

PROCEEDINGS OF THE ST. CLOUD ZONING BOARD OF APPEALS

A meeting of the St. Cloud Zoning Board of Appeals was held on May 17, 2011, at 7 p.m. in the St. Cloud City Hall Council Chambers. Members present were Barkalow, Bright, Fandel, Larson, Newman, and Zenzen. Ugochukwu was absent. Chairperson Fandel welcomed new Board member, James Newman.

Approval of Minutes: Barkalow moved to approve the minutes of the March 15, 2011, meeting. The motion was seconded by Bright and carried by a vote of 5-0-1 (Newman abstaining). Barkalow moved to approve the minutes of January 18, 2011, and Zenzen seconded the motion. The motion carried by a vote of 5-0-1 (Newman abstaining).

Conditional Use Permit Request/Sisters of the Order of St. Benedict: Dave Broxmeyer, Senior Planner, explained that the Oak Savannah Park PUD requires a conditional use permit for any building additions or new structures within a moderate density residential area. Applicant is proposing a 30' high bell tower on the north side of the campus. It would be approximately 500' to 600' from 20th Ave. SE. Staff is recommending approval. Chairperson Fandel opened the public hearing on a request from the Sisters of the Order of St. Benedict for approval of a conditional use permit to construct a 30' tall bell tower on the north side of the existing campus. The Oak Savannah Park Planned Unit Development requires building additions and new structures to go through the CUP process in the moderate density residential areas (Location: 1845 20th Avenue SE) (CUP-2011-02).

The following persons testified:

Sister Kara Hennes
Sisters of the Order of
St. Benedict
St. Joseph, MN

The bell is about 3' high and 3' wide and weighs 1,500 lbs. St. Scholastica opened as a hospital in 1890. In 1900, it became St. Joseph's Home, one of the first nursing homes in St. Cloud. In 1978, the Sisters retained St. Joseph's Home for their retired Sisters. The hospital which had been moved across the river then built a new nursing home structure which is now St. Benedict's Center Senior Community. In 1978, the bell was removed from the 1890 building because of the

weight of the bell and the age of the building. The Sisters wanted to incorporate the bell back into the campus. A donor will help with the project. The bell will ring about 7 minutes before Sisters go to prayers as it does on the campus in St. Joe. The residents at St. Benedict's Senior Community support having the bell put back on the campus. There are currently 95 sisters residing in assisted living.

Cory Ehlert
427 12th Ave. SE
St. Joseph, MN

He lives in St. Joseph and grew up one block from the Sisters of the Order of St. Benedict in St. Joe. He recalls hearing that bell ring, and it becomes part of the community. It would be a nice addition to the community, and he would support it.

There being no one else wishing to speak, the public hearing was closed. Bright moved to approve the conditional use permit subject to the following conditions: 1) Upon completion of the construction project, 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 Barkalow and carried unanimously.

Conditional Use Permit Request/Stephen Krause on Behalf of Brandl Automotive

Group: Dave Broxmeyer, Senior Planner, explained that several years ago, the LDC was amended requiring auto dealerships to obtain a conditional use permit if the dealerships are new or expanding. Brandl Motors wants to build a 30' x 40' building for auto detailing. The existing detailing space will be converted to office space. Barkalow asked if the proposed building meets the setback requirements, and Broxmeyer answered that it does. Chairperson Fandel opened the public hearing on a request from Stephen Krause on behalf of Brandl Automotive Group for approval of a conditional use permit to expand an existing vehicle dealership by constructing a 30' x 40' building. The St. Cloud Land Development Code requires any new or expanding automotive dealerships to obtain a conditional use permit prior to construction (Location: 559 Highway 10 South) (CUP-2011-03). The following person testified:

Stephen Krause
Plymouth, MN

He is the architect representing Brandl Motors. The CUP would allow the existing business to expand. There would be additional paving on the rear third of the property.

There being no one else wishing to speak, the public hearing was closed. Barkalow moved approval of the conditional use permit subject to the following conditions: 1) Upon completion of the construction project, 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 Bright. Chairperson Fandel asked if the new bituminous paving referenced by Mr. Krause is included as part of the motion, and Barkalow said it was. Larson asked if the City Engineering Dept. has any issues with runoff. Broxmeyer responded that Engineering had no drainage issues and believed it could meet the ¼"/hr. runoff requirement. The motion carried unanimously.

