

PROCEEDINGS OF THE ST. CLOUD ZONING BOARD OF APPEALS

A meeting of the St. Cloud Zoning Board of Appeals was held on December 18, 2012 at 7:00 p.m. in the St. Cloud City Hall Council Chambers. Members present were Barkalow, Bright, Fandel, Larson, Newman, Ugochukwu and Zenzen.

Approval of Minutes: The following changes were made to the November 20, 2012 minutes:

On page 11, 'Chairperson Fandel commented that a 6' high fence was approved on 9th Ave' was changed to 'Chairperson Fandel commented that a 6' high fence was approved on the 300 block of 9th Ave N'. 'Susan Barkalow' was changed to 'Susanne Barkalow' throughout.

Barkalow moved to approve the minutes of November 20, 2012 subject to modifications. Bright seconded the motion which carried unanimously.

Ordinary High Water Level & Top of Bluff Variances / Beaver Island Trail Phase III:

Dave Broxmeyer, Senior Planner, explained a request from the City of St. Cloud for two variances from Article 12, Section 12.2, E., Table 12-1 - a 75' setback from Ordinary High Water Level and a 30' setback from Top of Bluff. The applicant is proposing to construct a staircase and overlook on the east side of the River's Edge Convention Center and a bike/pedestrian trail that will extend under the DeSoto Bridge (St. Germain Street) and Burlington Northern Railroad Bridge, then turning west and connecting to 5th Ave N. The trail, in certain areas, will extend over the Mississippi River. This trail has been referenced in several documents as early as 1993. Staff is recommending approval. Additionally, the variance will require approval from the MN Department of Natural Resources (DNR).

Chairperson Fandel asked if there is Federal jurisdiction over the waters of the Mississippi River and if they have an objection to a bridge being cantilevered over the waters. Broxmeyer stated he is not familiar with the Federal jurisdiction in this matter. Barkalow commented that the current Beaver Island Trail is to the south of this area, and she asked if any part of that trail section was within

75' of the river. Broxmeyer stated that it was. Barkalow asked if a variance was granted for that trail. Broxmeyer stated that particular section of the trail was constructed as a part of a MN Department of Transportation (DOT) project. Given they are a state agency and it was an inter-agency project, they were not required to seek local approval. When the Civic Center was constructed, a variance to the Shoreland Overlay setback was granted averaging 50' - 55' from the water's edge. Barkalow asked if MN DOT is involved in the current phase of the trail. Broxmeyer stated they were not, with the exception of an element of funding. Barkalow asked if this proposal has been presented to any other City committees before coming to the ZBA. Broxmeyer stated the proposal has been to City Council, the Planning Commission and the Park and Recreation Advisory Board. Barkalow asked if any concern was expressed through those committees. Broxmeyer stated he is not aware of any concerns. Bright questioned spending \$4 million on a trail when there are other needs in the City, such as adequate parking for the Convention Center. It is difficult to look to local sales tax to fund a trail extension leading to a Convention Center that does not have an adequate amount of parking. He questioned whether the request for a trail extension is premature rather than wait until other needs are fulfilled first. Broxmeyer stated he is only dealing with the request as a regulator and cannot address the financial situation of the project. Bright stated he has a difficult time supporting a project when he cannot support the funding, and he may abstain from the vote. Chairperson Fandel opened the public hearing and invited testimony. The following persons testified:

Scott Zlotnik
Park & Recreation Director
City of St. Cloud

The City has been working cooperatively with many jurisdictions, private and public, on this trail connection project since 2006. Many alternate designs and alignments have been considered. City staff has been proceeding with plans for construction following the direction of the St. Cloud City Council establishing a final trail alignment at their September 26, 2011 meeting. Historically the City has embarked on several recreational Mississippi River improvements, most notably the 2000 River Walk partnership with SCSU and the 2003 Highway 23 / St. Cloud Civic Center Project. The proposal tonight is essentially an extension of the northern most terminus of the 2003 noted project. This is a stand-alone project that will be 1500' in linear distance and terminate at 4th St N. Progressing North from the start of this stand-alone project is a granite stairway feature. In an effort of be on the river bank, the trail needs to proceed under the St. Germain St Bridge and the Burlington Northern Santa Fe Bridge, then make a westerly turn to 5th Ave N and progress to 4th St N. There have been multiple community

engagements and the project has extensive meeting and action summary. Most recently, an affirmative motion was provided by the Park and Recreation Advisory Board at the December 4, 2012 meeting and by the Planning Commission at the December 11, 2012 meeting. The project is highlighted in the 2003 Comprehensive Plan, the 2011 St. Cloud Urban Area Mississippi River Corridor Plan and the 2010-2012 City of St. Cloud Strategic Plans. If the variance is granted, the next step would be to proceed to the MN DNR Waters Permit process and then to the Army Corps of Engineers. This is a project that is funded with \$1 million Federal Transportation funds. MN DOT governs the project and the construction oversight.

