

PROCEEDINGS OF THE ST. CLOUD ZONING BOARD OF APPEALS

A meeting of the St. Cloud Zoning Board of Appeals was held on June 19, 2012, at 7:00 p.m. in the St. Cloud City Hall Council Chambers. Members present were Barkalow, Bright, Larson, Newman and Zenzen. Ugochukwu was absent.

Approval of Minutes: Barkalow moved to approve the minutes of May 15, 2012. Bright seconded the motion which carried unanimously.

Variance Request/Terry Schmidt: Chairperson Fandel announced the request from Terry Schmidt for a variance from Article 15: On-Site Development Standards, Section 15.5, A. 5., which limits the amount of accessory building area on a single family property to a maximum of 2,000 sq. ft. The applicant is proposing to construct a 15' x 30' addition to the existing attached garage. The proposed garage addition will result in a total of 2,189 sq. ft. of accessory building area, which is 189 sq. ft. over the maximum permitted by the St. Cloud Land Development Code. The applicant is seeking a 189 sq. ft. variance to the maximum accessory building area permitted (Location: 2561 Pioneer Lane) (VAR-2012-05). Dave Broxmeyer, Senior Planner, explained that in residential zoning districts, no more than 2,000 sq. ft. of accessory building area is allowed. The existing triple garage is 1,750 sq. ft.; applicant wants to add a 450 sq. ft. addition to the north side of the building for a total of 2,189 sq. ft. (variance request of 189 sq. ft.). Bright asked if there are any LDC provisions that tie the allowed accessory building size to the size of the property. Broxmeyer stated that the LDC provision limits accessory buildings to 15% of the lot size but not to exceed 2,000 sq. ft. Bright said he believes that a LDC amendment should be considered that would allow more accessory structure square footage on larger lots. Chairperson Fandel opened the public hearing, and the following persons testified:

Terry Schmidt 2561 Pioneer Ln.	He asked if the Board members had any questions.
Susanne Barkalow Board member	She asked applicant why he needs a larger garage.
Terry Schmidt	He has a 16' trailer that he would like to park on the property and, therefore, needs a 15' x 30' addition to accommodate it. Otherwise, he would have to park it outside, making it subject to the weather and vandalism.
Susanne Barkalow	She asked where is it currently parked.
Terry Schmidt	He currently stores it in his warehouse in Avon, but the warehouse is now for sale as he has retired.
Evan Larson Board member	He asked why the addition needs to be 15' wide.
Terry Schmidt	He explained that he needs a 10' wide door to get it in and needs a couple additional feet on each side. The trailer has a hitch, and the end gate folds down and would like the entire length to be inside the structure.
Ron Zenzen Board member	He asked if any neighbors have expressed concern about the request.
Terry Schmidt	Neither his neighbor to the north nor the south has a problem with it. Also, some people walking by asked what he was proposing, and they were not opposed.

There being no one else wishing to speak, the public hearing was closed. Zenzen moved to approve the variance subject to the following conditions: 1) Upon completion of the construction, the applicant must sign and return the Statement of Completion to the St. Cloud Planning & Zoning Department; and, 2) The site plan approved by the Zoning Board of Appeals shall be the only site plan approved for this property. The motion was seconded by Bright. Barkalow noted that practical difficulties is a 3 factor test including reasonable use, unique circumstances and that the variance will not alter the essential character of neighborhood. She said she believes this is a personal preference rather than a practical difficulty. Zenzen stated that in driving around that neighborhood, it appears the residents make an effort not to have things sitting outside or in their driveways and would therefore, support the requested variance. Larson said applicant could probably do something without

a variance. However, he assumes the neighbors would prefer the trailer be stored inside, and no one has expressed opposition. The motion to approve the request carried by a vote of 4-2 (Zenzen, Bright, Fandel and Larson in favor; Barkalow and Newman opposed).