Discussion Regarding Changes to the State of Minnesota Legislation Regarding the Standards for the Granting of Variances: Chairperson Fandel stated that prior to the beginning of the meeting, it was decided to change the order of the agenda to consider Agenda Item 8 prior to Agenda Item 5. He explained that were actions in the courts regarding standards for granting of variances and ratified in the Supreme Court on May 5, 2011. House File 52 was signed into law by Gov. Dayton on May 5. The new law amends the standards for granting a variance and applies to counties, cities and towns with zoning controls. Fandel added that the change applies similar standards to the individual county and municipal planning district. The term "hardship" is eliminated and allows a zoning authority to issue a variance to a zoning control if there are "practical difficulties." "Practical difficulties" are described as follows: the property owner proposes to use the property in a reasonable manner not permitted by an official control; the plight of the landowner is due to circumstances unique to the property not created by the landowner; and the variance, if granted, will not alter the essential character of the locality." Finally, a variance may be issued only if it is "in harmony with the general purposes and intent" of the ordinance and consistent with the comprehensive plan. Broxmeyer explained that the recently adopted legislation brings the City full circle to the standards that had been applied for the last 20 years. The term "practical difficulty" applies rather than "undue hardship". He stated that the court case (Krummenacher vs. City of

Minnetonka) indicated that as long as there is a remote reasonable use of the property, a variance should not be granted (undue hardship). However, a variance may be considered for property if there are “practical difficulties.” Staff is considering amending the LDC to reflect these standards and are hoping to get some suggested language from the MN League of Cities.

Variance Request/Cory Ehlert on Behalf of Housing Coalition of St. Cloud Area: Dave Broxmeyer, Senior Planner, stated that applicant appeared before the ZBA in March for a variance for this property. At that meeting, approval was granted for variance for the building to be converted to a duplex with up to four bedrooms per dwelling unit. The same variances apply to the current lodging house request except that a lodging house requires a 20’ interior side yard setback rather than a 10’ setback. Chairperson Fandel asked if all previous variances for the property are rescinded if the current request is approved, and Broxmeyer answered that is correct. Barkalow asked why a 20’ side yard setback is required. Broxmeyer explained that standard was adopted many years ago with the intent to limit the expansion of lodging houses. He said that very few properties in the South side could meet that 20’ setback requirement. Chairperson Fandel said that Broxmeyer stated in the minutes from the last public hearing that if the variances were approved, the only two potential uses for the property would be a duplex or a temporary shelter facility. Broxmeyer said that was not an accurate statement because once the variance is approved and recorded, that is the only use allowed on that property. Therefore, the temporary shelter facility use has been eliminated. Bright noted that for the past 20 years, the property was used as a temporary shelter facility housing up to 20 people at a time. He pointed out that a duplex or lodging house use would allow far fewer residents. 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: Article 8, Section 8.3 - Bulk and Setback Regulations, Table 8-2, interior side yard setback (10’) and minimum 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 an eight bedroom lodging house. In order for the change in use from a temporary

shelter facility to a lodging house, 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-2011-03). The following persons testified:

Dan Hollenhorst
513 7th Ave. So.

There are two main issues that distinguish this application for a lodging house from the previously granted application for five variances for a duplex : 1) the use is changing from a duplex to a lodging house; and, 2) a much larger variance is being requested on the interior side yard setback. A lodging house is a very different use than a duplex. Lodging houses have been the bane of the South side since the 1970's. The most problems relative to peace and order of the South side are created by lodging houses. The R3A district was created from the R3 to place additional restrictions to address problems. Any new lodging house in the R3A must meet stricter requirements including the 20' interior side yard setback. Going from a 2' variance on the previous request to a 12' variance on this request is significant. An 8' setback is a 60% variance from the requirement. Granting that variance would set a precedent that undermines the LDC and returns the neighborhood to the problems prior to establishment of the R3A district. It would also adversely affect his property value in the R3A district.

Juliana Elchert
513 7th Ave. So.

She said she e-mailed a letter with her concerns that was forwarded to the Commission. The reason for the 20' side yard setback requirement was because the intensity of use of a lodging house outweighed the ability of the structure to properly serve the residents who lived there and the neighborhood in which they lived. Therefore, a larger piece of property is needed for such an intense use. Even though the same number of residents are proposed for the lodging house as the duplex, a lodging house is very different in character. There are more boundaries with a duplex. She believes there is no basis on which to grant this variance, and granting it would set a dangerous precedent.