Lowell Olson
23 Pandolfo Pl

He is in support of granting of the variance. This trail connection has been in the CIP for the City since 1999. It has been long awaited by citizens who do not rely on automobiles or trucks for their safe transportation and recreation needs. There are six goals and 13 strategies from the 2003 Comprehensive Plan that are all relevant to this plan for a trail. He stated he is especially interested in the concept of the trail being constructed similar to a bridge, minimizing the impact on the bluff as well as the river. The recommendation of replacement of lost vegetation with native vegetation that can tolerate growing on steep slopes and riparian environments is pleasing. The use of best management practices to minimize soil erosion during and after construction is also appealing. He noted that the banks for this project are not original to the Mississippi River. They were formed when the dam was constructed in the early 20th Century. He thanked the board for allowing him to speak in favor of the variance.

Bruce Campbell
230 5th Ave N

He is the President of the River's Edge Condominium Association. There are 18 units in the building, 14 of which are owned by individuals who are between 68 and 92 years old. He stated the original proposal was for the trail to come through his backyard, but it was changed when City Council realized it was not a good idea. The plan now has the trail coming up on the south side of the building. There is a 15' easement which was granted many years ago. He stated he measured 15' from the boundary stakes on the property, and the easement ends up in the middle of the sidewalk. There is one entrance to the building, and the sidewalk cannot be moved. It is possible that the measurement was incorrect, but there is still concern with residents entering and exiting the building with canes, walkers and wheelchairs with a path so close. He asked if a barrier would be built between the path and the building. There is a sidewalk where the path comes onto 5th Ave N, and there is concern that trail users will make a U-turn and come down the hill by the building. There is 19' between the river's edge and an 80-year-old woman's patio. Approximately 20'-25' from where the trail enters on 5th Ave N there is a loading zone for individuals that use services such as Dial-a-Ride, taxi cabs, Coborn's Delivers, etc., and there is concern that the area will no longer be available to use. Residents of the building bought their condos for privacy and safety. The residents have privacy because the building location is not well-known. The building is locked at all times and has security/motion lights on the back of the building. He stated no one has come to the property to see what it is going to

look like.

Allen Bright
Commission Member

He stated that the Zoning Board is not capable of answering some of the concerns addressed. He asked Mr. Campbell if the City Council or Planning Commission answered to any of his concerns.

Bruce Campbell

He stated they had not. Much of this project has been done off of concept plans. The plans show a 30' right-of-way, but there is currently a 19' right-of-way. There has been 10' of river's edge lost in the last 20 years. The numbers that were used to plan the trail were inaccurate. He stated he did not believe any drilling had been done to find out if the trail could be placed where it is proposed. The area was originally the Stearns City Garage. The building was torn down, filled with sand and sold to build condominiums. There are also springs that run underneath the property and flow into the river.

Susanne Barkalow
Commission Member

She stated she is familiar with the building. She asked if Mr. Zlotnik could explain on a map the relationship of the trail to the building.

Scott Zlotnik

He stated the concerns that Mr. Campbell has are very commonly expressed when new public improvements are proposed. Staff has had many opportunities and visits working with the Condo Association and has been very upfront and honest. He stated he believes Mr. Campbell and the Condo Association want to be reassured by advisory boards and commissions of some of the promises that were made. The trail will not provide a conduit for trespass on the facility. The City will make any means necessary available to provide for a bridge or barrier to prohibit or deter users from going towards the condos. He asked Mr. Campbell if this was a fair statement.

Bruce Campbell

He stated it was. He stated when speaking to Mr. Zlotnik, the verb-age used was 'Bruce, we will work with you', but he is unsure of what that means.

