



APPLICATION FOR APPEAL

Department of Planning and Economic Development
Zoning Section
1400 City Hall Annex
25 West Fourth Street
Saint Paul, MN 55102-1634
(651) 266-6589

Zoning Office Use Only

File #: 12-067225

Fee: 440.00

Tentative Hearing Date:

To Be Scheduled

APPELLANT

Name District 6 Planning Council

Address 171 Front Avenue

City Saint Paul St. MN Zip 55117 Daytime Phone 651-488-4485

PROPERTY LOCATION

Zoning File Name Volunteers of America Minnesota

Address / Location 1394 Jackson Street Saint Paul 55117

TYPE OF APPEAL: Application is hereby made for an appeal to the:

Planning Commission, under provision of Chapter 61, Section 701, Paragraph c of the Zoning Code, of a decision made by the Planning Administrator or Zoning Administrator

OR

City Council, under provision of Chapter 61, Section 702, Paragraph a of the Zoning Code, of a decision made by the Planning Commission

Date of decision: June 1, 20 12 File Number: 12-048-442

GROUND FORS FOR APPEAL: Explain why you feel there has been an error in any requirement, permit, decision or refusal made by an administrative official, or an error in fact, procedure or finding made by the Planning Commission. See attached

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8185
440.00

Attach additional sheets if necessary

Appellant's Signature *Raymond G. Carlson* Date 6/11/2012 City Agent *pdd*

6-11-12

Application is hereby made for an appeal to the City Council, under provision of Chapter 61, Paragraph a of the Zoning Code, of a decision made by the Planning Commission. Specifically, District 6 appeals the decision made by the Planning Commission on June 1, 2012 approving the conditional use permit subject to additional conditions with a modification to permit 32 adult residents for a department of corrections licensed, community residential facility operated by the Volunteers of America (VOA). District 6 strongly believes there has been an error in procedure made by the Zoning Committee, errors of fact and findings made by the Planning Commission, based on the information in the public record, including the staff report and the initial application of the VOA.

Background:

The Volunteers of America (VOA) initially went before the District 6 Land Use Task Force on **March 27, 2012** where it presented its proposal for a modification of conditional use permit (CUP) to allow for a 74 bed residential reentry program in the industrial district located in the area of Arlington and Jackson. This is an increase of 400% from the current allowable use if a CUP is granted. The concerns leading to District 6's recommendation for the denial of the permit included the fact that any modification stays with the property, the conflict with current area plans, the effect on property values, the idea that this property would be taken off the tax rolls, and over-concentration of similar uses in the area. The VOA's request for support of its application for a conditional use permit and the modification was denied.

Grounds for Appeal

General Standards 61.501 *lists five standards* that all conditional use permits must satisfy and District 6 Planning Council contends that the standards have not been met and that the Planning Commission made errors of fact and findings to have passed the motion approving a conditional use permit subject to additional conditions with a modification to permit 32 adult residents.

The extent, location and intensity of the use will be in substantial compliance with the St. Paul Comprehensive Plan and any applicable subarea plans which were approved by the city council. This condition has not been met and the following outlines the conflicts with the District 6 Neighborhood Plan and the Volunteers of America's application.

One of the purposes of the **District 6 Neighborhood plan** is to "establish a framework for strengthening the industrial areas, primarily by reducing the conflicts between industrial and residential uses in close proximity to each other." This desire was the genesis of the planning process. The task force reviewed the Jackson-Arlington Small Area Plan and the eastern portion of the Jackson-Arlington areas developed by the St. Paul Port Authority and determined that the updated policies would apply to the redevelopment of the western portion of the original

study area. Thus, in the eyes of District 6 the small area plan is still viable and it is paired with LU3 of the District 6 Plan.

The overall vision of the District 6 Plan is that it is compatible with the City Comprehensive Plan for the District and specifically this means that commercial and industrial bases would be strong, providing living wage jobs for residents from the community and elsewhere in St. Paul. Industrial and residential neighborhoods would be compatible with each other.

