

## PROCEEDINGS OF THE ST. CLOUD ZONING BOARD OF APPEALS

A meeting of the St. Cloud Zoning Board of Appeals was held on August 21, 2012, at 7:00 p.m. in the St. Cloud City Hall Council Chambers. Members present were Barkalow, Bright, Fandel, Larson, Ugochukwu, and Zenzen. Newman was absent.

**Approval of Minutes:** Barkalow moved to approve the minutes from the June 19, 2012 Zoning Board of Appeals meeting. The motion was seconded by Bright and carried unanimously. Zenzen moved to approve the minutes from the July 17, 2012 Zoning Board of Appeals meeting. The motion was seconded by Barkalow and carried unanimously.

**Variance Request/Steven and Lorraine Krey:** Chairperson Fandel announced this item was tabled from the July 17, 2012 Zoning Board of Appeals Meeting and the request from Steven and Lorraine Krey for a variance from Article 8, Section 8.3, Table 8-2, rear yard setback, which requires a principal structure to be set back a minimum of 35' or 20% of the lot depth, whichever is less. The applicants are proposing to construct a 25' x 49' garage addition attached to the rear side of their home. The proposed garage addition would be 19' from the rear property line, which requires a 13' variance to the 32' rear yard setback. (Location: 1704 Red River Trail) (VAR-2012-08) Barkalow moved to bring the item from the table. Seconded by Bright and approved unanimously. Bright moved to approve the variance request subject to staff recommendations after receiving the documentation requested by the Zoning Board of Appeals at their last meeting. Barkalow seconded the motion, but asked to add a condition that approval of the request to fill the 212 sq. ft. of wetland be approved by the State of Minnesota. Chairperson Fandel is satisfied with the information provided. Motion is approved unanimously.

**Conditional Use Permit Request/ Westwood Community Church:** Chairperson Fandel announced this item was tabled from the July 17, 2012 Zoning Board of Appeals Meeting and the request from Westwood Community Church to construct a driveway from the existing parking lot through a portion of Black Walnut Park to Spruce Street. The St. Cloud Land Development Code requires places of worship located in an R1, Single Family Residential District to obtain a Conditional Use Permit for any significant exterior improvement. (Location: 5719 Walnut Drive) (CUP-2012-07) Zenzen moved to bring the item from the table. Seconded by Barkalow and approved unanimously. Chairperson Fandel was satisfied with the additional information provided by staff that was requested at the July 17, 2012 Zoning Board of Appeals Meeting. Bright agreed with Fandel that they received the answers to their questions. Bright made a motion to approve the Conditional Use Permit subject to the conditions contained in staff memo. Motion seconded by Zenzen. Motion was approved unanimously.

**Variance Request/ City of St. Cloud Public Utilities Department:** Chairperson Fandel announced the request from the City of St. Cloud Public Utilities Department for a variance from Article 12, Section 12.3 – Scenic Rivers Overlay District, D. Table 12-3, 150' setback from the Ordinary High Water Mark (OHWM) of the Mississippi River. The applicant is proposing to construct a 15' x 17' screen enclosure around an existing sanitary sewer siphon pit. The siphon pit already exists on the upper bank of the river several hundred feet south the of the Clemens / Munsinger Gardens greenhouse. The screen enclosure is proposed to be 8' high and built out of materials similar to the nearby greenhouse. The screen enclosure is intended to protect the siphon pit's control panel and gate actuators. The applicant is requesting a 60' variance to the 150' setback. (Location: 1103 Riverside Dr. SE and 1725 Kilian Boulevard) (VAR-2012-11) Dave Broxmeyer, Senior Planner, stated the Scenic River Overlay District begins at the University Drive Bridge and goes south along the river, including the property within Riverside Park. The siphon pit has been in its current location since the 1950's. The visible portion of the siphon pit is a 15' x 17' concrete slab with some metal access doors. The Public Utilities Department is proposing to do

some major renovation work to the siphon pit and is requesting to install a screen wall around its perimeter. The siphon pit is located 90' from the OHWM, within the 150' Scenic River setback and is approximately 34' to 36' above the elevation of the river. The siphon pit is substantially screened by the trees and other vegetation on the riverbank. Staff is recommending approval. Barkalow asked if the reason for the screening is due to something being installed above ground. Bright asked if the need for the screening is a public safety issue. Broxmeyer deferred answering both questions to the Public Works Director. Chairperson Fandel opened the public hearing and invited testimony on the request. The following persons testified:

Pat Shea Public Works Director	Much of the sanitary sewer system from the north and east sides of the river, including all of Sauk Rapids, flows to the siphon pit location in Riverside Park. The siphon pit has three pipes that extend under the Mississippi River and eventually connect to the Wastewater Treatment Plant. The pipes are required to be full at all times. The siphon pit needs to be updated, including the ability to operate the valves from a safe location above ground. The proposed screen enclosure would look like a very nice dumpster enclosure. The primary reason for the screen enclosure is to protect the controls and valves that will project above ground from vandalism.
Evan Larson Board Member	Stated if the enclosure was more open, they could more easily see if someone was inside the enclosure.
Pat Shea	A solid wall enclosure would discourage vandalism by hiding the equipment.
Susanne Barkalow Board Member	Will there be equipment above the concrete slab?
Pat Shea	Yes, there will be valves and control equipment above the slab.
Chuks Ugochukwu Board Member	The siphon pit area is a well traveled area within Riverside Park. Could the enclosure be constructed out of more transparent materials? It could be more dangerous if someone could get inside the enclosure and no one would see them.
Pat Shea	He would have to address the construction materials with the design and field staff. There may be some potential issues in designing an enclosure that can handle the snow and wind loads and still protect the equipment within the enclosure.
Chuks Ugochukwu	Does the State of Minnesota have any jurisdiction over this property.

Dave Broxmeyer

The Minnesota Department of Natural Resources (DNR) does not have a problem with the enclosure. But they do suggest using earth tone colored building materials. The DNR will be sent copies of all of the documents being recorded.

There being no one else to speak, the public hearing was closed. Barkalow moved to approve the variance subject to the staff recommendations. Zenzen seconded. Bright suggested the enclosure be approved, but the type of construction materials would be up to city staff to determine. The friendly amendment was agreeable to Barkalow and Zenzen. Motion was approved unanimously.

**Variance Request/ Mike Jude:** Chairperson Fandel announced the request from Mike Jude for a variance from Article 15, Section 15.5, B., Table 15-2, which requires fences located within the front yard setback be limited to a maximum of 4' in height. The applicant is requesting a 2' variance to install a 6' high fence in the front yard area along 9<sup>th</sup> Avenue South. (Location: 616 9<sup>th</sup> Avenue South) (VAR-2012-12) Dave Broxmeyer, Senior Planner, stated the LDC permits a maximum height of a fence in the front yard to 4'. The applicant is requesting to construct a fence 6' in height; therefore, requires a 2' variance. The proposed fence would be located approximately 8' from the inside of the sidewalk along 9<sup>th</sup> Avenue South. There is a small slope, approximately 1.5' in height, located parallel to the sidewalk. The height of the fence is measured from the top of the slope, where the fence is proposed to be located. Staff is recommending denial. Chairperson Fandel asked why there is a 4' height limitation in the front yard. Broxmeyer stated the intention of a 4' fence height maximum is to preserve an uninterrupted viewshed in the front yard. Chairperson Fandel opened the public hearing and invited testimony on the request. The following persons testified:

Fr. Nathan Kroll  
708 6<sup>th</sup> Street South

He has a 4' high fence around his entire property and has found it insufficient for security purposes.

Mike Jude  
616 9<sup>th</sup> Avenue South

He stated traffic on 9th Avenue South is very heavy. His intention with a 6' fence is to limit noise and air pollution as well as make his house more livable. He doesn't think the higher fence will prevent vandalism or trespassing.

