

PROCEEDINGS OF THE ST. CLOUD ZONING BOARD OF APPEALS

A meeting of the St. Cloud Zoning Board of Appeals (ZBA) was held on September 18, 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.

Variance Request/ David Gaida on behalf of JRSR Partnership:

Chairperson Fandel stated that this item was tabled at the August 21, 2012 Zoning Board of Appeals meeting. A public hearing was held on the item from David Gaida on behalf of JRSR Partnership for a series of variances for a property on 8th Avenue South. Barkalow moved to bring the item back to the table. Newman seconded. Motion carried by a vote of 6-0 to place the item back on the table. Chairperson Fandel introduced the request from David Gaida on behalf of JRSR Partnership 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 all of the zoning requirements when properties change uses. 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 8th Avenue South) (VAR-2012-14). Chairperson Fandel stated that the Zoning Board of Appeals (ZBA) would not be holding a public hearing but would invite the applicant to speak if he wished. David Broxmeyer, Senior Planner, referenced a letter

submitted by the applicant addressed to the ZBA discussing some of the contacts made with the neighborhood representatives and would answer any questions from the ZBA regarding any of the variances requested. The applicant, David Gaida, stated that based on the recommendations of the ZBA he met with the property owners who submitted written comments in opposition of his proposal. Barkalow asked what would be entailed in converting the existing building into a duplex and what would make the conversion so impossible. David Gaida stated that there is a two-family dwelling conversion checklist that is required by the St. Cloud Building Safety Department. Since he has two buildings that have been pushed together, one a concrete block building and one a brick building, hardwiring all smoke alarms would be difficult. Additionally, the firewall has to be up and through the roof which would require removing the flat roof from the existing grocery store, putting it back on and meshing it with the existing brick building. There is also the option of sprinklering it as well if all Fire Board ratings cannot be met. His contractors identified that the process of converting the building into a duplex would be very difficult and that is why he is requesting the lodging house instead of the duplex. Barkalow asked what difference reducing the number of tenants from eight to seven make for the request. David Gaida stated that he could live with a reduction from eight to seven. It would bring the density down which was one of the big objections from the neighborhood. Barkalow asked what impact that would have on required parking. Dave Broxmeyer stated that the LDC required 0.75 spaces per person in a lodging unit. Eight tenants would require six spaces, so seven tenants would require five spaces. Bright asked if there was an estimated cost to meet the codes required for conversion into a duplex. David Gaida identified that the rough estimates he received from an electrician, contractor, plumber and others would be over \$250,000 to meet the current codes. Chairperson Fandel identified that the applicant would still have a very old building. David Gaida agreed. Chairperson Fandel stated that at the August 21, 2012 meeting there was no motion made and the decision to table was made after discussion ended. He invited a motion on the eight variances before the ZBA and noted that the ZBA did not have the option of approving some of the variances and not others in this case. For the purposes of discussion, Barkalow moved to approve

the variances subject to the following conditions: 1) Revise the site plan to show the individual off-street parking spaces and show the proposed location of the garbage can; 2) The off-street parking must be marked according to the LDC standards. A minimum of six off-street parking spaces that conform to the LDC dimensions are required; 3) Upon completion of the construction project, the applicant must sign and return the Statement of Completion to the St. Cloud Planning and Zoning Department; and, 4) The site plan approved by the Zoning Board of Appeals shall be the only site plan approved for this property. Bright seconded. Bright asked if by reducing the number of tenants from eight to seven the proposal would fall under another residential category. Dave Broxmeyer stated that any dwelling housing five or more unrelated persons or more would be categorized as a lodging house. Bright stated that a duplex could have up to six persons, but the applicant would have to spend \$250,000, and would still have an old building. Dave Broxmeyer identified that there could be a total of six persons between the two units. A duplex would actually permit eight unrelated persons between the two units. The ZBA has the option to set a permit unit maximum for this proposal. Bright asked if the ZBA could approve a lodging house but limit the number of persons allowed. Dave Broxmeyer identified that that would be correct. Chairperson Fandel identified that approving this number of variances would be a first in the number of years he has served on the ZBA and he would be inclined to vote against the motion. Barkalow stated that she understood the Chairperson's concern, but was concerned with allowing the property owner use of the property. She recognizes that it is a unique property and that there is likely limited demand for a commercial use in the other half. She was floored that it would cost \$250,000 to meet codes to convert it to a duplex. Ogochukwu identified that he too was concerned with the precedent being set in approving eight variances. Additionally, there is an alternative use for the property, although expensive. There is also the potential to harm the neighborhood. The ZBA is walking a fine line by granting eight variances. Bright stated he sees little difference in allowing the duplex which would allow six persons with a lodging house which would allow seven and how it would affect the neighborhood. He wished there was another alternative, but he wished to see it as a lodging house rather than sit empty. Ogochukwu

stated that the character of the neighborhood means a lot and impacts on value for everybody. Once the ZBA starts shifting on setbacks it is really detrimental to the overall character of an area. Bright responded that the ZBA is not in a position to make estimations of valuations in a neighborhood. There being no further discussion, Chairperson Fandel called the question and the motion carried by a vote of 4-2 (Barkalow, Newman, Bright and Zenzen voting yes; Fandel and Ogochukwu voting no).

