

July 5, 2023

444 Hall Avenue
St. Paul, Minnesota 55107

St. Paul City Council

Members of the City Council:

We strongly oppose granting Wabasha Brewery variance from the sound level limitations set forth in the St. Paul Noise Ordinance.

Wabasha Brewery cannot meet the requirements for a variance.

In order to be granted a variance, the applicant must show:

1. Practical difficulties in complying with the provision of the code from which a variance is requested, and that the property would be used in a reasonable manner not permitted by the provision. (Economic considerations alone do not constitute practical difficulties.)
2. That the plight of the landowner is due to circumstances unique to the property not created by the landowner.
3. The variance will not permit any use that is not allowed in the zoning district in which the property is located.
4. The variance will not alter the essential character of the surrounding area.

Wabasha Brewery has no practical difficulty in complying with sound levels for outdoor musical events, as no such events have been permitted or scheduled. Per the variance that allows Wabasha Brewery to operate in this location, neighbors must be notified and allowed to comment before outdoor music amplified events are authorized or scheduled. Neighbors have received no notification or opportunity to object. Therefore, there can be no amplified outdoor musical events.

Wabasha Brewery faces no “plight” with regard to compliance with sound levels; even if it does, that plight is of its own creation. Wabasha Brewery chose to locate on a city block, the majority of which is zoned RT1, two family residential, and the lesser part of which is zoned T2, traditional neighborhood.¹ Wabasha Brewery’s license is subject to several conditions, including that “3. There shall be no amplification of music, broadcasted events, or entertainment provided without prior written approval from DSI.” Wabasha Brewery chose to locate here despite this condition. Wabasha Brewery can serve malt and sell liquor on and off sale without music of any sort out of doors.

Wabasha Brewery’s location on the periphery of a T2 District and directly abutting an RT1 district is itself questionable. St. Paul City Ordinance section 60.313, delineating the intended

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<https://stpaul.maps.arcgis.com/apps/webappviewer/index.html?id=21c68099a3124881b4411859ff66c3e3>

use of the T2 District states that it “encourages but does not require” a variety of uses “with careful attention to the amount and placement of parking and transitions to adjacent residential neighborhoods.” Allowing any amplified outdoor entertainment much less entertainment up to 80 decibels affords no attention to the adjacent residential neighborhood.

A variance allowing any amplified music, much less amplified music up to 80 decibels, will change the character of this neighborhood. Wabasha Brewery is the only business on this block, occupying only one corner of the area. It is adjacent to a small city park. Eight households occupy the rest of the block. This is - or was - a quiet block. Two families have young children; one of these has six children nine years of age and younger, including a newborn. I am certain that they don't want their children subjected to hours of high volume music selected by people other than themselves. Other houses are occupied by people who are retired or close to retirement. Residents such as myself, who are not retired, are only able to enjoy our yards on Saturday and Sunday. Granting this application for a variance would reduce the time we can enjoy our yards by nearly half during some of the best months of the year in Minnesota. Most residents spend a considerable amount of time outdoors in summer months. Amplified music of any level reduces our ability to enjoy our own back yards. Since our property directly abuts that of Wabasha Brewery for approximately 125 feet,² amplified music of any kind eventually drives us into the house, where we can still hear the music, albeit not as loudly.

Sound at 80 Decibels is unpleasant and may lead to hearing loss.

80 decibels is the approximate volume of a garbage disposal, dishwasher, average factory, or freight train at 15 meters. Consider how you would like to hear these in your back yard for 9 hours for five consecutive Saturdays during the time of year you most like to want to be outside. Consider further that decibels will likely vary, since an actual decibel level is very hard control or live music and even more difficult to enforce, so that the level will likely exceed 80 decibels at times. Other sources of noise ranging upward from 80 decibels: include: a car wash at 20 ft (89 dB); a propeller plane flyover at 1000 ft (88 dB); a diesel truck 40 mph at 50 ft (84 dB); a diesel train going 45 mph at 100 ft (83 dB).³

Exposure to sounds of 80 decibels for 8 hours may lead to hearing loss.^{4,5} Wabasha Brewery is asking to have music for 9 hours, not inclusive of the sound check.