There being no one wishing to speak, the public hearing was closed. Ugochukwu moved to sustain staff's recommendation to deny. Seconded by Barkalow. Zenzen asked for clarification on where the 6' fence height can start. Broxmeyer stated that the first 25' from the front property line is limited to 4' maximum height; however, a fence beyond that could be up to 6' in height. Bright suggested that the Planning Commission and City Council look at the fence height provision for front yards depending on the traffic counts of the adjacent roadways. Barkalow stated concern with approving variance for a 6' high fence given the rise of slope already in the front yard setback area. She also stated concern in obstructing the viewshed for other property owners along that block. Chairperson Fandel complimented Mr. Jude for the work he has done on his house. He also lives on 9th Avenue South in a brick house and does not have noise problems. Ugochukwu encouraged the applicant to try to change the designation of 9<sup>th</sup> Avenue South from a minor arterial designation. The motion to deny was carried by a vote of 6-0.

**Variance Request/David Tomasek:** Chairperson Fandel announced the request from David Tomasek for a variance from Article 8, Section 8.3, Table 8-2, which requires 10' interior side yard setbacks for properties located within an R5 zoning district. The applicant is proposing to remove the existing 20' x 22' detached garage and replace it with a new 24' x 30' detached garage. The new garage is proposed to be located 6' from the southern property line. The applicant is requesting a 4' variance to the interior side yard setback from the southern property line. (Location: 711 11<sup>th</sup> Avenue North) (VAR-2012-13) Dave Broxmeyer, Senior Planner, states the Land Development Code require detached accessory structures located in the side yard to meet same setbacks as principal structures. If the garage were proposed behind the rear plane of the home, the interior side yard setback would be reduced from 10' to 5'. Staff recommends approval. Barkalow questioned the distance between the proposed garage and neighboring duplex. Broxmeyer estimated it to be less than 10'. Ugochukwu estimated approximately 3'. Chairperson

Fandel opened the public hearing and invited testimony on the request. The following persons testified:

David Tomasek  
711 11<sup>th</sup> Avenue North

He asked if the board had any questions.

Chairperson Fandel

How far would the proposed garage be from the neighboring structure?

David Tomasek

He stated the proposed detached garage would be at least 10' from adjacent structure.

Chuks Ugochukwu  
Board Member

The proposed garage appears to be 10' from the wall of neighboring structure. Clarified it would 6' from eave to eave. He asked if applicant would consider placing the garage further back on the property.

David Tomasek

He explained the length of the driveway is over 90' increasing snow maintenance and water run-off. The driveway and existing garage location limits open space in backyard.

Chuks Ugochukwu

He questioned if the proposed garage could be relocated to backyard closer to house reducing the setback from 11' to 4' eliminating the need for variance request.

David Tomasek

He talked with the contractor on that possibility and it would damage the root structure of the tree. He does not plan to keep the tree.

Dave Broxmeyer

He clarified that the Land Development Code requires a 10' separation between the principal structure and the detached structure.

Evan Larson  
Board Member

He asked for clarification regarding tree location and the placement of windows on the neighboring duplex.

David Tomasek

He clarified tree location and explained from the back of his house he can see both neighbors' windows. He also stated there is a high hedge lining the property line. He reiterates that he would gain 1,431 square feet of backyard and the opportunity to have a two-stall garage if the variance is granted.

There being no one wishing to speak, the public hearing was closed. Bright moved approval subject to staff recommendations. Seconded by Barkalow. Barkalow was agreeable to the suggestion to move the garage closer to the house in an effort to preserve the tree. Larson is concerned that it may be too close to adjacent property possibly obstructing their view; however,

understands the issues with a long driveway and the current garage location hindering the backyard. Motion carried by a vote of 5-1 (Ugochukwu opposed).