Juliana Elchert, 513 7th Avenue South, approached the ZBA and requested to speak. Chairperson Fandel stated that although it is not a public hearing, he would allow Juliana Elchert's comments because she is an adjacent property owner. Juliana Elchert stated that what bothered her about the ZBA's decision was that it appeared that several members made their decision on the assumption that a duplex was an allowable use for the property. A duplex also would have required variances, so in making a decision to allow a lodging house, which she finds very objectionable, based on the thought that a duplex would be allowable, but would cost \$250,000, is an incorrect assumption. Chairperson Fandel asked Dave Broxmeyer if the ZBA erred in making their decision. Dave Broxmeyer stated that the same number of variances would have been required, although the two interior side yard variances would be lesser. Chairperson Fandel stated that the duplex would still require variances but they would be lesser variances. Dave Broxmeyer responded that the change in use to a duplex would still require variances. Juliana Elchert stated that no matter what the use of the property, the number of variances requested by the applicant should have raised a flag that what is being requested is reasonable. She would have preferred that City staff clarified that a duplex is not allowed. She would have liked an opportunity to testify on a staff recommendation pertaining to duplexes so that that could have been clarified, but that was not an option. She felt many of the ZBA members assumed that that would have been a legal use as it is; it is not. Chairperson Fandel asked Dave Broxmeyer if the ZBA has erred in their decision and if the Board's action can be overturned or appealed if they have erred since the vote has been taken. Dave Broxmeyer stated that the ZBA has taken its vote and the only appeal would need to come from the Mayor, a City Council member, or the Planning Commission. Those are the only three entities, other than the applicant, that have the

ability to request an appeal. An appeal would need to be made within 10 days of the ZBA's decision and the appeal would automatically go to the City Council. As to whether or not the ZBA has erred, he could not answer that question. Each ZBA member would have to be polled as to what they were thinking at the time they made their vote, whether they clearly understood what the options were. Chairperson Fandel asked if it was appropriate to do that at this time. Dave Broxmeyer stated that after the vote has been taken he did not feel it would be appropriate since the motion was made, seconded and approved. He could not recall another time when the ZBA has gone backwards. Chairperson Fandel asked if the City Attorney could offer an opinion. Dave Broxmeyer stated that he could request an opinion from the City Attorney tomorrow. Chairperson Fandel requested that he seek an opinion as this is an unusual case in many respects, specifically that the ZBA has approved eight variances on a small lot in a residential neighborhood and he feels very uncomfortable with the decision. Chairperson Fandel added that he voted against the motion. Dave Broxmeyer stated that he would visit with Mr. Staehling sometime tomorrow when he is available. Chairperson Fandel asked if it were possible that the item would come back to the Board's agenda next month. Dave Broxmeyer stated that would be depending on the opinion of the City Attorney.

Variance Request/ Gil and Terry McCabe:

Chairperson Fandel introduced the request from Gil and Terry McCabe for a variance from Article 8, Section 8.3, Table 8-2 requiring a minimum interior side yard setback of 10' to replace an existing attached garage and replace it with a 22' x 40' attached garage addition to the south side of the house to be located 7' from the south property line requiring a 3' variance. (Location: 842 35th Avenue North) (Var-2012-16) Dave Broxmeyer, Senior Planner, explained the nature of the request to the ZBA to remove an existing breezeway and single-stall attached garage and construct a dining room addition and a two-stall garage, 22' in width. In order to fit the proposed garage on the site, it would need to be 7' from the southern property line. Staff is recommending approval. Barkalow stated that it was her understanding that the existing garage encroaches more into the setback area than the proposed new garage. Broxmeyer stated that that is correct. The existing garage is set back less than 5'.

CUP to be approved when there is a change in use or if there are extensive changes to the exterior of the property. The previous use did not include a restaurant. The site is located immediately south of McStop at the County Road 75 / Interstate 94 Interchange. (Location: 4325 Clearwater Road) (CUP-2012-08) Dave Broxmeyer, Senior Planner, explained that the terms of the general development plan for this PUD require that whenever there is a significant change in use a new CUP be issued for the property. The previous CUP was exclusively for a gas station / convenience store. The applicant has requested to convert the portion of the building previously a car wash and some interior area to a fast serve restaurant along with a drive-thru lane system. Staff is recommending approval of this request. Chairperson Fandel opened the public hearing and invited testimony. The following persons testified:

Graeme Mahler
Mahler & Associates
325 33rd Avenue N

He feels the use is appropriate for the area based on the uses of the adjacent properties. The property has been ripe for development for a number of years. Their client's experience in convenience store management as well as the new proposed use as a fast-serve restaurant will once again make this a viable entity for the St. Cloud area.

Jeff Malikowski
3125 Club View Ct

Stated that the current building has been closed for nearly two years and is very tired looking. He is hoping this project will brighten the area up a bit.

Ronald Zenzen
Board Member

Asked what the timeframe would be to do all the work and open.

Graeme Mahler

Stated that they are trying to beat the frost. With the ZBA approval it is a go and will be turning in construction documents by the end of the week.

Ronald Zenzen

Asked if the applicant was planning on a chain restaurant or a "mom & pop" restaurant?