In the District 6 Plan, there are several Land Use Objectives and Strategies relevant to this application:

LU1 – Reduction of conflicts between industrial and residential uses.

LU3 – Redevelopment of the Jackson-Arlington Industrial Area: The Jackson-Arlington Small Area Plan envisioned a business center, with the goals of increased employment, increased tax base, improved visual image, and compatibility with existing plans and zoning. In addition, LU3 envisions that the St. Paul Port Authority would complete its phased redevelopment of the western portion (it has already completed the eastern portion). This includes completing soils studies, preparation of a storm water management plan, and development to be compatible with the construction and use of Trout Brook Trail, Trillium Nature Sanctuary and trailhead facilities with uses as a business center and light industrial.

To find that a plan that does not specifically address reuse of existing structures and that the plan is silent on the proposed congregate residential use in an existing structure at 1394 Jackson meets the condition is unreasonable (as found in the Staff Report and Recommendations). The proposed site is in the center of any further redevelopment and is zoned industrial. The Neighborhood Plan does encourage property owners to improve and maintain their houses and businesses, however to find that allowing a conditional use permit on that statement is in **error**, the applicant may be making improvements however, the improvements are to a structure that is not in keeping with the spirit of the plan (i.e. of an industrial nature) and requires a conditional use permit to make any improvements.

The VOA application:

Creates conflict between industrial and residential uses by requesting a use that is too large and incompatible in the zone, where industrial work is being conducted i.e. Advanced Shoring.

Does not increase employment, it simply transfers existing jobs, with existing employees from an already existing facility outside of St. Paul.

Does not increase the tax base, and in fact will decrease the tax base;

This portion of the VOA application is not compatible with existing plans and zoning.

St. Paul Comprehensive Plan – Land Use Goals

The St. Paul Comprehensive Plan states” the commercial and industrial bases will be strong, providing living wage jobs for residents from the community and elsewhere in Saint Paul. “Historical industrial areas of the Great Northern Corridor and Arlington Jackson will remain vital, home to strong businesses that provide well-paying jobs for residents of the community” which places this application in conflict with the City Comprehensive Plan.

The Staff report and the VOA application chose a few sentences from the Strategies in the Comprehensive Plan and then used them out of context, but when the entire text is read it is clear that this project cannot meet the these land use goals. It is District 6’s contention that the Planning Commission relied on the Staff Report and the VOA application to make its findings, and made its decisions in error due to incomplete information or information presented out of context.

Specifically the VOA application states that there are “non-industrial uses allowed in an I1 zone, subject to a conditional use permit...including community residential facilities licensed by the MDH or DOC. The application cites 2.20 land use section of the city’s comprehensive plan and states “practically industrial districts have been designed to accommodate businesses and facilities that might not be welcome in other areas of the city.” (The applicant uses that wrong cite because there is no 2.20, but if you look at page 28, under the first paragraph entitled Regulation the cite can be found, **AND in fact goes on to say**) “there are concerns that industrial land will be developed with non-industrial uses, which often produce a higher rate of return on investment than industrial uses. In response many cities prohibit residential uses in industrial areas; others do not prohibit non-industrial uses but limit their size and number and require that they be subject to discretionary review. **The policies in this section are intended to facilitate the stability of Saint Paul’s industrial and employment base.**”

Regulation 2.21 and 2.22 of the comprehensive plan specifically discuss the goal to “Prepare regulations for conditional use review of specified uses for the purposes of ensuring compatibility on non-industrial uses with the primary industrial function of the district and of protecting the employment base.” The idea being that **“Some non-industrial uses are compatible with industrial uses while other permitted uses may weaken the industrial character of the district and its employment base.**

On May 24,2012, at the Zoning Committee’s second discussion about this CUP, staff released a memo addressing the information requested by the committee when the application was laid over the previous meeting. Staff stated that the statement following policy 2.22 is clearly a proofreading error; this error puts the neighborhood at a disadvantage and raises the

question of the possibility of additional “proof reading errors” and the neighborhood should have had an opportunity to respond. Also in light of staff submitting a memo and the fact that other applications have had additional “public testimony” taken, when questions are raised, the Zoning Committee should have continued the hearing and opened up public testimony to address this new concept.

