

PROCEEDINGS OF THE ST. CLOUD ZONING BOARD OF APPEALS

A meeting of the St. Cloud Zoning Board of Appeals was held on August 16, 2011, at 7:00 p.m. in the City Hall Council Chambers. Members present were Barkalow, Bright, Fandel, Larson, Newman, Ugochukwu and Zenzen.

Approval of Minutes: Bright moved to approve the minutes from the July 19, 2011, Zoning Board of Appeals meeting. Barkalow seconded the motion which carried unanimously.

Chairperson Fandel announced that agenda item #5, a variance request from Aimee and Robert Bates on behalf of John Muldowney and Susie Chesin (location: 1909 and 1913 9th Ave. SE) (VAR-2011-08) has been withdrawn.

Variance Request/Chad Flakne: Chairperson Fandel announced the request from Chad Flakne for approval of the following variances from Article 20 Nonconformities, Section 20.5 Nonconforming Lots of Record, B., Table 20-1: Single-Family Lot Coverage on Nonconforming Lots of Record, which permits up to 32% maximum lot coverage and Article 15 On-Site Development Standards, Section 15.5 Accessory Structures and Uses, A., Table 15-1: Detached Accessory Structure Setbacks, which requires a minimum setback of 5' from an interior side yard for a detached accessory structure. The applicant is proposing to construct a 22' x 24' detached garage in his rear yard area, which would exceed the maximum lot coverage by 6.8% and would encroach 3' into the 5' interior side yard setback. (Location: 700 10th Ave. No.) (VAR-2011-06). Dave Broxmeyer, Senior Planner, stated that applicant is requesting to build a two-stall detached garage in the rear yard. A large tree in the back yard fell on the old garage this summer and demolished it. Broxmeyer explained that applicant is requesting several variances. Applicant is requesting a 24' deep garage to accommodate a 22' long work vehicle. The lot is 46' in width. A 20' setback along the driveway and the 24' deep garage leaves only 2' left for the interior side yard setback. A 5' setback is required. The other variance is from the lot coverage requirements. Applicant's property is a 46' x 125' corner lot.

The existing home already puts the lot coverage close to the maximum allowed. The accessory structure would cause the lot coverage to be exceeded by almost 6%. Staff recommends approval of the request. Bright stated that the Board has had previous discussions about hand drawings submitted by applicants that are not always correct. Broxmeyer pointed out that in this case, the City is doing a road project on 7th Ave.; therefore, the property pins should be marked, and this hand drawing should be acceptable. Barkalow asked if the driveway extends into the road right-of-way. Broxmeyer stated that the driveway would extend beyond the property line up to the sidewalk and then flare on the other side of the sidewalk. Barkalow said it is her understanding from the site plan that the garage would be 27' from the property line. Broxmeyer said he believed that would be from the garage to the sidewalk or curb. He added that the City will be installing sidewalk along 7th St. and along 10th Ave. Barkalow asked for an explanation of the comment in staff's memo which states that the interior wall must be built with materials for a one-hour fire rating. Broxmeyer responded that that is a City Building Code requirement. He stated that whenever an accessory structure is less than 5' from a common property line, it is required to have a 1 hr. fire rated wall along that property line, and no openings are allowed along that side of the structure. Larson asked if the setback requirement would be 20' if the garage door was on the alley side. Broxmeyer answered that if the garage were rotated 90 degrees with access off the alley, the setback requirement from the alley would be 10' instead of 5', but the street side yard setback of 15' would apply on the south side of the property.

Chairperson Fandel opened the public hearing. The following persons testified:

Chad Flakne 700 10 th Ave. No.	He said he considered turning the garage, but it would still have to be moved at least 20' closer to the property line to get the truck into the garage. That would place the garage right next to his house. He would prefer his garage be as far from his neighbor as possible. He worked with the Engineering Dept. on the sidewalk. They are accommodating the length of his truck with the sidewalk by giving him an extra 2'. If he can't push his garage back, his truck will hang over the sidewalk which is illegal.
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Susanne Barkalow	She asked about the exterior of the garage.
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Chad Flakne	He wants it to look like an old carriage house so it matches his house. The exterior finish will be a cement board siding. He needs a 9' door so
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he doesn't have to remove the ladders from his truck before he comes home at night.

