

PROCEEDINGS OF THE ST. CLOUD ZONING BOARD OF APPEALS

A meeting of the St. Cloud Zoning Board of Appeals was held on April 17, 2012, at 7 p.m. in the St. Cloud City Hall Council Chambers. Members present were Barkalow, Bright, Fandel, Newman, Ugochukwu and Zenzen. Larson was absent.

Approval of Minutes: Bright moved to approve the minutes of the March 20, 2012, Zoning Board of Appeals meeting. The motion was seconded by Barkalow and carried unanimously.

Conditional Use Permit/Minnesota School of Diving, Inc. on Behalf of Paul Fredericksen, John Strack and Dan Strack: Dave Broxmeyer, Senior Planner, explained that the LDC requires schools that teach martial arts, dance, music, exercise, and vocational training in industrially zoned districts to obtain a conditional use permit (CUP). Applicant is proposing to use the majority of the building for training as well as service and repair of scuba equipment. There would also be some office space and general space. Approximately 10% of the floor area would be dedicated to retail sales that would be an accessory use to the principal use. The site is the former Fred's Plumbing & Heating building located at 415 Franklin Ave. NE. Staff is recommending approval subject to removal of debris on the western side of the property, that the parking lot be restriped, and approval of the ZBA site plan. Bright announced that he will recuse himself from this issue. Chairperson Fandel opened the public hearing and invited testimony on a request from the Minnesota School of Diving, Inc. on behalf of Paul Fredericksen, John Strack, and Dan Strack for a conditional use permit (CUP) to operate a SCUBA diving training, service, and retail sales of diving equipment. The St. Cloud Land Development Code requires schools for karate, dance, music, exercise, and vocational training located in an industrial zoned district to obtain a conditional use permit (Location: 415 Franklin Avenue NE) (CUP-2012-02). The following persons testified:

Bill Molitor Cold Spring	He works for Remax Results and is representing applicant. Currently the Diving School is located in the Archery Center building to the south under a lease. The School wants to add a pool for training.
Chuks Ugochukwu Board member	He asked Mr. Molitor if he has seen staff's recommendation for parking.
Bill Molitor	There would be approximately 32 parking spaces in the center, 10 along the fence and 2 handicapped parking at the front.
Susanne Barkalow Board member	Staff indicated a concern that the proposed parking to the south could only be accessed by crossing the neighboring property. She asked if it would be possible to stripe the parking and have adequate parking spaces without that area to the south.
Bill Molitor	He stated that the parking could be angled to meet setback requirements.
Susanne Barkalow	Her concern about the southerly stalls is unimpeded access.
Bill Molitor	He said he is not sure if there is a cross easement between the properties.
Dave Broxmeyer	The southern tier of parking is inaccessible unless the vehicles cross onto the property to the south. The 16 spaces to the south are not needed to meet the required parking. If needed, then some rights would have to be granted for access from the property to the south.

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) Removal of all material and equipment from the western portion of the property, especially the proposed off-street parking area; 2) The off-street parking area must be striped according to the standards found in the LDC and the unapproved site plan; 3) Upon completion of the construction project, the applicant must sign and return the Statement of Completion to the St. Cloud Planning & 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 and carried by a vote of 5-0-1 (Bright abstaining).

Variance Request/Brian Schoenborn on Behalf of W 200 Block, LLC: This item was tabled from the March 20, 2012 ZBA meeting. The request was from Brian Schoenborn on behalf of W 200 Block, LLC for a variance from Article 18: Signs, Section 18.5, A. 2., which requires a

separation of 750' between advertising structures and a minimum setback of 200' from residentially zoned property. The applicant is proposing to construct a four-sided 27' tall sign tower which will contain four signs for the four on-premise businesses on the east and west faces of the tower and St. Cloud State University logo sign on the north and south faces of the tower. The applicant is also proposing to include 4'4" x 8' electronic reader boards on the east and west sides of the tower. The applicant is proposing to use the electronic reader boards to promote the on-site businesses and their products, which is permitted by the St. Cloud Land Development Code. The applicant is also proposing to advertise businesses, products and services within the 5th Avenue Live development and events not located on the premises, which makes it an advertising sign. There is an existing advertising sign 150' to the north and a residential zoning district 45' to the east, which requires a 600' variance from the existing advertising sign and a 155' variance from a residential district (Location: 211 5th Avenue South) (VAR-2012-02). Dave Broxmeyer, Senior Planner, noted that staff has provided an updated memo with additional information in response to testimony given at the public hearing and concerns and questions from the ZBA members. He explained the difference between a business sign and an advertising sign. If the electronic reader board were to function for only those uses on the premises, it would be considered a business sign. By expanding use of the reader board to events, products, and sponsors outside of the zoning lot area, it becomes an advertising sign. Applicant is requesting a variance from the separation requirement for advertising signs. At the last meeting, applicant stated that either SCSU or the SCSU Foundation would lease the property and construct the sign and give rights for signage to tenants on the site. That is not regulated by the LDC. Broxmeyer said he spoke with the City Attorney about the City's ability to regulate this. The City Attorney has determined the lease agreement between the property owner and SCSU does not establish State property ownership. Therefore, the sign is not a part of the State and is subject to City regulations. Relative to use of City Hall property, it has been zoned residential since 1955. Advertising signs are required to have a minimum 200' setback from residentially zoned properties. Public buildings are allowed in any zoning district. Regarding the potential size of the sign, applicant