Scott Zlotnik

He presented a map highlighting the proposed trail between the River's Edge Condominiums and the Majestic View Apartments and the easements that have been acquired. Additionally, on the roadway, 15' on either side of the curb is public right-of-way for these types of improvements. There is not presently a detailed design showing rail improvements or landscape design. There would have to be a hand rail leading up to 5th Ave N that would provide a barrier and would stop entry into the facility.

Susanne Barkalow

She stated it seems the city owns, in effect, the land up to the access point to the condo.

Scott Zlotnik

He confirmed that was true. If the City were infringing on another part of the zoning code there would be another variance request. The City is within the jurisdiction from the North/South line and is setback accordingly to meet all standards.

Allen Bright

He commented on the discussions with the Condo Association and the

representations that were made regarding trespassing, etc. He asked Mr. Zlotnik if the City would be willing to make those representations part of the variance, if in fact the variance is approved.

Scott Zlotnik He stated it could be attempted, but the detailed designs are not available at this time. He would like the next step after the regulatory section to be furthering the design. He stated the City would like to do everything within their power to meet the needs of the Condo Association. In addition, there are 65,000 other residents that represent the community and there is lot of input suggesting that this trail is something the City needs.

Chuks Ugochukwu Commission Member He stated he is glad to hear that the City is listening to the concerns of residents and is willing to work with the residents of the condo. He asked if it is possible to engage the residents with developing the plan so they may give their input as to what they feel is appropriate.

Scott Zlotnik He stated that all owners within 500' of the project received a public hearing notice. He also personally contacted the Condo Association to confirm they had received the letter and to make sure they understood the process that would take place this evening. Staff is engaging the residents and will continue to do so.

Ronald Zenzen Commission Member He questioned how the trail will exit onto 5th Ave N.

Scott Zlotnik The intent is for the trail to take an immediate right turn and follow to 4th St N.

Steve Foss City Engineer The trail makes a 90 degree turn and continues down the hill on 5th Ave N. The project was originally planned to go all the way to Hester Park, but the project was split into two phases. The next phase will take the trail into Hester Park and tie it into 6th Ave N.

Peter Bergstrom Attorney at Law He is representing Steve Koishol, at 312 5th Ave N. Mr. Koishol has had no contact from the City concerning protecting his property, South Haven, MN the proposed trail line, or otherwise. Any representations that were made about the residents are related to the condominium and not to Mr. Koishol. The trail is designed to enter onto 5th Ave N and continue down the hill past Mr. Koishol's property.

Chairperson Fandel He asked if Mr. Koishol's property is the brown house at the bottom of the hill on the river's edge.

Peter Bergstrom He confirmed it is. There is only on-street parking where the trail is proposed to enter onto 5th Ave N. If cars are parked on either side of the road, it is difficult for two cars to pass at the same time. There is a significant problem with how the trail terminates on 5th Ave N and it will affect Mr. Koishol's property. He stated Mr. Koishol is not in favor of the variance. The request is premature, and the problems that may

arise for other residents are significant.

- Chairperson Fandel He asked Mr. Broxmeyer if Mr. Koishel's property at 312 5th Ave N had been included in the mailed notices.
- Peter Bergstrom He stated Mr. Koishel did receive the public hearing notice, but that was the only form of communication received.
- Dave Broxmeyer
Senior Planner The public hearing notice went out to all property owners within 500' of the variance request.
- David Laliberte
1108 7th Ave N He spoke in support of the variance. The topographical challenges are potentially not just challenges but topographical dead ends. The railroad and its right-of-way crossing pose extraordinary difficulties in contemplating a route feasible within the next multiple years unless it proceeds around the railroad. The proposed nature of this project is important because it serves a well-documented, compelling public interest, and not simply the interest of a private business or an individual. He stated he does not believe it sets a unilateral precedent environmentally. By passing this variance, it does not mean other variances along the river must be granted. The environmental concerns that will be voiced about this project have, in some ways, already made a great affect to create a new plan eliminating the switchback. He stated he believes this project is worthy of support of the proposed variance, if for no other reason than it provides us with a fine opportunity to create additional advocates for the Mississippi River.
- Ivan Bartha
904 Ranae Ln He is speaking in support of the variance. He has been involved in recreation planning for the length of this career. He stated he grew up in a community much like St. Cloud with a dominant river feature. This is a compelling section of trail that should be considered as a community wide asset. The trail is a multi-use trail, and there will be a lot of different people using this universal design. These types of trail systems have enhanced other communities such as Dubuque and Oklahoma City, not only from an economic development standpoint but also for the quality of life.
- Ron Seibring
84 Woodhill Rd He has lived in St. Cloud for 26 years. The multi-use trail ties into St. Cloud State University and fits into the community. He stated he believes in the City to address the concerns of citizens. The same concerns were expressed with the current Beaver Island Trail, and it has proven to be an asset to the community. This phase of the process will address other concerns and is worthy of support.
- Kimberly Thielen Cremers
Mississippi River
Renaissance Project She stated she agrees that this trail has been well-documented in many plans, however she does not believe any of the plans say the trail should be directly on the bluff. An environmental impact statement was not conducted at this site. In order for a variance to be granted, the applicant must satisfy the statutory three-factor test for practical difficulties: reasonableness, uniqueness, and essential character. If the applicant does not meet all three factors of the statutory test, then the variance should not be granted. In addition, variances should only be