There being no one else wishing to speak, the public hearing was closed. Bright moved to approve the variance request subject to the following conditions: 1) The applicant must obtain all necessary permits, such as a building permit, from the St. Cloud Building Safety Dept.; 2) Upon completion of the 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 ZBA shall be the only site plan approved for the property. The motion was seconded by Barkalow. Larson said he is comfortable with the 20' setback from the street side but is concerned about a 2' setback on the interior side yard. He said he would prefer 3' or 4'. Broxmeyer said he did not speak to the applicant about that. However, applicant's work vehicle is 22' in length; therefore, it does not seem unreasonable to ask for 1' in front of and 1' behind the vehicle. Broxmeyer stated that in regard to meeting the parking requirements, the minimum depth of 19' for a parking space is being met in the garage. He stated that space in front of a garage door is not considered a legal parking space. Zenzen noted the correspondence from the Keeville's of 702 10th Ave. No. who expressed opposition to the 2' setback and asked staff if any of the other neighbors had expressed concern. Broxmeyer answered that he had received no other correspondence from neighbors. Barkalow asked who owns the fence on the north property line. Flakne responded that it is his fence. Barkalow asked staff if a 2' setback is adequate to maintain the fence. Broxmeyer stated that it would be tight but is adequate. The motion to approve carried unanimously.

Variance Request/David and Susan Dropp: Dave Broxmeyer, Senior Planner, explained that applicant constructed the detached garage with the understanding that it would be attached to the existing residence. With that understanding, the living space on the second floor of the detached garage would count toward living space in the primary residence. However, the second floor would be considered accessory building space when it is not attached. This situation came to the attention of the Building Safety Dept. when they discovered that inspections for the building permit were not

closed. Applicant has submitted a proposal to connect the two structures with an open air trellis. Barkalow asked how staff arrived at a figure of 3,009 sq. ft. of accessory building space. Broxmeyer answered that the square footage includes the attached garage and both the ground floor and upper floor of the detached garage. Ugochukwu asked staff if a roof structure meets the ordinance requirement for connecting structures. Broxmeyer answered that there must be also be walls connecting the structures. Bright questioned whether the R1 zoning district makes any reference to guest houses, carriage houses, etc. He asked why they are not acceptable in the Land Development Code (LDC). Broxmeyer answered that they are all categorized as accessory structures, usually detached. Chairperson Fandel opened the public hearing on a request from David and Susan Dropp for approval of the following variance from Article 15 On-Site Development Standards, Section 15.5 Accessory Structures and Uses, A., 5. the maximum accessory building floor area of 2,000 sq. ft. In 2008, the applicants constructed a 1,320 sq. ft. garage with the 1,248 sq. ft. second floor of the structure finished as living space. The building permit was approved with the condition that the proposed garage would be attached to the existing home and garage, the second floor living space would not be considered accessory building space. The applicants never connected the two buildings, which results in a total accessory building area of 3,009 sq. ft. The applicants are requesting a variance of 1,009 sq. ft. of accessory building area. (Location: 1900 6th Avenue North) (VAR-2011-07). The following persons testified:

David Meyers
6210 Co. Rd. 8 SE

His wife's family, the O'Link's, owned the 5 acre parcel across the street for about 60 years. When the new Sauk Rapids Bridge was developed several years ago, water and sewer were brought in, and the parcel was subdivided into 9 lots. Another 5 or 6 lots would have been allowed, but the family developed it into a 9 lot plat to have larger lots to maintain the integrity of the large lot neighborhood. This is a fairly upscale neighborhood. In his experience, contractors and developers believe it is easier to ask forgiveness than ask permission. He asked that the Board consider whether they would have granted a variance if the applicant requested the variance prior to construction. He does not think the Board would have approved it because it is not in character with the neighborhood. The building permit states that the structures must be connected. He said it should be one structure to maintain the integrity of the neighborhood. He said he believes this is really a use variance because there are two single family dwellings on one parcel

which is not allowed in the R1 district in the LDC. If the Dropp's sell the property, the owner could put an apartment on the second floor of that detached garage. Granting the variance would undermine all the R1 district neighborhoods. He said he believes the applicant should have to follow through with what was required in the building permit.

Sue Dropp
1900 6th Ave. No.

They have lived on this property for 7 years. The detached garage was constructed 2 1/2 yrs. ago. The original building permit did not require a closed connection; it only required a roof structure. According to Joe Braun (City Building Dept.), she assumed, the two buildings could be joined by a roof structure or ornamental beam. They hired Jim Rummel to design a connecting structure from the new garage to the existing garage. Consideration had to be given to easy accessibility for their handicapped son, David, who lives with them. Another consideration had to be given to the future enhancement of the existing garage. She and her husband have a Phase 2 plan for that garage. David is not confined to a wheelchair, but his mobility is impaired and requires easy barrier free access to all areas of their home and yard. The American Disability Act of MN and Fair Housing Act advocate for accessible design, barrier free structures and emergency preparedness routes. David cannot easily open doors, and the enclosed structure would inhibit his independence to move about freely. David's therapy equipment is located in the new garage, and he can currently enter that structure from all directions from their yard. He only has to open one door to get in. The trellis that was designed is a beautiful cedar/teakwood solid structure equipped with a handrail and a resting bench for David. She asked for the variance to accommodate their son and to enhance the future construction that they plan for their existing garage. Phase II would be to construct a grand front entranceway in the old existing garage door area and add a cupola, skylight or dormer above that to tie in the rooflines. She does not believe their variance request would be a detriment to the neighborhood. They understand they would need permits for that project.

