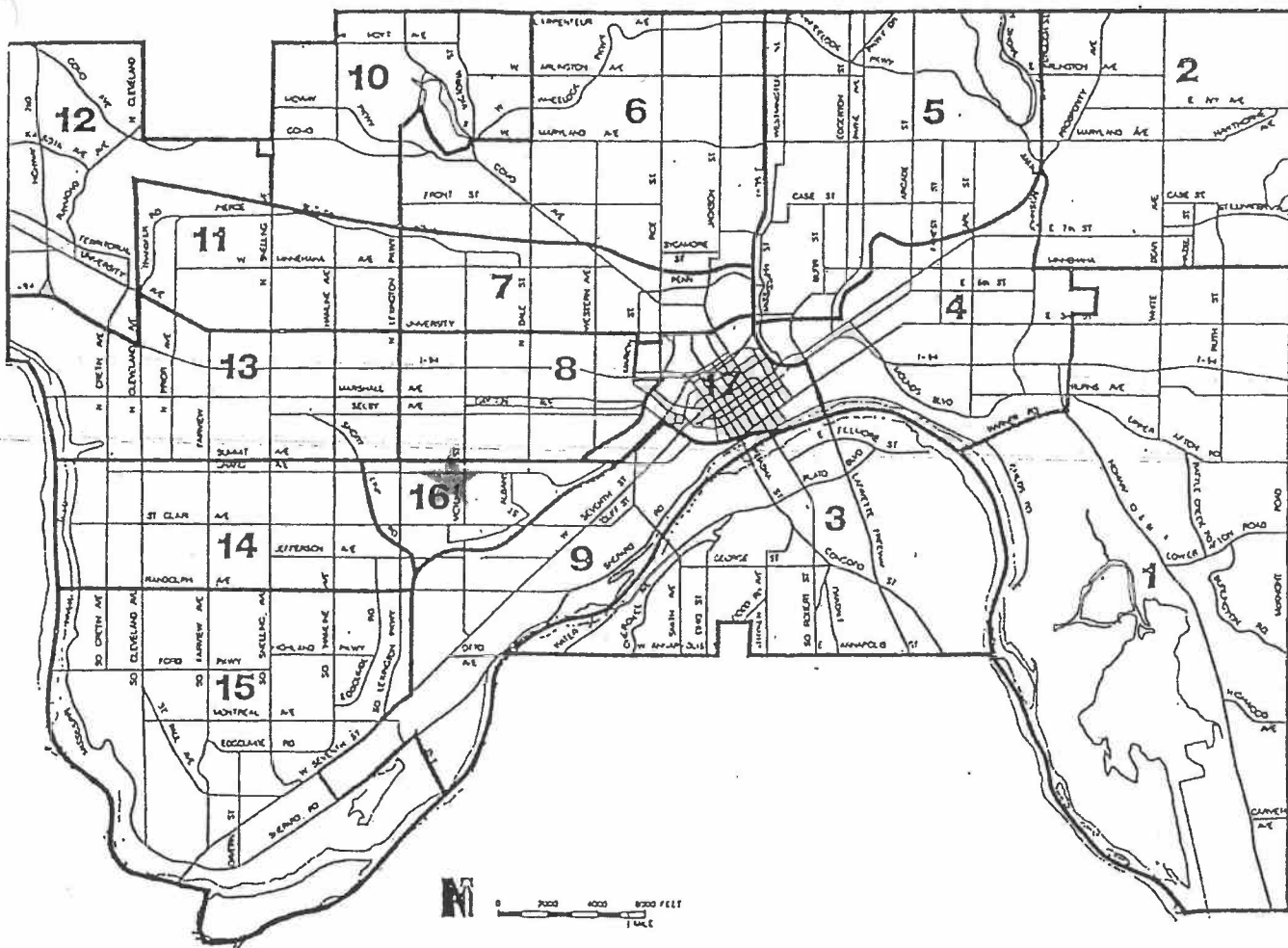
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41-19



CITIZEN PARTICIPATION PLANNING DISTRICTS

1. SUNRAY-BATTLECREEK-HIGHWOOD
2. HAZEL PARK HADEN-PROSPERITY HILLCREST
3. WEST SIDE
4. DAYTON'S BLUFF
5. PAYNE-PHALEN
6. NORTH END
7. THOMAS-DALE
8. SUMMIT-UNIVERSITY
9. WEST SEVENTH
10. COMO
11. HAMLINE-MIDWAY
12. ST. ANTHONY PARK
13. MERRIAM PARK-LEXINGTON HAMLINE-SNELLING HAMLINE
14. MACALESTER GROVELAND
15. HIGHLAND
16. SUMMIT HILL
17. DOWNTOWN

ZONING FILE 17-214989

EXHIBIT

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41-20

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

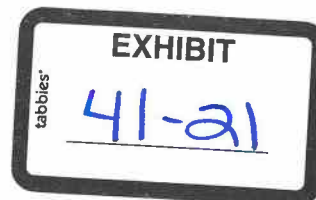
Purpose: The property owner has submitted an appeal of a decision made by the Zoning Administrator stating the west dining room of the Commodore Restaurant was never legally established.

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.

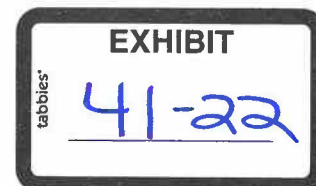
Section 62.102 of the Saint Paul zoning code states that the burden of proof establishing a nonconforming use, "shall be on the property owner." City staff has not received proof from the property owner that the most recent use of the space in question was for a restaurant. The appellant provided a floor 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

17-214989

BOARD OF ZONING APPEALS STAFF REPORT

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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

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.

EXHIBIT

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41-a3

**CITY OF SAINT PAUL
HERITAGE PRESERVATION COMMISSION RESOLUTION
FILE NUMBER 786
DATE August 13, 1987**

JACK
FILE

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WHEREAS, the Saint Paul Heritage Preservation Commission is authorized by Chapter 73 of the Saint Paul Legislative Code to review building permit applications for exterior alterations, new construction or demolition on or within designated Heritage Preservation Sites or Heritage Preservation Districts; and

WHEREAS, the Commodore Squash Racquets Club has applied for a building permit to install windows in the window openings on the south face of the Commodore Squash Club building at 79 North Western Avenue; and

WHEREAS, the Commodore Hotel at 79 North Western Avenue is a seven story, brick, u-shaped building constructed in 1924 and categorized as pivotal to the Hill District, and the Commodore Squash Club courts were built in 1976 of concrete block as an addition to the Commodore Hotel building; and

WHEREAS, the Design Review Committee of the Heritage Preservation Commission met on August 5, 1987, and voted unanimously to recommend approval of the application for a building permit for the proposed windows; and

WHEREAS, the Saint Paul Heritage Preservation Commission conducted a public hearing on said permit application on August 13, 1987, pursuant to the requirements of Chapter 73 of the Saint Paul Legislative Code; and

WHEREAS, the Saint Paul Heritage Preservation Commission, based upon evidence presented at the public hearing, made the following findings of fact:

1. The size, proportion, materials, and details of the proposed double-hung windows relate to the size, proportion, materials, and details of the windows in the Commodore Hotel and in the adjacent Commodore dining room;
2. The trim color of the new windows will be a dark coffee color to match the trim color of the windows in the existing Commodore building;

NOW, THEREFORE, BE IT RESOLVED, that based on the above findings the Heritage Preservation Commission approves the application for a building permit for the proposed windows on the south facade of the Commodore Squash Club building at 79 North Western Avenue.

MOVED BY Committee
SECONDED BY

IN FAVOR 8
AGAINST 0
ABSTAIN 2

Decisions of the Heritage Preservation Commission are final, subject to appeal to the City Council within 10 days by anyone affected by the decision. This resolution does not constitute approval for tax credits.

1/4/88 O.K. J.H.

EXHIBIT

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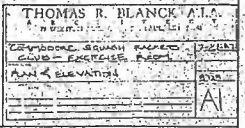


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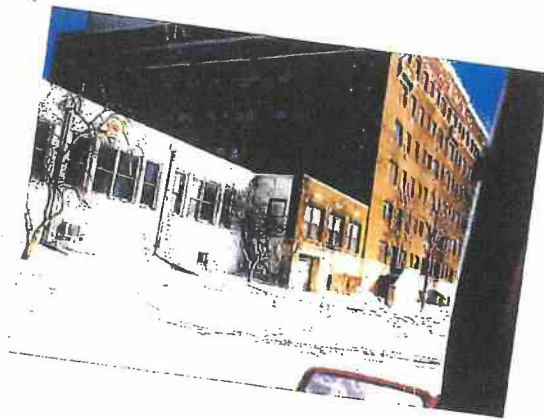
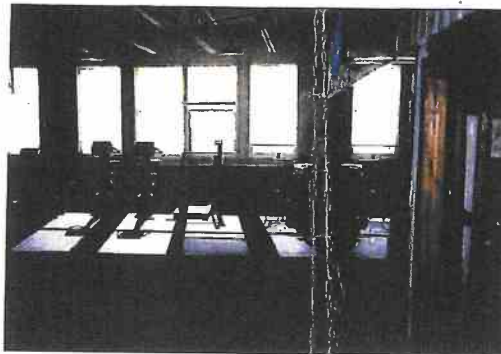
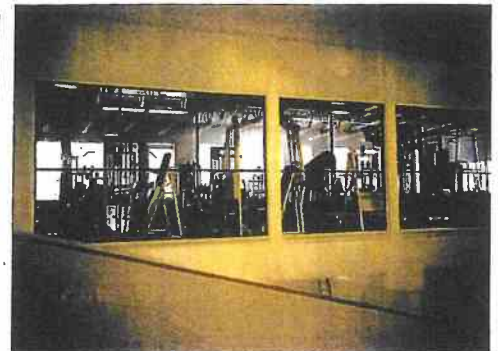
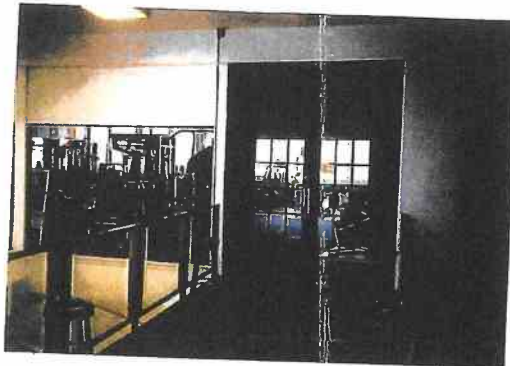