permitted when they are in harmony with the general intent of the ordinance and when the terms of the variance are consistent with the Comprehensive Plan. The Shoreland Ordinance states a setback of 75' from the Ordinary High Water Level (OHWL) is required for any structure or facility within the Shoreland Overlay District (SOD). The purpose of the setback is to provide an adequate distance between the development of a shoreland area and the adjacent water body to control the resource damaging effects of non-point source pollution, soil erosion and subsequent sedimentation into water bodies and the loading of nutrients, toxics and other pollutants to the water body from the shoreland area. The proposed variance is for elimination of the setback requirement, as at some points, the structure will encroach over the water surface and therefore, is not in harmony with the purpose and intent of the Shoreland Ordinance. The Shoreland Ordinance states a setback of 30' from the top of the bluff is required for any structure or facility within the SOD. The purpose of this setback is to limit construction on steep slopes to ensure that development does not result in slope failure and slumping, on-going erosion, and excessive runoff and sedimentation entering public waters. The trail is to be built on or within the slope of a bluff, with 50 - 80% grade at some points. MN State Shoreland Rules caution impacts on 18% grade slopes. The proposed variance is for elimination of the setback requirement and is therefore, not in harmony with the purpose and intent of the Shoreland Ordinance. One Environmental Goal that was not included in the staff report is to protect, conserve and enhance natural resources and environmentally sensitive areas within the city and its planned growth areas for the community's long-term environmental and economic benefits. Strategies include to avoid wetlands, native species, sensitive areas and other significant natural resources during development, and to minimize the impact of urban development on rock outcroppings, wetlands, forested areas and other environmental features. The most important strategy stated to strictly limit development on unsuitable soils, including steep slopes, wet soils, floodplains, and those identified in the County Soil Survey as unsuitable for development. Granting the variance is not completely consistent with the Comprehensive Plan because 1) it does not strictly limit development on unsuitable soils, 2) it does not avoid sensitive areas or other significant natural resources during development, and 3) it does not continue to implement the City's Shoreland Management Ordinance. Granting the variance will alter the essential character of the locality because there is a strong likelihood that soil stability of the bank will be undermined during construction of a project of this scale. Bluffs are extremely sensitive landscapes. Any modifications, regardless of care in minimizing impacts, will alter the essential character of this site. The MN DNR, within their Statement of Needs and Reasonableness, states that communication with researchers at the University of Wisconsin indicated that on a general basis, slopes ranging from 25 - 32% should be considered as approaching the ultimate angle of stability. In Douglas County, Wisconsin, a generalized stable slope angle of 33% has been suggested for regulatory purposes in predominantly clay soils. The removal of vegetation on a bluff is of concern. Vegetation is extremely important to bluff stability in four ways: 1) it directly removes water from