Wabasha Brewery has not acted in good faith and cannot be trusted.

Wabasha Brewery was granted a license on the condition that there be no amplification of music, broadcasted events, or entertainment outside the building without prior written approval from the DSI. Per Ross Haddow (DSI), approval can only be granted with prior notice to neighbors and ability to respond. Also per Mr. Haddow, Wabasha Brewery neither applied for nor received any authorization to have outdoor amplifier music in 2022. Yet Wabasha Brewery consistently played and amplified music outdoors on weekends throughout the summer of 2022, including an 8 or 9 member Mariachi Band. Initially, I called and ask them to turn down the volume. They turned up the volume. I also called and informed the individual who answered the phone that amplified music was not allowed under the conditions of their license. They ignored me. I repeatedly called and sent letters to the St. Paul licensing office to no avail, though I was consistently told that no applications to have amplified music had been requested.

² <https://maps.co.ramsey.mn.us/MapRamsey/>

³ <https://www.iacacoustics.com/blog-full/comparative-examples-of-noise-levels>

⁴ Ibid.

⁵ <https://osgamers.com/frequently-asked-questions/how-loud-is-80-decibels>

Despite multiple oral and written complaints, no action was taken against Wabasha Brewery. This year, there has not yet been any amplified music, but there has been amplified entertainment, including amplified drawings for prizes which I learned on the evening of July 7 while working in my back yard, occur at regular intervals every Monday night. This is what the announcer informed the audience and, yes, I can hear it clearly in my back yard, which is up the hill from the brewery.

In September of 2022, Wabasha Brewery filed an application to add Malt Off Sale added to their licenses. I wrote a letter objecting to any further expansion of their licensure based on their failure to comply with existing conditions on their license. The hearing was scheduled during my work hours and with short notice, so that I was unable to attend. My husband attended to represent us. Before the hearing, he had a conversation with the owner of Wabasha Brewery, detailing our problems with the music, the volume, the parking, the traffic, and several other issues. During this conversation, the owner told my husband that he had no real interest in providing musical entertainment and that it was a bother to work with the musicians. In response to other concerns, the owner also indicated that the food trucks, which are parking in front of the Brewery and obstructing vision at the intersection of Isabel and Wabasha, would return to parking in the lot. This request for a sound variance is evidence that the owner's statements that he had no interest in musical performance were disingenuous. The trucks continue to park in front of the Brewery, creating hazardous conditions for cars, bicyclists, and pedestrians. Based on the owner's misrepresentations, my husband did not present our objections at the meeting.

Obviously, this owner's word means nothing. He has repeatedly violated the conditions of his license and makes misrepresentations in order to achieve his objections.

The current owner of the Brewery knowingly bought a liquor establishment located in a residential neighborhood. Since this time, he has sought to expand activities of the Brewery to include: serving liquor on the patio, outdoor entertainment, Malt Off Sale (128 oz), and now a variance to the sound ordinance. He will continue to seek additional licenses and variances that erode the quality of our lives, the value of our property, and the protections that rightfully attend to those who live in residential districts. His plans are incompatible with either RT1 or T2 zoning districts.

In short, Wabasha Brewery is a bad actor and cannot be trusted.

Wabasha Brewery does not belong in this residential neighborhood.

Wabasha Brewery had conditions put on its license in order to operate. Wabasha Brewery then sought an additional license to sell Malt Off Sale. Now, without complying with the requirement to that amplified music be approved by the DSI, it is requesting a variance from sound levels. This business obviously cannot and will not operate according to strictures required by the city in order to exist in this neighborhood.

Wabasha Brewery is interfering with the quiet enjoyment of our property, which should be guaranteed us by the zoning ordinances.