submitted a rendering of the maximum signage allowed by right within the C4 district at this location for a business sign only. A maximum of 125 sq. ft. of signage area and 50' in height would be allowed. Broxmeyer calculated the increased advertising signage at this intersection would be 13% if the variances were granted. Staff still recommends approval of the request. Chairperson Fandel read a portion of the City Attorney's e-mail into the record: "There has been some suggestion that this proposal would be exempt from the Land Development Code by virtue of a prospective lease agreement with SCSU. Although in general State property is not subject to zoning restrictions, the property in question is privately owned. A lease to the State, in my opinion, would not transform this property into State property. Further, the anticipated use of the sign involves several private business stakeholders along 5th Avenue. This proposed usage is properly before the ZBA as a request for variance from the Land Development Code." Bright noted that it was his understanding from last month's discussion that there is a lease in place. The ZBA had requested to see a copy of that lease; however, there isn't a lease for them to review. He asked the applicant if he met with the neighborhood residents since the last meeting as requested by Board member Barkalow. Ugochukwu said he is not sure if a copy of the lease is necessary for review as this is private property. Bright stated that SCSU must lease the property for the sign. Chairperson Fandel stated that he wrote to staff following last month's meeting requesting information be provided to the ZBA regarding the lease agreement for the business/advertising sign, particularly about the rights and responsibilities of the tenant and/or owner, the term of the lease and potential for renewal, as well as what would happen to the sign if the tenant chose to discontinue its use. Fandel stated that an indefinite response was received, but they have not seen any lease information. Ugochukwu reiterated that he thinks the terms of the lease are irrelevant because the sign is still subject to the LDC regulations. Barkalow stated that she is not concerned about the lease because staff has clarified that it is not considered State property. She asked for further clarification of staff's recommended condition which states that "the advertising on the proposed electronic reader boards shall be limited to businesses and products with the 5th Avenue Live development and future potential

expansions as delineated on the map below and other community events occurring off-site (SCSU, Downtown, River's Edge Convention Center, etc.)". Barkalow noted that the map only includes those buildings currently part of 5th Avenue Live. She asked what the future potential expansion could include. Chairperson Fandel said it was also indicated that the sign could advertise events from the Rivers Edge Convention Center which is not part of 5th Ave. Live. all the way to the National Hockey Center south of University Dr. Bright questioned what would be covered by the word "etc." in that condition. Broxmeyer said the intent would be to allow groups such as the Southside University neighborhood, the HPC, and the Neighborhood Coalition, to have access to usage of the sign. Chairperson Fandel inquired if it could be extended to the Boy Scouts, Girl Scouts, and Boys & Girls Club for a neighborhood cleanup event. Broxmeyer said he believed that would be appropriate. Chairperson Fandel then asked if the Downtown Council/retailers along St. Germain St. would have access to advertise on that sign. Broxmeyer responded that it would probably have to be limited to businesses along 5th Avenue. He agreed that the word "etc." is rather vague. Brian Schoenborn, representing applicant, stated that he met with the individuals who had submitted the e-mails that were read into the record at last month's meeting. They talked about use and design issues and made some subtle changes. He showed a picture of the property from two years ago with the pylon and reader board. Although there is no lease agreement in place at this time, the sign structure would be owned and governed by SCSU. It would be used more for 5th Ave. oriented community events. At the meeting with the neighbors, they talked about allowing rotation of the digital sign that would welcome people to the Southside Historic neighborhood and allowing them to use the sign to announce the Southside Home Tour. By lease, applicant is required to replace the signage that was there with new signage. Barkalow asked if the building across Hwy. 23 to the north is part of the 5th Ave. Live project. Schoenborn answered that the signage is not attached to that building and is owned by the people that own the Perkin's parking lot. Barkalow inquired if any changes in the signage to the north is planned. Schoenborn answered that he does not know because applicant does not own that sign. Chairperson Fandel asked if the two billboards 150' to the north will remain in place.

Schoenborn stated that he has no control over them because applicant doesn't own them, but believes they will remain. Ugochukwu asked if applicant is willing to include allowance for signage for community groups in the lease agreement. Schoenborn said a commitment was made to the neighbors that they would be allowed to use that signage for neighborhood events. Ugochukwu said he believed it would be appropriate to have another public hearing since applicant has met with some southside residents since the last public hearing. Barkalow moved to re-open the public hearing, and the motion was seconded by Ugochukwu. Chairperson Fandel opened the public hearing and invited testimony. The following person testified:

Craig Wruck He is the Vice-President for University Advancement at SCSU and is the Executive Director of the SCSU Foundation. SCSU Foundation will be the initial party that will build and own the sign, who will then immediately give it to the University subject to some type of operating agreement. It is expected that the lease would include language that spells out what can be advertised on the reader board.