the soil layers, 2) the root systems hold soil in place, 3) vegetation softens the impact of raindrops which can otherwise loosen soil particles, and 4) vegetation slows runoff and filters out suspended sediments. In addition, the view shed of the river corridor within the St. Cloud Pool will be altered significantly with a trail built on the bank and extending over the river. The applicant does not identify the essential character factor of practical difficulty as required under state law. The property owner does not propose to use the property in a reasonable manner permitted by the ordinance given the purpose of the protections because placing a structure on any bank with a grade greater than 50% is not reasonable in any landscape. This is a natural bank that is stabilized with trees and roots, and there is already slope failure and soil erosion. A more suitable use for the site would be for scenic vista overlooks with the appropriate bluff setbacks. There are no circumstances unique to the property not created by the landowner that would prevent compliance with the Shoreland Ordinance. The focus of this factor is whether there is anything physically unique about the particular piece of property in reference to the land and does not include changes made to the property. The staff report states there are unique circumstances associated with the property due to the fact that the additions of the rail and road bridge features exacerbate the challenge. The applicant would have been faced with these same challenges had they chosen an alternate route. The applicant must demonstrate that no other feasible alternatives exist that would comply with the ordinance. There have been drawings of alternate routes, but it has not been demonstrated that there is no ability to follow another route. She stated she is in favor of a trail system, but does not want to jeopardize the sensitive shoreland. Steep slopes, floodplains, riparian vegetation and erodible soils are not usually unique in shoreland areas. Uniqueness cannot be created by actions of the property owner that prevent compliance with the ordinance. The applicant moved forward with easement acquisitions and agreements knowing the physical constraints of the site and the fact that any structure placed on this site would be in violation of the Shoreland Ordinance. The Shoreland Ordinance was established to protect the public water for the state and for the citizens of St. Cloud. Granting this variance will set a precedent for citizens to come forward with similar requests. She stated she recommends the variance be denied and encourages the applicant to consider an alternate route that does not impact the shoreland of this important public water amenity, which supplies drinking water to the City. She stated if approved, she would strongly recommend the Board to consider expanding upon the conditions outlined in the staff report to include third party review and formal recommendations from the local Soil and Water Conservation District and the MN DNR on design criteria that will minimize loss of vegetation and soil erosion during construction. In addition, a long term maintenance and operation agreement should be established to minimize future impacts from the structure.

Chairperson Fandel

He asked Mr. Broxmeyer if he was aware of any correspondence between the City, the City's Park and Recreation Department, the City's Planning Department and the Mississippi River Renaissance Project, and if he was made aware of their concerns prior to this meeting.

Dave Broxmeyer	He stated he was not aware of their concerns, but could not speak for the other City departments.
Chairperson Fandel	He asked Mr. Zlotnik if the Park and Recreation Department had any correspondence with the Mississippi River Renaissance Project, and if he was made aware of their concerns prior to this meeting.
Scott Zlotnik	He stated he had not received any formal correspondence regarding the concerns of the Mississippi River Renaissance Project.
Chairperson Fandel	He asked Mr. Foss if the City Engineering Department has had any correspondence with the Mississippi River Renaissance Project, and if he was made aware of their concerns prior to this meeting.
Steve Foss	<p>He stated the department has not had formal contact with the Mississippi River Renaissance Project however, they are aware of some of the concerns. He spoke to the structural concerns. The current bank is not stable and intervention on the slope is necessary. The structures that are posed will not aggravate the stability and will, in some ways, increase stability. The trail system will be elevated on piles that will go down to firm, secure and stable ground and will run parallel to the bank. This change was made because it was realized that putting a trail physically on the surface of the bank would require retaining walls, anchors, etc. The current design opens the site distance, significantly reduces the amount of vegetation removed from the bank and will increase the bank's stability. Best management practices are commonly used in road construction and home construction where water runoff occurs. Several tools are used to treat the water before it is discharged into the river. The amount of square footage of this trail in comparison to the square footage of driveways, sidewalks and roads that are surface draining is extremely small. The trail must get past the railroad in some way. The options that exist are to 1) cross the railroad at grade surface, which is undesirable for trail users; 2) elevate the trail to cross above the railroad, which is also undesirable for trail users; and, 3) go under the railroad to avoid conflict with trail users and to regulate the trail grade, which is reflected in the current design. A process is used for Wetland Mitigations in which the same principles can be applied to this project. The first step, 'avoid', asks to select an alternate route. In this case, there is not an alternate route that would allow the trail to avoid the railroad. The second step, 'minimize', asks to reduce the impact, which is done by elevating the trail. The third step, 'mitigate', asks to offset the impact, which is done by ultimately leaving the site better than it was found.</p>
Susanne Barkalow	She asked if the entire distance of the trail at the river's edge will be elevated.
Steve Foss	He stated that was correct.
Susanne Barkalow	She asked if there would be cuts into the bank itself.