Jeff Malikowski

Stated that they would be doing a chain.

There being no one else wishing to speak, the public hearing was closed. Zenzen moved to approve the CUP subject to the following conditions: 1) All conditions of previous conditional use permits shall apply where appropriate; 2) Upon completion of the construction project, the applicant must sign and

return the Statement of Completion to the St. Cloud Planning and Zoning Department; 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 Ogochukwu. Bright stated that it is an appropriate use for the property. The property was developed many years ago and there have been as many as four to five businesses located there that have not been successful. Hopefully with adding a restaurant it will be alright. There was a covenant covering all of this property by McDonald's that was effective for 20 years beginning in 1989, and has been expired by three years. The applicant would be safe in adding the restaurant. He would support the project. Chairperson Fandel thanked Bright for the history of the property. There being no further discussion, Chairperson Fandel called the question and the motion carried unanimously by a vote of 6-0.

Conditional Use Permit/George Kluempke on behalf of CP Investment Group:

Chairperson Fandel introduced the request from George Kluempke on behalf of CP Investment Group for a Conditional Use Permit (CUP) to remodel an existing office building to a proposed day care facility to accommodate up to 90 children. The Planned Unit Development (PUD) requires a new CUP to be approved when there is a change in use or if there are extensive changes to the exterior of the property. (Location: 1520 24th Avenue North) (CUP-2012-09) Dave Broxmeyer, Senior Planner, explained that the terms of the general development plan for this PUD require that whenever there is a significant change in use a new CUP be issued for the property. The previous use of the building was set up as an office. The applicant is proposing to locate a day care facility in the building for up to 90 children. There are no significant exterior building changes proposed with the exception of the addition of a fenced outdoor play area for the children. Staff is recommending approval of this request. Chairperson Fandel opened the public hearing and invited testimony. The following persons testified:

Tim Gillet
3011 18th Street South

Here on behalf of George Kluempke and the Moonlight Daycare Center. The building has been vacant have over a year. The change in occupancy would benefit the community by changing from a commercial

use to a day care, family-oriented, helpful-type use. All of the Code issues have been investigated and the only issue is adding a sprinkler system, which will be added. The project is a simple, interior project that seems to work well with the adjacent neighborhood. A daycare center is allowed in a residential area and there are a lot of residents around the area.

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) The applicant and/or day care operator shall be responsible for obtaining all necessary approvals and permits from the State, County and City; 2) No more than 90 children are permitted at the day care facility at any one given time; 3) Any substantial change to the approved site plan or an increase in the number of children shall require the CUP to be amended. Minor changes to the site plan may be approved by the City's Planning Director; 4) Prior to the opening of the day care facility, the applicant and/or day care operator must sign and return the Statement of Completion to the St. Cloud Planning & Zoning Department; and, 5) 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 Ogochukwu. Barkalow stated that after driving around the neighborhood and noting the density of population with apartment buildings and townhouses, a day care center seems like a logical use for the building. There being no further discussion, Chairperson Fandel called the question and the motion carried by a vote of 5-0-1 (Bright abstaining).

Variance Request/Thomas Rentz:

Chairperson Fandel introduced the request from Thomas Rentz for a variance from Article 8, Section 8.3, Table 8-2 requiring a minimum street side yard setback of 15' and a variance from Article 15, Section 15.5, A., 9., requiring detached accessory structures be set back a minimum of 10' from the principal structure. The applicant is proposing to construct a 9' diameter gazebo 3' from the northern property line along 17th Street SE and 3' from the existing home. (Location: 1701 9th Avenue SE) (VAR-2012-17) Dave Broxmeyer, Senior Planner, explained the nature of the request to the ZBA regarding the location of the proposed gazebo. The R1, Single Family Residential District, requires a

15' street side yard setback which had been met at the time of the home's construction. The applicant has proposed to place the gazebo 3' from the northern property line requiring a 12' variance. The second variance is related to an accessory structure in relationship to a principal structure. The Land Development Code (LDC), adopted in 2008, included the provision that a minimum separation of 10' is required, so that would require a 7' variance to keep the gazebo in the proposed location. Staff is recommending denial in this particular case. Chairperson Fandel stated that there appears to be room for the gazebo to be placed behind the house and beyond the deck. Dave Broxmeyer stated that that is correct and the proposal does not exceed accessory building space or lot coverage. Chairperson Fandel stated that they would be able to relocate it. Chairperson Fandel asked if it were relocated adjacent to the deck would they even need a variance of any kind. Dave Broxmeyer stated that as long as it is not within the street side yard setback, it could be located almost anywhere within the rear yard. Chairperson Fandel asked if the applicant could proceed with construction of the gazebo without a variance if it were within the rear yard. Broxmeyer stated that would be correct. Zenzen asked how many feet there were between the structure and the street. Broxmeyer stated that he did not perform that calculation. From what he could recall approximately 10-12 feet, so probably about 15' from the actual pavement as an estimate. Barkalow asked if the side yard setback extended to the pavement or to the street right-of-way. Dave Broxmeyer stated that the setback extends to the property line. That is where all setbacks are measured from. Barkalow asked if the line show on the site plan was the property line. Dave Broxmeyer state that that was correct and beyond the property line there is additional boulevard space until the pavement. Chairperson Fandel opened the public hearing and invited testimony. The following persons testified:

Tom Rentz

He is the property owner. He built the home in 1980 and feels that this is a reasonable request. He does not feel the zoning took into consideration the location and what he is trying to do with the property. The steps from the deck go to the north. The north side is not encroaching on any right-of-way, it is not visually distracting to any of the neighbors, but it would allow him to go off his deck. He has terraced his lawn and he will have a step-down patio off his deck for his grill and the gazebo would be located in the side yard. He has a side door on his

house that is not currently utilized and he would like to use that too. His preference is for the gazebo to be located on the north side. The ZBA's proposal to relocate the gazebo into the rear yard would take away all green space in the back yard. He asked that Board reconsider staff's recommendation but would follow all recommendations as far as building codes and everything else.

- Susanne Barkalow She drove by the property and did notice the terracing and retaining walls, but also noticed several very mature trees; one along the side of the house that looks as though it would be very, very near the gazebo. She asked if that tree would be removed.
- Tom Rentz He stated that that tree has been on the property since the house was built and would not be removed. He included a mock-up of where the gazebo would sit on the side of his house showing where the deck stops and where the steps would go. The steps would drop down and allow people to walk into the gazebo. The tree would not interfere with the gazebo at all.
- Susanne Barkalow She asked if there are any steps currently on the deck.
- Tom Rentz He stated that there are no step currently on the deck. The site plan presented to the ZBA shows where he would like to put the steps and incorporate all the elements together.
- Chairperson Fandel He also wondered about not having steps off the deck.
- Tom Rentz He was either going to take the steps around to the side of the house. They wanted to be able for the steps to come down so that they could use the lower area for a grill and to use the gazebo as a screened-in porch during the summer for the bugs.
- Ronald Zenzen
Board Member He asked if the bare spot in the photo represents where the stairs would start coming down.
- Tom Rentz He stated that would be correct.
- Ronald Zenzen He asked if the steps would join the gazebo or incorporate them somehow at that location.
- Tom Rentz He stated that was correct. He also included some other properties to the north one block that have variances for their structures as a comparable.

There being no one else wishing to speak, the public hearing was closed. For the purposes of discussion, Barkalow moved for approval of the variances subject to the following conditions: 1) The applicant must obtain all necessary permits, such as a building permit, from the St. Cloud Building Safety Department; 2) Upon completion of the construction project, the applicant must sign and return the Statement of Completion to the St. Cloud Planning and Zoning Department; 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 stated that staff recommends denying the variance because this is a personal preference and given the opportunity to relocate the gazebo to another part of the yard would require no variance. He is inclined to vote against the motion and to uphold staff's recommendation. Barkalow stated that she understands the applicant's concern over the loss of green space but a 9' diameter gazebo is not that large and has seen many houses that have the gazebo basically attached to the deck. She added that apparently privacy is not a concern as the applicant is proposing a patio in the setback area as well. She would intend to agree with Chairperson Fandel on upholding staff's recommendation for denial. Zenzen stated he understood the ZBA's thinking but seeing the elevation of the deck and the way the gazebo is to be incorporated into the deck, he did not hear the construction details of what would be used in the gazebo if it would be matching exterior to match the house or something like that. Zenzen asked if the applicant could provide some clarification. Tom Rentz identified that the gazebo would match the house. It would be cedar and showed a photo of the gazebo model. Zenzen stated that he sees this project as a very nice addition to a nice clean existing house and he would vote against staff's recommendation to deny. Tom Rentz identified that the height of the deck off the ground is about seven steps so it is quite high to try to incorporate the gazebo into the deck. Ogochukwu asked about the steps shown on the site plan. Tom Rentz stated that the steps have been already made but have not been installed and would depend on if he would have the gazebo installed as proposed. Ogochukwu asked if the gazebo would be located adjacent the street or to an adjacent property. Tom Rentz stated the gazebo would be located adjacent to the side street. Ogochukwu asked if approving the motion would

follow staff's recommendation. Chairperson Fandel stated that the motion is to approve the variance contrary to staff's recommendation. There being no further discussion, Chairperson Fandel called the question and the motion failed by a vote of 3-3 (Newman, Zenzen & Ogochukwu voting yes; Barkalow, Bright & Fandel voting no). Dave Broxmeyer stated that it was his understanding the any time there is a tie, the motion fails and is, in fact, denied. Chairperson Fandel identified that the applicant may appeal the ZBA's decision to the City Council.