Cory Ehlert
427 12th Ave. SE
St. Joseph, MN

It is not his intent to devalue the neighborhood. He has been making significant improvements on the interior of the house and will also make exterior improvements. It is an 11 bedroom home. It had previously been used at a higher density by the Housing Coalition with more than 20 people living there. He met with Katie Vollbrecht from the Building Safety Dept. and learned that if the property were to be used for a duplex, there must be a fire separation between the units which creates challenges.

Chairperson Fandel

He asked applicant if he has completed that work.

Cory Ehlert

He has not completed it. The project is on hold because of the age and structuring of the house make the duplex almost unachievable. That is why is making the current request. Common access for both units to the utility room is also required. That is where the electrical panel, the

heating system and water shutoff are located. Currently, there is only one access to the utility room. In talking to a structural engineer, he discovered that a common access is probably not possible. Another problem was the requirement to provide a 36" stairwell entrance and exit with a 6'8" height at the access point for each unit.

- Evan Larson He assumed Ehlert worked with the City to address code issues and asked if the City offered any creative solutions. He asked applicant if he has considered a residential sprinkler system that could offset the prohibitive requirements.
- Cory Ehlert Katie Vollbrecht was willing to work with him, but she said it is difficult when layering city building codes, state electric codes, and state fire codes. Relative to the sprinkler system, that was put in in 2003 which reduces the fire code requirement. However, the wall penetrations presented the problem.
- Susanne Barkalow She asked if the 20+ residents who previously lived there were supervised.
- Cory Ehlert He said there was an office in there but not sure if it was staffed 24 hrs./day. One of the rooms had an intercom system and the switchboard for the security system, etc.
- Susanne Barkalow She asked if all of the residents were adults.
- Cory Ehlert It housed families with children.
- Susanne Barkalow She asked applicant if he is currently making repairs and if he is the owner of the property.
- Cory Ehlert Yes, he closed on the property and is the owner.
- Susanne Barkalow She asked if any consideration has been given to an outside entrance for the upper level.
- Cory Ehlert He met with Debbie Gruszka, City rental inspector, who walked through the structure with him. Consideration was given to splitting the structure in half with the back stairwell servicing the two bedrooms at the top of the stairs and the two bedrooms in the third level. The front staircase would service the two bedrooms on the main floor and the remaining bedrooms on the second floor.
- Ronald Zenzen He asked when the house was last occupied.
- Dave Broxmeyer He believes it was last occupied in October 2009.
- Cory Ehlert The first time he looked at the property was November or December of 2009. Marshall Weems was the listing agent for the Housing Coalition, and over 40 people looked at the property. He said he would like to improve the property. He said he is in the neighborhood often and will

do his best to maintain the integrity of the neighborhood. He has had no noise violations on any of his other rental properties. Ninety percent of the properties surrounding this property are multi-family use, one with as many as 14 sleeping rooms.

- Ronald Zenzen He asked applicant if the other two houses he owns are to the west of this property.
- Cory Ehlert They are to the west and south – 817 7th St. So. and 620 9th Ave. So.
- Evan Larson He asked if he talked to Joe Braun or Don Winter relative to codes.
- Cory Ehlert He talked to Katie Vollbrecht. Debbie Gruszka talked with Jim Schloegl who inspects lodging facilities, and he inspected the property when it was owned by the Housing Coalition. Schloegel had found no code issues.
- Evan Larson He asked who makes the final decision on code requirements.
- Dave Broxmeyer He answered that Katie Vollbrecht is the residential specialist who reviews single and two family units, and Joe Braun does the multiple family and commercial/industrial review.
- Cory Ehlert He did not intend to come back to the Board with a new request, but he did not anticipate the problems with converting the structure to a duplex. He said he does not want to lose the option of converting the structure to a duplex if this variance request for a lodging house is denied.
- Dave Broxmeyer He clarified that the existing use is a temporary shelter facility with no special approvals required. Given the action of the ZBA two months ago, a duplex would also be approved subject to the variances. Applicant's current request is for variances that would allow him to use the property as a lodging house. The Board could approve one, two or all three uses.
- Susanne Barkalow She asked how would the proposed lodging house would be set up relative to the rooms. She asked if he will construct an additional kitchen.
- Cory Ehlert At this point, he probably wouldn't add another kitchen; however, he would be willing to work with whatever the ZBA feels is appropriate. The existing kitchen is a large commercial kitchen – stainless steel, 6 burner gas stove, 36" flat griddle, 2 ovens, commercial grade walk-in freezer, commercial dishwasher and walk-in refrigerator.
- Susanne Barkalow She questioned how the City can be assured that only 8 people will live there if there are 11 bedrooms.
- Cory Ehlert When he was going to use it for a duplex, the plan was to convert one of the bedrooms into a kitchen, one into a den or living room, and the other into another laundry area. The City has very diligent rental inspectors.

