

PROCEEDINGS OF THE ST. CLOUD ZONING BOARD OF APPEALS

A meeting of the St. Cloud Zoning Board of Appeals was held March 15, 2011, at 7:00 p.m. in the St. Cloud City Hall Council Chambers. Members present were Barkalow, Bright, Fandel, Larson, Ohman, and Zenzen. Ugochukwu was absent. Chairperson Fandel welcomed new members Bright and Zenzen to the Zoning Board of Appeals.

Approval of Minutes: Barkalow moved to postpone approval of the January minutes to the next meeting because the complete set of minutes was not included in the packet. Larson seconded the motion, and it carried unanimously.

Conditional Use Permit/Robert Young on Behalf of Prime Industrial Properties, LLC:

Dave Broxmeyer, Senior Planner, explained that any uses in industrial districts related to gymnastics, dance, instructional exercise, etc. are permitted with a CUP. The building was constructed in 2008 and has been partially occupied by a number of different users. The site plan on file shows the entire length of the building. Twenty-five bays are shown on the site plan; however, the proposed use would occupy five of the bays. Broxmeyer stated that the staff memo indicated that it would occupy three bays which was an error. Broxmeyer added that staff recommends approval of the CUP subject to three conditions. Broxmeyer indicated that parking is adequate. Fandel asked if applicant would have to come back to the Board if they wish to expand. Broxmeyer answered that the CUP would have to be updated. Bright asked if only property owners within 500' received notice of the public hearing or if the tenants of the building also received notice. Broxmeyer responded that only property owners are notified. The City doesn't know who the tenants are. Bright suggested that it would be important that tenants in the building know what use might be going in those bays relative to parking. Barkalow asked under which category the proposed use would fall to determine required parking. Broxmeyer answered that it would probably fall under place of assembly such as a church. Those parking requirements would be 1 stall for every 4 seats in the largest area of assembly plus 1 space

for every 300 sq. ft. of gross floor area of office space. Since there is no assembly hall, Barkalow asked if parking would be based only on square footage of gross floor area. Broxmeyer answered that he doesn't know if there is seating provided as he has not seen a site plan. Barkalow stated that parking is a concern since they are occupying five bays. Bright asked staff how parking for this use would compare to parking requirements for Gold's Gym. Broxmeyer responded that he did not check to see what would be required for Gold's Gym or other similar uses. Bright commented that there is a potential for an issue with parking for existing businesses that are tenants in that building. He added that notice should be given to not only the property owners, but also the tenants. He assumed the City would have the names of the tenants as the City would send utility bills to them. Chairperson Fandel opened the public hearing on a request from Robert Young on behalf of Prime Industrial Properties, LLC for approval of a conditional use permit to operate a trampoline exercise and recreational business in an I3, Planned Industrial District. The St. Cloud Land Development Code requires schools for karate, dance, music, exercise, and vocational training located in an industrial district to obtain a conditional use permit. (Location: 3900 Roosevelt Road) (CUP-2011-01). The following person testified:

Robert Young
Big Lake

He is the applicant. He stated the majority of the customers/clients for the proposed use would come between 3 p.m. until about 9 p.m. and on weekends. Therefore, he doesn't believe there will be a significant parking overlap. There are numerous parking spaces available to the rear of the building (east side). The only seating for the use would be on the south end of the business for up to 25.

There being no one else wishing to speak, the public hearing was closed. Bright moved to approve the variance subject to the following conditions: 1) Expansion of the size of the business will require an updated CUP; 2) Upon completion of the construction project, the applicant must sign and return the Statement of Completion to the St. Cloud Planning & Zoning Dept.; 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 Barkalow. Bright supported the concept in general; however, he is concerned that the notification process did not include the other tenants of the building. Fandel asked

if the bays on either side of the proposed use are occupied. Young answered that the bay on the south side is occupied, but there is no tenant on the north side. Zenzen inquired if the parking on the east side of the building is marked for parking. Barkalow stated that it is striped for parking by the wetland area. Mark Hubert of Minneapolis, partner of Prime Industrial Properties, stated that the original design of the property had perimeter parking around the entire building. Many uses don't require egress. Therefore, applicant's parking would have access to an additional 20 stalls up against the building. The rear entrance from Clearwater Rd. has been widened so there is room for parallel parking. He stated that he has provided excess parking. He added that he has also discussed applicant's request with the adjacent tenants. The motion carried unanimously.