There are several strategies to implement the City’s Comprehensive Plan.

Strategy 1: Target Growth in Unique Neighborhoods: This strategy focuses on sustaining the character of Saint Paul’s existing single-family neighborhoods while providing for the growth of mixed-use communities. New development in Neighborhood Centers, Corridors, the Central Corridor, and Downtown is intended to create communities where housing, employment, shopping, and community amenities, supported by transit, work together to provide for the needs of the people who live and work in them.

The VOA application states that its project will provide more intensive housing along a mixed-use transit corridor thus promoting greater land use density within the city. As such, it supports the Plan’s call for residential development of 30-150 units along such corridors. This is in **error**; a transitional use is not what the “more intensive” housing policy means and any policy regarding higher density housing should be required to fit in the existing code as well as the character of the neighborhood.

Strategy 2: Provide Land for Jobs: For Saint Paul to have a strong economy and to thrive, it must have businesses with living wage jobs. The strategy focuses on providing land for employment centers that capitalize on Saint Paul’s historic strengths and emerging labor markets. An important element is reclaiming industrial land for new businesses that can provide living wage jobs.

The VOA application states that the city is fully developed and that new employment opportunities need to be created through re-development of outmoded and non-productive sites. The application claims that they will provide employment for 20 full-time staff, paid a living wage, some in excess of \$65,000 a year, and invest in excess of \$750,000 in upgrading the site.

Transferring 20 currently existing and already filled jobs from Roseville will not create jobs for residents of St. Paul.

Standard (c): The use will not be detrimental to the existing character of the development in the immediate neighborhood or endanger the public health, safety, and general welfare.

This use will be detrimental to the development of the neighborhood. By taking an industrial zoned parcel off the tax rolls, it places a burden on other industrial sites and other tax payers. A Conditional Use Permit at this location will undermine the viability of the industrial sector and the City's employment base. There has been a migration of economic based activity to locations outside the City. One third of the land in Saint Paul is tax exempt and if the City had stronger industrial bases, it would put less burden on residential tax payers, the Volunteers of America is a not for profit organization and if this industrial site goes tax exempt, it removes a higher tax rated parcel off the tax rolls. The City of Saint Paul's Comprehensive Plan Strategy 2 discusses the loss of jobs and the need to focus on been reclaiming vacant and underutilized industrial lands and making them productive once again. However, this productivity cannot be non-industrial uses on industrial sites, or the situation becomes a death spiral as discussed above.

Standard (d): The use will not impede the normal and orderly development of the surrounding property for uses permitted in the district.

This use will irrevocably change the nature of this area. The VOA states that "its community impact will be less than most, if not all, other current uses in the area in terms of traffic, parking, noise, use of city services, etc." This totally misses the point if the goal is minimize the conflict between residential and commercial, gain high density, provide jobs, target growth. This use could in fact disrupt the way the adjacent businesses conduct their lawful business in this industrial district.

Typically, there is a need for buffering between residential and industrial uses and the District 6 plan states that there are "risks when residential and industrial uses are in such close proximity to each other. The conflicts can potentially produce deleterious effects for both residential and industry. The industry impacts can affect the living conditions of residents. Permitted industrial activities may be constrained because they are close to residential structures. The intent is to reduce the numbers of conflicts between residential and industrial uses" If residents live in close proximity to an industrial use there will be complaints regarding noise, traffic, dust, lighting to name a few. The adjacent industry could then be forced to make accommodations that would not need to be made if this use wasn't allowed. This then would affect a permitted use, one that did not need a Conditional Use Permit.

The modification of 32 residents is not a necessary modification if the Conditional Use Permit is found to have not met the standards.

While the Planning Commission may approve modifications of special conditions when specific criteria of 61.502 are met; *strict application of such special conditions would unreasonably limit or prevent otherwise lawful use of a piece of property or an existing structure and would result in exceptional or undue hardship to the owner of such property or structure; provided that such*

modification will not impair the intent and purpose of such special condition and is consistent with the health, morals and general welfare of the community and is consistent with the reasonable enjoyment of the adjacent property.