Allen Bright	He asked applicant if he has closed on the property.
Cory Ehlert	Yes, he has.
Allen Bright	Previous discussions about this property indicated that at one time there were two potential buyers – applicant, and a developer for the purpose of getting CDBG money to use it as a ReEntry Program facility for felons coming out of prison. He said considering the student population in that area, housing for students seemed more logical than the Re-Entry Program use.
Chairperson Fandel	He asked if the City can provide some relief to applicant on some of the codes.
Dave Broxmeyer	No; it cannot. The City is responsible for enforcing State fire and electrical codes.
Chairperson Fandel	He stated that the ZBA has received letters of opposition from Juliana Elchert of 513 7 th Ave. So., Beth Cragle of 201 Ramsey Pl. So., and Simone Finneman of 423 8th Ave. So. Finneman stated that she strongly opposes the request “because it would set a precedent for variances allowing more lodging houses that would destabilize a neighborhood sorely in need of stability. There were good reasons for the stringent requirements that were passed; safety and law enforcement were only two of them.The Southside University Neighborhood Master Plan for the neighborhood supports permanent owner-occupied residents in this area. Encouraging and supporting the establishment of more lodging houses will only discourage owner-occupied structures, and granting these variance requests will undermine the City’s Master Plan for the Southside University Neighborhood.” The letter from Beth Cragle states, ‘Allowing this request sets a precedent that sends our neighborhood back in time, even as we are still working to recover. We know (from years of experience) that letting one owner do this will result in a rash of other requests. We have worked too long and too hard to accept such an outcome....Sadly, we still have some “grandfathered in” from the last few decades and they continue to plague us. Until they change hands and someone can reduce the “grandfathered” occupancy levels to current zoning allowances, the negative impact will continue. Why the city would add another and open a door for more is difficult to understand. I would plead with you to deny this request.”
Allen Bright	He noted that no past similar variances were cited in staff’s memo. It is his understanding that the reason for the omission is because each decision should be made based on the individual situation and should not as precedent setting.
Dave Broxmeyer	That is correct. That was the advice of the League of MN Cities land use attorney.

Susanne Barkalow	She asked applicant if he owns two other lodging houses in the neighborhood.
Cory Ehlert	They are not lodging houses.
Susanne Barkalow	She asked the difference between a single family home that is rented by the bedroom and a lodging house.
Dave Broxmeyer	There is no difference. A structure with four sleeping rooms would not be classified as a lodging house. However, once there is a fifth sleeping room, it would be classified as a lodging house according to the LDC.

There being no one else wishing to speak, the public hearing was closed. Barkalow moved to approve the variances subject to the following conditions: 1) Approval of the following variances negates the variances granted to this property at the March 15, 2011 Zoning Board of Appeals meeting; 2) A maximum of eight occupants is permitted; 3) A 12' variance to the 20' interior side yard setback on the north side of the property; 4) A 10.5% variance to the maximum lot coverage; 5) A 2.8% rear yard open space variance; 6) A variance to permit a fire escape within an interior side yard setback; 7) A variance to reduce the total number of off-street parking spaces from six to five; 8) The applicant must obtain all necessary permits such as a building permit, from the St. Cloud Building Safety Department; 9) Upon completion of the interior renovation project, the applicant must sign and return the Statement of Completion to the St. Cloud Planning and Zoning Department; and, 10) 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 Bright. Barkalow commented that she is finding it difficult to make a decision on this request based on the new legislation regarding variances. The challenge is that the proposal has to be reasonable, unique to the property with circumstances beyond those created by the landowners, and the request cannot alter the essential character of the locality. She stated that her difficulty is with the third consideration. Chairperson Fandel said he will vote against the motion. Relative to "altering the essential character of the locality", he lives on the South side and is well acquainted with lodging houses. He stated that it is his observation that people who live in lodging houses are different than those that live in a single family home occupied by four unrelated

persons. He believes there is a lack of cohesion among tenants in a lodging houses. Many times they are not friends or are not even acquainted with each other. Fandel added that in a single family home rented to four unrelated persons or a duplex, there is some cohesion. Larson said he appreciates that applicant is working on the house. During discussions at the March meeting regarding using the property as a duplex, he was uncomfortable with renting to eight tenants because of the parking situation. With the variance request for the lodging house use, the fire separation requirements have a tie in with the side yard setback requirement in that there must be accessibility for fire trucks. Therefore, he has a problem with a variance from the side yard setback variance. Zenzen sympathized with the problems with rental properties on the South side; however, many problems depend on the property owner taking responsibility. The motion to grant the request with conditions failed by a vote of 2-4 (Zenzen and Bright in favor; Barkalow, Fandel, Larson, and Newman opposed). Chairperson Fandel informed the applicant he can appeal the Zoning Board's decision to the City Council. Ehlert said he is willing to work with staff to make this work and may be willing to reduce the number of tenants allowed in the structure.