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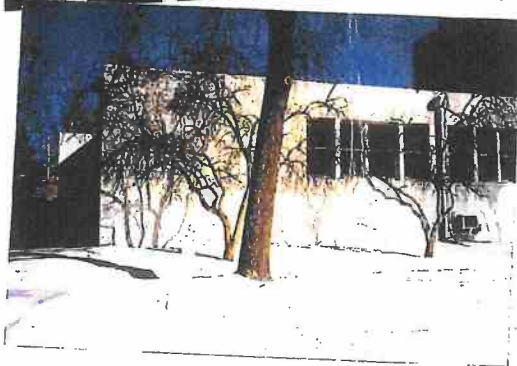
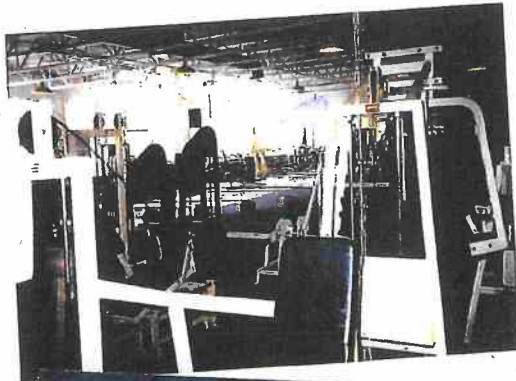


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EXHIBIT

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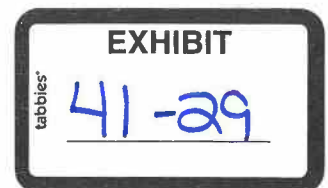
CITY OF SAINT PAUL
BOARD OF ZONING APPEALS RESOLUTION
ZONING FILE NUMBER: 17-214989
DATE: December 4, 2017

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:

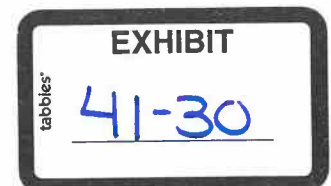
1. Appellant is the current owner of the Property.
2. The Property is located in an RM3 residential zoning district.
3. Certain uses at the Property, including the "restaurant" and "bar" uses at issue here, appear to qualify as legal nonconforming uses provided the uses were established prior to the 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

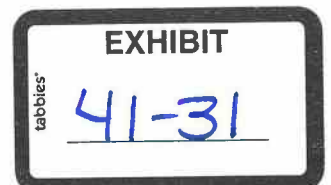
AGAINST: 0

MAILED: January 18, 2018

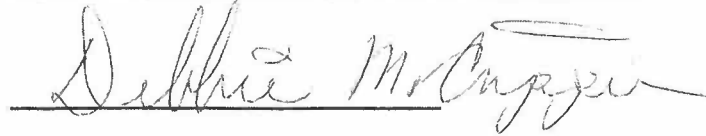
TIME LIMIT: No decision of the zoning or planning administrator, planning commission, board of zoning appeals or city council approving a site plan, permit, variance, or other zoning approval shall be valid for a period longer than two (2) years, unless a building permit is obtained within such period 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.

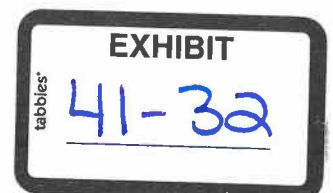
CERTIFICATION: I, the undersigned Secretary to the Board of Zoning Appeals for the City of Saint Paul, Minnesota, do hereby certify that I have compared the foregoing copy with the original record in my office; and find the same to be a true and correct copy of said original and of the whole thereof, 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 dark ink, appearing to read "Debbie M. Crippen", is written over a horizontal line.

Debbie M. Crippen
Secretary to the Board



MINUTES
BOARD OF ZONING APPEALS
15 W KELLOGG BLVD, ROOM 330
ST PAUL, MINNESOTA, DECEMBER 4, 2017

PRESENT: Mmes. Bogen, Maddox, Trout-Oertel and Younkin Viswanathan; Messrs. Miller and Saylor of the Board of Zoning Appeals; Mr. Warner, City Attorney; Mr. Benner II, Mr. Diatta and Ms. Crippen of the Department of Safety and Inspections.

ABSENT: Luis Rangel Morales*

*Excused

The meeting was chaired by Gloria Bogen, Chair.

JOHN RUPP - Commonwealth Properties (#17-214989) 79 Western Avenue North: The applicant is appealing the decision by the Zoning Administrator stating that the west dining room in the Commodore Restaurant was never legally established as a dining room.

Mr. Benner showed slides of the site and reviewed the staff report.

Four letters were received in support and one in opposing the variance request.

No correspondence was received from District 8 regarding the variance request.

Ms. Bogen asked if the squash building at that time included both of those buildings that are located toward Arundel Street? Mr. Benner replied yes, that is correct.

Ms. Bogen and Mr. Benner discussed the site plan on page 27 of the packet and the overhead photo of the block showing the building from an bird's eye view, the dining room shown on the site plan that is starred in red, matches up on the handout of the overhead view of the property, with the lower section of the building that shows a darker rectangular area located on the roof of the lower section of the building. She asked Mr. Benner if that is the area that is being called the squash club? Mr. Benner replied correct. Staff went back to the photos showing the addition with the stair case. This is the south side of the building where the west dining room is located. This is the location where the HPC (Heritage Preservation Commission) approved a building permit in 1987 to install the windows shown in the photo.

Mr. Miller asked if that section is where there was a parking lot. Mr. Benner stated that it was never a parking lot. He stated that the appellant purchased this space sometime in 2001, it was in conjunction with the squash club some time prior to the appellant's purchase of the space. The previous owner of the squash club had intended to make this space a future dining room. But it never came to fruition nor was it ever approved by the City to be a dining room.

Ms. Bogen asked what Mr. Rupp owns right now. Mr. Benner replied that Mr. Rupp owns the bar and restaurant. Ms. Bogen stated that is in the middle of the "c" section of the building. Mr. Benner replied correct. Ms. Bogen asked if he owns a piece of the building? Or does he rent it. Mr. Benner replied that Mr. Rupp owns that portion of the building. Ms. Bogen asked if there is a different pin (property identification number) for that as opposed to the rest of the building. Mr. Warner stated without going into too much detail, it is his understanding that Mr. Rupp obtained that piece of the building in a court proceeding.

Ms. Trout-Oertel restated for clarity, Mr. Rupp owns all the physical property but the squash club operation is owned by different entities. Mr. Benner replied correct. Ms. Trout-Oertel stated that Mr.



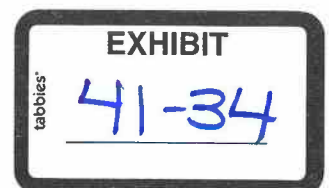
Rupp owns all the physical property. Mr. Benner replied but not the condos. Ms. Trout-Oertel stated the bar and restaurant and the spaces of the squash club. Mr. Benner replied correct.

Ms. Younkin Viswanathan asked if the space is currently being used for a dining room. Mr. Benner stated that when he visited the space it was set up with white table cloths and chairs, it is being used as a dining room. Ms. Trout-Oertel asked if when this room was turned into a dining room was it permitted and inspected? Mr. Benner stated that it was never legally established as a dining room. Mr. Warner stated that there are two things going on here. There are building permit issues and there are zoning issues. The issue before the Board is the zoning administrator's determination with respect to the zoning use. Ms. Trout-Oertel stated because there is a change of use. Ms. Bogen interjected from the exercise room to a dining room. Mr. Warner stated that in the packet on pages 20-21 is the letter of determination from Wendy Lane that the appellant is challenging today.

Ms. Trout-Oertel stated this is a change of occupancy of a room, as opposed to the restaurant/bar facility, she thinks that it requires a change of occupancy when a major space is repurposed for a different use. Is that true? Mr. Warner replied yes. Ms. Bogen asked if there are options here for the Board to either allow it or for the appellant to go the Planning Commission to get a non-conforming use permit, because that space went unused for over a year. Does it now need to be reestablished to some use? Mr. Warner stated yes that is true but before we get to that we should hear the appellants version of the facts and the zoning administrator's determination, that is ultimately what this Board is going to decide. At that time, he will be happy to lay out those options for the Board.

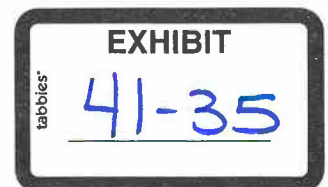
Ms. Younkin Viswanathan questioned that Mr. Benner's determination is that he agrees with the letter written by Wendy Lane. Mr. Benner replied that is correct.