Conditional Use Permit Request/J F Kruse Jewelers on Behalf of Shopko Stores, LLC:

Chairperson Fandel announced the request from J F Kruse Jewelers on behalf of Shopko Stores, LLC for a Conditional Use Permit (CUP) to build a 4,475 sq. ft. jewelry store at Shopko Shopping Center. The St. Cloud Land Development Code requires shopping centers that are 100,000 sq. ft. or greater in gross floor area and are located in the C5, Highway Commercial District to obtain a conditional use permit (Location: 110 Waite Avenue South) (CUP-2012-03). Dave Broxmeyer, Senior Planner, explained that there are two vacant lots fronting on Waite Ave. on the west side of Shopko. The property under consideration would be the most northerly of those two lots. It is deeper than it is wide. Applicant is proposing to construct a 4,500 sq. ft. jewelry store on the site. Broxmeyer stated that the ZBA has approved CUPs in the past for different uses on this lot which were never constructed. Staff is recommending approval of the CUP but that the LDC's land banking future parking provision be used which would allow the 11 parking spaces on the north to be turned into green space until such time as the spaces would be needed and the area could be paved. Currently, there is not a need for those spaces, and it creates some concerns with the east-west traffic within the Shopko lot. Barkalow noted that consideration has been given to widening Waite Ave. and asked if that would impact this lot. Broxmeyer responded that he has not seen a preliminary engineering report, but the area that would be acquired for additional right-of-way would come from the western side of the site. Depending on the design of the street, it could impact from 1 or 2 feet up to the entire green space. Broxmeyer indicated that the sidewalk along Waite Ave. may have to be moved closer to the proposed curb line for the parking. He added that additional right-of-way would also be acquired on the west side of Waite Ave. in Waite Park. Barkalow asked if the parking places shown on the west side of the site would be impacted. Broxmeyer answered that those could be impacted,

but it depends on the street design. If the spaces on the west were lost, then the 11 land banked spaces could be paved. Barkalow asked how many spaces would be required for this use, and Broxmeyer answered that it would be 15. Chairperson Fandel opened the public hearing and invited testimony. The following persons testified:

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| Peter Maus
5527 Glenview Ln. | He introduced himself. |
| Melissa Kelley
1829 Southwood Trail | She and Peter Maus are co-owners of J F Kruse Jewelers. They have been looking for a place to relocate for several years. It would give them more space, be a better place for their employees to work, and increase their revenue. |
| Susanne Barkalow
Board member | She asked how many employees are on site at any given time and how many customers are in the building at one time on a typical day. |
| Melissa Kelley | There is a minimum of 6 staff at slower times and 10-13 at any given time during the day which is typical. There are usually a minimum of 4 or 5 customers in the store at any one time. |
| Susanne Barkalow | The 15 spaces would just cover the number of people in the building at any one given time. |
| Melissa Kelley | There is a cross easement agreement between Shopko, Toys R Us and Stearns Bank as to who can purchase the lot and how many parking spaces must be on the lot. |
| Chairperson Fandel | He asked if the cross easement agreement allows employees and customers of all three businesses to park anywhere in the contiguous parking area. |
| Melissa Kelley | Stearns Bank is currently renting parking spaces for their employees from Shopko; they have adequate spaces for their customers, but not for their staff. It is her understanding that the parking spaces denoted in the diagram are reserved for use by J F Kruse Jewelers only. |
| Chairperson Fandel | He asked if overflow customers would be allowed to park in the Shopko parking lot. |
| Peter Maus | It would be allowed if it is not for an extended period of time. |

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 as recommended by staff: 1) All conditions of previous conditional use permits shall apply where appropriate; 2) The applicant must

provide written approval of the proposed CUP amendment from all of the property owners within the shopping center boundaries; 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. Barkalow seconded the motion which carried unanimously.

Conditional Use Permit Request/EMMES Realty Services on Behalf of Gateway Jackson,

Inc.: Chairperson Fandel announced the public hearing on a request from EMMES Realty Services on behalf of Gateway Jackson, Inc. for a Conditional Use Permit (CUP) to demolish the former Baker’s Square building and build a new 4,715 sq. ft. multi-tenant building in the same vicinity. The St. Cloud Land Development Code requires shopping centers that are 100,000 sq. ft. or greater in gross floor area and are located in the C5, Highway Commercial District obtain a conditional use permit. (Location: 2800 Division Street) (CUP-2012-04). Dave Broxmeyer, Senior Planner, explained that the Division Place shopping center exists on both sides of 29th Ave. So. Applicant wishes to demolish the existing former Baker’s Square building and construct a new building that would be several hundred sq. ft. larger in size, but would be situated slightly to the east and south which would accommodate a drive-thru lane on the north side. The building would be divided into three tenant bays. There is a parking surplus on site. Staff found no traffic flow issues. Barkalow noted that in a previous request for a drive thru, City staff had an issue with vehicles exiting the drive thru onto the street and asked if that may be an issue in this case with vehicles exiting onto 29th Ave. Broxmeyer responded that given the amount of stacking space, it is not seen as an issue. Chairperson Fandel opened the public hearing, and the following persons testified:

Scott Michaelis He is with EMMES Realty Services and is speaking on behalf of the property owner, Gateway Jackson. They have had people express interest in leasing because of the location, but they don’t like the existing building due to its age and because it has a brand and identity for Baker’s Square. He believes there is more leasing interest in a new multi-tenant building, particularly with a drive thru.

Susanne Barkalow She asked if they have any tenants under contract.

Scott Michaelis They have some interested parties, but no commitments at this time. The final design will be tenant driven. The drive thru will not be incorporated if the eventual tenants do not need it. The plan submitted with the application may not be the final design; the actual size could be a little bigger or a little smaller.

Susanne Barkalow She asked staff if the request can be approved without specifics.

Dave Broxmeyer Yes, but it is the ZBA's decision on what specifics are necessary. He suggested they could include in the motion a maximum allowed square footage and could include the drive thru as an option.

Susanne Barkalow She asked applicant how much larger they may want the building to be.

Scott Michaelis He said it would not be more than 5,000 sq. ft.

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) The current 4,500 sq. ft. restaurant building near the corner of 29th Ave. So. and Division St. can be removed and replaced with a multi-tenant building, up to 5,000 sq. ft. in floor area, including the option of having a single lane drive-thru; 2) All conditions of previous conditional use permits shall apply where appropriate; 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 Barkalow and carried unanimously.

Variance and Conditional Use Permit Requests/Mary Isaacs: Chairperson Fandel announced the public hearing on a request from Mary Isaacs on behalf of Lincoln Depot, Inc. for a variance from Article 10, Section 10.2, Table 10-2, front and street side yard setbacks for the operation of a patio on the east side of the building. The Land Development Code (LDC) requires a 10' front and street side yard setback in the I1, Light Industrial District and a 50' setback on the side of the property when it is adjacent to a residential zoning district. The applicant is also seeking approval of a Conditional Use Permit (CUP) to operate a patio with outdoor seating on the east side of the existing building. Restaurants in an I-1, Light Industrial District are required to obtain a CUP. (Location: 629 Lincoln Avenue SE) (VAR-2012-06 & CUP-2012-05). Dave Broxmeyer, Senior

Planner, explained that applicant is seeking variances and a conditional use permit for the patio area that has been installed on the east side of the building near 7th St. SE and Lincoln Ave. SE. The patio area has 3 tables and 10-12 chairs and is fenced in by a 3 ½' tall fence. A variance from the required 10' setback along 7th St. SE is being requested as well as a variance from the 50' minimum setback from a residential district. Broxmeyer pointed out that applicant made a similar request in 2007, but it was for a covered deck. He noted there is adequate parking on-site; however, the patio would max out the parking. Staff is recommending denial of the requests. Chairperson Fandel asked if 7th St. SE is the front yard and asked how "front yard" is defined. Broxmeyer responded that 7th St. SE is the front yard. The front yard on a corner lot is the narrowest side on a given right-of-way. Barkalow asked what concerns were voiced with applicant's previous variance request for the deck. Broxmeyer answered that there was concern about potential noise from the deck. Applicant appealed the ZBA's denial to the City Council. At the City Council meeting, issues were raised relating to public safety with outside seating so close to public streets. Barkalow asked if the patio area was brought to the City's attention via a complaint. Broxmeyer stated that two complaints were made to the Planning Office. Barkalow said people may still stand outside the fence. Broxmeyer said they could but pointed out that people should not be outside the fenced area with a drink. Bright questioned if there have been problems with residents of the chronic inebriate facility on Lincoln Ave. bothering businesses in this area. If so, he believes the fence would help control that problem. Broxmeyer stated that applicant has said there have been problems with chronic inebriates coming into their establishment. Bright said he does not see a problem with the patio because it shouldn't bother anyone. Larson asked what triggers the problem with the patio area. Broxmeyer clarified that it is an expansion of the use which triggers the conditional use permit request. Zenzen asked if a Land Use Action sign was given to the applicant to post on her property. Broxmeyer responded that he did, and the sign was located near the back door when he went by the building over the weekend. He added that there is no requirement for where it has to be placed on the property. Chairperson Fandel opened the public hearing, and the following persons testified:

