city of saint paul
planning commission resolution
file number 11-97
date December 16, 2011

WHEREAS, Kingdom Pathways, File # 11-298-461, has applied for a Re-establishment of nonconforming use as a community residential facility licensed by the Department of Human Services under the provisions of §62.109(e) of the Saint Paul Legislative Code, on property located at 426 Oxford St N, Parcel Identification Number (PIN) 352923320064, legally described as Greves Subdivision A Lot 9 Blk 2; and on property located at 1038 Aurora Ave, Parcel Identification Number (PIN) 352923320063; legally described as Greves Subdivision A Lot 8 Blk 2;

WHEREAS, the Zoning Committee of the Planning Commission, on December 8, 2011, held a public hearing at which all persons present were given an opportunity to be heard pursuant to said application in accordance with the requirements of §61.303 of the Saint Paul Legislative Code; and

WHEREAS, the Saint Paul Planning Commission, based on the evidence presented to its Zoning Committee at the public hearing as substantially reflected in the minutes, made the following findings of fact:

1. Currently, both properties are described by the applicant as housing facilities that serve adult male residents that are in recovery from chemical dependency and/or have mental illness. The 426 Oxford property is proposed to serve 14 residents (7 residents in each part of the duplex), and the 1038 Aurora property is proposed to serve 7 residents (a single family house). The properties operated as legally nonconforming uses since shortly after the 2007 Planning Commission denial until September 2, 2010. The applicant now seeks to reestablish the non-conforming residential use as a community residential facility licensed by the State Department of Human Services (DHS). If successful in receiving City, County, and State approvals, the program at 426 Oxford St and 1038 Aurora Ave would be licensed by the Alcohol and Drug Abuse Division (ADAD) of the State DHS, which would allow the applicant to receive reimbursements for costs associated with providing housing and boarding services for residents onsite under a Consolidated Chemical Dependency Treatment Fund (CCDTF) program contract.
2. The applicant applied for a conditional use permit for transitional housing facilities and a rezoning to RM1 for both 426 Oxford Street and 1038 Aurora Avenue in 2007; the Planning Commission denied these applications on February 23, 2007. The applicant also applied for a rezoning of both properties to RM1 to exempt them from certain standards and conditions that would apply to transitional housing facilities in RL-RT1 districts. Due to the Planning Commission denial, the applicant subsequently withdrew the rezoning application.
3. Following the 2007 Planning Commission denials, the City Department of Safety and Inspections approved the use of the properties as "sober houses" for adult males in recovery from chemically dependency. The applicant was receiving Group Residential Housing (GRH) funds from Ramsey County at that time to support resident-related housing/boarding costs. The current City sober house ordinance (Sec §65.160), not yet in effect at the time of the 2007 DSI approval, states that sober houses are "financially self-supporting," and they "do not include facilities that receive

moved by Kramer
seconded by
in favor 11
against 5 (Connolly, Fernandez, Reveal, Thao, Ward)

operating revenue from governmental sources." In a letter dated September 8, 2011, the City Zoning Administrator describes this formerly-approved use as a "legally nonconforming sober house with GRH funding."

4. The properties at 426 Oxford St N and 1038 Aurora Ave have been registered with the "Housing with Services" designation with the Minnesota Department of Health (DOH), which under 2005 Ending Long Term Homeless legislation allowed Ramsey County Human Services (RCHS) to enter into a GRH agreement at the two properties. However, RCHS stopped referring residents to these properties on July 1, 2010. On September 2, 2010, Ramsey County Human Services (RCHS) terminated the GRH contracts with the applicant for these two properties. A subsequent letter dated September 8, 2011, from the City of Saint Paul Department of Safety and Inspections, the Zoning Administrator states that the legally nonconforming sober house with GRH funding had "been discontinued for more than 365 days." Ramsey County Human Service staff now advises that it will be requiring a rooming/boarding license for any congregate living facility proposing to receive GRH funds. The County has found that a facility that merely has a *Housing with Services* registration alone did not work well due to a lack of sufficient oversight of the property (e.g., licenses, regular inspections). The preferred model of RCHS is either: 1) inpatient treatment, which includes both housing and treatment services at the same location, or 2) housing supported by GRH funds. GRH are flexible funds, which can fund the costs of housing and food for residents even after outpatient treatment is completed, unlike sources like CCDTF, which are treatment funds, and do not reimburse a housing facility provider for the costs of resident's housing/food once treatment is completed.
5. Staff at the State Department of Human Services-ADAD agrees with RCHS that a *Housing with Services* registration with DOH is not sufficient for the properties at 426 Oxford St N and 1038 Aurora to receive CCDTF funds. In addition, DHS-ADAD and RCHS agree that roominghouse and food boarding facility licenses from the City are required for the two facilities to be eligible to receive CCDTF funds (the State and County refer to these City licenses as "boarding/lodge" and food service licenses).
6. Currently, the applicant has a separate Rule 31 license to provide non-residential outpatient treatment services at a nearby property at 1088 University Ave. The applicant has stated that residents would attend outpatient treatment services at 1088 University Ave., or another similar Rule 31 licensed facility while residing at 426 Oxford St N and 1038 Aurora.
7. In Minnesota, publicly-funded substance use disorder treatment is paid for by CCDTF funds. According to the State Department of Human Services-ADAD, "clients assessed as needing residential treatment are 'vulnerable,' and require a safe environment for their treatment process." ADAD does not allow facilities funded with CCDTF dollars to house both clients (residents) who have been through or undergoing treatment as well as non-treatment or non-recovering residents. For this reason, once clients are finished with treatment at a separate, outpatient Rule 31 facility, CCDTF will no longer fund the housing/boarding costs of that resident. CCDTF funds pay $54.02 per day per resident for the costs of housing/food for residents. According to the State DHS-ADAD, the proposed housing facility must also be reviewed by DHS-ADAD against the State's boarding/rooming requirements that relate to house rules, programming components, staffing, and medication. DHS-ADAD monitors providers who contract through ADAD for CCDTF-funded services, including annual on-site visits to review providers as well as counties; in addition, throughout the year, ADAD monitors, via electronic review and documentation, basic and enhanced services rates, billing/payments, staff qualifications, staff scheduling, and services provided.
8. According to the City's Department of Safety and Inspections, the proposed facilities will require both roominghouse and food boarding facility licenses (what State DHS-ADAD and RCHS refers to "boarding/lodge" license and food service license). DSI has identified several physical requirements that must be addressed to comply with the Health Code, including the addition of a