The applicant **JOHN RUPP - Commonwealth Properties**, 366 Summit Avenue, was present. Mr. Rupp asked for copies of the handouts presented to the Board so that he can answer questions about them, stating that he has not seen the handouts provided to the Board. Particularly the overhead photo of the block. A set of handouts was given to Mr. Rupp. Mr. Rupp stated that it should be no surprise that he has a different take on this entire situation including the facts as they have been presented. The Commodore hotel building was built in 1920. It was opened about the same time that prohibition was established. In 1934 prohibition ended and the Art Deco bar in the Commodore was constructed. At that time, the Bar/restaurant was located in what is now the six-story condominium building and had a dining room that had been built in 1920, as a single-story building immediately to the west of the six-story building. In the overhead photo, it is the building that shows some mechanicals on the top. A section of the "u" shaped building and the building with the mechanicals on it opened in 1934, with a liquor license. It stayed in operation, when in 1976, the parking lot that had been approved in 1972, had a new building constructed on it by the late previous owner Thomond O'Brien. Ms. Lane found that when that building was built in 1976 it included a dining room for expanding the restaurant complex. There was also a determination made in 1976 that the license that had been granted in 1934 would be expanded to cover the dining room. In 1976 before the construction was completed the building exploded in 1978. In 1980 there was a large effort to reconstruct the Commodore building after the explosion. Which included rebuilding the sections to the west of the dining room with the mechanical equipment on it, in the overhead photo. At that time one part of the expansion was to add a bar and a lounge in the area that is to the north of the west dining room. At the same time Zoning and Licensing expanded the 1934 liquor licensing for the second time. The liquor license first expanded in 1976 to include the west dining room, which was intended not to be part of the squash club but part of the restaurant. Ms. Lane in her recent letter agreed with that. Then there was another expansion in 1980. For a while Mr. O'Brien attempted to operate the Bar/restaurant, there were a number of meetings between him and Mr. O'Brien, who admitted to Mr. Rupp that it wasn't



a particularly successful experience for him. At which time Mr. O'Brien decided to sell to one of Mr. Rupp's corporate/business entities, that he controls. In 1984 Mr. Rupp purchased the original bar/restaurant and the dining room, which is the single-story building in the photos and Mr. O'Brien retained ownership of the west dining room. At this point Mr. O'Brien was concerned that he would lose the ability to use the west dining room as a restaurant. Mr. O'Brien and Mr. Rupp entered into an agreement. Mr. Rupp passed out a copy of the agreement (he did not provide staff with a copy). He stated that the agreement says that Mr. Rupp is purchasing the original bar and restaurant that was built in 1920 and reopened in 1934. He was buying the liquor license that covered the bar/restaurant and the entire squash rackets club, including the restaurant and bar in the lounge area in the club and the west dining room. This agreement said that he would maintain the license, meaning he pays all the fees beginning in 1984, and that the license would cover not only his own property that he purchased from Mr. O'Brien, but Mr. O'Brien's property as well.

Mr. Rupp continued in 1991 he contacted Mr. Bob Kessler, Licensing and Permit Manager for the City. He requested a confirmation from Mr. Kessler, that the liquor service area in the Commodore Squash Racket Club, including the west dining room and the lounge and bar within the club, were still covered under his license. Mr. Rupp submitted a letter from Mr. Bob Kessler who stated that Mr. Rupp was covered. This was important because in 1991 he thought he was going to expand the restaurant and use the west dining room for the purpose that it was intended for and had been originally licensed in 1976. By 2001 Mr. Rupp had not heard anything counter to the 1991 letter from Mr. Kessler, stating that his liquor license covers the west dining room. He stated that he received ownership of the west dining room in 2001. He continued that in 2001 he incorporated the dining room into the operation of the bar restaurant complex. It was covered by the license uninterrupted since 1976. For fifteen years he used it as part of the bar and restaurant. It was inspected by license and building inspectors. Nobody had a problem with him using it as part of the restaurant. In 2012, he thought it was time to make some improvements to the bar and restaurant complex, that he had expanded in 2001. Mr. Rupp filed plans to the Department of Safety and Inspections for review. In August of 2015 concluded from a licensing and zoning standpoint he could use the west dining room, that there was no expansion or change of use. Mr. Rupp submitted site plans to the Board. The second plan in the stack is dated February 2012. He stated that when he has a project that is going to take multiple approvals he submits the plans and asks for comments. It took until May to receive the plan that is on the top of the packet he just submitted. The plan has multi colored dots on it and a series of directives in the lower right-hand corner. Those comments all came from the city and they were consolidated comments from the building department, the licensing department and from zoning. After his meeting in February he revised his drawings and submitted the top plan on May 7, 2012. Three months after his original conversation about the project with Planning and Zoning. During those three months, the original February plans were reviewed by the zoning department and by licensing. He submitted the May plan and it is stamped re-submitted May 15. It is highly detailed and says that he incorporated the suggestions from the City into a set of revised plans. He waited from May 17 until August 30. On August 30, 2012, he finally gets a building permit. In order to get a building permit, it has to be determined by licensing and zoning, that what is being applied for a building permit is in an appropriately zoned property and is licenses for the use in which it was intended. Mr. Rupp stated that the City had documents from Mr. Rupp from the first week in February until the last week in August, at the end of this time they all concluded that there was no change or expansion of use. Shown in the upper right-hand corner of the site plan. He pointed out the symbol key on the lower left-hand side of the plans. That reads scope of alteration work. On the plans with the colored dots it shows the lower left hand enclosed area of the plan it reads "west dining room" and it has a detail number saying that a new bar is going to be built in the room. That area is what was covered in the August 2012 permit. Mr. Rupp contended on the strength of that permit he has a building permit, he has appropriate zoning, he has a licensing letter from the previous Licensing Examiner. He owns the property, he has a liquor



license, the zoning is an approved use, and the building department gave him a building permit. He started construction which went on for almost three years. Because he was short of money, he worked on it when he had available funds. During that time, the building department inspected the property five times. The City also issued three electrical permits during that time for the west dining room. The electrical permits cannot be issued unless there is a building permit. He understands that is how the building department works.

Mr. Rupp asked why the zoning department would issue an opinion in advance of construction in which nobody in the zoning department, the licensing department or the building department says there is any problem with this permit, until two days after the opening, three years later. The Building Official, Mr. Ubl says that that Mr. Rupp did not have a building permit for this space. Mr. Rupp showed Mr. Ubl the building permit he has. He stated that it turns out that the City misplaced his permit. Mr. Rupp submitted a print-out of the City records showing permits pulled for the 79 Western Avenue North address. On the second page, it shows that Mr. Rupp filed a building permit application. That is inaccurate, because in 2012 he came in with a preliminary plan, which did not include the west dining room at that time. To talk about what the City was going to require for not only the area he discussed but the west dining room, and the permit he was granted was done on August 30, 2012. Conspicuously what is absent is the building permit, or any indication that he obtained a building permit. He was not surprised when he found this a couple of months ago, because he was told by John Skradski, a Plan Examiner, in DSI (Department of Safety & Inspections), that the City had lost all these permits. The City gave him a permit and they were inspecting it, but they had lost it. In trying to come up with an explanation of why he would have constructed this without a permit in the fall of 2014 when he was trying to open the bar/restaurant expansion.

Mr. Rupp stated that now we get to the use of the building and the zoning. The comment was made that at some point this room was used as an exercise room. That is true, he knows something about this, he owns the University Club of St. Paul and the St. Paul Athletic Club. Both of those clubs are covered by liquor licenses that cover the entire facility. If he uses part of that facility and fills it with exercise equipment or he wants to serve liquor at the swimming pool either the outside or inside of the pool his license covers it. The fact that a licensed building that was built for a restaurant, that continuously held a license in which there was no City action to revoke the license. No zoning or Planning Commission changes to its use and that the O'Brien family never requested that the liquor service area be reduced. The fact that exercise equipment showed up in there is no more important than the fact that little kids are sitting next to their toys around their parents along the swimming pool in summer time while their parents have a bottle of beer, or the same thing downtown. He asked his architect to also look into this based on whether from a zoning stand point if you can take a licensed facility without changing its use, and use it for a temporary period of time as an exercise room without changing its use and without needing any approval. Mr. Rupp submitted a letter from his architect, stating that the Board could read his conclusion, which is no. Ms. Bogen stated that the Board has already read it, it was in the packet. No action was taken throughout the life of this, 40 years now that would suggest that the room was not intended to be used as a dining room. Mr. Rupp contended that he has been using the room for 15 years continuously and there has been no gap in which it has not been used. The only possible explanation that he can see looking at this situation from the outside is that there was a massive screw up on the City's part in having lost its records. Not knowing what is going on with this space and then deciding that the safest thing to do, because they do have at least one neighbor that is trying to get the City figure out what to do about this situation. Is to now make it his problem. Mr. Rupp continued that the City was trying to make him defend the fact that he was granted a permit with the Zoning and Licensing Departments approval to use this as a restaurant and spent a fortune doing it. Three years later and two days after he opened he is told he did something wrong. He contended that he did not do anything wrong. What is at stake here, if he

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goes back and says he is going to ask for a change of use because this is from one legal non-conforming use to another. He does not need to do that because as the architect argued if it changes to a lower hazard. If you change a restaurant and temporarily put exercise equipment in it, you can do that, without changing the zoning. You cannot do that if you have an exercise room and want to convert it to a restaurant. That would require a change of use. Mr. Rupp continued, let's say he is forced into a change of use what Mr. Ubl, (the Building Inspector) has already threatened him, saying that Mr. Rupp does not have a building permit. If Mr. Ubl wins it will cost Mr. Rupp \$200,000 and will probably bankrupt the bar/restaurant.

Mr. Rupp explains that by changing the use of the space for building code purposes, he will have to tear the whole place apart, which is beautifully finished, Mr. Rupp added, and install a sprinkler system. Mr. Rupp told Mr. Ubl that he is not required to do that even under his building codes and he is certainly not required to do it if there has not been a change of use. The flood gates open if Mr. Ubl gets away with winning on the point that Mr. Rupp has changed the use when he has not. Because now all of a sudden, the place gets bankrupt by this guy. Mr. Rupp stated that he is trying to defend that this business has been around for 40 years, in fact the business has been around since 1934.