Susanne Barkalow

She asked Sue Dropp if they were given a sign by City staff to place in their yard about upcoming land use action for this property.

Sue Dropp

No; they were not.

Dave Broxmeyer

He stated that the note in the file states that a sign was picked up on July 20.

Susanne Barkalow

She noted that the site plan for the newer garage indicates it would be an attached garage. She asked why the roof was never installed.

Sue Dropp

The architect that designed the garage as well as other people said it could be attached by an ornamental beam or a wrought iron gate.

Dave Dropp

It was never completed. His brother-in-law designed the trellis which would work better than the diagonal roof. He wasn't aware it was supposed to be enclosed.

Susanne Barkalow	She pointed out that the sketch indicates an attached garage with roof structure. She asked staff if the change is a result of the LDC.
Dave Broxmeyer	He said he is not aware of a change to the LDC. He also said he was not aware of what was agreed to several years ago.
Susanne Barkalow	The plans for the new garage indicate that there are a restroom and sink on the second floor. She asked if this would be considered a separate living unit. There would be two living units on one parcel which is not permitted in the R1 district.
Dave Broxmeyer	In order for the second floor of the new garage to be a living unit, a stove and refrigerator would have to be included. Lisa Schreifels, Health Dept. Director, expressed concern about the potential for a second dwelling unit above the garage.
Chuks Ugochukwu	He asked applicant if there is a reason why there was no final inspection.
Dave Dropp	The attachment portion was never completed, so there was no final inspection. However, the heating, plumbing, and electrical inspections were done during the process of construction.
Chuks Ugochukwu	He pointed out once again that there was no final inspection.
Dave Dropp	He misunderstood what the attachment could be. Therefore, it was never completed because he wanted to make sure it was done correctly.
Chuks Ugochukwu	He asked Mr. Dropp if he knew from the beginning that the structures had to be attached.
Dave Dropp	Yes, he did; however, the connection was never made, so no final inspection was requested.
Ronald Zenzen	He asked staff if there is a reasonable or set time from the date of issuance of a permit to the date of final inspection.
Dave Broxmeyer	He stated that the Building Office reviews permits on a periodic basis. He believes that typically there is a span of 6 to 8 mos. from permit origination to a check on the progress of the permit project.
Ronald Zenzen	He asked if the only work remaining to be completed is the connection of the two structures.
Dave Dropp	That is correct.
Allen Bright	He asked staff for an explanation of the City's position on the connection. He asked if it could be a covered walkway.

Dave Broxmeyer	That is the Board's decision. However, staff believes "attached" means there needs to be permanent walls.
Allen Bright	He pointed out that the building permit states: "...Garage attached to house with 2 x 10 rafters covering walkway."
Dave Broxmeyer	That was approved by the Building Safety Dept. He assumes the City would honor what was approved.
Jim Rummel	He is Susan Dropp's brother. He is from Oregon. He is an architect and his family asked him to help them by doing some drawings. There was a misunderstanding about the enclosed connection. The original architect's drawing showed 2' x 10' joists connecting the buildings. He stated that it is virtually impossible to run a diagonal without tearing out all the electrical services in the existing garage. He stated that the old garage will eventually become the grand entryway, and the side with the round windows will match the back of the house which is brick. The plan is to apply for another building permit to make the front elevation like the rear elevation (classic brick exterior.) Due to the fact that the structures are different, he believed that the trellis is a neutral feature that wouldn't define any particular style. If a variance is not granted, it will cause a hardship for their son. The design proposal will blend well. Enclosing the walkway will deflate the appeal because it will be a mishmash of elements. The Dropps believed they were doing the right thing considering what they were told.
Kathryn O'Link Meyers 6210 Co. Rd. SE	She owns all the property across the street with her family. This neighborhood has a 70 year residential history. The new garage looks like a large square box next to a classic Rambler. This is a quiet, upscale neighborhood with very large lots. The Dropps' property appears to have 2 single family homes on it. The view from Lots 7 and 8 of Pearl Place Addition used to be trees and a gracious Rambler. Now the view is a big box and what appears to be a second home. It was her understanding that the two structures would be connected with a permanent structure. The neighbors' concern is that the new garage structure would be used as a commercial venture at some point. The trellis would not be a permanent structure that would attach the two structures to make them look like one structure. The permit for this project was taken out in 2008, and a final inspection was never requested because the project was not completed. Therefore, she questioned how long the proposed new construction for the grand entryway will take given what has happened with the current permit or if it will actually happen at all. Since the second garage was constructed, this property has changed the character and appearance of that neighborhood. She requested that at the very least the Zoning Board require that the permit requirements be carried out.

