

PROCEEDINGS OF THE ST. CLOUD ZONING BOARD OF APPEALS

A meeting of the St. Cloud Zoning Board of Appeals was held on November 16, 2010, at 7 p.m. in the St. Cloud City Hall Council Chambers. Members present were Barkalow, Fandel, Larson, Ohman, and Ugochukwu. Jamnick was absent.

**Approval of Minutes:** Barkalow moved to approve the minutes of the September 21, 2010, meeting. Ugochukwu seconded the motion, and it carried by a vote of 4-0-1 (Barkalow abstained as she was not present at that meeting). Barkalow moved to approve the minutes of October 4, 2010, and Ohman seconded the motion which carried unanimously.

**Variance Request/Dale Willner:** Chairperson Fandel announced the request from Dale Willner for approval of a variance from Article 15, Section 15.5, A., 5., which limits the total maximum accessory building area to 2,000 sq. ft. The St. Cloud Land Development Code (LDC) limits the number and total area of accessory buildings permitted on a single family lot. The applicant has an existing 876 sq. ft. attached garage and 624 sq. ft. garage, which total 1,500 sq. ft. in area. The applicant is proposing to construct another detached accessory structure that is 910 sq. ft. in area, which exceeds the maximum square footage permitted by 410 sq. ft. (2049 Pleasant Avenue) (VAR-2010-12). Dave Broxmeyer, Senior Planner, explained that the LDC limits single family residential properties to a total of 2,000 sq. ft. of attached and detached accessory structure space. Applicant's request would place the accessory structure square footage on his property 410 sq. ft. over the maximum allowed. Barkalow asked if the 4' setback on the site plan was adjusted to 5' to meet the setback requirement. Broxmeyer answered that he was not sure why it was changed, but he noted that the plat of the property indicates there are 15' wide utility easements. Therefore, the structure would have to be moved outside of those utility easements. Larson asked if the driveway to the new

accessory structure would connect straight out to Pleasant Ave. Broxmeyer responded that applicant did not indicate if he was going to have a driveway accessing the structure. Larson asked if the original two lots were similar in size to a standard lot so that the combination of the two lots essentially made it a double lot, and Broxmeyer answered that is the case. Barkalow noted that staff's memo indicates that the new detached accessory building would be 26' x 35', but the application states the building would be 26' x 36'. Broxmeyer stated that question should be directed to the applicant as the application indicates the building would be 26' x 36', but the detailed plan provided by the applicant indicates 26' x 35'. Chairperson Fandel opened the public hearing. The following persons testified:

Dale Willner  
2049 Pleasant Ave.                      He bought the lot next to him, and the two lots were combined; he has almost an acre of land. He noted a mistake in square footage in the staff memo. He measured the total square footage, and it is only 1,464 sq. ft.

Susanne Barkalow  
Board member                              She asked for a clarification on what the 1,464 sq. ft. represents.

Dave Broxmeyer  
Senior Planner                              The total square footage for the existing attached and detached garage space is 1,464 sq. ft. rather than 1,500 sq. ft.

Dale Willner                                He stated that he would have to increase the setback of the building because of the utility easement. The reason he wants the 26' x 36' garage was to keep the dimensions even. It suits his needs better than having a 24' x 22' garage. There will not be a driveway to the garage because he will not be using it that much. The garage will blend into the neighborhood with horizontal steel siding and shingled roof. The windows will be similar to what would be in a house.

Susanne Barkalow                        She asked why the building needs to be 26' x 36' if there won't be a driveway and if he won't be using it that often.

Dale Willner                                He has a rental and equipment, e.g. ladders and a wood splitter.

Susanne Barkalow                        She asked if he considered expanding the existing detached garage.

Dale Willner                                That wouldn't work very well. There isn't enough room.

Susanne Barkalow                        She asked if he considered making the new garage larger than 26' x 36' and removing the current detached garage.

Dale Willner                                No.

Susanne Barkalow                        She said she is trying to find a way for applicant to meet the square footage requirements of the LDC.