Ms. Younkin Viswanathan stated, she is trying to get the time line down, in 1921 the building opened up and it was a private club or was it. Mr. Rupp replied let's start again, in 1920 the six-story building opens and adjacent to it, on the aerial photo shown with the mechanical equipment on the top of the building, that was the dining room for the hotel, there was no squash club. The buildings to the west were some garages which wasn't relevant to the zoning. Sometime before 1976, he thinks, Thomond O'Brien, John O'Brien's father, remodeled the garages west of the dining room as a classroom for 3M. He believes that the change occurred in 1972, counter to what has been stated, some houses had been tore down along Holly Street and a parking lot was put in, because 1975 the Zoning Code was changed. Then in 1976 Mr. O'Brien decided to build the first phase of what was to ultimately become the squash club. Which was a dining room for the club/hotel with a squash club below it.

Mr. Rupp stated that this is an air rights parcel, the west dining room, below it are squash courts. The dining room was built precisely within 1/100th of a foot of elevation and lines up with the floor of the dining room, because it was going to be part of the dining room. There is one tax id parcel because when he received title of this parcel in a court action the examiners of title in Ramsey County decided that rather than having another tax id parcel that is just the west dining room, they added it to the original dining room that was built in 1920. That is why there is not a separate tax id for the property.

Ms. Younkin Viswanathan stated to continue with the trajectory, the Commodore opened in 2015, as it exists now. Mr. Rupp replied in 2015 they completed the remodel that was started in 2012. Ms. Younkin Viswanathan questioned that Mr. Rupp had stated that before 2012 the space was being used as a dining room. Mr. Rupp replied that the whole thing was part since 2001 the entire area that was remodeled and shown in the site plans was a bar/restaurant complex. Ms. Younkin Viswanathan asked if it was open to the public? Mr. Rupp stated that back then it was periodically open to the public on special occasions. It was a banquet facility and its license is owned by the University Club. They had a restaurant license so that they could open it periodically and close it, it was primarily for private events. Mr. Miller stated that Mr. Rupp is telling the Board that he thinks that this space was established when it was constructed back in 1976. Mr. Rupp replied no, that is what Wendy Lane agreed to in her most recent letter, she said it was built as a dining room in 1976. Before Ms. Lane wrote that letter she had sent some internal memos which he found in discovery, which said that John has not come in and said what the building was built for. Before she wrote her letter, he brought in all the evidence that the structure was built with the squash courts down below to be part of the soon to be expand squash club and a dining room up above because it is stacked. She took that evidence and she reached the conclusion that it was built as a dining room. Mr.

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Miller restated that it is not Mr. Rupp's opinion that it was established as a dining room, it was Wendy Lane's opinion. Mr. Rupp replied no, it was built as a dining room. He gave Ms. Lane the evidence, the evidence was a letter from the architect who designed the dining room wrote a statement that Wendy Lane has a copy of that says that it was designed as a dining room and both the 1976 site plans and the 2015 site plans it says dining room. Mr. Rupp continued that these are not matters of opinion this is what it was. Ms. Bogen stated but Ms. Lane's letter does not say that. Mr. Rupp replied yes it does. Ms. Bogen stated that the letter says that Mr. Rupp provided a floor plan from 1976 when the floor plan showed this area as a future dining room. But no evidence that the use was ever established. Mr. Rupp stated that the question was if the space that was intended to be a dining room in 1976 ever established for use as a restaurant. Ms. Lane is saying that he, Mr. Rupp, has not produced evidence that a building that was permitted to be built as a dining room and licensed for use as a dining room could not be used as a dining room. He stated that his presumption that any rational person should make is if the City of St. Paul grants a permit for a building to be used as a restaurant/dining room and then gives a license to use it as a restaurant/dining room, that its use was established. Ms. Bogen asked if Mr. Rupp has a copy of the license that covers that dining room? Mr. Rupp replied that it is in the 1991 letter from Mr. Kessler, who says that the entire squash racket club is covered by his liquor license. He contended that was an important question that he needed the City to have in its records that they would find that this is a licensed restaurant area. Because he has a very large project that depended upon not getting into this kind of a nightmare with the City over the use of that particular piece of property. He thought he had it figured out in 1991, he still thinks he has it figured out.

Mr. Saylor questioned Mr. Rupp about the 1991 letter, the letter reads "We agree that the liquor service area does include the area presently occupied by the squash club" it also mentions an entertainment issue and Mr. Kessler goes on to say "My contention is that an entertainment license is required if liquor is provided by the license holder." Then in the next paragraph goes on "During our discussion you recalled the existence of a letter from the previous license inspector that supposedly gave you permission to provide liquor and allow another private party to provide entertainment without the need for a license, you were to locate a copy of that letter since we cannot find any such letter in our files and we have not heard from you." Mr. Rupp stated that he went to Mr. Kessler on two issues, he has a ridiculous situation on the whole complex. He stated this is how it goes, if one of you comes to him and says that they want to rent the restaurant or use part of it for a private party and want to bring in entertainment, no problem. But if he hires the entertainment and invites, people in to listen to it, he cannot do that. He finds that ridiculous, but that is the position he is in. When he went to Mr. Kessler he had two issues. One to make sure that he had the liquor license in the west dining room. The second issue was about an entertainment license situation. He lost one of the first points on the entertainment license. Now the other problem he has is that he opened this place to have entertainment in it. But he cannot get a neighborhood petition supporting a change in the entertainment license to allow him to hire the entertainment like anyone else can at his business until he gets this zoning issue straightened out. Mr. Rupp contended that he has been tied up for six years come February. Trying to get clarification on the zoning of that business. It is going to be six years since he filed his first building permit to get this resolved.

Ms. Bogen asked Mr. Rupp if the building permit he submitted to the Board is the building permit he received that allowed him to improve and put a bar in. Mr. Rupp stated that he does not say anything, this speaks for itself, this is a legal document. It says that he can build in this area, there are all the conditions listed on it. We have added all the conditions that the City put on the permit, if he complies with those conditions he is fine. The last inspection by the City, the City inspector told him he was going to provide a temporary certificate of occupancy. He never got one but was told that two days before he opened.

Ms. Bogen asked why the building permit has attached to it bathroom plans and bathroom details. The

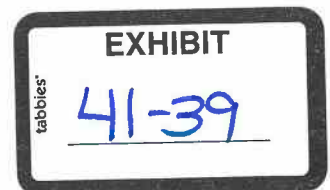


building permit refers to it as a minor remodel, minor structural work and then at the bottom of the building permit it says "it is an interior remodel permitting with owner was approved by Building Official Jim Bloom, that the new restrooms would have to be constructed according to the 2007 Minnesota Accessible Code Chapter 13.41 requirements even though the restrooms are not on an accessible route and the unisex bathroom is being provided." How do we know that this building permit is not just for the bathroom? Mr. Rupp stated that you really have to look at it. He stated that it is circled on the plans and calls out the fact that he is building a bar inside of the west dining room and he is doing the bathroom upgrades. The meeting in February 2012 one of the comments that was made when upgrading drawings for a formal building permit application purposes, the 2007 code for restrooms has to be analyzed, the architect went back to the drawing board did a bunch of modifications to the plans per the City requirements one of which was to develop the specs for the bathrooms. We then installed those. Mr. Rupp pointed out the dashed line around text on the top of the plans, stating that this was added to the plans between February and May of 2012, this section does the calculation that says that the bathrooms that were required after his first meeting with the City in February, in order to occupy the place, they had to meet the new codes. That is why there is a change from the February 2012 draft to this one there was a change. Ms. Bogen asked where is the building permit that does not have to do with the toilets, because on this plan it specifically says under point #10 in blue, new toilet rooms see detail, electrical and mechanical by separate permit. This is the permit for the toilet rooms. Mr. Rupp replied no, this is a building permit that includes the toilet rooms. He cannot, because he is not licensed, file an electrical permit or a plumbing permit, what he can do is file a building permit which says here are the number of toilet stalls. Here are their sizes, here is how they meet the code and then subsequently what happened is a plumber come in and files a plumbing permit then an electrician comes in and files an electrical permit to put the electrical in. He cannot do that because he is not licensed to do that.

Paul Olson, 431 Portland Avenue, testified that he has known Mr. Rupp for many years, his net effect of real estate and entertainment investments in our neighborhood has been extremely positive. Ms. Bogen asked that Mr. Olson address his comments about the dining room, that is what this Board has to hear about. Mr. Olson continued that Ramsey Hill uses these facilities frequently. Ms. Bogen asked if he is speaking for the Ramsey Hill Association. Mr. Olson state he is a member and his wife is a Boardmember. They use this for various meetings and gatherings. Ms. Bogen asked Mr. Olson to just speak the dining room issue and whether it has been in use as a dining room. Mr. Olson stated that he has had occasion on many occasions to be a member of the Ramsey Hill Association as a guest to enjoy and utilize these facilities. They were very conducive to neighborhood building and safety. What he is saying is that these facilities is a big asset to the community. Ms. Bogen stated that we just have to talk about the Commodore and the dining room.

There was opposition present at the hearing.

Valerie Evje and Gerald Barns, 418 Ashland Avenue, stated she has a zoning question, since this property is zoned a residential area is there a zoning requirement about the parking and its impact on the residents. Mr. Benner stated that if the Board decides that Mr. Rupp is correct in his assessment of what happened then the parking would be a wash, because it would have already been established as a restaurant use and there would be no new parking required. However, if the Board decides that a non-conforming use permit is required, the parking would then be included with that and the parking determination would be made to see how many parking spaces would be required. Essentially there would be a need for a non-conforming use permit and a parking variance if Mr. Rupp decides not to provide the required parking. At this time, we do not know the number of parking spaces that would be required. Ms. Bogen stated that would be a decision of the Planning Commission and if a variance is needed then it would come back to this Board. Ms. Evje asked if she is understanding correctly, the parking required would depend on if the

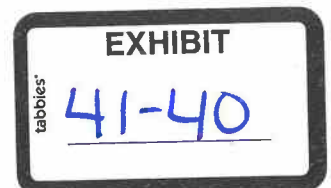


west dining room was in the original plans or if it now needs an additional approval. Mr. Benner replied that is correct. Ms. Evje further asked if there is any sense of how many parking spaces would be required for that room, or is that for a later event. Mr. Warner stated that there is a formula for calculating parking, but before we get to that point we have to make a determination. There is a parking requirement and there is a formula for it, whether or not it is applied depends on what happens here today. Mr. Barns stated he just wanted to make a quick comment. As of 2015 when the restaurant opened parking became an extreme issue. Since the day of opening anyone who lives on this street is unable to find a parking space from 4 p.m. until around 10-11 p.m. except for Sunday and Monday when the restaurant closes early. Ms. Bogen stated that if this gets to the point of looking at the parking, their testimony on that issue would be very important. Ms. Evje asked if there would be another notification about that. Ms. Bogen replied yes.