Variance Request/Pam and Jerry Froelich:

Chairperson Fandel introduced the request from Pam and Jerry Froelich for a variance from Article 15, Section 15.5, A., 5., which limits the total square footage of all accessory buildings on a zoning lot to a maximum of 2,000 sq. ft. in area, Article 15, Section 15.5, A., 6., which prohibits a detached accessory structure from exceeding the size of the principal structure, and Article 15, Section 15.5, C., which limits the home occupations to no more than 25% of any one story. The applicant is proposing to construct a 25' x 35' (875 sq. ft.) pen around an existing duck pond, which will increase the total square footage of accessory building area to 2,607 sq. ft. and use 100% of the detached accessory structure as a home occupation. The pen is proposed to be constructed using posts of various sizes, 3' high fence panels, and clear netting. (Location: 25043 63rd Avenue South) (VAR-2012-18)

Chairperson Fandel asked Dave Broxmeyer, Senior Planner, to explain why this matter is before the Zoning Board of Appeals and to why a pen around an open duck pond constitutes an accessory structure. Dave Broxmeyer stated that a significant amount of staff time was spent discussing as to, within the limitations of the existing Land Development Code (LDC), how to define what the applicant is proposing. Staff came to the conclusion that what is proposed would most closely fit an accessory structure even though the construction materials are 6" x 6" wooden posts, 3' high panels and some clear netting above it, staff has to be able to put it into some type of category within the LDC. Once categorized, the proposal required the variance because the property owner would be above the space permitted for detached accessory structures for a lot of that size. Chairperson Fandel asked if

the netting was to cover the top of the open duck pond. Dave Broxmeyer stated that as it was explained to him, the fence panels would be approximately 3' in height around the perimeter of the pond and from the top of the panels up to the top of the post and over the top of the posts would be the clear netting. Chairperson Fandel asked if there is specific information available as to the type of materials the side panels are made of, he envisioned a see-through netting all around. Dave Broxmeyer stated that the applicant would be better suited to answer questions regarding the materials to be used. Barkalow asked what the largest accessory structure the applicant could have and still be within the LDC ratios. Dave Broxmeyer stated that the applicant could have up to a maximum of 2,000 sq. ft. for the total accessory building area. He believed that is already being exceeded. Barkalow stated that this proposed addition further exceeds the requirement. Barkalow stated that she was visualizing normal fence and not solid panels. Chairperson Fandel agreed. Bright asked how many animal units are permitted on the property. Dave Broxmeyer stated that the property is zoned Rural Residential (RR), for ducks, which would be considered large poultry, he believed the maximum number of animal units would be 6. The maximum allowed is 12.5 per acre in the RR District for large poultry. The property is approximately 0.5 acres. Chairperson Fandel asked if that is the same ratio for a chicken or a goose. Dave Broxmeyer stated that chickens would be small poultry and would be double the amount and geese would be considered in the same category. Zenzen asked what the difference would be between this structure and a dog kennel. Dave Broxmeyer stated that the LDC does not clearly define what a dog kennel is and that was a part of staff's discussion. The LDC has setbacks for dog kennels yet if an entire yard was fenced, would that be considered a dog kennel? Staff came to the conclusion to focus solely on what the request is. Chairperson Fandel asked if the staff recommendation would differ if the clear netting surrounded the pen as well as covered the top. Dave Broxmeyer identified that staff's interpretation would indeed differ. Staff's concern was not with the material. Chairperson Fandel stated that it makes no difference if the material is invisible or nearly invisible. Dave Broxmeyer identified that in staff's opinion it would make no difference. The intention is to keep the ducks near the perimeter of the

pond. Bright asked if it were called a dog kennel but the applicant put ducks in it, if it would make a difference. Dave Broxmeyer stated that that is an interesting point. Chairperson Fandel stated that it is a valid question. Dave Broxmeyer stated that if it is a dog kennel with ducks, it is no longer a dog kennel, but a duck kennel. Chairperson Fandel opened the public hearing and invited testimony. The following persons testified:

Neil Franz
1011 2nd Street N.

He represents the applicant's Pam and Jerome Froelich. Mr. & Mrs. Froelich operate a home occupation on their property, called Flyaway Taxidermy. The applicant is an accomplished taxidermist who has been named a world champion in his field. The applicant is well recognized and proud of his work. In 2006, the applicant received permission from the Zoning Department to construct the accessory building shown on the site plan adjacent to the pond on the west side of the property. The building was constructed during the fall of 2007 and final Certificates of Completion were issued by the Health & Inspections Department in January 7, 2007. The building completely complied with all requirements of the Zoning Ordinance at that time. In 2008, there were changes made to the LDC. Those changes are pertinent today in light of staff's conclusion that this proposal should be analyzed as a structure. The applicant did not consider the proposal to be a structure. Once the issue arose, the applicant had a decision to make to challenge staff's interpretation or to apply for variances before the ZBA. The applicant decided that it would be more appropriate to address the issue as a variance because it is felt it qualifies for the reasons outlined in the staff report. The pond is already in place. The proposed pen has some of the posts already in place. The applicant anticipates a 3' solid fence-like structure at the bottom to protect the waterfowl in the pond. The applicant expects to maintain six waterfowl for education and inspiration. The waterfowl are of specimen that are of value to the applicant and he wants to protect them from predation and from leaving. The applicant believes it is prudent to protect the waterfowl to have a solid structure for the bottom three feet and the rest of the structure would be a clear netting material for the purpose of keeping the waterfowl from leaving. The applicant is in the audience and is available for questions. The applicant encourages the ZBA to accept the staff recommendation and approve the variances.

Suzanne Barkalow
Board Member

Asked if staff's decision that this was a structure came from the fact that there was netting across the top.

Dave Broxmeyer In his mind, yes. When something goes over the top, the transition is made from being a fence to an enclosure.

Suzanne Barkalow Asked if that was the thought process used by staff.

Dave Broxmeyer In his mind, yes.