Mary Isaacs
6605 Riverview Loop
Sauk Rapids, MN

She is the owner of Lincoln Depot. She stated that she may have misunderstood the voice mail from Scott Schreiber, City Engineering employee, that led her to believe the outside patio area was okay as long as nothing was built in the right-of-way and it stayed within her property lines. She then received a letter from Dave Broxmeyer, Senior Planner, saying the patio was in violation of the Land Development Code (LDC). She looked at it as a patio, not a building addition. Relative to noise impact, she has done different things to check noise levels from various surrounding locations, and it hasn't been an issue. She stated that one of the neighbors stated they can hear bottles being broken at approximately 2:45 a.m. She explained that is the approximate time that the recyclables are taken out and dumped into the dumpsters. That can be changed. She pointed out that the greatest noise levels at that intersection are from trains, semis, motorcycles, and cars with loud mufflers. She does not believe the human noise is a problem. Staff's memo states that in 1996, the Fire Marshal stated there was a seating capacity of 140. Since that time, it has been changed to 130. She said she only has 110 seats inside with 10-12 outside. She pointed out the tiny piece of residentially zoned property on the east side of the railroad tracks. It is so small that it is not buildable. The railroad creates a natural boundary between her property and the residential properties. She said she referred to the LDC, and believes there are discrepancies. The I-1 zoning refers to Article 15.5 for setbacks on accessory structures, particularly for fences. She looked at several tables, and one stated there is a 5' setback, and another one says that patios do not require a setback. She stated that the chronic inebriate housing down Lincoln Ave. is a problem for her and have had to call the police on a regular basis. The fence has helped that problem. She has cameras outside to monitor activity. She believes not having the patio will result in a loss of business because customers like to sit outside during the summer. They have had many compliments on the patio area, and it has brought in new customers.

Susanne Barkalow
Board member

She asked if there is a gate in the fenced area.

Mary Isaacs

No, there isn't because of the chronic inebriates. She will install a gate if it is required.

Susanne Barkalow

She inquired if the door that accesses the patio is a requirement.

Mary Isaacs

There are 3 exit doors in the building which all have exit lights above them. She said she is only required to have 2.

Susanne Barkalow

Her concern is that in the event of an emergency, someone might rush out onto the patio and trip over the fence.

Dave Broxmeyer

Relative to exit requirements, those would be found in the building and fire codes.

Pat Morin 917 13 th Ave. SE	She drives by the Lincoln Depot regularly. Ever since the smoking ban went into effect, people stand outside to smoke. She noted that the fence makes it look much better and would like it to remain in place. She believes the chronic inebriates from Rivercrest create much more noise than the patrons of Lincoln Depot.
John and Sue Keenan 705 8 th Ave. SE	They live directly across the railroad tracks from the Lincoln Depot and do not object to the patio and do not have any noise issues from that property.
Amanda Hanson Clearwater, MN	She is a Lincoln Depot employee. The patio helps keep things more organized and clean.
Lacey Bowne	She is a Lincoln Depot employee. It is better having a patio so they can check on people. People who smoke will probably go and sit in that area. The white fence is attractive. People like to enjoy the outside patio area in the summer.
Lance Tesmer 803 6 th Ave. No.	He worked at Casey's General Store for over 6 years. The fence has been an improvement to the property because it keeps the people outside in one area. The owners keeps the property clean.
Richard Kull	He is Mary Isaacs' significant other, but has no ownership in the property. He spent 3 years in Germany, and it was his experience in that country that neighborhoods are held together with small establishments such as those operated by Mary Isaacs. Mary has done so much to keep her establishment going and make it affordable and fun. She has come before the City to make improvements to her business and has been denied. He is concerned that if she is not allowed to make improvements, the business will eventually fail. He noted that families come to the restaurant to eat. She is a concerned owner.
Brianna Larson Miller 46 6 th Ave. So. Sauk Rapids, MN	In the summer, it is difficult for this business to compete with other bars/restaurants because so many of them have patios. They have had many new customers since the patio area was installed.
Patricia Callahan 803 6 th St. No.	She is a patron of the Lincoln Depot and enjoys it because it is a controlled environment and feels like a small town family bar/restaurant. Many families come there to eat. She encouraged approval of the request.