Dale Willner	He could build a smaller garage, but it wouldn't meet his needs. He has a lot of things to store.
Chuks Ugochukwu	The current garage space on the property is 1,464 sq. ft. allowing 536 sq. ft. of additional accessory building space. Applicant is asking for a 910 sq. ft. garage, almost double what is allowed.
Dale Willner	There is ample space on the property.
Chuks Ugochukwu	That isn't the issue. It is the duty of the City to ensure safety of life and health.
Dale Willner	He doesn't see how that could be a problem, because the building will be back in the corner of the lot.
Chuks Ugochukwu	The City has the regulation to restrict the maximum accessory structure square footage to 2,000 sq. ft. for a reason.
Dale Willner	He bought the lot next to him, and he would like to be able to use it.
Chuks Ugochukwu	He asked if the 2,000 sq. ft. regulation applies to each lot.
Dave Broxmeyer	Yes, to each zoning lot. In this case, applicant had both lots in the same title. Through an administrative process, both lots were combined into one zoning lot.
Dale Willner	He will use temporary sheds to meet his square footage, but thinks a garage would look much better.

There being no one else wishing to speak, the public hearing was closed. Barkalow moved to approve the variance as requested subject to the following conditions as recommended by staff: 1) Upon completion of the construction, the applicant must sign and return the Statement of Completion to the St. Cloud Planning & Zoning Department; and, 2) The site plan approved by the Zoning Board of Appeals shall be the only site plan approved for this property. The motion was seconded by Ugochukwu. Barkalow stated there is a reason for the restriction on the number of structures and square footage. This is a residential neighborhood. She stated that applicant already has an attached garage with a third stall off the back as well as a detached garage, and she doesn't think there needs to be a third garage. Larson pointed out that applicant could construct a 22' x 24' garage and still not exceed the total accessory structure square footage allowed. The motion to approve failed unanimously.

**Variance Request/Tim Stang:**

Chairperson Fandel announced the request from Tim Stang for a variance from Article 15, Section 15.5, B., 1., Table 15-2: which limits the maximum fence height in the rear setback area to 6'. The applicant has constructed an 8' fence along his rear property line. The applicant is seeking a variance to keep the fence at the existing height (1761 W. St. Germain St.) (VAR-2010-13). Dave Broxmeyer, Senior Planner, explained that several months ago, the City's code enforcement staff received a complaint about this property, visited the site, confirmed the complaint, and sent a violation letter to the property owner. Consequently, the property owner (applicant) filed a variance to allow the current 8' high fence to remain. Chairperson Fandel opened the public hearing and invited testimony. The following persons testified:

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| Tim Stang<br>1761 W. St. Germain | He purchased his property in 2003. It is a very small lot. When he is on his deck or at his kitchen window, he looks directly into his neighbor's kitchen and living room. He uses his deck frequently. The 8' high fence gives both him and his neighbor more privacy. He stated that he doesn't have a garage set back behind his house. His neighbors have garages behind their houses that block their views from their windows. The pitch of his neighbor's garage to the east is 16'; the pitch of his garage is 12'. |
| Susanne Barkalow                 | He asked how long the fence has been in place.  |
| Tim Stang                        | He built it in early October.   |
| Susanne Barkalow                 | She asked why he waited until 2010 to build it if it has been bothering him since 2003.   |
| Tim Stang                        | He witnessed the neighbor's marriage go through some difficult times.   |
| Chuks Ugochukwu                  | The 8' height is blocking natural light for the neighbor.   |
| Tim Stang                        | He stated that the shrubs on the opposite side of the fence will get plenty of sunlight and stated that it is only a 20' long fence. The fence is quite a bit lower than the buildings next to it.  |
| Chuks Ugochukwu                  | If the Board makes an exception to this 8' fence, many others in the neighborhood may also wish to put up 8' high fences.   |
| Tim Stang                        | The way his house sits is a unique situation.   |

There being no one else wishing to speak, the public hearing was closed. Barkalow moved to approve the variance request subject to the following conditions: 1) The applicant must obtain a building permit from the St. Cloud Building Safety Office for the fence; 2) Upon completion of the

construction, the applicant must sign and return the Statement of Completion to the St. Cloud Planning & Zoning Department; and, 3) The site plan approved by the Zoning Board of Appeals shall be the only site plan approved for this property. The motion was seconded by Ohman. Larson commented that there are many odd shaped lots in that area, but he understands Ugochukwu's concerns about creating a closed off community with 8' high fences. Larson said that planting vegetation may be a solution. The motion to approve the variance failed unanimously.