Chairperson Fandel Asked if using a window screen would change the analysis.

Dave Broxmeyer Responded no, not in his mind. The applicant could change the materials, but it would still be enclosed on top.

Chuks Ogochukwu Board Member Asked if there was no netting on the top would there still be an issue.

Dave Broxmeyer He did not know how Mr. Glaesman would look at the issue. In his personal opinion, he would not consider it to be an accessory structure. When staff reviews items, the difference between when something is a structure and not a structure is often times the roof, when there is something there to contain, to protect, to cover. Once that is eliminated, it would be back closer to the dog kennel analogy.

Chuks Ogochukwu His concern is equating a net, which is completely transparent and cannot stop the elements, as a roof. He is struggling with how a netting would become equated with a roof.

Dave Broxmeyer He responded that in this particular case, how he viewed it was that the top would be there to keep the ducks inside, so it is an integral part of the structure. If this were intended to keep chickens, or some other flightless bird, or dogs or guinea pigs, etc., the need for the roof would not be there and it would not be considered an accessory structure.

Chuks Ogochukwu Asked Dave Broxmeyer to repeat his last statement.

Dave Broxmeyer Stated that in the case of ducks, they could potentially fly away, so the netting on the top is an integral part of the structure. Once the need for the roof is eliminated, it becomes essentially an open for anything from dogs, chickens, or something that could not get over the fence.

Chairperson Fandel Asked what if the netting was retractable and could be rolled out.

Dave Broxmeyer Stated that was something that staff did not contemplate. Staff's understanding was that the netting would be there indefinitely, or as long as the pond was there.

Carol Kenning
25008 63rd Avenue S

Her house is right next door to the Froelich property. She wanted to pose a few questions to the members of the ZBA. There is a little history involved with the entire situation. First, how can the ZBA justify granting a variance to a building that legally is not supposed to be there. In 2006, when the Froelich's received a building permit, by some anomaly, according to Mr. Glaesman, it was granted and should not have been. When they approached the City, requesting the exact same type of building for our property, we were told no.

Chairperson Fandel

Asked if she was referring to the building to the north of the pond, if it was the new addition that projects to the rear of the property.

Carol Kenning

She identified that was correct. They were told that that building permit was granted because it was done in error by a former employee and under no circumstances would the City of St. Cloud change their mind about doing something about that building being there illegally. It seems that it is one difficulty on top of another. To her the statement that under no circumstances are they going to make this change seems that the City thinks it is not liable for their errors. If anyone, as a taxpayer, paid half of their tax bill we would be billed that outstanding amount and would probably be penalized. She asked how could the ZBA issue a variance when the original building permit should not have happened at all. That blows her mind and she has several other issues to bring forth as well. The party requesting the variance has a history of violations with animal control and this is where their concern comes in. The applicant's are saying that they will have six ducks. She begs to differ. She has been on the applicant's website, www.flyawaytaxidermy.com, and you can pictures of many more than six ducks in his pond that were there in the fall of 2011 before he ever asked for a variance. She thinks of the neighborhood issue, and the fact that there are no neighbors there supporting the issue, except for one neighbor that came to listen, but none of the other neighbors are affected by this like they are. The applicant's duck pond and their taxidermy business is in their dining room. They need to live with it. They need to see it. To them, ducks are not the issue, the issue is the number of ducks. Her concern that if the applicant is granted six, what is to say two months from now he might want 12 more and he would ask for a variance, or ask for a permit to have more. History has proven that this is the applicant's style, this is how he operates. From her viewpoint as a next door neighbor, can the applicant not be happy with what he has been granted. Why does it always have to be more? When is it going to stop? She could bring up many more issues in this ongoing situation, but it is irrelevant to what

the ZBA is talking about tonight. She would ask the ZBA to carefully consider the facts before making their decision.

Ronald Zenzen
Board Member

Asked, in the fall of 2011, they noticed a lot of ducks on his property, if the ducks were contained.

Carol Kenning

She responded that, yes, the applicant had put up a make-shift fence around the pond.

Ronald Zenzen

Asked if the ducks had the possibility of leaving on their own.

Carol Kenning

She identified that yes, the ducks could leave on their own because there was nothing across the top of the pen. She added that if the applicant is in violation before he ever gets a variance, what will stop him from doing what he wants to do once he has the variance. He will take it and run with it.

John Kenning
25008 63rd Avenue S

He lives right next door to Mr. Froelich. Regarding how the fence is described, it is a fence, it's not a netting, it's not a non-fence. Webster's Dictionary says a fence is something to keep something in or keep something out. So if it is part of the structure, the applicant has gone way over on the structure. As far as his animals go, he has been abusive. We have seen him be abusive to his animals. He has seen the applicant viciously kick his dogs, as hard as he can. He's in not an animal lover, not like he would have you believe.

Chairperson Fandel

Asked if he had anything else to say.

John Kenning

He could not think of anything else to add.

Suzanne Barkalow
Board Member

Stated that abuse dogs is outside of the ZBA's purview and asked if the abuse has been reported to the appropriate authorities.

John Kenning

Stated that they have had so much trouble with the applicant's dogs that they have given up. The City seems to back the applicant.

Chairperson Fandel

Asked if he said "ducks" or "dogs".