The Planning Commission was in error when the members found this condition was met. Allowing a modification of a Conditional Use permit by citing hardship by the applicant is not a reason to allow a modification when the applicant has not as yet experienced a hardship, the applicant does not own the site, there have been no improvements to the site and to allow any modification on financial gain or the fact that the applicant needs to recoup losses that may have yet not incurred is an error in finding.

The Arlington Jackson neighborhood does not support this application, District 6 Planning Council does not support this application; the North End Business Association does not support this application, the Saint Paul Port Authority does not support this application. What they all support is the adherence to the small area plan, the District 6 Plan, and the City Comprehensive Plan.

District 6 Planning Council is also requesting the City Council to waive the cost of this appeal. As you know District Councils have limited budgets and we have brought this forth as the citizen's participatory organization on behalf of all who live, work or own a business in our district. Thank-you for your consideration of this request.

city of saint paul
planning commission resolution

file number 12-36

date June 1, 2012

WHEREAS, Volunteers of America - Minnesota, File # 12-048-442, has applied for a Conditional Use Permit for a Department of Corrections-licensed community residential facility, with modification to permit up to 74 adult residents under the provisions of §65.154 of the Saint Paul Legislative Code, on property located at 1394 Jackson St, Parcel Identification Number (PIN) 192922420025, legally described as J W Bass Garden Lots Ex The S 65 Ft And Ex The E 300 Ft; Lot 9; and

WHEREAS, the Zoning Committee of the Planning Commission, on May 24, 2012, 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. Volunteers of America (VOA), is a faith-based, nonprofit health and human services provider that provides support to adults in need of residential re-entry services at residential facilities. The organization currently operates a licensed residential re-entry facility at 1771 Kent Street in Roseville, but must re-locate due to the expiration of a lease. They seek to re-locate the Roseville Center program to the property at 1394 Jackson Street. The building is 26,470 finished square feet; there are 70 parking stalls on site, as well as a storage shed to the rear of the property. Adult residents include men and women from the federal prison system; the residents are predominantly non-violent offenders, with approximately 80% having been convicted in the past of a drug-related crime or white collar fraud. No sex offenders are proposed to be housed at this property. VOA also indicates that it has a State of Minnesota contract to house residents awaiting pre-trial services; unlike the federal resident population, the pre-trial residents will not be leaving the facility on a daily basis for employment.
2. § 65.154 lists the standards and conditions for a community residential facility licensed by the Department of Corrections:
 - (a) *Preliminary licensing review by the state department of corrections.* This condition is met. The Roseville Center, the program that is proposed to move to this site, is currently licensed by the State of Minnesota; the applicant has submitted a letter from the State showing 100% compliance with its licensure requirements. This center has the same number of residents and program scope as proposed at the facility at 1394 Jackson Street.
 - (b) *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.*

moved by Wickiser

seconded by _____

in favor 7

against 5 (Nelson, Oliver, Shively, Ward, Wencil)

This condition is met. There are no such facilities within 1,320 feet of the 1394 Jackson Street property.

- (c) *Except in B4—B5 business districts, the facility shall not be located in a planning district in which one (1) percent or more of the population lives in licensed community residential facilities, emergency housing facilities with more than four (4) adult facility residents, shelters for battered persons, overnight shelters, and/or transitional housing facilities with more than four (4) adult facility residents.* This condition is met. The current percentage of the population living in these facilities is 0.26%, with capacity for an additional 188 residents, based on the 2010 Census and the recent approval of a transitional housing facility for 12 adults at 197 Geranium. The addition of 74 residents at this property would bring the balance of residents that could be added in these types of congregate residential facilities to 114 and the percentage of the District 6 residents living in these facilities to 0.55%.
- (d) *The facility serves no more than sixteen (16) facility residents, except in B4—B5 business districts where it shall serve no more than thirty-two (32) facility residents.* The applicant has applied for a modification of this condition to allow up to 74 residents on site.
- (e) *It shall occupy the entire structure.* This condition is met.
- (f) *Except in B4—B5 business districts, the facility 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.* This condition is met. The lot area of 62,726 square feet permits up to 59 rooms (57,726 square feet divided by 1,000 square feet allows 57 rooms in addition to the base two rooms). The proposed use would have 38 resident rooms (36 double occupancy and 2 single occupancy rooms).