**Variance Request/David Gaida:** : Chairperson Fandel announced the request from David Gaida on behalf of JRSR Partnership for variances from Article 8, Section 8.3, Table 8-2, which requires 25' front yard setback, 20' interior side yard setbacks, 40' rear yard setback, 30% maximum lot coverage, 0.7 maximum Floor Area Ratio (FAR), 25% of the rear yard setback in open space, and variance from Article 16, Section 16.7, C., which does not permit off-street parking spaces from being located in a required setback area. The applicant is requesting to change the use of the property from a four bedroom dwelling unit with an attached vacant 1,600 sq. ft. former grocery store into an eight bedroom lodging house. The St. Cloud Land Development Code (LDC) requires properties to come into compliance with current development standards when the use of the property changes, in this case from single-family residential to a lodging house. The applicant is requesting a 4' variance to the 25' front yard setback, a 20' variance to the 20' interior side yard setback on the north side of the property and a 14' variance to the 20' interior side yard setback on the south side, a 40' variance to the 40' rear yard setback, a 5% variance to the 30% maximum lot coverage, a 0.3 variance to the maximum FAR, a 25% variance to the amount of open space in the rear yard setback, and a 20' variance from an interior side yard parking setback. (Location: 520 8<sup>th</sup> Avenue South) (VAR-2012-14) Dave Broxmeyer, Senior Planner, explained that the applicant is requesting to change the use of property from single-family residential to lodging house. Also, the attached 1,600 sq. ft. vacant structure that was used at a grocery store at one time would be occupied as part of the lodging house. Broxmeyer explained that the change in use requires the property to meet all of current standards. Staff is recommending approval, but not of an 8 person lodging house as requested rather a duplex with a maximum of 6 bedrooms between the 2 units. Barkalow questioned how many off-street parking spaces staff's recommendation would be required? Broxmeyer stated 6 off-street parking spaces would be

required. Chairperson Fandel stated that the ZBA has received letters from neighbors in the area.

Chairperson Fandel opened the public hearing and invited testimony on the request. The following persons testified:

Fr. Nathan Kroll  
601 7<sup>th</sup> Avenue South

He is speaking on behalf of church at 601 7th Ave. So., as the Orthodox Church overlooks alley. He is opposed on almost every level not only as a neighbor, but also property owner. The buildings are already squeezed in there; more people shouldn't be allowed to live on that property. Since purchasing property twelve years ago, the church has been working towards increasing livability of neighborhood. Given the scope of the requested variances, he is discouraged that City is recommending allowing even two additional people. He explained that parking and lack of green space is a significant problem, and cited his neighbors as parking on lawns because inadequate parking is available. Would like to see the neighborhood continue in a positive direction and encourages ZBA to decline the request.

Susan Barkalow  
Board Member

She asked for clarification from Fr. Nathan Kroll if there is parking on the grass for this property, and his opinion on Staff's recommendation for a duplex.

Fr. Nathan Kroll

He stated parking on grass is not on this property. He reiterates that he understands that its use is grandfathered and finds six persons to be excessive given the inadequate parking of the site.

Ronald Zenzen  
Board Member

He asked if to his knowledge there has been police calls, noise complaints, etc. for the property in question?

Fr. Nathan Kroll

Several summers ago there were illegal fireworks and police have been called to this property. Given the footprint and flow of traffic, there are a lot of hiding spaces. He believes it is a physical space issue, and not reflective on the owner or the persons who live there.

Chairperson Fandel

He asked for clarification from Staff regarding the density increase with a duplex.

Dave Broxmeyer

The definition of family is 4 unrelated persons in each dwelling unit according to the Land Development Code. The intent of the Staff recommendation is to allow an increase, but with a maximum of 6 persons.

Susan Barkalow

She stated it appears there are air conditioners all along the front of the house including above the former grocery store and questioned if this area is occupied?