John O'Brien, 675 Goodrich Avenue, stated that he is the owner of the Commodore Squash Club and he has a long history with Mr. Rupp. He would like to point out that some of what Mr. Rupp said, he would disagree with. Mr. Rupp's contention that the exercise room has been in use as restaurant space, seems to be what he was implying, is not true. From 2001 when the O'Brien Family lost it as a result of twenty years of bitter lawsuits, until it was reopened as part of an expanded restaurant in 2015, the room was an awful leaky nightmare. With tarps strung around through the ceiling to try and capture some of the rain water and to prevent the water from flowing into his property, which it continued to do for years and years; not only from that mess of a room but also from the adjoining kitchen space into his office flooding his carpets. When Mr. Rupp talks about the room being in use, sure he stored some chairs in there and other stuff, but it was not being used as a restaurant.

Mr. O'Brien stated he would also like to question this business of a liquor license which applies to a space that is not owned by Mr. Rupp. That room he does not believe was ever utilized for liquor service or liquor consumption. It was an exercise room, in fact the record would show that he applied for a 3.2 beer license back in 1995, but it expired because he did not sell a single beer, we just did not think that we wanted to go into that business. Then when he hired a new (??) he encouraged Mr. O'Brien to see if he could get that 3.2 beer license reinstated and he did. Mr. O'Brien stated that he could not understand how a liquor license from 1993 that is part of the University Club's license could apply to a room that Mr. Rupp did not own until 2001. Ms. Bogen stated that she saw that in the letter he submitted to the Board, that is not something that we would be able to have an answer for. But we appreciate the question.

Mr. Rupp stated that yes when he received title to the restaurant, the west room, it was in a deplorable condition. It took a while to get it repaired. But it was always part of the restaurant operations and he thinks that John was correct in that a lot of the time we used it for storage. It wasn't a formal dining room by any means but it was part of the back-house operations as defined by Bob Kessler, the license manager in the 1995 letter. Mr. O'Brien asked about it being the University Club license. The University Club holds three separate different liquor licenses one for the Summit Avenue Clubhouse, one for banquet operations in the St. Paul Athletic Club and one for the Commodore. He thinks one of the larger questions did not get raised in this hearing, was that the Zoning Office reached the conclusion that there was no expansion of use and Wendy Lane reached a different conclusion. He met with Wendy Lane at the suggestion of the City Attorney, and she, Theresa Skarda, asked him to bring in information to Wendy that she could use in her decision. Mr. Rupp stated that he asked her that question and Ms. Lane said that we lost the zoning file. He asked about the person who wrote the conclusion that Mr. Rupp relied upon, when he built the business. That person has retired and cannot be reached. He asked if they had seen the building permit that the City Attorney has. Ms. Lane told him no we have not been given that. He stated that the previous Thursday he stopped in at DSI and asked Mr. Benner if he would like a copy of the site plan so they would have it before they wrote the staff report. The response was no we cannot look at it,



because the City Attorney has said you have to go through her. She has the copy that she won't show them.

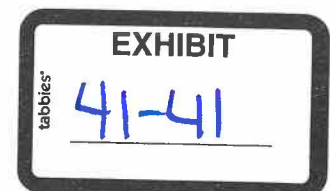
Hearing no further testimony, Ms. Bogen closed the public portion of the meeting.

Ms. Bogen stated that the decision would be to uphold Ms. Lane's decision or not uphold it.

Mr. Saylor asked if Mr. Warner has any legal perspective from the City's point of view before the Board makes a determination. Mr. Warner replied no, he thinks that the Board has Ms. Lane's letter to Mr. Rupp and she sets out her reasons for her determination that the restaurant could not be expanded in there because of the zoning code. The burden is on the applicant to establish whether that is correct and it is up to this Board to determine if Mr. Rupp has shown that is correct or incorrect. If the Board has questions concerning the testimony he would be happy to address those. The Board has the basis of Ms. Lane's decision in this letter.

Ms. Younkin Viswanathan asked if the City contends that the permit from 2012 is not correct that Mr. Rupp came to the City with these plans to build it and he was granted the permit. Does the City think that is not what happened? Mr. Warner stated that he thinks that the building permit issue is addressed in the first paragraph of Ms. Lane's letter. Stating that the building permit is not really relevant to the zoning issue, it might be relevant to Mr. Rupp's business, but that is between the building and the zoning code. The issue here is that Ms. Lane looked at it and says that the current uses in the building and the current uses that are proposed are non-conforming uses and she has made the determination that the non-conformity cannot be expanded into that portion of the building. She is saying that it was never legally established as a restaurant. The testimony that the Board has heard is that Mr. Rupp has a liquor license and he has these permits, but this is zoning the only people that can make zoning decisions are Zoning Officials. The Building Official cannot modify a zoning requirement, just because a building permit is granted to allow something that is a non-conforming use, that does not legalize it. In fact Minnesota law would say just the opposite, that if a Building Official issues something that is in violation of the zoning code then theoretically that permit is revocable. Ms. Lane has very narrowly for zoning purposes the use that Mr. Rupp is proposing has never been approved as a restaurant. The answer to the original question here would be for Mr. Rupp to apply for some type of a non-conforming use permit, he does not know if it is re-establishment or expansion, there are about 7 different non-conforming use permits, there is a process that could for zoning purposes legally clarify what this space could be used for. To address one of the questions that came from the testimony today, and that would take into analysis how big the space is and would apply the parking formula, it would be run by Plan Review to assure that the building is safe for occupancy, all those things would be taken up in that process. Mr. Warner stated that he looks at this permit, he does not know what it says for zoning purpose, the Board heard that the document speaks for itself, well when he looks at this document it says change of expansion or use no, commercial use c restaurant that is building code descriptions not zoning code descriptions. The building code and the zoning code use different descriptors for what the public would say that's residential, that's commercial use, that's a bar, that's a restaurant, but the zoning code and the building code use different terms. The approvals here might have been building code approvals but Ms. Lane is saying for zoning code purposes, in her opinion, it has never been established.

Ms. Trout-Oertel stated that this space has clearly not been used over the years as a dining room and to find a note on an architect's drawing "future dining room" that is the kind of thing that is thrown on plans and the fact that it does not have a history of being used as a dining room and was turned into one in a process that took years. She looks at the building permit and it is not really clear what is happening with this remodel.



Ms. Trout-Oertel moved to deny the appeal, concluding that Ms. Lane did not err in her determination that the restaurant could not be expanded in there because of the zoning code.


Ms. Younkin Viswanathan asked if this part of the restaurant was always attached to the restaurant, just because it wasn't being used. To her it would be like if a kitchen was not being used to serve food on a table you cannot move your kitchen in your restaurant and make it dining room. If this was always part of the restaurant space it just seems like it was an accessory room at some point that did not feel that it was needed to be used, but it was still part of the space and is still covered under the grandfathered zoning. She stated that she does not understand the timeline of the history of the space. As she remembers the Commodore you walk in and there is the small area with a little bar and the lounge area, then you walk down some steps and there is this west dining room we are having this conversation about. If that was always there and there wasn't ever a closed off wall then it was a room that wasn't being used in the restaurant. You should not be penalized and not allowed to use it, because it was always there but not actively being used. Ms. Bogen stated that it was in a building that was built many years after the original bar and restaurant was built. She does not believe that the buildings were attached or connected, she does not know when the room was attached. From what she sees here it was never meant to be a part of the complex until there was some change of ownership, then this plan was drawn up that maybe we are going to have a future restaurant in there. That is how she would look at it, that this building has not always been a part of the complex. Ms. Younkin Viswanathan restated that it has not always been attached to the dining area of the original 1924 building. Ms. Bogen stated that it was a squash club. She thinks that 2001 is when it became part of the Commodore complex. Ms. Younkin Viswanathan questioned when they opened up the building space. Mr. Warner stated that if you look at the plans submitted by Mr. Rupp, looking at 1A and 1B on the key of the plans, it says remove a portion of the existing masonry wall for new door assembly, that is a recent phenomenon. Ms. Bogen stated that is about 2012. Mr. Warner stated it looks like there might have been a service door there. It was not the wide expansive doors he has on this plan, to open up the space.

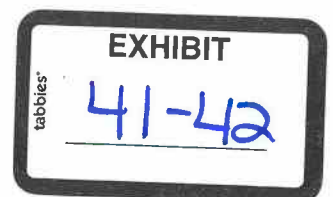
Ms. Maddox seconded the motion, which passed on a roll call vote of 5-1 (Younkin Viswanathan).