3. § 61.501 lists five standards that all conditional uses must satisfy:

- (a) *The extent, location and intensity of the use will be in substantial compliance with the Saint Paul Comprehensive Plan and any applicable subarea plans which were approved by the city council.* This condition is met. The recently-adopted North End-South Como District 6 Plan has a policy that recommends the western portion of the Jackson-Arlington area to be redeveloped as a "business center with light industrial and office-service uses" (LU3.1). The plan does not address reuse of existing structures, such as is the case with the current application. Since the plan is silent on the proposed congregate residential use in the existing structure at 1394 Jackson Street, the proposed use is not inconsistent with this plan. Further, the proposal is consistent with goal three, objective three of the North End-South Como District 6 Plan, which encourages property owners to improve and maintain their houses and businesses. The proposed community residential facility is also consistent with the I1 Light Industrial zoning of the site, and the zoning is consistent with the North End-South Como District 6 Plan.

The Generalized Future Land Use Map in the Land Use Chapter of the Comprehensive Plan designates this area as "Industrial," which is defined as "primarily manufacturing and/or the processing of products; could include light or heavy industrial uses, large warehouse facilities, and/or utilities" (emphasis added). While this use is not industrial, it is an institutional-residential use permitted in the I1 Light Industrial District that contains an employment component, including 20 full time staff. This area is also identified as an opportunity site (Policy 1.54), appropriate for mixed-use development or as an employment center.

- (b) *The use will provide adequate ingress and egress to minimize traffic congestion in the public streets.* This condition is met, as the property is currently accessible from Jackson Street via a driveway at the northwest corner of the lot. In addition, there is over 100 feet of frontage between this driveway's access and the access of each of the neighboring properties access driveways. The applicant states that an estimated 50 vehicles will enter and leave the proposed facility over a 24-hour period. The proposed use requires 28 parking spaces (1.5

spaces for every 4 adult facility residents). The seventy surface parking spaces currently on the site will remain.

- (c) *The use will not be detrimental to the existing character of the development in the immediate neighborhood or endanger the public health, safety and general welfare.* This condition is met. The site is self-contained, surrounded by industrial uses, and has a history of large institutional residential uses. The property was constructed as a nursing board and care home in 1967, and housed up to 114 women at one point. More recently, the property has had a range of commercial uses, including an office in the early 2000s, the establishment of a restaurant in 2003, an herbs shop, and an adult day care center in 2010. The proposed institutional residential use will not be detrimental to the immediate neighborhood. The applicant's experience at existing facilities in Roseville and along Lake Street in Minneapolis show a successful track record and positive feedback from neighbors. The building was originally constructed for a very similar use, and the proposed level of staffing and services onsite will ensure public safety and the general welfare of the immediate neighborhood. Residents of this proposed facility may choose to take the bus to access employment opportunities. While this portion of Jackson Street does not have transit service, Arlington Avenue, just north of this property, does. To provide for public safety and general welfare, the addition of a sidewalk along the frontage of this property and the two neighboring properties to the north (622 feet of sidewalk) is needed to make this connection. This investment is consistent with established City practice of *Complete Streets*, to provide a sidewalk on at least one side of any arterial street where they do not currently exist.
- (d) *The use will not impede the normal and orderly development and improvement of the surrounding property for uses permitted in the district.* This condition is met. The use is self-contained, would have little impact on the surrounding industrial uses, and will not impede the normal and orderly development and improvement of the surrounding property for uses permitted in the I1 Light Industrial district.
- (e) *The use shall, in all other respects, conform to the applicable regulations of the district in which it is located.* This condition is met provided the Planning Commission approves the requested modification.