There being no one else wishing to speak, the public hearing was closed. Ugochukwu moved to approve the request subject to inclusion of staff's recommended conditions with the exception of changes in language of condition #1 that would allow advertising for community events and neighborhood organizations and giving the University the discretion to exclude advertising that may not be in the best interest of its students. The motion was seconded by Barkalow, and she asked that the word "etc." be deleted from condition 1 if acceptable to the maker of the motion. Ugochukwu agreed to the conditions as follows: 1) The advertising on the proposed electronic reader boards shall be limited to businesses on-site, businesses within the 5th Avenue Live development, community events occurring at SCSU and the River's Edge Convention Center, and other community events, and giving the University the discretion to exclude advertising that may not be in the best interest of its students; 2) The proposed logo signs shall be limited to St. Cloud State University as shown on the attached drawing; 3) The sign structure must comply with all other portions of Article 18 of the Land Development Code; 4) Upon completion of the project, the applicant must sign and return the Statement of Completion to the St. Cloud Planning and Zoning Department; and, 5) The site plan

approved by the Zoning Board of Appeals shall be the only site plan approved for this property. Fandel would like to know what applicant discussed with the neighbors. He said he cannot support a 600' variance. He had suggested that the developer purchase the billboards to the north and petition the City to rezone the land to the east. Bright noted that ownership of the sign by SCSU will result in a non-taxable structure on 5th Ave. He said he doesn't recall the ZBA ever approving a variance of this magnitude. Broxmeyer stated that he talked to the Assistant City Assessor about the signage, and he indicated that the impact of the sign on the estimated property value is negligible and that it is immaterial whether the property is leased by the State. Ugochukwu said he is troubled by what is allowed by the LDC. If applicant decided not to put any off-site signage on it, the structure would be allowed. Therefore, limiting the type of signage seems immaterial. Ugochukwu pointed out that applicant is not proposing to build the sign structure to the maximum potential allowed by the LDC. Zenzen said he would hope that the Foundation would only allow advertising that is appropriate on that sign. Barkalow said she is not concerned about the variance from the setback from a residential district because of the use on the residential property (City Hall). She said she has considered how distracting the signage on both the north and south sides of the intersection will be for people traveling on Hwy. 23. She does not believe the signs on the north side of Hwy. 23 would be competing with applicant's signage. She prefers applicant's proposal for a 27' high sign over the 50' height that would be allowed by the LDC. Barkalow added that she hopes the Foundation will have the integrity to monitor what is allowed to be advertised on the sign. Zenzen commented that this sign will be a proper landmark. The motion carried by a vote of 4-2 (Ugochukwu, Barkalow, Newman, and Zenzen in favor; Fandel and Bright opposed).

Request for Renewal of CUP-2010-01/Rick Schroeder from the Robert Muir Company on Behalf of St. Cloud Rainbow Village, LLC: Chairperson Fandel announced the request from Rick Schroeder of the Robert Muir Company on behalf of St. Cloud Rainbow Village, LLC for the extension of CUP-2010-01 for a 5,000 sq. ft. addition to the Barnes & Noble building and add an additional 24" of brick on the planter wall at the NE corner of the site so tenant signage can be attached to the

planter wall. (Location: 3940 Division Street) (CUP-2010-01). Dave Broxmeyer, Senior Planner, explained that shopping centers over 100,000 sq. ft. require a CUP. In 2010, applicant requested and received a conditional use permit for a 5,000 sq. ft. addition to the Barnes & Noble building which is part of the Rivertown Village Shopping Center. To date, no action has been taken to begin executing the terms of the conditional use permit. Broxmeyer stated that the ZBA can either approve applicant's request for extension of the CUP or the Board could schedule a public hearing for the May meeting. Bright said it was his understanding that a conditional use permit is null and void if no action has been taken within one year. Broxmeyer stated that the LDC does not specify an expiration date. Bright thought that was covered by State Statute and said that in this case, it is two years since the CUP was granted. Broxmeyer explained that the Board cannot set a sunset date on a conditional use permit; however, he is not aware of limitations on the validity period. Chairperson Fandel asked if the extension could be approved subject to a determination by the City Attorney regarding the time period for which an approved conditional use permit is valid. Barkalow moved to approve the extension of CUP-2010-01 subject to verification by the City Attorney that the original CUP is still valid since it has been two years since it was approved. Zenzen seconded the motion, and it carried unanimously.

Adjournment: Barkalow moved to adjourn the meeting. There being no further business, the meeting was adjourned at 7:56 p.m.

Chuks Ugochukwu, Secretary