



APPLICATION FOR APPEAL
 Department of Planning and Economic Development
 Zoning Section
 1400 City Hall Annex
 25 West Fourth Street
 Saint Paul, MN 55102-1634
 (651) 266-6589

Zoning Office Use Only
 File #: _____
 Fee: 462.00
 Tentative Hearing Date:
3-6-19

APPELLANT

Name District 10 Como Community Council Email district10@district10comopa
 Address 1224 Lexington Parkway N
 City Saint Paul St. MN Zip 55103 Daytime Phone 651-644-3889

PROPERTY LOCATION

Zoning File Name Twin Cities German Immersion School Files 18-126-885 and 18-117-556
 Address / Location 1031 Como Ave.

TYPE OF APPEAL: Application is hereby made for an appeal to the:

Planning Commission, under provision of Chapter 61, Section 701, Paragraph c of the Zoning Code, of a decision made by the Planning Administrator or Zoning Administrator

OR

City Council, under provision of Chapter 61, Section 702, Paragraph a of the Zoning Code, of a decision made by the Planning Commission

Date of decision: Feb. 8, 2019 File Number: 18-126-885 and 18-117-556

GROUND FORS FOR 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, procedure or finding made by the Planning Commission.

Through its actions on Feb. 8, 2019, the Planning Commission failed its fundamental role of ensuring that a project complies with city zoning code. As a result, by operation of law, three variances and a site plan that violate the zoning code will take effect. In reaching the point leading to its Feb. 8 action, the Commission made errors in fact, finding, and procedure.
 (continued)

Attach additional sheets if necessary

Appellant's Signature Michael Kuchta Date 2/19/2019 City Agent pdd



District 10 Como Community Council

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February 19, 2019

Appeal re: Files 18-126-885 and 18-117-556 (continued)

- The Planning Commission's actions of Feb. 8 erroneously allow an off-street parking variance of only 20 spaces. Under Section 63.207, the school is required to accommodate 86 parking spaces. However, the school's initial site plan (filed on Oct. 23, 2018) accommodates only 50 spaces. That means the school must seek a parking variance of 36 spaces.

However, according to the city's official notification (dated Dec. 3, 2018) the school's initial variance request (filed on Nov. 9, 2018, and recorded on Dec. 3, 2018) seeks a variance of only 20 off-street spaces. Based on that initial request, the school's site plan must account for 66 spaces. It does not. The school's initial site plan and initial variance requests are 16 spaces short of meeting code requirements. However, the Planning Commission's errors allow this violation, by allowing both the initial site plan and the initial variance request to take effect.

- On Jan. 25, 2019, the Planning Commission approved (on a 7-5 vote) a site plan for the school that originally was submitted for approval to the Zoning Committee on Jan. 17. However, the city attorney's office later deemed this Jan. 25 vote invalid because the Jan. 17 site plan relies on variances for height, lot coverage, and parking that had not been approved. On Feb. 8, the Planning Commission chose to not reopen its Jan. 25 vote.

These factual and procedural errors on the part of the Commission cause the school's initial site plan from October to take effect on March 6, 2019, and the school's initial variance requests to take effect on March 26, 2019. Unless this decision is appealed, the site plan and variance requests take effect due to time limits set out in Minnesota Statute §15.99.

Because the variance will not take effect until March 26th, the October site plan that takes effect on March 6 relies on variances that have neither been approved or become legally in effect. Since the Planning Commission's Jan. 25 vote was determined invalid because the site plan approval preceded variance approval, then the rationale that found an error with the original Jan 25th vote, equally applies to the February 8th vote, as it allows for the October site plan to take effect without necessary variances. The Planning Commission is allowing a site plan to take effect that relies on variances that are not legally in effect. If the Jan. 25 vote is invalid, then the impacts of Feb. 8 vote must also be invalid. Conversely, if the impacts of the Feb. 8 vote are valid, then the Jan. 25 vote and its impacts also must be valid. That means the Planning Commission has approved the Jan. 17 site plan; that site plan should govern, not the initial site plan filed Oct. 23.

- Section 61.402 of city code requires that, in order for a site plan to be approved, it must demonstrate compliance with city code. Areas where compliance is required include:
 - "Protection of adjacent and neighboring properties through reasonable provision for such matters as ... sound and sight buffers..."
 - "The arrangement of buildings, uses and facilities of the proposed development in order to ensure abutting property and/or its occupants will not be unreasonably affected."

- “Safety and convenience of both vehicular and pedestrian traffic both within the site and in relation to access streets...”
- “Sufficient landscaping, fences, walls and parking necessary to meet the above objectives.”

The site plan that would take effect for Twin Cities German Immersion School as a result of the Planning Commission’s Feb. 8 vote is far from fulfilling those requirements. Specifically:

- The site plan that would take effect because of the Planning Commission’s actions does not address inadequacies that city staff and independent consultants have identified concerning traffic flow, student drop-off and pick-up, bus parking, crosswalk treatments, a Safe Routes to School plan, and related issues affecting congestion, parking, pedestrian safety, and the impact of vehicles on the surrounding neighborhood. It does not incorporate the findings of a traffic impact analysis that the city’s traffic engineer deemed necessary. The site plan that is being allowed to take effect places no conditions upon the school or city departments to address these impacts, as is required by city code.
- The site plan that would take effect because of the Planning Commission’s actions does not address the impact of sound from the school’s play area on nearby residences, as is required by city code. This impact is magnified by the school’s growing enrollment and by the fact that playground equipment is within 10 feet of the nearest home.
- The site plan that would take effect because of the Planning Commission’s actions allows a private fence on the east side of the property to remain, even though, according to city staff, the fence encroaches into the public right-of-way.

These are the most obvious examples of where the Planning Commission has erred, factually and procedurally, to uphold the clear requirements of city code. The Jan. 17 site plan represents extensive work by city staff, surveyors, the school, and community members. By failing to address procedural errors pointed out by the City Attorney’s office, the Commission further erred by abdicating its oversight responsibilities in a manner that will yield results that will have detrimental effects on the surrounding neighborhood.