Dave Broxmeyer	He stated that he believes it is.
Susan Barkalow	She asked how it can be limited to 6 occupants if City Code states no more than 4 unrelated persons in dwelling.
Dave Broxmeyer	The ZBA can set those limits because of the proposed change in use and variances associated with it; therefore, the ZBA can stipulate maximum number of occupants.
Juliana Elchert 513 7th Avenue South	She submitted a letter to ZBA; however, would like clarification on how many persons could be living in each bedroom per Staff's recommendation?
Dave Broxmeyer	He explained that it depends on how the variance is written. The ZBA could limit the number of occupants rather than number of bedrooms.
Juliana Elchert	She has another question regarding the process. Rather than recommending against the request then offering an alternative, Staff should only respond to the actual request by applicant. She feels it is unreasonable to have 8 variances for 1 property. She lives across the alley and down one house from the subject property. She has a view and can hear the partying on the property. The police have been called to that property. That property is not being managed well. This request is contrary to the Master Plan for the neighborhood that was put forth 3 years ago. She asks the ZBA to deny the applicant's request as well as the staff's recommendation. She asked if the request is denied, is there is a period of time that applicant must wait to apply again?
Dave Broxmeyer	He stated a minimum of one year, assuming an identical request. If the request is changed, then could be presented again at any point.
Dave Gaida 2105 Red Fox Road	He is the applicant making the request and able to answer any questions of the ZBA. He confirms that there have been some police calls to the house; however, it was because the house has been broken into several times. There are no noise violations, social host violations, etc. for the property. He is not an absentee landlord and makes frequent visits to the property. He understands the concerns with parking and density; however, feels there was more of a parking concern when it was a grocery store. He applied for lodging house status rather than duplex due to structural limitations of the house given its age. He is agreeable to placing a cap on the number of occupants allowed.
Allen Bright Board Member	He asked if there has been an opportunity to rent this house to a family?

Dave Gaida	He did consider that option when he first bought the house, but found little interest given the neighborhood and lack of space for kids to play. He stated he received approval from HPC to tear down detached accessory structure. If granted the variance to park up to the property line, the garage would be torn down.
Chuks Ugochukwu Board Member	He asked what other uses would be allowed on the property.
Dave Broxmeyer	Permitted to have a single-family home. The additional 1,600 sq. ft. space is unoccupied and undefined. Any use other than vacant is considered a change of use.
Chuks Ugochukwu	Could the property owner demolish the existing structure and construct a new single family home?
Dave Broxmeyer	Yes.
Chuks Ugochukwu	Could the property owner construct a duplex? If so, how many bedrooms, etc.?
Dave Broxmeyer	That becomes a design issue for the property owner.
Chuks Ugochukwu	He stated there are several variances being requested. He has issues with parking in that neighborhood. The request by applicant adds to that problem and considers it a personal preference as many property owners would like to have parking up to the property line. That is not in the best interest of the community.
Chairperson Fandel	Clarified that the change in use requires compliance with all aspects of City code.
Dave Gaida	He would like comment on parking. For many years there has been parking right up to property line on the non-garage side of property. The existing garage is located right up to the property line. There are currently 5 parking spaces; if the garage demolished it would provide room for the 6 spaces making the property compliant with parking requirements.
Allen Bright	It is an unusual property, and the question is how to resolve the change of use for the vacant 1,600 sq. ft. area. The alternative as presented by City staff may be imperfect, but better than an empty building. It is illogical to require a building to stay empty to not increase parking. He suggested the property owner hold a neighborhood meeting to discuss how to lessen the impact of occupying of the vacant space on the neighborhood.
Susan Barkalow	Will the garage be removed?

Dave Gaida

The HPC gave approval to demolish; however, he would rather not unless a variance is approved to park up to property line. A concrete block freezer located in the rear of the property was demolished last year.