Submitted by:


Jerome Benner II

Approved by:


Diane Trout-Oertel, Secretary





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, MN
 City ST. PAUL State MN Zip 55102 Daytime phone 651-492-2644
 Email jcrupp@commonwealthproperties.com

Property Location

Project Name COMMODORE BORND RESTAURANT
 Address 79 WESTERN AVENUE NORTH

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

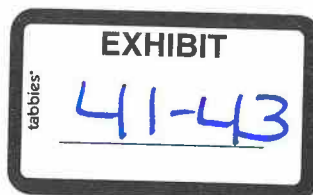
- ☐ **Planning Commission**, under the provision of Chapter 61, Section 701, Paragraph C of the Zoning Code, of a decision made by the Planning Administrator or Zoning Administrator on _____
 (date of decision)
- ☐ **Board of Zoning Appeals (BZA)**, under the provisions of Chapter 61, Section 701, Paragraph C of the Zoning Code, to appeal a decision made by the Zoning Administrator on _____
 (date of decision)
- ☒ **City Council**, under the provision of Chapter 61, Section 702, Paragraph A of the Zoning Code, of a decision made by the Planning Commission or the Board of Zoning Appeals (BZA). #17-214992
 (file number)

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

Date

12/14/17

City agent

[Signature]

MEMORANDUM

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

Project No. 74803.010

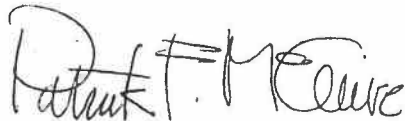
14 December 2017

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

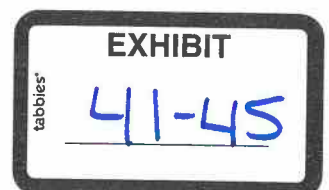
Grounds for Appeal to the City Council from the Decision of the Board of Zoning Appeals

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!

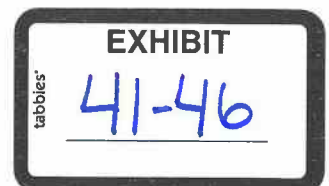


Both the Zoning Administrator and the Zoning Staff failed to make the distinction between the zoning issue and the building permit issue. Example: the report mentions that the HPC approved windows in 1987 – eleven years after the building was constructed. The report failed to mention that the windows 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.

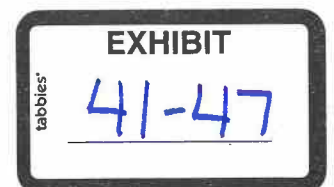


Contrast the staff's argument about the Club use with Appellants steps to obtain all required approvals. Appellant submitted plans in 2012 to complete the interior work required to finally allow it to be used as a restaurant dining room, after owning it and using it for other restaurant uses since 2001. 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.



FILE
17-214989

Crippen, Debbie (CI-StPaul)

From: Benner II, Jerome (CI-StPaul)
Sent: Wednesday, November 29, 2017 10:21 AM
To: Crippen, Debbie (CI-StPaul)
Subject: FW: Commodore restaurants

Please add this comment to the 79 Western.

Thanks,

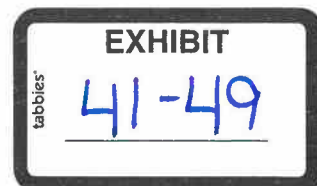
Jerome

-----Original Message-----

From: Tharkcom [mailto:tharkcom@comcast.net]
Sent: Wednesday, November 22, 2017 5:38 PM
To: Benner II, Jerome (CI-StPaul) <jerome.benner.ii@ci.stpaul.mn.us>
Subject: Commodore restaurants

I live at 387 Portland Ave . I would support the retroactive approval of present dining space at the Commodore . This is a good use of space with a track record of being neighborhood friendly. There have been no parking or traffic issues.
Thank you. Thomas Harkcom

Sent from my iPad



FILE
17-214989

Crippen, Debbie (CI-StPaul)

From: Benner II, Jerome (CI-StPaul)
Sent: Wednesday, November 29, 2017 10:23 AM
To: Crippen, Debbie (CI-StPaul)
Subject: FW: Commodore Restaurant dining room

Please add this comment for 79 Western.

Thanks.

From: Patricia Hampl [mailto:hampl@umn.edu]
Sent: Sunday, November 26, 2017 5:24 PM
To: jens@summit-university.org; John R. Rupp <JRRupp@commonwealthproperties.com>; Benner II, Jerome (CI-StPaul) <jerome.benner.ii@ci.stpaul.mn.us>
Subject: Commodore Restaurant dining room

Dear Jerome Benner (and copying John Rupp and the Summit-University Planning Council:

Thank you for alerting me to the public hearing about the Commodore Restaurant zoning appeal. Unfortunately, because I teach at the University on Monday afternoons, I am unable to attend the hearing on Dec 4, 2017. I offer my thoughts here, and ask that you enter them in the record for consideration of the appeal.

Since 2004 I have owned a condo at the Commodore (#400) which I rent to a tenant. The restaurant and bar have enhanced the property, both its value on the market, and simply its appeal within the building and in the neighborhood (I have lived nearby for 35 years in a townhouse I own at 286 Laurel).

Beyond the evident benefit of the restaurant (which my tenant confirms--it has no negative effect on her peace and quiet as a resident of the building which is built like a fort and is wonderfully soundproof), I can offer this historical fact: my father proposed to my mother in July, 1939 on the roof garden of the Commodore. They held their wedding breakfast on August 31, 1940 in the Commodore dining room. Yes, there was a dining room there at that time. I have a photograph of the room and the wedding party being served at a formally set table. When I have had dinner at the current restaurant (twice) I have felt (based on the photograph I grew up seeing at home) that I was in the same room. Perhaps this area ceased to be a dining room for a long while, but it was there in 1940.

So to say a dining room "was never legally established," as the zoning appeals notice states in its "Purpose" line, is not accurate, it seems. Unless the earlier restaurant was not legally established. But it was there and doing business. The current restaurant might better be seen as a restoration.

Sincerely,
Patricia Hampl
--
Patricia Hampl

EXHIBIT
tabbies 41-50

Support

FILE

17-214989

Benner II, Jerome (CI-StPaul)

From: Jean Schroeffer <jshrep@aol.com>
Sent: Monday, November 20, 2017 8:07 PM
To: Benner II, Jerome (CI-StPaul)
Subject: Commodore west

The re-opening of the Commodore as a fine restaurant was long- and eagerly-awaited in the neighborhood and we like it. While I know nothing about the history of specific uses of any part of the building, I support now the use of the contested west dining room as part of this beautiful, open-to-the-public restaurant. It is an appropriate, attractive, inclusive use of this historic building at this location.

Jean Schroeffer
jshrep@aol.com
271 Summit Avenue



FILE

17-214989

Benner II, Jerome (CI-StPaul)

From: Elaine Elnes <elelnes@mac.com>
Sent: Saturday, November 18, 2017 11:26 AM
To: Benner II, Jerome (CI-StPaul)
Subject: Application pertaining to West dining room at The Commodore

Purpose: To comment on the Zoning Administrator stating that the west dining room in the Commodore Restaurant was never legally established as a dining room and the space was originally approved by the city as an exercise room for the former squash club.

Public Hearing is: November 20, 2017 at 3:00

Comments:

I live at The Commodore Condominiums, directly over the Bar/Restaurant.

Our unit faces south and west - and we look out over the rooftop of the section that is under question.

My main concerns are:

1. NOISE:

With this area being used as a dining room (that is often used for parties and large gatherings) there may be noise from crowds and/or music.

I have been bothered by loud noise from the Bar/restaurant for 20 years. It was quite for about 4 years during construction and has been pretty

quite so far. But, I live in fear that the large gathering in this beautiful space will produce NOISE and destroy our tranquility.

2. NO ENTRANCE ON HOLLY: Back in early 1990s The Bar permitted patrons to use the door on Holly to access the Bar. A few neighbors and I

attended a city council meeting to talk for an ordinance to block the use of that door except for emergencies. It was closed except for emergencies for

over twenty years after the city council voted for the ordinance. We have been worried that once the remodeling was completed that the door would be used again (since it does not have a crash bar). Now a door has been added to Holly Avenue for the west

dining room. We want that door closed and not used unless there is an emergency. We do not want band equipment brought in and out of that

door. If they need to do so it should only be between the hours of 8:00a.m. -5:00 p.m.

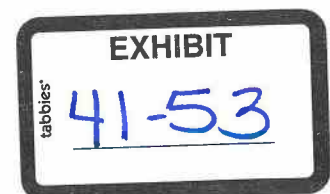
3. Smells, odors and rodents: The Commodore Bar and Restaurant needs to do everything they can to ensure that they have the proper equipment which

is in good working order to eliminate smell and odors. They also need to have good rodent control (something I fear they do not have now). In addition,

they need to have A/C equipment that works and is in good working condition so that it does not disturb those of us who live on the west side. Their

A/C equipment is 2-3 times as noisy this past summer than it was the previous summer before adding the west dining room. This may have something to do with the cooling of this additional space.

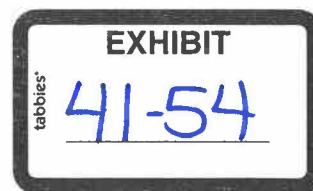
I love the area and welcome businesses to this residential community. However, that being said, I do not want them to disturb the tranquility of our living spaces. Everything they do should be to ensure that they are being considerate of their neighbors.



Thank you,

Elaine Elnes
79 Western Ave N
#200/202
St. Paul, MN 55102

651-271-9361



FILE

17-214989

Opposition

Thank you for alerting me to the December 4, 2017 meeting regarding Mr. Rupp's appeal of a zoning decision that the western part of his restaurant was never legally established as a dining room. It wasn't. As the owner of the Commodore Squash Club, a totally separate business sharing a parking lot, I stand in OPPOSITION to Mr. Rupp's appeal, primarily for lack of adequate parking, but secondly because the western room, my old Fitness Center, was never fully permitted as an operational LEGAL restaurant. Thirdly, I protest that Mr. Rupp's Liquor License, which was switched suspiciously to the University Club around 1993, applies to a room he did not own until 2001!

Let me provide some historical background. My father Thomond O'Brien built the Commodore Squash Club, which opened for business in 1976. The northern portion of the Squash Club sits above underground parking for the Commodore Association, but the southern portion was all brand new construction: outside the parameter of the Old Commodore Hotel. The devastating explosion of the Old Commodore Hotel in 1978 caused my father to rethink all of his plans for the Commodore Complex, and he decided to separate the Commodore Complex into two entities: the Commodore Condominium Association, composed of the former hotel rebuilt as a condominium complex, including the bar and restaurant, and the Commodore Condominium Corporation, which holds the squash club. The new, but empty, unfinished space above the squash courts, which in 1976 he had once envisioned as a possible "future dining room," built at the same elevation as the Old Commodore Hotel's restaurant, remained unoccupied and vacant until 1987. The 1976 permit to build the squash club was not a permit to build a "future dining room." Such a permit would have required many steps, not least of which were a finished space, a full review of local parking, liquor laws, and zoning/ordinance restrictions, as well as specific plans for a large restaurant.