We bought and built on a lot in a residential district (RT1) expecting the protections afforded by residential zoning. The Wabasha Brewery was operating at the time we bought the property, but under different ownership. For several years prior to commencing to build, we came to the lot to sit on it and enjoy the trees and the wildlife. At no time during the many hours we spent on the lot was there any outdoor music. Wabasha Brewery, which has failed to comply with the

conditions of its license and is now requesting a sound variance is interfering with the quiet enjoyment of our property.

Wabasha Brewery is a nuisance.

Since we moved here three years ago, Wabasha Brewery has three times sought action by the city, each of which we have opposed. Each time, I have spent considerable time researching, pulling together my thoughts, and composing a letter. The first instance was when they sought a license to provide entertainment. Both we and at least one set of neighbors had concerns and responded to this notice. Both we and these neighbors expected a hearing. **No hearing occurred.** No explanation was provided as to why we were not afforded a hearing at which to air our concerns. Despite our letters and without the hearing we were told would occur if we had concerns, the license was issued, albeit with conditions.

Wabasha Brewery blatantly disregarded the conditions of its license throughout the summer of 2022 and 2023. Despite numerous calls and letters to DSI in 2022, no action was taken and Wabasha Brewery continued its blatant pattern of disregarding the conditions of its license.

Responding to the notices engendered by Wabasha Brewery's requests and endeavoring, albeit fruitlessly, to elicit city help to make Wabasha Brewery comply with the conditions of its license, has taken many hours and cause me considerable frustration. We would like to live in our home without the repeated stress of having to defend my home against Wabasha Brewery's intrusions into my air space and upon my equanimity. How would council members or the Brewery owner like it if music, including music not aligned to their preferences, were played loudly next door to to their property?

Has the request for a sound variance already been decided in favor of the Brewery?

The Brewery is requesting a sound variance 9 hours (plus time for a sound check) for five five connective Saturdays. The first of these Saturdays is a scant 10 days after the hearing on the variance request. This indicates that the bands are most likely already lined up. (i) Neighbors have received no notice about a request for amplified music. Based on conversations with Mr. Haddow, we understood that we were supposed to be notified and consulted prior to any amplified events. (ii) I also submit that the Brewery does not intend to monitor sound levels regardless of whether the variance is granted. This being a weekend, the licensing office will be closed. The police refuse to get involved since, to their minds, noise emanating from the Brewery is a licensing issue. This leaves neighbors with no recourse. By the time city staff return on Monday morning, the weekend will be over, neighbors' peace and enjoyment of their homes will have been ruined again, and the Brewery owner will once again have gotten what he wanted.

Why is the city not following its own processes?

We and at least one set of neighbors wrote to object to the Brewery's request for an entertainment license. The notice we received indicated that if anyone objected, a hearing would be scheduled. We received no notice of a hearing. Despite this, the entertainment license was issued.

Last year, per Ross Haddow, the Brewery neither requested nor received approval for any amplified events. Yet The Brewery held amplified events throughout the summer. Multiple calls

and letters to Ross Haddow failed to elicit any action to curb the Brewery's amplification of music. This year, neighbors have not been notified of any requests for amplification of entertainment events. Yet, the Brewery has held games and drawings throughout the summer, with the voice of the emcee amplified. That I have not complained doesn't mean that we cannot hear it or that it is not annoying; it is simply less intrusive than the music.

The state of Minnesota requires that staff regulating health care licensees remain neutral on issues related to licensees they are charged with regulating. On Mr. Haddow's facebook page, he expounds on his great affinity for breweries. How can we expect even-handed regulation from someone who is so obviously in the Brewery's corner?

We respectfully request that you deny this application.

This is the third time that Wabasha Brewery has caused us to put aside other concerns and priorities to try to retain the protections that should be afforded us by the zoning code and common civility. Our previous efforts, outlined in copies of our earlier letters which accompany this letter have failed. If city officials continue to ignore the impact this bad actor is having on our lives and our neighborhood, what message are you sending to people who live in St. Paul or might consider living in St. Paul?

Sincerely,

Anne Kukowski

Stephen Gammon

in order-to