There being no one wishing to speak, the public hearing was closed. Fandel noted letters from Jerry and Deb Middelstadt of 402 6th Ave. So., Beth Cragle of 201 Ramsey Place, and Juliana Elchert & Dan Hollenhorst of 513 7th Ave. So. Fandel read the letter from Rich Kelly into the record at his request. Chairperson Fandel questioned why the Southside Master Plan does not include lodging houses in this area or increases in rental uses; but rather preservation and enhancement. Dave Broxmeyer explained the difference between Master Plan and the Land Development Code. He stated that the LDC reads that if a person has adequate space and can meet the minimum requirements, they are allowed the use as a lodging house. Whereas, the Master Plan shows direction and presents options. Barkalow stated the property is located in the Southside Historic District, is there any input from Heritage Preservation Commission? Broxmeyer explained that the HPC's mandate is not the land use of the property rather architectural and design. Ugochukwu suggested that the applicant meet with the residents from that neighborhood in an effort to reasonably use the vacant building. Ugochukwu motioned to table the request. Seconded by Bright. Motion carried by a vote of 5-1 (Larson opposed).

**Variance Request/Dennis Dunphy:** Chairperson Fandel announced the request from Dennis Dunphy for a variance from Article 15, Section 15.5, A., 1., which requires a principal structure be on a property prior to the construction of a detached accessory structure. The applicant is requesting to construct a 12' x 12' garden shed on a residentially zoned lot that does not have an existing principal structure on it. (Location: 101 16th Avenue South) (VAR-2012-15) Dave Broxmeyer, Senior Planner, stated the Land Development Code requires that prior to a detached accessory structure being constructed, a principal structure must be located on the property. He explained that the property is unusual in that it is triangular in shape due to expansion of Highway 23 and is approximately 2,300 sq. ft. in area. Given the setback requirements, a house

cannot be built on the property without variances. The applicant is requesting to construct a storage shed to maintain the property. Allen Bright clarified that when the Minnesota Department of Transportation took the property the future lack of use was taken into consideration of value; therefore, the lack of use has been paid for by MNDOT to the current property owner. Chairperson Fandel opened the public hearing and invited testimony on the request. The following persons testified:

Dennis Dunphy  
Avon, Minnesota

He gave a history of property. He purchased in 2003 from Stearns County as tax-forfeited lot. He would be willing to reduce the size of the building he is proposing. MNDOT took houses when they reconstructed the streets; however, did not properly replant the grass. He did offer the property to MetroVets; however, they are not interested at this time. His plans are to locate a building back by the trees. Given the fence is at an angle, the building will not be seen from the west. His intent is to beautify the property with flowers, garden and possibly flags. He calculates that the proposed building would be less than 4% of the property area. He explained the reasoning behind the building is to be able to have access to equipment needed to maintain the property.

Chairperson Fandel

When he purchased the property in 2003 did he know it was not buildable?

Dennis Dunphy

This would not be a permanent structure and will bring water to the property; it will be an improvement to the property with plantings benefiting the City.

Susan Barkalow

She asked if he considered donating this property to the City?

Dennis Dunphy

He explained he asked MetroVets; did not pursue donation to the City specifically.

There being no one wishing to speak, the public hearing was closed. Bright asked if the property is a separate tax parcel. Dave Broxmeyer stated yes. Ugochukwu motioned to approve the request subject to staff's conditions. Seconded by Bright. Barkalow said applicant knew when he acquired the property that he could not build on it. Ugochukwu stated sometimes the City does not accept land donations because the associated costs to maintain the properties. Motion failed by a vote of 1-5 (Ugochukwu in favor; rest opposed).

Broxmeyer stated there are couple additional items being presented for board information. He continued that prior to publication of the Zoning Board of Appeals agenda and meeting packet, an email containing an abbreviated agenda will be sent out to members of the ZBA, Planning Commission and City Council. The intent is to notify the public bodies of quasi-judicial actions. Broxmeyer asked if staff should pursue changing front yard regulations for fences. Board said yes. Broxmeyer thanked Vicki Perske for her 37 and half years of service to the City of St. Cloud and the Zoning Board of Appeals.

**Adjournment:** There being no further business, the meeting adjourned at 8:57 p.m.

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Chuks Ugochukwu, Secretary