Steve Foss	He stated if there are any, they will be extremely minimal.
Scott Zlotnik	He stated the only section where a cut may be made is when the trail bends Westerly between the Majestic View Apartments and the River's Edge Condominiums.
Susanne Barkalow	She clarified that other than the bend in the trail, there would be no cuts into the bank to destabilize it.
Steve Foss	He stated it is his understanding that when the trail is parallel to the river , it will be elevated. When the trail turns to reach 5 th Ave N, the trail is no longer elevated.
Susanne Barkalow	She asked if the amount of slope becomes less significant if a cut is not made into the bank to erode it.
Steve Foss	He stated that was correct. The elevated design would not change the existing slope, and the pilings would lend additional stability.
Chairperson Fandel	He asked what a gabion wall is.
Scott Zlotnik	It is a rock material that is inside a metal netting-type cage that is used in landscape applications. He provided a closer image of an example depicting a step-up approach to act as a retaining wall and stated the example is not specific to the proposed trail. It provides a more aesthetic appeal as opposed to steel and concrete and provides the ability for plants and water to filter through.
Ronald Zenzen	He asked if any problems are foreseen with the Army Corps of Engineers, the MN DNR, or permitting of any kind.
Scott Zlotnik	The MN DNR has been provided an opportunity to review the project as a part of their process. The MN DNR requested that, as the local government unit, the City began first with the regulatory piece. The current plan came forward from the MN DNR when concerns arose from the original switchback design. He stated at this point, he does not foresee any issues, but it is not to say none may arise.
Pat Morin 917 13 th Ave SE	She stated she has considerable experience with trails as a snowmobiler for 35 years. The plan to extend over the river could not be any better. She stated she believes the variance is a good idea and suggested that the Board grant it because the linking of existing trails is very important. Although the trail is very expensive, it is worth the cost. Being a city with a river, there could not be a better place to have a trail than along the river.

There being no one else wishing to speak, the public hearing was closed. Chairperson Fandel acknowledged concerns for funding of the project. He stated if the funding for the project is not obtained and the project is not completed by a date certain, the variance will expire and a new one

will need to be obtained. Broxmeyer stated that the ordinance allows the City Council to extend the variance.

Ugochukwu made a motion to approve the variance subject to staff recommendations and was seconded by Barkalow. Barkalow clarified that the project will require additional various types of approval beyond the ZBA, and she asked if it will come back to the ZBA if revisions are made. Broxmeyer stated the project will require additional approval and should not have to return to the ZBA. The recommendations were left vague to allow leverage for revisions. Barkalow acknowledged that this project was also presented to the Planning Commission, and she asked what approval was sought from them. Broxmeyer stated it is the responsibility of the Planning Commission, through the City Charter, to approve any public improvements or acquisition of property. Barkalow asked if the property has been acquired for this project. Broxmeyer stated he is not certain on the status, but believes the property has been acquired. Chairperson Fandel asked if the request would return to the ZBA or the Planning Commission if it is found that part of the trail cannot be constructed above grade and will need to be built on the river bank. Broxmeyer stated the motion could be worded to include a stipulation where any additional cuts into the bank would require the variance to return for review. The motion could also be worded to include any cut adjustments in the variance so it does not need to return to the Board. Chairperson Fandel questioned the replacement of lost vegetation. Foss stated that in other Public Works improvements, for every tree that is removed, two are planted in its place. Chairperson Fandel asked what the standard diameter is for replacing trees. Foss stated the standard is usually 4 inches, but he has replaced smaller trees if requested. Due to the vulnerability of the bank, low vegetation with wide root bases should be planted where possible. Anything and everything that can be done to stabilize the bank is a good idea. Chairperson Fandel asked if the plans call for the application of riprap on the river bank. Foss stated that by elevating the trail, he is not aware of any riprap needed; although that is not to say it will not be necessary. The Army Corps of Engineers assisted the City in riprap design and construction when a problem arose on a bank to the South of the Highway 23 Bridge due to the destabilizing of a sanitary sewer line. Currently, staff is