John Kenning

Stated that he said dogs as it was what Barkalow was referring to.

Suzanne Barkalow

Stated that he had said that he viciously abused his dogs and certainly they are bigger than ducks so it could be seen and asked if he had reported the various instances of abuse.

John Kenning Stated that no, because they could not prove the abuse. The applicant can deny it, but both he and his wife have seen it.

Carol Kenning Stated that the other thing that the ZBA should be aware of, in regards to the animal situation and the limit, we have had a very fierce battle about it. People can say that this is "bad blood" and she could see where they would be coming from, but they just feel that the City of St. Cloud does not enforce their ordinances, at all. It has been exacerbating. Last fall, when the applicant was in violation by having all the ducks within the makeshift pond with the makeshift fence, we did not call because they knew that they would be laughed out of town. Because that's how we have been treated by the City of St. Cloud. They feel they have had just complaints and feel that they have been spurned, belittled, say what you want.

John Kenning He complained to the City about the ducks and the City said that they cannot do anything about it because they cannot see it and they cannot go over the fence and look at it. He believed that if the ZBA allows the applicant to do what he has proposed, with the fencing and everything else, he has already devalued their property because the business is there. The applicant never got a variance to put the building in there. The applicant never got the property rezoned. If the ZBA allows him to go further, and further, and further, with this, then their property values will not be worth anything.

Carol Kenning Asked when it will stop.

John Kenning Stated that there is also a parking issue. The applicant does not have enough room for parking. He understood that if there is a home occupation, you could not have an employee living on the premises. He called the Planning and Zoning Department today and that is what Dave Broxmeyer had told him.

Chairperson Fandel Stated that unfortunately, the ZBA cannot deal with pre-existing conditions or the construction of the other building. That is not in their purview. The matter with the dogs is not something that the ZBA can deal with at all. The ZBA is listening to what they are saying but are powerless to act.

Carol Kenning Stated that they understand that. They wanted the ZBA to be aware of the history before the ZBA makes their decision about approving the request for the variance because they feel that it will definitely bare some light on the way the applicant carries out the granting of the variance.

John Kenning	Stated that when he was returning home from the City, the road was completely blocked by the applicant's customers or his cars. Other times there are cars parked on both sides of the road. One time this spring, the applicant had two trailers in his yard, so there is nowhere else for his customers or his employees to park so they park on the street.
Chairperson Fandel	Stated that, again, the ZBA is not able to remedy that. What they need to do is to call the City.
John Kenning	Stated that it is about the business that is brought up in the variance request. It is about the business.
Chairperson Fandel	Stated that when they infractions or violations of the ordinance, they need to call the City. The ZBA can only look at the case presented to them. The ZBA cannot entertain the things that occurred years and years ago.
Carol Kenning	Stated that they understand that. But they want the ZBA to be aware of the things that have gone on because they feel that they factor in. They feel that the City of St. Cloud has treated them less than a decent taxpayer. They feel that they have been at the receiving end of a kick in the face when it comes to any of this.
Chairperson Fandel	Suggested that they take this matter to the Mayor.
Carol Kenning	She had, many times. After a while, they just shrug their shoulders. They just want the ZBA to be aware of these things because they feel that it is not fair.
John Kenning	Stated that they had a lot of money stuck in their home. They built on three times, and they'll never get that money back if the ZBA lets this go on. This is their retirement money.
Allen Bright Board Member	Asked if staff was aware of any violations that are sitting with the City at this point regarding their property.
Dave Broxmeyer	Asked what type of violations he was referring to.
Allen Bright	Any type of violations.
Dave Broxmeyer	Stated that he was not aware of any. He did not question anybody in the Health Department, the animal control officer or anything like that or

check any of the records. His understanding was that he had not heard of any outstanding complaints.

- Allen Bright Stated that he knew that there was some effort within the City Council not to approve permits or variances or anything for property owners that are in violation of City ordinance.
- John Kenning Stated that the applicant was in violation and he had been fined in the past for too many dogs, at least three times, and he has lied to the City each time, saying he got rid of that dog; but he didn't. He had a package of documentation.
- Chairperson Fandel Asked Dave Broxmeyer if the recent developments had any impact on the ZBA's ability to proceed with the hearing, or to dispose of this request.
- Dave Broxmeyer Stated that it was up to the discretion of the ZBA. If the ZBA feels that it has enough information to make an informed decision, it can certainly proceed. If the ZBA does not, if it wants additional information, it has the option of tabling the item.