Request for Extension of Administrative Variance/Dennis Glover: Dave Broxmeyer, Senior Planner, explained that this request is for an extension of an administrative variance that was granted about 11 months ago. The request was for a variance from the maximum lot coverage. The regulations allow a 33% lot coverage; applicant was proposing a lot coverage of 36.5%. At the time of the initial request, notice was mailed to owners of property within 500 feet of applicant's property. A letter of opposition was received but did not have the name and address of the person opposing the request. Therefore, it was not considered a valid objection. Public notice was again mailed for the extension request. A letter was received from the neighbor immediately to the south of applicant's property objecting to the extension of the variance. Chairperson Fandel opened the public hearing on a request from Dennis Glover for approval of a one year extension of an administrative variance that was granted on June 17, 2010. The Planning and Zoning Department received an objection to the proposed variance in writing. The variance requested was from Article 20, Section 20.5 -

Nonconforming Lots of Record, Table 20-1, which establishes the maximum lot coverage for existing nonconforming lots of record. This provision permits the applicant to cover up to 33% of his lot with buildings. The applicant is requesting a variance to increase the maximum lot coverage to 36.5%, which would allow him to construct a roof over an existing 10' x 24' deck (349 32nd Avenue North) (VAR-2010-08). The following persons testified:

Dennis Glover
349 32nd Ave. No.

He applied for a variance to put a roof over his deck. Someone objected but didn't sign the letter; therefore, it was not considered a valid objection. The administrative request was approved. He is requesting an extension of the variance because he was not able to start the project within the deadline due to financial constraints. Planning staff has received a written objection to the extension from his neighbor to the north. Staff recommends approval with conditions. He thanked the Board members who visited the site.

Jerry Westhoff
3166 Dolores Dr.

He is the owner of the property at 353 32nd Ave. No. He believes the request is reasonable and supports the request.

Carl Henkel
345 32nd Ave. No.

He objects to the building as it is intrusive into his property. Houses are supposed to be built with reasonable structures due to other architectural buildings in the neighborhood. Applicant is already overbuilt on his property. There are two other houses on this block (including his own) that have a deck, but the properties aren't overbuilt. Applicant wants an addition on his existing deck. The floor level of applicant's deck would be 8-10' above Mr. Henkel's deck. This does not fit in the neighborhood.

There being no one else wishing to speak, the public hearing was closed. Barkalow moved to approve the variance extension subject to the following conditions: 1) The applicant must obtain all necessary permits, such as a building permit, from the St. Cloud Building Safety Department; 2) The variance will be valid for a period of not longer than one (1) year, unless the erection of the structure or alteration of the land as permitted has begun within that period or an extension of time has been granted; 3) Upon completion of the project, the applicant must sign and return the Statement of Completion to the St. Cloud Planning And Zoning Department; and, 4) 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 Zenzen. Barkalow said the property appears to have more than 36% lot coverage because of the size of the garage and the amount of concrete. She pointed out to Mr. Henkel that

applicant doesn't want to enlarge the deck; he just wants to cover it with a roof. Larson stated that his main issue is the additional encroachment over the site on a fairly small lot. Bright asked if applicant could screen the deck and use it as a screened porch at some point. Broxmeyer answered that placing the roof over the deck is what triggers the additional lot coverage calculation. Therefore, it could be enclosed. He added that a condition could be placed on the variance extension that it could not be enclosed beyond screening. Bright would like to offer a friendly amendment to the motion to include a condition that the deck cannot be enclosed because it would interfere with air circulation. Barkalow agreed, but Zenzen did not agree to the amendment. Zenzen asked applicant if he plans on enclosing the deck at some time. He said he doesn't plan to do that at this time, but may in the future. The original motion failed by a vote of 1-5 (Zenzen opposed).

Adjournment: There being no further business, the meeting was adjourned at 8:38 p.m.

Chuks Ugochukwu, Secretary