

MINUTES OF THE ZONING COMMITTEE
Thursday, December 30, 2021 - 3:30 p.m.

PRESENT: Grill, Hood, Rangel Morales, Reilly, Syed, and Taghioff
EXCUSED: DeJoy
STAFF: Tony Johnson and Samantha Langer

The meeting was chaired by Commissioner Reilly. He stated that the chair of the Planning Commission had determined that due to the COVID-19 pandemic it is neither practical nor prudent for the Zoning Committee to meet in person, and therefore the meeting was being conducted remotely, with all members of the Zoning Committee attending the meeting remotely. The public is also able to join the meeting remotely and can speak during the public hearing portion or submit comments by noon on the day before the meeting.

79 N Western Nonconforming Restaurant Expansion - 21-320-126 - Expansion of a legal nonconforming restaurant into an adjacent building. 79 N Western, NW corner at Holly Avenue

Tony Johnson explained that the case was laid over at the December 9, 2021, Zoning Committee meeting to give staff time to discuss the potential additional condition with the applicant and the condo owner association regarding access to the structured parking facility. Mr. Johnson explained the parking access issue and that staff added a potential condition at the previous meeting to state that the applicant must reconfigure access to the building's structured parking facility and have site plan approval by June 30, 2022. After discussions it was discovered that the applicant does not have full site control and only 10% ownership stake in the parking lot, and that a sign has been erected to direct patrons of the business to the surface parking lot. Based on this information Mr. Johnson is only recommending the original two conditions in the staff report dated December 6, 2021.

Commissioner Grill moved to reopen the public hearing to hear from the applicant who did not have audio at the December 9, 2021, Zoning Committee meeting. Commissioner Syed seconded the motion and the motion passed by a vote of 6-0.

John Rupp, 340 Cedar, Saint Paul, the applicant, provided background on the property. He said the Commodore Building was built in 1920 and had a bar and restaurant built on the main level and a ballroom in the basement. In 1970 the building blew up in a contained gas explosion and the owner at the time rebuilt the building and moved the ballroom to the main floor with the bar and restaurant. That replacement ballroom is the west dining room that is the subject of today's discussion. He purchased the bar and restaurant in 1984, not the west dining room, and the liquor license. The City acknowledged that the liquor license he purchased covered the bar and restaurant as well as the west dining room. In 2001 he became the owner of the west dining room and at that time it was covered by a Certificate of Occupancy and had a liquor license. He began operating it as part of the bar and restaurant and continued for 20 years. In 2012 he decided to make an improvement to the décor of the west dining room and in 2015 he reopened the restaurant after a period of time that it was closed, and the City sent him a notice that he was not allowed to use the west dining room. The Zoning Administrator, Wendy Lane, researched it and concluded that it was built and intended to be used as a dining room. Mr. Rupp said there has been no change of use since and now the City is saying there has been a change of use stating that there was exercise equipment located in the area. Mr. Rupp said he owns the St. Paul Athletic Club and the University Club. In both of those cases he owns liquor

licenses and zoning approval to use the entire building for food and beverage service. This should be the case with the Commodore Building. The City revoked his Certificate of Occupancy and liquor license because he defended his right and continued to use the west dining room which he had been using for 20 years, had been fully inspected, insured, licensed, and had an occupancy certificate. The City never responded as to why they thought that what he needed to do in today's hearing was to apply for the expansion of a nonconforming use as opposed to the establishment of a legal nonconforming use for a use in existence for 10 years. This use has been in existence since 1979. He said that the City has made a series of mistakes that has bankrupted a business. The City closed it on its 100th birthday two years ago. He submitted his application for an establishment of legal nonconforming use status for use in existence. The staff said they want it to be submitted as an expansion of a nonconforming use. He said the way in which this is being done is inconsistent with the facts although he will accept the Zoning Committee saying that their allowing expansion of a nonconforming use even though the nonconforming use has been legal since 1979. His only goal is to be able to reopen his business.

In response to Commissioner Taghioff, Mr. Johnson said the applicant is correct that he could have applied for either an expansion of nonconforming use or the establishment of nonconforming use. In his original application he indicated that he wanted to apply for both, however, he advised him to apply for expansion of nonconforming use, because in his original application he provided no proof aside from his word that the restaurant has been in existence for more than 10 years.

In response to Commissioner Taghioff, Mr. Johnson said there is no difference in outcome with either application.

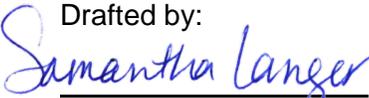
Mr. Rupp said he applied both ways. The evidence that he had been in business since 2001 was it had been inspected by the City and given an occupancy certificate and had a valid liquor license. It's hard to prove a negative that says he hasn't been using it as a restaurant. The outcome is what he is most interested in and to be able to use this room as part of the restaurant. Without being able to use this room the restaurant will never reopen.

No one spoke in support or opposition. The public hearing was closed.

Commissioner Grill moved approval with conditions of the expansion of a legal nonconforming restaurant into an adjacent building with the two additional conditions listed in the December 6, 2021 staff report. Commissioner Syed seconded the motion.

The motion passed by a vote of 6-0-0.

Adopted Yeas - 6 Nays - 0 Abstained - 0

Drafted by:

Samantha Langer
Recording Secretary

Submitted by:

Anthony Johnson (Jan 14, 2022 13:34 CST)
Tony Johnson
City Planner

Approved by:

Jacob Reilly (Jan 19, 2022 15:15 CST)
Jake Reilly
Chair

21-320-126 79 N Western minutes 12-30-21 TJ

Final Audit Report

2022-01-19

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