There being no one else wishing to speak, the public hearing was closed. Ogochukwu stated that the proposed requested would increase the accessory building size by 607 sq. ft. and asked Dave Broxmeyer if there were comparable structures within the area. Dave Broxmeyer stated that in the area, probably not. This area is fairly sparsely populated as far as homes go. If this property were to be located on a lot that was one acre or greater in size, they would be permitted to have up to 3,000 sq. ft. of accessory building space. Other properties in the area are not running into the same thresholds that this property has. Barkalow stated that on the other hand, slightly further north on County Rd 74, the same Rural Residential Zoning, on parcels that are less than one acre do have multiple buildings on them. They often have a house, an attached garage, and often an additional detached garage or something like that. There is a frontage road on the east side of County Rd 74, probably a quarter to a half-mile north of this property and a number of those houses along there do have those types of buildings. Ogochukwu stated that this property was a little less than one acre. Barkalow stated that the property was much less than one acre. Chairperson Fandel stated that there is no motion on the floor. Does the ZBA wish to proceed with a motion, or does it wish to request

more information? Does the ZBA wish to table it, or proceed with a motion? Barkalow asked what information the ZBA might need. Chairperson Fandel stated that if the ZBA might need to verify the allegations of abuse and multiple dogs. Ogochukwu stated that Bright had made reference to the City planning to deny applications where there are cases of abuse, and the ZBA is not sure if there is one on this property. The neighbors seem to suggest that there is one. Bright stated that what he meant was that if there were outstanding violations and to Dave Broxmeyer's knowledge there are none, nor have any been presented. He understands what the neighbors say, but with respect to what anybody said or that this was done incorrectly, to him it is hearsay. He does not think that the ZBA can take it into consideration. From the standpoint of the neighbors, they can speak for themselves as far as what they have seen or what they have heard, and the ZBA can take that into consideration. Beyond that he does not feel it can. If new information was found after that, someone in the City has the ability to appeal the ZBA's decision based on the fact the ZBA has erred based on the fact that it did not have proper information. He thinks that based on the information that the ZBA has, it can go only on the base of the testimony of these people and nothing else, in his opinion. Zenzen asked Dave Broxmeyer if the process automatically flags pending or an existing violation or violations. Dave Broxmeyer stated that that was not necessarily the case. Staff would have to go do individual searches and in his capacity, he would only search for outstanding zoning violations. His search would not flag anything as far as health and safety, building, animal control, or any of those sorts of things when he would do the search. Zenzen stated that the ZBA needs to remember that there must be a lot of history with this issue, but the ZBA must only look at what is in front of it for the variance and look at it accordingly. Barkalow moved for approval of the variances subject to the following conditions: 1.) The applicants must comply with the number of animal units permitted by the Land Development Code; 2.) The pen enclosure materials shall be limited to wooden posts of various heights, 3' high fence panels, and transparent netting; 3.) If the detached accessory building is to be expanded in the future a new variance application will have to be reviewed and approved by the ZBA; 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. The motion was seconded by Zenzen. Chairperson Fandel stated that there are five conditions that accompany the staff recommendation and verified that all members were aware of those five details. There being no further discussion, Chairperson Fandel called the question and the motion carried unanimously by a vote of 6-0.

Other Business: Dave Broxmeyer informed the ZBA that at the Planning Commission meeting last Tuesday, the Commission briefly discussed the front yard fence regulations and it agrees with the ZBA that something could be looked at in certain circumstances along arterial roads the height of the fence could be increased, in certain circumstances. Chairperson Fandel asked if arterial roads would include the instance at last meeting along 9th Avenue South. Dave Broxmeyer did not know the terms of the Planning Commission's discussion. What they talked about were the single family homes along Roosevelt Road near the former school district property where it seemed appropriate to have a larger fence. As to along 9th Avenue South, that location has yet to be talked about. It will on next month's Planning Commission agenda to adopt some kind of change to the LDC. What specifically that is, staff has not begun to work on that. Dave Broxmeyer also stated that, in a similar light, staff is proposing an additional change to the LDC for an administrative Conditional Use Permit (CUP) where it would give the Zoning Administrator the authority to approve previously approved CUPs. This would only be in circumstances where it is not a change in use, it is not in the Scenic River or Shoreland or things like that. Chairperson Fandel asked for "a previously approved" to be further explained. Dave Broxmeyer stated that an example would be the church at the corner of Roosevelt Road and Cooper Avenue South came in, and there was an existing CUP approved by the ZBA in that location. Chairperson Fandel asked if the example was for the Baptist Church and the electric sign. Dave Broxmeyer stated yes. As part of the site plan, there was an area shown as future parking. The church wanted to be able to use that future parking plus make some other changes to

that. Staff approved those changes as it did not seem to make a lot of sense to make them wait six weeks, go through the process, to hear an assumed yes on a previously approved issue to improve the site. The proposed amendment would give staff a more formal process of doing that. A brand new CUP or a change in use would have to come to the ZBA. Bright stated that staff was talking about a modification. Dave Broxmeyer stated that was correct, a modification to the site plan, a change in landscaping or dumpster location, staff would want to have the authority to administratively approve those. Barkalow stated that it would not include the item on tonight's agenda for the restaurant and addition. Broxmeyer stated that was correct because both items on tonight's agenda were for changes in uses to the buildings. Both of those would still require ZBA approval. Chairperson Fandel stated that from time to time, the ZBA has brought up having a joint study session with the Planning Commission, but nothing has been pulled together. He asked if there were any formal plans to hold a joint study session. Dave Broxmeyer stated that after the Zucker Systems Report came out it had been discussed, and he would hope that sometime this fall, possibly October or November, that something could be scheduled. It was hoped that people's schedules become more agreeable as the weather gets colder and something could be scheduled.

Adjournment: Barkalow moved to adjourn the meeting. There being no further business, the meeting was adjourned at 8:35 p.m.

Chuks Ugochukwu, Secretary