4. The planning commission may approve modifications of special conditions when specific criteria of §61.502 are met: *strict application of such special conditions would unreasonably limit or prevent otherwise lawful use of a piece of property or an existing structure and would result in exceptional undue hardship to the owner of such property or structure; provided, that such modification will not impair the intent and purpose of such special condition and is consistent with health, morals and general welfare of the community and is consistent with reasonable enjoyment of adjacent property.* This finding is met for modification of the standard pertaining to maximum number of residents to permit up to 32 adult residents. Limiting use of the existing structure - built as a large nursing board and care facility - to less than 32 residents would unreasonably limit use of the structure and result in undue hardship. While VOA is proposing a \$750,000 renovation to the building, the existing structure will essentially remain as it is with no major remodeling - as an institutional residential facility that includes many bedrooms, common bathrooms and other living spaces, and offices. Bedrooms will remain with the current layout, with a small number being altered slightly to accommodate two residents; the total proposed bedroom count is 38. In addition, the bathrooms will be renovated. While previous congregate residential uses were different in terms of the populations served, they are similar in terms of the scale of the occupancy of this building. These included an adult day care in the recent past, and a nursing board and care facility that historically housed up to 108 residents. The code recognizes that facilities larger than 16 may be appropriate in some areas, and allows up to 32 residents in the downtown districts (B4 and B5). This industrial district can also reasonably accommodate a facility of 32 due to the characteristics of the existing large structure and the size of the site.

Second, limiting use of the existing structure to less than 32 residents would prohibit VOA from utilizing the property consistent with their existing State of Minnesota license. The federal contract associated with this facility legally requires a large, on-site staff to provide 24/7 coverage and services for residents. The client reimbursement funds that VOA would receive for a smaller number of residents would not cover the costs of the required staffing, representing an undue hardship to the applicant. Permitting up to 32 residents would help the applicant recoup these costs.

Third, if developed to its full capacity, the large size of this parcel would allow up to 59 bedrooms for the proposed use.

Fourth, the intent of the special condition is to disperse at-risk residents throughout a community, reducing potential impact at a particular location and avoiding an "institutional" environment, thereby positively impacting the safety and welfare of the residents themselves. The modification will also help to provide for the high level of 24/7 on-site staffing for the residents. The proposed use is largely self-contained, and would have little impact on the surrounding industrial uses. The residents will typically stay at the facility for 3 to 6 months. The modification will not impair the intent and purpose of the special condition, provided the number of residents is limited to that permitted in the B4 and B5 districts, and there is no evidence that the modification of this size would be inconsistent with the health, morals, and general welfare of the community or reasonable enjoyment of adjacent property.

NOW, THEREFORE, BE IT RESOLVED, by the Saint Paul Planning Commission, under the authority of the City's Legislative Code, that the application of Volunteers of America - Minnesota for a Conditional Use Permit for a Department of Corrections-licensed community residential facility for the Volunteers of America Residential Re-entry program with modification to permit up to 32 adult residents, at 1394 Jackson St, is hereby approved, subject to the following additional conditions:

1. The facility is limited to no more than 32 adult facility residents for the Volunteers of America Residential Re-entry Center program and the pretrial services program.
2. The Federal Department of Corrections approves the transfer of the Roseville Center facility license to this property at 1394 Jackson Street.
3. The applicant submits to the City of Saint Paul Department of Safety and Inspections the revised Certificate to Operate from the Minnesota Department of Corrections to the City of Saint Paul for the two year period that ends January 31, 2014.
4. A sidewalk shall be constructed by the applicant along the Jackson Street frontage of this property and along the Jackson Street frontage of the two neighboring properties to the north to connect to the existing dead-end sidewalk on Jackson near Arlington Avenue.
5. A certificate of occupancy is received for the use and any necessary licenses are received as required from the City of Saint Paul Department of Safety and Inspections.
6. The applicant shall submit a copy of the federal contract for this property to the Department of Safety and Inspections.