There being no one else wishing to speak, the public hearing was closed. Barkalow moved that the variance be granted subject to staff conditions as follows: 1) The applicant must obtain all

necessary permits, such as a building permit, from the St. Cloud Building Dept.; 2) Upon completion of the project, the applicant must sign and return the Statement of Completion to the St. Cloud Planning and 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 Bright. Chairperson Fandel read the e-mail from City Health Director, Lisa Schreifels, which states that no certificate of occupancy has been issued as there has been no final inspection on the building permit. Therefore, use of the second floor space should not occur prior to the issuance of the certificate. Schreifels also noted that the R1 does not allow two dwelling units on one parcel, and the additional potential dwelling unit above the garage as proposed to remain detached would be a violation. Zenzen said that when a person does not adhere to a building permit, he considers that a violation of a contract. The building permit should have been followed, and it shouldn't have taken this long to complete. Larson commented that if the walkway would have been built initially, it would probably have passed final inspection. The diagonal rafter design would not have worked very well and would not have been visually appealing. He suggested that a design similar to the new layout that uses a flat roof style with glass on both sides and doors that open on both sides. It would not be a competing element between the two structures. Broxmeyer informed the Board that an alternative would be to consider tabling the item for a month pending revised sketches of the overall master plan for the property to be provided by the applicant. That would give applicants an opportunity to propose something with a covered roof. Chairperson Fandel asked how long the applicant would have to wait to submit a new variance request if the Board fails to approve the request. Broxmeyer responded that applicant would have to wait a year to submit another variance request. Ugochukwu said he considers the failure to comply with the building permit as a violation and asked if there is a penalty to the applicant. Broxmeyer stated that it would probably go through an administrative citation process to give them some time to make the required connections. If that is not done, then a fine can be imposed. If the fine is not paid, it could go to court. Ugochukwu suggested giving applicant the option of resolving the issue with the Planning Office and following through on the building permit.

Chairperson Fandel asked staff if it would be advisable for applicant to withdraw the request in light of Ugochukwu's suggestion. Broxmeyer stated that applicants can withdraw their request prior to Board action. Barkalow asked if applicant could go back to the Building Dept. and work out a solution if the Board denies the request. Broxmeyer said staff's biggest concern is that it is resolved in a timely manner. Fandel recessed the meeting for five minutes to give applicant time to decide if they want to withdraw their application. The meeting reconvened at 8:13 p.m. David Dropp asked that the Board take action on the variance request. The motion to approve failed unanimously. Chairperson Fandel stated that applicants can appeal the Board's decision to the City Council. David Meyers said that according to Minnesota Statute (M.S.) 15.99, denial of a motion to approve does not defeat the 60 day rule. Rather, the motion should be made to deny the variance. Chairperson Fandel stated that it has historically been the practice of the ZBA to make motions in the affirmative and vote them up or down. David Meyers reiterated that the Minnesota courts have ruled that a motion to deny and a vote to deny are required. Chairperson Fandel said he will check with the City Attorney on this issue. Broxmeyer said he is not familiar with the details of M.S. 15.99, but it has been the past practice of the Planning Commission, City Council and the Zoning Board of Appeals to make motions to approve and then vote for or against the motion. Barkalow moved to deny the variance request. The motion was seconded by Bright and carried unanimously.

Variance Request/Aimee and Robert Bates on Behalf of John Muldowney and Susie

Chesin: Chairperson Fandel announced earlier that this item has been withdrawn at the request of the applicants.

Information Related to Amending the Findings of Facts Related to Variances:

David Broxmeyer, Senior Planner, stated that as a result of the Krummenacher vs. City of Minnetonka court case, the Supreme Court overturned the decision by the lower district court which set in motion the process to change State law regarding how variance requests are considered. Staff is proposing to update the Land Development code with language that would replace references to "undue hardship" with "practical difficulty" and update several definitions. The amendment was approved by the

Planning Commission and will go to the City Council for public hearing in September. Bright asked Broxmeyer to check with the City Attorney on M.S. 15.99 to determine if the Board should change its practice and put all motions in the affirmative.

Adjournment: Barkalow moved to adjourn the meeting. The meeting was adjourned at 8:22 p.m.

Chuks Ugochukwu, Secretary