

Department of Community Planning and Economic Development – Planning Division
Variance
BZZ-5401

Date: December 1, 2011

Applicant: Broders' Pasta Bar

Address of Property: 5000 Penn Avenue South

Contact Person and Phone: Molly Broder, (612) 925-3113

Planning Staff and Phone: Shanna Sether (612) 673-2307

Date Application Deemed Complete: November 7, 2011

End of 60-Day Decision Period: January 6, 2012

Ward: 13 **Neighborhood Organization:** Fulton Neighborhood Association, adjacent to Lynnhurst

Existing Zoning: C1 Neighborhood Commercial District

Zoning Plate Number: 35

Legal Description: Not applicable

Proposed Use: Outdoor grill accessory to an existing sit-down restaurant

Variance: of the enclosed building requirement to allow for outdoor kitchen and grilling area

Applicable Code Provisions: Chapter 525, Article IX, Variances, Specifically Section 525.520(26) "to vary the enclosed building requirements of this zoning ordinance."

Background: The subject property is an existing sit-down restaurant in the C1 Neighborhood Commercial District. The use has been in existence since 1994. The applicant is proposing to add an outdoor grill to an existing outdoor patio and kitchen area adjacent to the existing building. The outdoor business activity of grilling is prohibited in the zoning ordinance per section 548.180 of the zoning code:

548.180. Enclosed building requirement. (a) *In general.* All production, processing, storage, sales, display or other business activity shall be conducted within a completely enclosed building, except as otherwise provided in sections (b) and (c) below or elsewhere in this ordinance.

(b) *Outdoor dining.* Outdoor dining shall be allowed, provided the following conditions are met:

- (1) The outdoor dining area shall be no closer than twenty (20) feet from an adjacent residence or office residence district boundary or from an adjacent ground floor

CPED - Planning Division Report
BZZ 5401

permitted or conditional residential use, and shall be screened from such district boundary or residential use, as specified in Chapter 530, Site Plan Review.

(2) Sidewalk cafes shall comply with the requirements contained in Chapter 265 of the Minneapolis Code of Ordinances, Special Permits for Specific Businesses and Uses.

(c) *Outdoor sales and display.* The following may include outdoor sales and display provided such outdoor sales and display area shall be no closer than twenty (20) feet from an adjacent residence or office residence district boundary or from an adjacent ground floor permitted or conditional residential use, and shall be screened from such district boundary or residential use, as specified in Chapter 530, Site Plan Review:

- (1) Automobile sales.
- (2) Direct refueling of motor vehicles.
- (3) Lawn and garden sales, provided the outdoor sales and display area shall be included in the maximum gross floor area of such use, as regulated in each district.
- (4) Permitted drive-through facilities.
- (5) Building material sales located in the C4 District only.
- (6) Truck, trailer, boat or recreational vehicle sales, service or rental, subject to the regulations of the C4 District governing the outdoor parking of trucks and other commercial vehicles.

Therefore, the applicant is applying for a variance of the enclosed building requirement to allow for outdoor grilling accessory to an existing sit-down restaurant.

As of the writing of this report, staff has not received any comments from the Fulton Neighborhood Association. Staff will forward comments, if any are received, at the Board of Adjustment meeting.

VARIANCE: to the enclosed building requirement to allow for outdoor grilling

Findings Required by the Minneapolis Zoning Code:

- 1. Practical difficulties exist in complying with the ordinance because of circumstances unique to the property. The unique circumstances were not created by persons presently having an interest in the property and are not based on economic considerations alone.**

The applicant is seeking a variance to allow for the outdoor grilling accessory to an existing sit-down restaurant in the C1 District. Staff believes that practical difficulties existing in complying with the ordinance due to circumstances unique to the property. The subject property and the adjacent properties to the south and west are commercial uses. The intent of prohibiting outdoor grilling is to prevent obnoxious grilling odors and smoke from dissipating into the public areas and residential properties. While the applicant is contributing to the need for a variance by requesting the outdoor grilling, the circumstances upon which the variance is requested are unique to the property. Staff believes that the proposed location of the outdoor grill reduces the potential off-site nuisances of odor and smoke, due to the adjacency of other commercial structures and will be located 45 feet from the public sidewalk along 50th Street West and 75 feet from the public sidewalk along Penn Avenue South. Further, the outdoor grill is only intended to be used during seasonable times of the year.

2. The property owner or authorized applicant proposes to use the property in a reasonable manner that will be in keeping with the spirit and intent of the ordinance and the comprehensive plan.

Staff believes that the applicant proposes to use the property in a reasonable manner, consistent with the zoning code and comprehensive plan. The intent of prohibiting outdoor grilling is to prevent obnoxious grilling odors and smoke from dissipating into the public areas and residential properties. The subject property and the adjacent properties to the south and west are commercial uses. Staff believes that the proposed location of the outdoor grill reduces the potential off-site nuisances of odor and smoke, due to the adjacency of other commercial structures and will be located 45 feet from the public sidewalk along 50th Street West and 75 feet from the public sidewalk along Penn Avenue South. Further, the outdoor grill is only intended to be used during reasonable times of the year.

3. The proposed variance will not alter the essential character of the locality or be injurious to the use or enjoyment of other property in the vicinity. If granted, the proposed variance will not be detrimental to the health, safety, or welfare of the general public or of those utilizing the property or nearby properties.

Staff believes that the proposed variance to allow for outdoor grilling will not alter the essential character of the surrounding neighborhood, or be injurious to the use of other property in the vicinity. The subject property and the adjacent properties to the south and west are commercial uses. Staff believes that the proposed location of the outdoor grill reduces the potential off-site nuisances of odor and smoke, due to the adjacency of other commercial structures and will be located 45 feet from the public sidewalk along 50th Street West and 75 feet from the public sidewalk along Penn Avenue South. The outdoor grill is only intended to be used during reasonable times of the year. Further, the proposed variances should not increase the danger of fire safety, or be detrimental to the public welfare or endanger the public safety.

RECOMMENDATION:

Recommendation of the Community Planning and Economic Development Department – Planning Division for the variance:

The Community Planning and Economic Development Department – Planning Division recommends that the Board of Adjustment adopt the above findings and **approve** the variance of the enclosed building requirement to allow for outdoor kitchen and grilling area accessory to an existing restaurant located at 5000 Penn Avenue South in the C1 Neighborhood Commercial District.

Attachments:

- 1) Written descriptions and findings submitted by the applicant
- 2) Copies of letters sent to the Fulton Neighborhood Association, Lynnhurst Neighborhood Association and CM Hodges
- 3) Correspondence from neighbors
- 4) Zoning map
- 5) Site plan
- 6) Photos