I quote in part from a Letter written to me and signed yesterday, 11/28/2017 by Tom Blanck, the Architect responsible for designing the Squash Club in 1976, finishing the Fitness Center in 1987, and remodeling the Squash Club in 1995:

"On August 21, 1987 I prepared a drawing that was finalized and approved by me on 9/17/1987. I believe this plan was used for a permit to finish the space labeled "future dining room" on the 1976 drawings of the squash club. The work completed the space as an exercise room related to the club. These improvements were made and inspected by myself. The room functioned for some time as an exercise facility. Certainly it was an exercise room in 1995 when I further reviewed documents and conditions at the Commodore.

In 1997 I prepared for you a review including several more documents related to the Commodore and at that time made a computation of require parking for the Commodore complex including the squash Club. That survey found there to be a shortage of 80 spaces based on conversations with Tate Halvorson, St. Paul Dept. of Inspections. This computation did not include the exercise room as a dining facility. Such a use would require greater parking."

Mr. Blanck's letter removes any doubt the Exercise Room was ever legally permitted as a finished restaurant, and that there was a severe parking shortage back in 1997. I can testify the parking shortage is exponentially worse now that Mr. Rupp's restaurant has re-opened. Mr. Rupp tore down the intervening historic exterior wall and combined the two rooms to form one HUGE dining room over last few years.

The greatest mistake my father ever made was his decision in mid 1980's to swap the Commodore Bar and Restaurant for a portion of the Minnesota Building, triggering roughly 25 years of lawsuits with Mr. Rupp. In 2001, a Judge ruled that the Fitness Center henceforth belonged to Mr. Rupp. The Judge made no mention of parking in his 2001 decision, and I contend no squash club parking was thus transferred to that room. Furthermore, I submit Mr. Rupp's parking rights as an Owner of the of the Commodore Association do not extend to that space. It has its own separate PIN# 01.28.23.24.0289, and, unless the Association has taken the necessary legal steps to incorporate an expansion of such size, that room IS NOT PART OF THE ASSOCIATION. Even if it were, such a gross expansion would not necessarily include Association easement rights. As an aside, I mention a current online search reveals many Permits have been pulled on my PIN # 01.28.23.24.0290 without my knowledge or permission for recent work done on Mr. Rupp's property.

EXHIBIT

tabbles

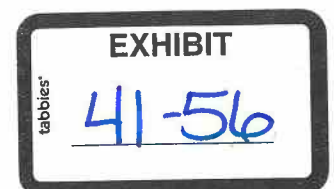
41-55

The Commodore Association and Commodore Squash Club have enjoyed reciprocal easements since 1980, though the Association recently contested the Squash Club's easement over association property. My attorney Evan Rice is clear that our easement over the association property is secure and legally protected, and I am surprised the Association is taking this position. Though I am not an attorney, I believe an Abuse of an Easement occurs when one or the other party uses the easement in a way contrary to how the usage was intended. Such an abuse could result in the loss of easement rights. My father imagined that a small bar/restaurant's turnover parking needs would at times overflow onto the squash club property, and on occasion squash club patrons would spill over onto association property. Such "friendly" easements would benefit both parties. However, never was the squash club property to be overflow for a huge restaurant and Banquet facility; 1976 "pipe dreams" notwithstanding. Had those dreams come true, I presume additional parking would have been required, perhaps an expanded underground parking garage, or an adjacent parking structure. That my members presently have to park up to four blocks away is absurd, considering I own roughly three fifths of the parking lot. Simply put, parking is totally inadequate for Mr. Rupp's expanded Restaurant and Banquet Room. Even without a squash club, there would be a severe shortage of parking spaces. The entire neighborhood is suffering while cars circle endlessly and futilely in search of parking, mostly for a business which has not been properly authorized and whose Liquor License is suspect.

IT IS MY SINCERE WISH THAT THE CITY OF ST. PAUL DENY MR. RUPP'S APPEAL, ENFORCE ALL PERTINENT LIQUOR LAWS, ORDINANCES AND ZONING RESTRICTIONS, AND SEVERELY RESTRICT MR. RUPP'S USE OF THAT ROOM AT LEAST UNTIL SUFFICIENT PARKING IS PROVIDED. I FURTHERMORE RECOMMEND A CERTIFICATE OF OCCUPANCY NOT BE ISSUED AT THIS TIME.

Respectfully,

John O'Brien
Owner of the Commodore Squash Club since 1995



FILE

17-214989

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

January 3, 2018

John Rupp
6 W. Fifth Street, Suite 900
Saint Paul, MN 55102

RE: Application for Administrative Review (BZA File #17-214989) - Notice to extend the time limit for decision under Minnesota Statute 15.99

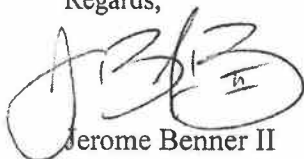
Dear Mr. Rupp:

On November 13, 2017 you filed an appeal of a decision made by the Zoning Administrator stating that the west dining room of the Commodore Restaurant and Bar was never legally established as a restaurant.

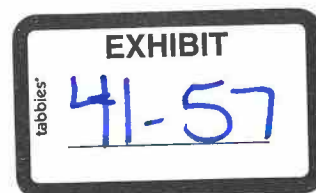
MN Statute 15.99 requires the City of Saint Paul to approve or deny zoning applications within 60 days of submission. Accordingly, the City's present deadline to act on your appeal application is January 12, 2018. Because the 60-day deadline would be met prior to the January 17, 2018 hearing date, the City must extend its review period an additional 60 days per Minnesota Statute 15.99. The additional 60-day period takes effect immediately upon the expiration of the initial 60-day period. Therefore, the deadline to make a final decision on your application is March 13, 2018.

If you have any questions regarding this matter, please contact me at 651-266-9080 or jerome.benner.ii@ci.stpaul.mn.

Regards,


Jerome Benner II
DSI Inspector III

An Equal Opportunity Employer





IN OPPOSITION

Dear St. Paul City Council,

February 14, 2018

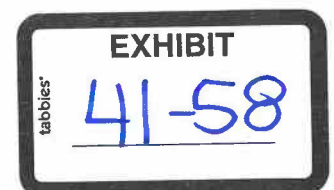
Please accept this letter, as detailed below, as my strong and unequivocal statement in **opposition** (both as an affected neighboring landowner and as a life-long Saint Paul resident) with respect to the zoning appeal that is now before you (the "**Appeal**").

I Summary of Opposition and Request for Denial.

While at first blush I understand that the Appeal, and the issues that underlie it, might appear to the Council to be a labyrinth of petty disputes about property rights and uses, the fact of the matter is that it brings forward important issues about how the City implements and enforces its zoning code and related ordinances and is at the hub of long simmering issues that have important implications for an historic neighborhood and public safety.

Although I will detail for the record a number of the important particulars, history, and context below, I know that your time is precious and limited. Consequently, in summary, I want you to understand that the Appeal should be rejected because:

- The existing use of the subject property as a bar and restaurant, popular though it may be, is directly contrary to the City's zoning ordinances and was not properly permitted, and the Appeal represents a cynical and manipulative end-run by a powerful and notorious landowner to bully and confuse the City into taking actions that would not only be illegal but contrary to the public good.
- The reasons that the applicant's original application was denied are well-founded and indeed further demonstrated by the existing conditions created by the applicant's illegal use of the property – which, while flouting the City's existing zoning, land use, and alcohol permitting laws, has created an untenable and dangerous parking and public safety problem that is spilling over into the surrounding neighborhood. If the Appeal succeeds, these problems will be exacerbated, not solved.



- Although the history here is complex, and the issues generated by the interaction of the various owners and interests thorny, a simple change to the zoning will not change or simplify that. Indeed, it's no panacea, and any type of comprehensive resolution to the problems plaguing these interrelated properties must begin with the City firmly requiring compliance with the City's ordinances and regulations.

II. Detailed Reasons, Background and Context in Opposition and Supporting Denial.

First, please accept my apologies for missing the scheduled February 21 meeting set to discuss Mr. Rupp's appeal of the Zoning Administrator's determination that the Commodore Squash Club's former Fitness Center, now owned by Mr. Rupp, was never legally established as a dining room. I will be in Florida for a precious, long scheduled family vacation, and flying back for the meeting would be prohibitively disruptive.

Below, you will find a letter I submitted to Mr. Benner back in November 2017, stating my opinion, and highlighting Architect Thomas Blanck's recollections and words related to the establishment of the finished room as a Fitness Center back in 1987. Also, you will find a previous letter submitted to the City Council on December 7, 2015, in which I pointed out a number of ordinances not being met related to Mr. Rupp's expansion, and where I expressed frustration at my inability to ensure Mr. Rupp had followed all the necessary laws BEFORE his Grand Opening.

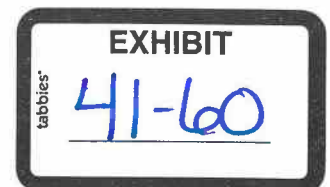
Let me take this opportunity to thank Wendy Lane, the previous Zoning Administrator, for her heroic determination on this matter. It is not easy to put the brakes on a project that has started rolling. However, in the interest of safety and fairness, it is crucial Mr. Rupp follow the rules, and get the approval of Zoning BEFORE proceeding with plans, construction, and permits for an expanded restaurant. Should Mr. Rupp's appeal be rejected, and he have to resubmit his plans through the Planning Commission, I sincerely hope the horrendous parking and safety issues are addressed before Mr. Rupp is allowed to proceed. Meanwhile, I ask the western portion of his expanded dining room be physically sealed off until zoning and Certificate of Occupancy issues have been resolved.