Variance Request/Cory Ehlert on Behalf of Housing Coalition of St. Cloud Area: Dave Broxmeyer, Senior Planner, stated that the property had been used as a temporary shelter facility since 1986. It currently has 11 bedrooms and three bathrooms. Applicant wishes to purchase the property from the Housing Coalition and convert it to a duplex. Broxmeyer noted that when a change in use is requested, the property is required to come into compliance with the current LDC standards for the proposed use in the given zoning district. In this case, the interior side yard setback on the north side cannot meet the 10' requirement (the existing setback is 8'); the emergency fire exit is located entirely within the side yard setback and even extends across the property line; the maximum lot coverage is exceeded by approximately 10%; the required off-street parking is not met with 2 stalls in the garage and 3 spaces on the concrete surface off the alley (6 are required). Broxmeyer stated that staff is recommending approval of the variance request. Chairperson Fandel noted that the fire escape was built with public funds in the '80's in order to accommodate sleeping rooms on the third floor. He asked if the fire escape would be required if there were only a sitting room and no bedrooms on that level. Broxmeyer assumed that the fire escape would not be necessary if there were no bedrooms on the third level. Fandel asked if the Board can approve the variance requiring only 5 parking stalls. Broxmeyer answered that reducing the parking requirement from 6 to 5 is one of the requested variances. He said another option would be for applicant to pave the proposed parking

stall in the northwest corner of the property along the alley. However, it would be located within the parking setback area and would reduce the amount of green space in the rear yard, creating the need for several other variances. Barkalow asked staff the maximum number of non-related people that could live in the building if it were reconfigured as a duplex with three bedrooms in each unit. Broxmeyer answered that there could be up to 4 people in each unit. Barkalow stated that could trigger a potential need for 8 parking spaces. Chairperson Fandel opened the public hearing on a request from Cory Ehlert on behalf of Housing Coalition of St. Cloud Area for approval of the following variances from Article 8, Section 8.3 - Bulk and Setback Regulations, Table 8-2, interior side yard setback (10') and maximum lot coverage (30%) and Article 15, Section 15.6 - Permitted Obstructions, Table 15-4, fire escapes are not permitted in side yard setbacks. The applicant is proposing to convert the existing 11 bedroom, 3 bathroom, temporary shelter facility into a two dwelling unit structure. In order for the change in use from a temporary shelter facility to a two dwelling unit structure, three variances are necessary, including a 2' variance to the northern interior side yard setback of 10', a variance to the 30% maximum lot coverage requirement, and a variance to locating a fire escape in an interior side yard setback. (611 8th Avenue South) (VAR-2011-12). The following persons testified:

Marshall Weems
603 20th St. No.
Sartell, MN

He is representing the Housing Coalition, owner of the property. This property has been shown to 40 people since 2009, but no one is interested in this large home on the small lot. It is primarily surrounded by college housing. It is difficult to make an 1890 house fit into current codes. He would prefer not to remove the fire escape to come into compliance since it is a life safety issue. At one time, the fire escapes on both sides of the house were a requirement; now they don't meet the LDC standards. Use of this property as a duplex would have a positive impact on the community. It would be easier to monitor the building with 8 tenants as opposed to when it was a shelter with as many as 24 people there at one time. It is not possible to remove the building bumpout on the north side of the house that doesn't meet the setback.

Allen Bright

He asked if Ehlert will be the buyer of the property if the variances are granted.

Marshall Weems	Yes, he will be the buyer.
Allen Bright	He stated there is an application for CDBG monies for the Re-Entry project for this property. The Planning Commission unanimously recommended to the City Council approval of the funding for the project today. His concern was that if the variances are approved and the Re-Entry project CDBG funding is approved, the variances will be in place for the Re-Entry project as variances run with the property.
Marshall Weems	The City Council makes the final decision on the CDBG funding. He said that the Housing Coalition is not in the position to wait for a decision on the funding as they need to sell the property.
Allen Bright	If the variance request is approved, then the request for CDBG funds should be withdrawn.
Marshall Weems	If the variance request is approved, the City Council could decide that the ZBA's decision was in error, and that could occur at the same meeting as consideration of the CDBG funding.
Susanne Barkalow	She asked if the garage encroaches on the alley.
Marshall Weems	Yes, it does. The garage precedes the alley.
Susanne Barkalow	She asked if any consideration was given to removing the garage to reduce the amount of coverage on the lot and allow for additional parking spaces.
Chairperson Fandel	He noted that the garage is a protected structure because of the Historic District. It is grandfathered in.
Allen Bright	He asked applicant about the intended use for the property.
Cory Ehlert 427 12 th Ave. SE St. Joseph, MN	His intention is to use the property for a student rental. There is a great demand for students to be in close proximity to SCSU as fewer students are bringing cars to college. A 6 th parking spot could be added north of the garage if necessary.
Chairperson Fandel	He noted that Ehlert is the applicant on behalf of the Coalition. He thought it was unusual for the ZBA to be asked to approve variances prior to a sale.
Dave Broxmeyer	He said it is quite common for applicants to be acting on behalf of the owner in making a request as a contingency for the sale of the property.
Allen Bright	It is usually subject to a purchase agreement. He asked if the Board should grant the variance if Ehlert does not buy the property. He said he is not comfortable with the high density use for students in the neighborhood.