seeking authorization to move forward with bidding documents, which are detailed documents a contractor would use to bid from, but it would be premature to say if riprap would be necessary. Bright asked if there is a limitation to the variance extension if granted by the City Council. Broxmeyer stated the ordinance does not specify limitations to variance extensions. Bright commented that if an extension is granted for an additional year or more, many changes could be made that would render this public hearing useless. He asked what would bring the item back to the ZBA and if another public hearing would be required. Broxmeyer stated a second public hearing is an alternative to an extension from City Council, although the current vision is for a 2013 construction. Bright stated it may not happen that quickly since the project is still looking for funding and the State is projecting a shortfall. Broxmeyer stated he cannot speak to the funding of the project. Bright questioned whether there is any formal process if the project extends past a year or two years to return for another public hearing if changes have been made. Foss stated there are funds reserved for this project that must be used by 2014. He suggested to restricting the variance to two years instead of giving it the ability to remain open-ended. Chairperson Fandel commented that the portion of the Beaver Island Trail that runs through St. Cloud State University is well lit and much is within public view. He stated he is concerned with public safety for this portion of the trail as much of the proposed trail will be close to the river. He asked if there are plans for lighting, high resolution cameras or any other type of security for the public. Foss stated there is a high level of lighting that will be developed along the length of the trail, but he is not aware of any camera systems. Chairperson Fandel asked if the lighting is dark sky compliant. Foss confirmed that it is.

Zenzen stated that since the project is in the beginning stages, he would like to move that any changes or revisions of the plan would require the item to return to the ZBA. Ugochukwu commented that there are limitations to what the Board can restrict. He stated if the project comes back to the ZBA, the City Council can still decide to move forward. Barkalow asked on what basis the item could return to the ZBA. If construction is approved within the setback, regardless of whether the trail is elevated or cuts into the river bank, the variance would already be granted. Broxmeyer stated it may

be appropriate to include in the motion that major changes, such as a substantial cut into the slope, be brought back to the ZBA for review. Bright asked if the Zoning Administrator now has the ability to make minor modifications to a variance. Broxmeyer stated that the ability to make minor adjustments is for Conditional Use Permits. Ugochukwu asked what jurisdiction the MN DNR and the Army Corps of Engineers have in regards to a cut being made into the bank. Foss stated that his understanding is the final plan will be required to be reviewed by the MN DNR. Ugochukwu clarified the City would not be able to move forward without the permission of the MN DNR and the Army Corps of Engineers. Chairperson Fandel stated he would like to encourage Kimberly Thielen Cremers to contact the MN DNR and the Army Corps of Engineers during the interim, as some valid points have been made. This body is not prepared to answer those concerns, but he would strongly suggest having a conversation with those bodies. Chairperson Fandel called a vote and the motion carried (5-1-1, Zenzen opposed, Bright abstaining).

Conditional Use Permit / Sisters of the Order of St. Benedict: Dave Broxmeyer, Senior Planner, explained the request for a conditional use permit to remove an existing four story building and replace it with a single story, 13,500 square foot addition. The proposed addition, located at 1845 20th Ave SE, will be used for a wellness center, library, craft room, laundry room and employee space. Staff is recommending approval.

Larson stated his firm, GLT Architects, is working on this project therefore he will abstain from the vote. Chairperson Fandel opened the public hearing and invited testimony. The following persons testified:

Dan Tideman GLT Architects 808 Courthouse Square	He is working with the Sisters of the Ordinance of St. Benedict on the project. The existing building no longer serves the needs of the owners and is unsafe due to its current condition.
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There being no one else wishing to speak, the public hearing was closed. Barkalow made a motion for approval subject to staff recommendations. The motion was seconded by Bright and the motion carried (6-0-1, Larson abstaining).

Variance Request / Kevin and Lena Coe: Dave Broxmeyer, Senior Planner, explained a

request for a variance from Article 15, Section 15.5, Table 15-4, which permits window wells in a R1 District to encroach up to 4' into the 10' interior side yard setback area. The applicants' home, located at 816 26th Ave N, was built approximately 6' from the northern property line. The applicants are requesting to install a window well 3' into the existing 6' setback. Currently the window is in place, but the window well is not. Staff is recommending approval.

Barkalow asked where the driveway is located in relation to the property lines. Broxmeyer stated the driveway is approximately 4' to the north of the property line and approximately 10' from the side of the house. The window well is approximately 7' from the edge of the driveway. Barkalow asked who owns the fence at the rear of the property. Broxmeyer stated he is unclear as to who owns the fence. Barkalow stated her concern is a vehicle leaving the driveway and ending up in the window well that was not previously in place. Broxmeyer suggested that fence posts or bollards may be wise to include.