separate hand wash sink in the kitchen of 426 Oxford St, an NSF dishwasher in the kitchen of 1038 Aurora, and possibly a new range hood and other upgrades for the kitchen, pending on-site inspection of the kitchen. Both facilities must also be approved by the City Department of Safety and Inspections for Fire Certificates of Occupancy.

9. If this application were to be approved by the Planning Commission, appropriate licenses approved by Saint Paul DSI, and the State of MN were to approve the properties for CCDTF funds, then "placing authorities" would be able to engage in resident screening and eligibility assessments (a Rule 25 review) to determine whether to refer eligible residents to these properties for housing/boarding. Placing authorities include counties (such as RCHS), tribes, and Managed Care Organizations.
10. Section 65.153 of the Zoning Code defines Community Residential Facilities licensed by the Department of Human Services as "*one (1) main building, or portion thereof, on one (1) zoning lot where one (1) or more children or persons with mental retardation or related conditions, mental illness, chemical dependency or physical handicaps reside on a 24-hour-per-day basis under the auspices of a program licensed by the state department of human services to provide lodging in conjunction with monitoring, supervision, treatment, rehabilitation, habilitation, education or training of the residents of the facility.*" The proposed uses at 426 Oxford St N and 1038 Aurora Ave meet this definition in that the population served consists of adult males in recovery from chemical dependency, some of whom may also have co-occurring mental illness. The facility residents would live on-site while receiving out-patient treatment services at a Rule 31-licensed facility at 1088 University Ave (or other licensed outpatient facility). This use is different from the previous nonconforming sober house use in that the population served is vulnerable and currently receiving outpatient treatment services, whereas typical sober house residents have completed treatment and can live reasonably independently within the supportive environment provided by housemates.

    If this were a use being requested via a Conditional Use Permit, the following standards and conditions for a community residential facility licensed by the Department of Human Services would apply, as follows:

    (a) The facility shall be a minimum distance of one thousand three hundred twenty (1,320) feet from any other licensed community residential facility, emergency housing facility, shelter for battered persons with more than four (4) adult facility residents, overnight shelter, or transitional housing facility with more than four (4) adult facility residents, except in B4—B5 business districts where it shall be at least six hundred (600) feet from any other such facility. If this were a use being established by a Conditional Use Permit, it would meet the above definition, but not meet this standard. The applicant contends that because the properties were previously approved as legal nonconforming sober house uses with GRH funding, the proposed nonconformity does not represent a change from the previous use. However, the two properties are located adjacent to one another, only separated by an alley (20 feet). The required separation between sober houses is 330 feet; because the previous nonconforming sober houses had an actual separation of only 20 feet, a legal nonconformity of 310 feet existed. The separation requirement between community residential facility uses is 1,320 feet, implying a proposed new nonconformity of 1,300 feet. Because 310 feet was the previous legal nonconformity, and now 1,300 is proposed, the proposed nonconformity represents an increase of 990 feet. The proposed uses would therefore represent a net increase in nonconformity at both properties.

    (b) In RL—RT1 residential districts, the facility shall serve six (6) or fewer facility residents. In RT2 residential, traditional neighborhood, OS—B3 business and IR—I2 industrial districts, the facility shall serve sixteen (16) or fewer facility residents. If this were a use being established by a Conditional Use Permit, it would meet the above definition, but not meet this standard. The applicant contends that because the properties were previously approved as legal nonconforming sober house uses with GRH funding, the proposed nonconformity does not

represent a change from the previous use. The 426 Oxford St property is proposed to serve 14 residents (7 residents in each part of the duplex), and the 1038 Aurora property is proposed to serve 7 residents (a single family house). The maximum number of residents under the previous sober house use was 10 residents (per dwelling unit). At 426 Oxford St N, 14 residents were housed, i.e. seven (7) per unit - though up to 20 were allowed (i.e. 10 per unit) - so no nonconformity previously existed. There was also no previous nonconformity at 1038 Aurora where seven (7) residents lived (but up to 10 were allowed as per the sober house requirement). However, this community residential facility standard states that the maximum number of residents for this use is six (6) at both properties, which would imply a proposed nonconformity of eight (8) residents at 426 Oxford St N and one (1) at 1038 Aurora. The proposed uses would therefore represent a new nonconformity at both properties that did not previously exist.