**Conditional Use Permit Request/Farah Aidid and Ali Abdifatch on Behalf of Mark Suess**

**and Holly Benson-Suess**: Chairperson Fandel announced the request from Farah Aidid and Ali Abdifatch on behalf of Mark Suess and Holly Benson-Suess for a conditional use permit for a day care facility for up to 190 children. The St. Cloud Land Development Code requires a conditional use permit for all day care facilities located in a commercial zoning district with 13 or more people. (Location: 1209 W. St. Germain Street) (CUP-2010-02). Dave Broxmeyer, Senior Planner, explained that any day care within any of the commercial districts with 13 or more persons is required to have a conditional use permit (CUP). Examples of issues related to the day care center that would be relevant to the Board are traffic, outdoor play area, and signage. The proposed day care would be located in an existing structure near the downtown. Although the location is convenient, Broxmeyer said he has concerns about the total number of children that applicant is planning to have in that location, i.e., 190. He added that if the ZBA approves the CUP, applicant would still need approval from the State Dept. of Human Services as well as the City Health, Building, and Fire Departments. Chairperson Fandel asked if there would be a fence requirement for the children's safety. Broxmeyer stated that according to the Department of Human Services (DHS) website, the outdoor play area must be secured. It did not specify the minimum fence height, but Broxmeyer believed it would have to be a minimum of 4', but preferably 5' to 6'. Barkalow asked staff if any additional information was provided on the interior of the building and the dropoff zone. Broxmeyer answered that he had not received any additional information. The applicant has been working with Norm Cole, the architect, on the interior space. Larson noted that the LDC requires one parking stall per 10 persons. Using the

State requirements, there would probably be a minimum of 10-16 staff. The 14 parking stalls does not include any spaces for drop-off or pick-up areas. Broxmeyer stated that he is not aware of the proposed number of employees; however, the State does have a minimum staffing requirement based on the age and number of children. Relative to the parking requirement, Broxmeyer explained that is based on the number of children attending the day care and does not include employees. Larson said it appears that the loading zone requirement does not apply directly to this type of use. Broxmeyer stated that the loading zone on St. Germain St. would be addressed by the City Engineer and City Council because it is within the public right-of-way. He said it would be an important factor because there is potential for blocking the neighbor's driveway if the line for picking up/dropping off gets too long. Larson asked if there are landscaping requirements in the parking area. Broxmeyer responded that there are no landscaping requirements in the C-4 district, and there is very little space for landscaping. However, if the Board chooses to approve the request, landscaping could be included as a condition of approval. Larson asked Broxmeyer if he received clarification on whether there would be 190 children in the building at one time or if there would be two shifts with 95 children per shift. Larson noted there are several homes in that C4 area. Broxmeyer pointed out that the owner of the home immediately to the west was before the Board in January requesting a variance to allow occupancy of a residential dwelling unit on the ground floor. The Board did grant that variance. Larson asked if the yellow brick home right next to applicant's property is single family. Broxmeyer said he is not familiar with that home. Barkalow commented that the applicant's site plan shows a total of 14 parking spaces. If there are 16 employees, the day care can't even accommodate all their employees. Broxmeyer explained that in the commercial district, applicant would be allowed to provide additional parking in another off-street parking area with surplus parking within 150' of applicant's property if they have a formalized agreement. Ugochukwu asked if there is an option to use Lake George as a play area. Broxmeyer stated that the distance from the front door of the facility to the first large piece of playground equipment at Lake George is approximately 1,700 ft.; therefore, it is within the 2,000 linear ft. required by the DHS. However, his concern is taking children across St.

Germain St. and particularly, Hwy. 23. Ohman asked for clarification of the location of the pickup/dropoff area. Broxmeyer stated that the parking area will be the pickup/dropoff for infants and toddlers, and St. Germain would be utilized for pickup/dropoff for the older children. Chairperson Fandel opened the public hearing and invited testimony on the request. The following persons testified:

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| Abubakor Kullatein<br>??? W. St. Germain | He is speaking on behalf of the people who wish to open the day care since they were unable to attend the meeting. The people who are running the day care have purchased several vans to transport the children to and from the day care since many of the Somali parents do not drive.                       |
| Susanne Barkalow                         | She has concerns about dropoff and pickup and she understands there are other proposals for the layout.  |
| Abubakor Kullatein                       | The parents will make arrangements to have the vans pick up their children and bring them home.  |
| Susanne Barkalow                         | Both W. St. Germain and 12 <sup>th</sup> Ave. No. have above average traffic. She is concerned about parents of all those children trying to get in and out at the same time.  |
| Abubakor Kullatein                       | It is not 190 families with vehicles. Probably only 25% of those will have vehicles.   |
| Susanne Barkalow                         | She asked on what that 25% is based.   |
| Abubakor Kullatein                       | He said it is based on his knowledge of the community. Many of the parents do not have driver's licenses.  |
| Evan Larson<br>Board member              | He asked if Human Services has been involved in review of this site.   |
| Abubakor Kullatein                       | He has no knowledge of that. There is inside play area.  |
| Evan Larson                              | He believes the indoor space requirement can be met. He is more concerned if the outside play area requirement of 75 sq. ft. per child can be met which is a requirement of the DHS. He asked if the proposal was for 190 children at one time or two shifts with a maximum of 95 in the building at one time. |
| Chuks Ugochukwu                          | He asked staff how the City and DHS coordinate approvals and inspections.  |
| Dave Broxmeyer                           | They are basically independent of each other.  |