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

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|---|--|
| Kevin Coe
816 26 th Ave N | He is the owner of the property. When he originally approached the City for guidelines to construct an egress window, he did not know a variance would be needed. When he turned in the excess building code paperwork, he was told he needed to ask for permission. |
| Susanne Barkalow
Commission Member | She asked if he owned the fence. |
| Kevin Coe | He stated he owns the fence. It was there before they moved into the house. |
| Susanne Barkalow | She asked if he would be willing to install some sort of barrier to prevent any accidents. |
| Kevin Coe | He stated he would be happy to. There will be three inches of the window well that extend above the surface. A plastic barrier could also be placed on top of the window well. |
| Susanne Barkalow | She stated she is more concerned with someone potentially parking in the driveway and inadvertently going into the window well. Shrubs or something of that nature would help protect the well. |
| Kevin Coe | He stated he is not opposed to a barrier. The long-term goal is to apply landscaping, such as bushes or flowers, in front of the window well. |

There being no one else wishing to speak, the public hearing was closed. Barkalow moved for approval subject to a barrier being put in. Bright seconded the motion and stated that bollards would be preferred instead of landscaping. Chairperson Fandel called for a vote and the motion carried unanimously.

Variance Request / Granite City Townhomes, LLC: Dave Broxmeyer, Senior Planner, explained a request for a variance from Article 8, Section 8.3, Table 8-2, which requires principal buildings to be setback a minimum of 20' from an interior side yard property line. The applicants, located at 433 and 435 33rd Ave N, are proposing to construct a 12' x 44' building addition to the south wall of the 433 33rd Ave N building. The addition is intended to be used by the on-site property manager as office space and additional storage. The proposed building addition will encroach approximately 2.5' into the interior yard setback. Staff is recommending denial and feels there is adequate space to construct the addition and meet the setback requirement. It would require the applicant to narrow the footprint of the proposed addition by approximately 3'.

Barkalow clarified that the variance is needed for the southern property line only, and the staff recommendation is to reduce the footprint but not relocate the addition. Broxmeyer confirmed and stated the footprint would then be a 9' x 44' addition. Barkalow asked what the view from this location is. Broxmeyer stated the property faces some other multiple family projects immediately to the south and is in a mixed use district of multiple family, commercial office, and potentially industrial to the east. Barkalow asked if the current area is green space. Broxmeyer confirmed.

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

Jamie Thelen
Sand Companies, Inc.

Sand Companies is the property owner / manager. In 2010, Sand Companies was approached by a partner of the property to take it over. There were a number of management issues on the site and was going into a foreclosure situation. Sand Companies acquired the property in 2011 and has spent the last year and a half working to stabilize the property. A \$1 million renovation is scheduled for the property in the coming year, and the office addition is integral as it is important to have management on site. The front part of the addition will have a management office with a reception area. Behind the reception area will

be an ADA accessible restroom. There will be a 4' walkway leading to a storage area and will open into a garage. The full 12' is needed to accomplish these tasks. There is no other place to locate the office. The office is attaching to an existing building to use existing plumbing lines. There is no room for a freestanding building on the property and would not be practical to have. Attaching the addition to other areas of the buildings would not be practical due to the location of driveways. The property is unique as it is toward the end of a dead end and does not have any street frontage. There is not a lot of green space in this area, the majority being behind the garage area on the east side of the property. The goal is to continue improving and stabilizing the property.

There being no one wishing to speak, the public hearing was closed. Bright made a motion for approval subject to staff recommendations and was seconded by Barkalow. Chairperson Fandel called for a vote and the motion carried unanimously.

Other Business: Dave Broxmeyer, Senior Planner, informed the Board that tonight marks the Board's third window well variance this year. Previously a site plan had not always been required on building permits for a window replacement. The request for a site plan is now being made, and the Building Safety Department is finding window well requests. Staff is considering having a discussion with the Planning Commission about possibly amending the Land Development Code to accommodate these existing non-conforming properties with regards to window wells. This discussion will potentially be on the Planning Commission's January agenda.

Barkalow asked for an update on the Lodging House appeal. Broxmeyer stated staff has not had contact with the applicant, but a decision will need to be made by the Council in early or mid-January regarding the appeal.

Adjournment: There being no further business, the meeting was adjourned at 9:00 p.m.

Chuks Ugochukwu, Secretary