(c) In residential districts, a conditional use permit is required for facilities serving seven (7) or more facility residents. Because the two properties are zoned R4 and RT1, a community residential facility serving seven (7) or more residents is not permitted by the code. A licensed human service community residential facility serving seven or more residents is not listed as a conditional use permitted in R4 and RT1 districts, which is why the application is for reestablishment of a nonconforming use rather than for a conditional use permit.

(d) In B4—B5 business districts, the facility shall be located in a multiple-family structure. If this were a use being established by a Conditional Use Permit, this standard would not apply, given the R4 and RT1 zoning of the properties in question.

(e) Except in B4—B5 business districts, facilities serving seventeen (17) or more facility residents shall have a minimum lot area of five thousand (5,000) square feet plus one thousand (1,000) square feet for each guest room in excess of two (2) guest rooms. If this were a use being established by a Conditional Use Permit, the proposed facilities would both meet this standard, as one serves seven and the other fourteen residents.

11. Section 62.109(e) states: *When a nonconforming use of a structure, or structure and land in combination, is discontinued or ceases to exist for a continuous period of three hundred sixty-five (365) days, the planning commission may permit the reestablishment of a nonconforming use if the commission makes the following findings:*

    (a) The structure, or structure and land in combination, cannot reasonably or economically be used for a conforming purpose. This finding is not met. The two properties could be used for conforming purposes - 1038 Aurora could continue to be used as a single family home or a Community Residential Facility serving six (6) residents, conforming with the lot size and RT1 zoning (currently it is a single family home), and 426 Oxford could continue to be used as a duplex or a Community Residential Facility serving six (6) residents (currently it is a duplex).

    (b) The proposed use is equally appropriate or more appropriate to the district than the existing nonconforming use. This finding could be met if City DSI and State DHS-ADAD approve all appropriate licenses for these properties. If approved, the proposed community residential facility with funding program licensed by the Department of Human Services could be more appropriate to the neighborhood than the previously-approved nonconforming use – a nonconforming sober house with GRH funding. Reasons include a higher level of licensing and associated oversight required by CCDTF funds (including licenses from both the City and State), and a higher level of on-site staffing. DHS-ADAD states that CCDTF provides an increased level of staffing and services onsite given the vulnerable client population – including staff that is awake overnight as opposed to a live-in manager that sleeps at night (though Ramsey County Human Services disputes whether CCDTDF funds require a higher level of oversight than required by GRH funding). However, even if it receives all necessary approvals, the proposed community residential facility could be less appropriate to the

neighborhood than the previously-approved nonconforming use, given the increases in nonconformity as discussed in findings 10(a) and 10(b) above.

(c) *The proposed use will not be detrimental to the existing character of development in the immediate neighborhood or endanger the public health, safety, or general welfare.* This finding could be met if the applicant complies fully with all State, City, and County requirements associated with the proposed use. However, RCHS staff has stated that during the period of the GRH contract, there were many client complaints as well as reports that the applicant was consistently housing numbers of clients over the contracted capacity. Given this history, County staff has advised that even if these properties were successful in obtaining the necessary licenses (City DSI and State), there is no guarantee that Rule 25 clients would be referred to these properties. However, any designated placing authority (counties, tribes, or Managed Care Organizations) could.

(d) *The proposed use is consistent with the comprehensive plan.* This finding is met. While the Housing Chapter of the Comprehensive Plan encourages a diversity of housing choices (Strategy 1), including supportive and affordable housing (Strategy 3), it does not call for allowing community residential facilities at any particular site under any set of circumstances. The proposed re-establishment of nonconforming use as a community residential facility licensed by the Department of Human Services is not specifically inconsistent with the comprehensive plan.

(e) *A notarized petition of two-thirds of the property owners within one hundred (100) feet of the property has been submitted stating their support for the use.* This finding is met. The petition was found sufficient on November 2, 2011: 15 parcels eligible; 10 parcels required; 10 parcels signed.

The application for the permit shall include the petition, a site plan meeting the requirements of section 61.401, floor plans, and other information as required to substantiate the permit. This finding is met, as the applicant has submitted initial floor plans indicating notations on them for compliance with accessibility requirements as well as the health code.

NOW, THEREFORE, BE IT RESOLVED, by the Saint Paul Planning Commission, under the authority of the City's Legislative Code, that the application of Kingdom Pathways for a Re-establishment of nonconforming use as community residential facility licensed by the Department of Human Services at 426 Oxford St N and 1038 Aurora Ave is hereby denied.