Dave Broxmeyer	If the Housing Coalition would sell the property to someone as a temporary shelter facility, no approvals would be necessary from the Planning Office or Zoning Board. The change of use prompts the need for variances. Variances are valid for one year unless work relating to the variance has been started. Variances are attached to the property, not the owner.
Allen Bright	He asked if variances can be approved with contingencies.
Dave Broxmeyer	If the variances are approved, there are only two potential uses for the property – a duplex or a temporary shelter facility.
Chairperson Fandel	Applicant has stated that his intent is to rent to students. He asked if the variance can include a condition that it be a student rental.
Dave Broxmeyer	It would be difficult to enforce or verify that.
Allen Bright	If there can't be a guarantee that the property will be used for student housing, he suggested that the issue should be tabled until the Council has taken action on the CDBG funding request.
Marshall Weems	Chairperson Fandel had previously commented that it is unusual for someone to make a request on behalf of an owner. He explained that in March 2010, there was a variance request made by an individual on behalf of the Housing Coalition very similar to this request for a property on 6 th Ave. So. He stated that the initial request was for an extension of sheltering beyond 30 days. The ZBA denied the request. The next month applicant submitted a variance request for the same property to reuse the temporary shelter facility as a two dwelling unit house. He stated that there is a lien on this property for CDBG dollars. Therefore, if Mr. Ehlert purchased the property, some CDBG monies would be returned to be used elsewhere.
Allen Bright	He would like to table this request for a month.
Cory Ehlert	He pointed out that he would prefer that the ZBA take action as students are already seeking housing for the next school year.
Allen Bright	He stated there is no guarantee that Ehlert will be the buyer.
Susanne Barkalow	She asked when the Council will consider the CDBG funding request.
Dave Broxmeyer	He believes it is April 11.
Susanne Barkalow	She asked if the future use of the property is contingent on the City Council's action.

Cory Ehlert He has a purchase agreement for the property subject to approval of this variance request.

Susanne Barkalow She asked applicant if he would close on the sale prior to April 11 if the variances are granted.

Cory Ehlert He said the closing would be prior to April 11.

Evan Larson He asked how many bedrooms will be on each floor.

Cory Ehlert The third level is a unique space. He anticipates that space for a graduate student. There is a bedroom, bathroom, and a den on that level. On the second floor, he would convert one bedroom to a kitchen. There is large family room on the main floor with a fireplace.

Evan Larson If only 5 parking stalls are provided, one of the units could have 2 bedrooms, and the other could have 4. That arrangement would require 2 parking stalls for the 2 bedroom unit and 3 stalls for the 4 bedroom unit. He asked applicant if that is an option.

Cory Ehlert He would not pursue purchase of the property if that were required. He said he needs 6.3 bedrooms to break even. The 7th renter would be the point where he would break even.

Allen Bright He asked the date of closing.

Cory Ehlert It would be on or before April 15 according to the purchase agreement. If the ZBA grants the variance, he would close as soon as possible.

Allen Bright He asked if the Housing Coalition would be willing to close early due to the pending CDBG funding decision.

Marshall Weems He believes the Housing Coalition would be willing to close early. The CDBG cycle was unknown when they put the purchase agreement together.

Chairperson Fandel He noted the letter from Juliana Elchert of 513 7th Ave. So. dated today. Her concerns were for the number of variances requested, the potential for more than 4 persons living in the duplex, inadequate parking, and the potential for setting a precedent if the variance were approved.

Susanne Barkalow She stated there was a similar request a year ago in the same neighborhood and asked staff what variances were approved by the ZBA for that property.

Dave Broxmeyer That request involved a variance from the interior side yard setback requirement. On that property, there was no alley. Access was from the front of the property. There was one tuck

under garage space with room for 7 parking spaces. That was a wider lot than the one currently under consideration. One of the conditions placed on the variance approval was to increase the number of parking stalls to 8.; the LDC required 6.