There being no one wishing to speak, the public hearing was closed. Barkalow asked applicant if she installed the patio to keep the smokers in one area. Isaacs explained that she called Gregg Engdahl, the City Clerk, the first week in March because she heard that the City is allowing patios for bars/restaurants. Engdahl told her she needed to fill out an application for it and to send it

in with her liquor license application. Isaacs stated that two weeks later she received a voice mail from Scott Schreiber from the City Engineering Dept. saying he didn't foresee any problems with the patio as long it is confined within her property lines. She said she considered this an approval and proceeded to put in the patio area. Barkalow asked where the smokers are going. Isaacs responded that smokers do use that area, but there isn't always someone smoking out there. She would like to keep smokers off of the 7th St. SE side because of the safety issue with the small space between the sidewalk and the street. Barkalow asked if the smokers stand in the fenced in area while non-smokers sit at the tables. Isaacs answered that there is room for the smokers to stand off to the side and has not had any complaints from the non-smokers. She stated that she has had new customers due to the patio area. The current location of the patio is the furthest away from the residential area. She doesn't want to move the patio over to the other side because she would lose her main entrance. Barkalow inquired as to how far the fence is set back from the curb. Broxmeyer answered that it is 10 or 12 feet on the Lincoln Ave. side and probably 11 feet on the 7th St. SE side. Barkalow is concerned about safety and asked if people can walk around the fenced area; Isaacs answered that they can. Zenzen asked applicant if she has had any problems with people going over the fence and trying to enter the business through the door off the patio; Isaacs said she has not. She pointed out that the wait staff goes out to the patio on a regular basis. Many people like the small town atmosphere of this establishment. Bright asked about #2 of staff analysis & recommendation which refers to noise impact on the neighborhood from the patio. Broxmeyer stated that staff received two noise complaints, one from the neighborhood to the southwest and one from the apartments to the east. Bright believed that those who made the complaints should have testified at the public hearing. Chairperson Fandel noted that the tiny triangle of residential property to the south of the applicant's property is unusable, yet can impact a number of decisions made by the City. He asked if it would be possible for the City to have that triangle combined with another parcel. Broxmeyer responded that it may require a condemnation order. He stated that property was originally platted as a larger block prior to the railroad going through that area. That small piece of property is probably a remnant that

was left over. Fandel requested that staff look into the ownership of that parcel because it is not usable, yet can create a problem because of its residential zoning. Broxmeyer stated that the distance from the southwestern corner of applicant's property to that parcel is 127'. The distance from that parcel to the apartment property to the east is 171'.

Bright moved to approve the CUP and variance subject to the following conditions: 1) All conditions of previous conditional use permits shall apply where appropriate; 2) The patio "fence" must have a minimum 3 foot wide gate; the gate must swing out (in direction of egress) from patio to the public way, and cannot have latching hardware unless it is panic hardware; 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. Barkalow seconded the motion. Barkalow commented that she originally questioned whether these requests should be approved. However, she changed her mind because the people who registered the complaints with the Planning Director did not attend this meeting, and some of the other neighbors testified in support of the request. Larson stated that the building and fire departments may want to review this to decide if a gate is required in the fenced area. Broxmeyer stated that the Fire Marshal and Bldg. Safety will review the need for a gate. Bright and Barkalow agreed that a condition regarding the gate should be included if it is required by the Building Safety and Fire Depts. Zenzen commented that he was impressed when he viewed the property. Barkalow said her original concern was for safety, and those concerns have been addressed. The motion with the possible inclusion of a condition for the gate carried unanimously.

Adjournment: There being no further business, the meeting was adjourned at 8:26 p.m.

Chuks Ugochukwu, Secretary