For the sake of clarity and discussion, I am numbering additional Points which have arisen or I have uncovered since my November 29th letter:

- 1) Parking and safety continue to be Major Issues. Almost daily, cars, vans, and trucks will attempt to enter the parking lot via the southern entrance, which was converted into a private entrance for the Association's underground parking in 1996. Unable to proceed or turn around, those vehicles must then back blindly into Western Avenue. According to a January 22, 1997 deposition by Tom Blanck, Tom Beech in 1997 determined that a proper permit for that closure had never been filed, and had one been submitted, he would not have approved it. I recommend the City of St. Paul insist the southern access to the parking be restored to its original 1979 permitted design. Placing a second exit elsewhere would decrease limited parking spaces even more.



- 2) On Wednesday, February 1, around 7 pm, Jeff Mulligan, my squash pro, witnessed cars parked COMPLETELY BLOCKING access to the northern exit from the southern part of the lot. Thus, cars were forced to go against the arrows all the way around the west fire lane turn to exit. Thank Heavens I recently installed concrete parking barriers to protect that lane, or there would have been no way in or out of the lot. The 1979 Permitted fire lane in front of the Association Entrance was lost due to the above-mentioned closure in 1996. I do not think one parking lot exit is sufficient for current occupancy safety, and nowhere near close to sufficient for an expanded restaurant. Rapid Tow is authorized to tow any cars in the fire lanes on my side of the lot, and has towed cars blocking traffic by the squash club entrance, but I have no authority over the Association's side.
- 3) According to Public Records, Case 62-CV-14-1723 Judge William H. Leary III of Second District Court Findings of Fact, signed and dated May 14, 2015, determined "On October 23, 2013, Mr. Rupp completed a credit application with American Bank in which he certified that there had never been any judgements against him and that he had not gone through bankruptcy. His representations were false." Furthermore, Judge Stauber on December 27, 2016, in Minnesota Court of Appeals for Case A16-0531 in his Decisions under Breach of Contract on page eleven wrote: "The district court made separate credibility findings in which it found Mr. Rupp was not a credible witness." How this is relevant is that it calls into question Mr. Rupp's testimony and recollection of events from 1976 onward, particularly conversations, letters, and agreements with my deceased father, who undoubtedly would present a very different picture were he alive today.
- 4) Reviewing Mr. Rupp's transference of the Commodore Bar's Liquor License in 1992 to the University Club, I would think some sort of diagram SHOWING IN DETAIL the boundaries of the transferred liquor service area would have been required. How is transferring a Liquor License between properties even possible, and were it, wouldn't that automatically sever any kind of alleged agreement between Mr. Rupp and my father? Moreover, I just can't see how the City would issue me a 3.2 License TWICE when (according to Mr. Rupp) his Liquor License covered my club the entire time. Isn't it impossible for two entities to have a liquor license for the same area? Wouldn't the most recent Licensee (me) have precedence? Am I, even now, able to serve Liquor at the Commodore Squash Club under Mr. Rupp's license?
- 5) Reading the Minutes of the December 4, 2017 Zoning Appeal Meeting, Mr. Rupp states that the Property ID Number for the expanded dining room, 2016 PIN #01.28.23.24.0289, has been combined with his old dining room PIN. However, that does not appear to be true. The address for his PIN is erroneously on 5th Street, not 79 Western Avenue North, though the legal description conforms exactly to Judge Leary's 4/11/16 Order (and does not include the old dining room's measurements). This is important. Mr. Rupp has not filed the necessary paperwork with the Ramsey County Property Records Department on Plato Boulevard finalizing the transfer and separation



of Title, drawing into question his ability to "incorporate" with the Association. I would think it also raises the legality of the \$2,000,000 mortgage he pulled on the property. Just what property, exactly? Incidentally, the roofing company had to put a Mechanic's Lien on Mr. Rupp to get paid, as did the Commodore Association to collect Association Dues. How likely is the Association to approve an expansion outside the boundaries of the original Commodore Bar footprint?

- 6) With all these issues, I think it is time a long-term solution be contemplated. What about redeveloping the entire parking lot site? Imagine multiple levels of underground parking, with retail and residential above, a new squash club on top, and green space for the neighborhood to enjoy? Perhaps thinking big will be the best path forward. Maybe St. Paul is ready.

Respectfully,

John O'Brien

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N OPPOSITION

Dear Mr. Jerome Benner,

November 29, 2017

Thank you for alerting me to the December 4, 2017 meeting regarding Mr. Rupp's appeal of a zoning decision that the western part of his restaurant was never legally established as a dining room. It wasn't. As the owner of the Commodore Squash Club, a totally separate business sharing a parking lot, I stand in OPPOSITION to Mr. Rupp's appeal, primarily for lack of adequate parking, but secondly because the western room, my old Fitness Center, was never fully permitted as an operational LEGAL restaurant. Thirdly, I protest that Mr. Rupp's Liquor License, which was switched suspiciously to the University Club around 1993, applies to a room he did not own until 2001!

Let me provide some historical background. My father Thomond O'Brien built the Commodore Squash Club, which opened for business in 1976. The northern portion of the Squash Club sits above underground parking for the Commodore Association, but the southern portion was all brand-new construction: outside the parameter of the Old Commodore Hotel. The devastating explosion of the Old Commodore Hotel in 1978 caused my father to rethink all of his plans for the Commodore Complex, and he decided to separate the Commodore Complex into two entities: the Commodore Condominium Association, composed of the former hotel rebuilt as a condominium complex, including the bar and restaurant, and the Commodore Condominium Corporation, which holds the squash club. The new, but empty, unfinished space above the squash courts, which in 1976 he had once envisioned as a possible "future dining room," built at the same elevation as the Old Commodore Hotel's restaurant, remained unoccupied and vacant until 1987. The 1976 permit to build the squash club was not a permit to build a "future dining room." Such a permit would have required many steps, not least of which were a finished

EXHIBIT

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space, a full review of local parking, liquor laws, and zoning/ordinance restrictions, as well as specific plans for a large restaurant.

I quote in part from a Letter written to me and signed yesterday, 11/28/2017 by Tom Blanck, the Architect responsible for designing the Squash Club in 1976, finishing the Fitness Center in 1987, and remodeling the Squash Club in 1995:

"On August 21, 1987, I prepared a drawing that was finalized and approved by me on 9/17/1987. I believe this plan was used for a permit to finish the space labeled "future dining room" on the 1976 drawings of the squash club. The work completed the space as an exercise room related to the club. These improvements were made and inspected by myself. The room functioned for some time as an exercise facility. Certainly, it was an exercise room in 1995 when I further reviewed documents and conditions at the Commodore.

In 1997, I prepared for you a review including several more documents related to the Commodore and at that time made a computation of require parking for the Commodore complex including the squash Club. That survey found there to be a shortage of 80 spaces based on conversations with Tate Halvorson, St. Paul Dept. of Inspections. This computation did not include the exercise room as a dining facility. Such a use would require greater parking."

Mr. Blanck's letter removes any doubt the Exercise Room was ever legally permitted as a finished restaurant, and that there was a severe parking shortage back in 1997. I can testify the parking shortage is exponentially worse now that Mr. Rupp's restaurant has re-opened. Mr. Rupp tore down the intervening historic exterior wall and combined the two rooms to form one HUGE dining room over last few years.

The greatest mistake my father ever made was his decision in mid 1980's to swap the Commodore Bar and Restaurant for a portion of the Minnesota Building, triggering roughly 25 years of lawsuits with Mr. Rupp. In 2001, a Judge ruled that the Fitness Center henceforth belonged to Mr. Rupp. The Judge made no mention of parking in his 2001 decision, and I contend no squash club parking was thus transferred to that room. Furthermore, I submit Mr. Rupp's parking rights as an Owner of the of the Commodore Association do not extend to that space. It has its own separate PIN# 01.28.23.24.0289, and, unless the Association has taken the necessary legal steps to incorporate an expansion of such size, that room IS NOT PART OF THE ASSOCIATION. Even if it were, such a gross expansion would not necessarily include Association easement rights. As an aside, I mention a current online search reveals many Permits have been pulled on my PIN # 01.28.23.24.0290 without my knowledge or permission for recent work done on Mr. Rupp's property.

The Commodore Association and Commodore Squash Club have enjoyed reciprocal easements since 1980, though the Association recently contested the Squash Club's easement over association property. My attorney Evan Rice is clear that our easement over the association property is secure and legally protected, and I am surprised the Association is taking this position. Though I am not an attorney, I believe an Abuse of an Easement occurs when one or the other party uses the easement in a way contrary to how the usage was intended. Such an abuse could result in the loss of easement rights. My father imagined that a small bar/restaurant's turnover parking needs would at times overflow onto the squash club property, and on occasion squash club patrons would spill over onto association property. Such "friendly" easements would benefit both parties. However, never was the squash club property to be overflow for a huge restaurant and Banquet facility; 1976 "pipe dreams" notwithstanding. Had those dreams come true, I presume additional parking would have been required, perhaps an expanded underground parking garage, or an adjacent parking structure. That my members presently have to park up to four blocks away is absurd, considering I own roughly three fifths of the parking lot. Simply put, parking is totally inadequate for Mr. Rupp's expanded Restaurant and Banquet Room. Even without a squash club, there would be a severe shortage of parking spaces. The entire neighborhood is suffering while cars circle endlessly and futilely in search of parking, mostly for a business which has not been properly authorized and whose Liquor License is suspect.

IT IS MY SINCERE WISH THAT THE CITY OF ST. PAUL DENY MR. RUPP'S APPEAL, ENFORCE ALL PERTINENT LIQUOR LAWS, ORDINANCES AND ZONING RESTRICTIONS, AND SEVERELY RESTRICT MR. RUPP'S USE OF THAT ROOM AT LEAST UNTIL SUFFICIENT PARKING IS