Mark Suess

He is the property owner. The people who want to open this day care currently have a day care facility in Minneapolis. He has visited it and was very impressed with it. The facility was very clean and was very professionally operated. The ages of the children in the St. Cloud facility would range from babies up to 12 yrs. old. The number of 190 children is a maximum and would be divided into two shifts running from 7 a.m. to 3 p.m. and 3 p.m. to 11 p.m. The playground in Minneapolis is similar to the one being proposed in St. Cloud. It is fenced with regulation playground equipment. Everything they are doing is following state guidelines. He attended a City Board or Commission meeting that discussed parking in the C-4 district. He said he believes there is a committee that is talking about parking in the C-4 district. A proposal was brought forward about reducing parking requirements in the C-4 district. Suess said he said that parking not only needs to be reduced but that the buildings need to be individually classified. After that City meeting, a study was coordinated to talk about each block in between Washington Memorial Dr. and 12<sup>th</sup> Ave. No. He said that Matt Glaesman, Planning Director, talked about putting angled parking on side streets to maximize parking. The goal is to make the gateway to downtown viable. A day care across from the library is an ideal situation. The area in the rear will be a safe drop off area. Contrary to what people may think with the Police Station located on 12<sup>th</sup> Ave., it is very quiet around there with the squad cars all parked internally. There will be classrooms, bathrooms, changing areas, food prep area, sleeping areas, play area and possibly a basketball court all located in the building. The child care center will operate under open enrollment.

Roger Doroff

He is owner of the property at 1201 W. St. Germain. His concerns are fencing for the children's safety, the large number of children in that small area, whether the dropoff area would be St. Germain St. or 12<sup>th</sup> Ave., and parking.

There being no one else wishing to speak, the public hearing was closed. Barkalow moved to approve the conditional use permit subject to the following conditions: 1) Combine platted lots in a single zoning lot; 2) Pave off-street parking area as per the approved site plan; 3) Provide wheel stops in the parking lot to prevent vehicles from encroaching onto neighboring properties; 4) No more than 140 children are permitted at the day care facility at any one given time; 5) Any substantial change to the approved site plan or an increase in the number of children shall require the CUP to be amended; 6) Upon completion of the accessory building construction project, the applicant must sign and return the Statement of Completion to the St. Cloud Planning & Zoning Department; and, 7) The site plan approved by the Zoning Board of Appeals shall be the only site plan approved for this property. The motion was seconded by Ohman. Larson offered a friendly amendment to condition #4 so that it

reads: "No more than 95 children are permitted....." and a condition that landscaping be provided in the parking and playground areas. Suess explained that landscaping will basically be for the front St. Germain area which is already done. He stated that the side of the building already has bituminous pavement about 6' wide on the east side and concrete on the west side. The area between the dry cleaner and the house is currently unpaved; that area would all be hardscaped for parking. Larson stated that the area is very harsh in appearance. Suess stated that the playground and parking lot will be beautiful. The trash receptacles will be enclosed. Barkalow would still like a plan that shows a safe dropoff/pickup in the rear. The motion with the friendly amendment relating only to the number of children permitted carried by a vote of 3-2 (Ugochukwu, Fandel and Ohman in favor; Larson and Barkalow opposed).

**ZBA Rules of Order and Procedure:** Ugochukwu moved to adopt the amended ZBA Rules of Order and Procedure dated 10/4/2010. The motion was seconded by Larson and carried unanimously.

**Potential Meeting with St. Cloud City Council and Planning Commission Regarding a Minnesota Supreme Court Decision Related to the Interpreted Definition of "Undue Hardship":** Broxmeyer stated that staff is anticipating a meeting with the Council and the Planning Commission shortly after the first of the year relative to the Minnesota Supreme Court decision in the case of Krummenacher v. City of Minnetonka. Broxmeyer stated that the decision essentially increases the applicant's burden to meet the threshold of an undue hardship rather than practical difficulties when requesting a variance.

**Adjournment:** There being no further business, the meeting was adjourned at 8:08 p.m.

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Chuks Ugochukwu, Secretary