Susanne Barkalow

She asked how many bedrooms were in that duplex.

Dave Broxmeyer

Four bedrooms in each unit. Mr. Ehlert is also proposing 8 bedrooms.

Marshall Weems

In the 2010 case, a side yard setback variance was granted for additional rear yard parking.

There being no one else wishing to speak, the public hearing was closed. For discussion purposes, Bright moved to grant the variances subject to staff conditions. The motion was seconded by Barkalow. Bright expressed concern about the closing date for the purchase. Bright said he does not object to the property being used for student housing but is concerned about granting the variance if the property is not owned by Mr. Ehlert and therefore, would prefer the request be tabled. Bright withdrew his original motion, and Barkalow withdrew her second. Bright moved to table the request, and Barkalow seconded. Barkalow asked if the property would have to be used as a duplex if the variances are approved. Broxmeyer answered that the property would have to be used as a duplex if the variances are granted. The variance is valid for one year from the date of approval. During that time period, the property could be used as a temporary shelter facility. Council President Libert stated that the advantage of the student housing use is that the property goes back on the tax rolls. The motion to table failed on a 2-4 vote (Fandel and Bright in favor; Larson, Ohman, Barkalow and Zenzen against). Bright moved to approve the variance request subject to staff's recommended conditions as follows: 1) A 2' variance to the 10' interior side yard setback on the north side of the property; 2) A 10.5% variance to the maximum lot coverage; 3) A 2.8% rear yard open space variance; 4) A variance to permit a fire escape within an interior side yard setback 5) A variance to reduce the total number of off-street parking spaces from six to five to preserve green space; 6) The applicant must obtain all necessary permits, such as a building permit from the St. Cloud Building Safety Dept.; 7) Upon completion of the interior renovation project, the applicant must sign and return

the State of Completion to the St. Cloud Planning and Zoning Dept.; and 8) The site plan approved by the Zoning Board of Appeals shall be the only site plan approved for this property. Barkalow seconded the motion. Larson said he understands the value of green space, but tenants will still probably park on the grass north of the garage. Chairperson Fandel suggested that a bollard or some type of obstruction be placed adjacent to the alley and that the area north of the garage be green space. Bright said he would prefer parking be on a hard surface rather than on grass. Zenzen would be in favor of adding an additional parking stall on the north side of the garage and that it be an improved surface. Ohman agreed. Barkalow asked Bright as maker of the motion if he was agreeable to a friendly amendment to remove condition 5 and add the condition that 6 parking spaces are required. Bright agreed to the friendly amendment. Fandel asked applicant if the garage can accommodate two vehicles. Ehlert responded that there is space for two vehicles in the garage; however, the garage needs some work, including functional garage doors. Broxmeyer pointed out that requiring the additional parking space would require two additional variances, one for parking in an interior side yard setback, and the other for minimum green space in the rear yard. Fandel urged the Board to reconsider the amendment and to reduce the number of required off-street parking spaces to 5 to preserve the green space north of the garage and that a fence or bollard be placed along the alley to prevent vehicles from parking on the grass. By paving the grassy area for parking, Broxmeyer stated that the rear yard green space would be reduced to approximately 15%; 25% is required. Fandel said he would not want to require the 6th parking stall if it would require granting two more variances. Ohman concurred. Larson said he would prefer the 6th parking stall area remain green space, particularly since it would require two more variances which were not included in the public notification. Bright said he would be willing to withdraw his friendly amendment, and Barkalow agreed. Barkalow stated that she would prefer the green space providing that it be blocked off from alley to prevent vehicles from parking on it. Ehlert noted that he owns two properties across the alley, one of which has extra parking. If parking at 611 becomes an issue, he could make arrangements for tenants to park on the property across the alley. Elchert said placing posts or a

fence to prevent parking on the green space north of the garage may present a problem for tenants trying to back out of their parking stalls into the alley and for snowplowing. Barkalow suggested placing the posts a foot or two in off the alley to alleviate those problems. The original motion with the 8 conditions carried unanimously.

Other Business: Dave Broxmeyer informed the Commission that the Minnesota legislature is addressing legislation relating to the Krummenacher vs. City of Minnetonka case to amend State enabling legislation for granting of variances to use practical difficulties rather than undue hardship as a standard for granting variances. That is the standard that the City once used. Chairperson Fandel suggested a meeting of the City Council, ZBA and Planning Commission take place when the final legislation is adopted.

Adjournment: There being no further business, the meeting was adjourned at 8:30 p.m.