

MINUTES OF THE MEETING OF THE BOARD OF ZONING APPEALS  
CITY COUNCIL CHAMBERS, 330 CITY HALL  
ST PAUL, MINNESOTA, FEBRUARY 7, 2011

PRESENT: Mimes, Maddox, Bogen, Linden and Morton; Messrs. Courtney, Ward, and Wilson of the Board of Zoning Appeals; Mr. Warner, City Attorney; Mr. Diatta, Mr. Beach, and Ms. Crippen of the Department of Safety and Inspections.

ABSENT: None

The meeting was chaired by Joyce Maddox, Chair.

MJ Properties Of St Paul Limit (#11-007821) 1440 Randolph Avenue: An appeal of the decision of the Zoning Administrator requiring the removal of all temporary real estate rental signs exceeding that allowed by code (which is one real estate sign not exceeding 6 square feet in size).

Mr. Diatta showed slides of the site and reviewed the staff report with a recommendation for denial.

No correspondence was received opposing the variance request.

No correspondence was received from District 15 regarding the variance request.

Ms. Bogen conferred with staff that the sign that is allowed is the brown and tan sign which is grandfathered in because it is larger than what is allowed. So they can have one other real estate sign that is six square feet somewhere else on the property. Mr. Diatta replied that is correct. Ms. Bogen continued and asked about any other temporary signs they would need to get a permit for and would it only be allowed to be up for a certain periods of time? Mr. Diatta stated that they would not be allowed more than six square feet unless they obtained a variance. The Code does allow them to have a sign six square feet. The code also says that those signs do not require a permit because they are part of the exception to the permit requirement so they can be up for as long as the building is being rented or advertized for lease or for sale but those are the signs that are defined as real estate signs? Ms. Bogen questioned so they can never have temporary signs up? We have put them up on hospitals. Mr. Diatta replied they can put up six square feet of signage or apply for a variance.

The applicant **MARGARET JOHNSON - MJ PROPERTIES OF ST PAUL LIMIT**, 1440 Randolph Avenue, Suite 300, was present with her attorney Mr. John Trojack, 1459 Livingston Avenue, West St. Paul. Ms. Johnson passed out photos to the Board. She stated that she works very hard to provide affordable living for people in the neighborhood. She stated that her father built the building and she is carrying on the business. She stated that she thinks that the sign code is being discriminatorily enforced so she provided some photos from around the City. She contended that the loose language of the ordinance, seems to her to be a bit outdated and should be made irrelevant by virtue of the terrible burden it places on the wonderful local entrepreneurs within our city limits. She contended that she has to pay property taxes and assessments, business is not booming and advertising is very necessary for her business. She stated that she did not think that the banners on the building were offensive and she was shocked that anybody complained about them. "This vehicle of advertising has afforded me a big difference in getting people into my building, I have filled as many as 38 units in the last year and a half using the banners for advertisement. I have been losing long term tenants that are moving into assisted living so I have been working very hard to fill my building. There is also a lot of new competitive units

being built. This mode of advertisement has been very successful for me and I need to continue it." Ms. Johnson went through the photos and explained them to the Board. Ms. Maddox stated she is going to interrupt here, explaining that the Board has to stick to the findings and Ms. Johnson needs to point out where the Zoning Administrator has erred with the code. Ms. Maddox stated that this has been a response to a complaint on Ms. Johnson's signs. If someone complains about these other signs then they will probably end up here also, but right now we need to stick to why the Zoning Administrator erred. Ms. Johnson continued to say it seems to her that some people can use these large signs and others can't. That is how it feels to her.

Mr. Trojack, Attorney for Ms. Johnson, stated that finding number one is not a true statement of the applicant's position; it says that the code is discriminatory where as no such thing is found in our appeal. "What we are saying is that the enforcement of the code is discriminatory. You cannot have a general law, rule or code and not enforce it across the City uniformly and that is not being done. The second point is that he heard in the previous report that they could have applied for a variance but that was not something that was advised to this applicant." He stated that it is a legal question that probably would not be decided here but "real estate sign" is subject to a lot of different interpretations and the most common meaning of real estate sign is one that is posted by a realtor and the usual interpretation is that people go by the ordinary and common meaning of words unless it is defined by a court. Mr. Trojack and his client also think because there is no showing in this statute that it is one that is actually protecting safety or health, or there is no reasonable governmental reason for the limitations that are put on it, that it is not permitted under the freedom of expression that is guaranteed in the United States. That is the purpose of the exhibits that have been presented to the Board and that is the reason for showing them. There are all kinds of places all over the City where signs of this kind are up, granted no one has complained, but that is not the rule. No one has to complain the rule is that they have to be uniformly enforced across the City. These situations exist and there should not be one land owner who is called aside for whom there is a complaint as opposed to others.

Mr. Ward stated: good report with lots of good history. You mentioned there is no real definition about real estate signs but there is in City Section 64.120 R, where the definition of a real estate sign says: "A temporary sign placed upon a property advertising that particular property for sale, rent or lease." Your signs advertise for rent or lease? Ms. Johnson stated that just as a property is not sometimes sold for more than a year sometimes her units sit for more than a year. She states that sometimes she leaves that sign up across her ground floor apartments for over a year and sometimes things are just not moving, so those real estate signs could stay up for two, three or even four years, you never know how long. Mr. Ward stated that there is a method for that in the City. Use a variance and you can reapply for a variance. One of our staff members sole purpose is to enforce signs and he hears about signs constantly from him. It is a constant problem in Grand Avenue and in other special sign districts within the City. So the appellants argument that the code is not enforced, it is not uniform, he would beg to differ. He sits on a lot of meetings about signs. He recommended that the applicant apply for a sign variance. But we are not here for that today. Those are only his comments.

Richard Roberts, 1437 Randolph Avenue, asked: this is just about the sign issue? Ms. Maddox replied yes, it is not about whether they are shoveling or not shoveling the snow. Mr. Roberts stated that the signs are directly in front of him and to be honest he did not even notice the signs. He thinks when he looks at it, it is just another sign and if it helps somebody he thinks that they should keep the sign up.

There was no opposition present at the hearing.

Hearing no further testimony, Ms. Maddox closed the public portion of the meeting.

Ms. Bogen moved to deny the variance and resolution based on findings 1 through 3.

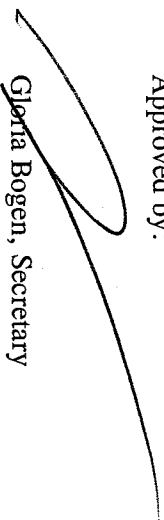
Ms. Linden seconded the motion, which passed on a roll call vote of 7-0.

Submitted by:



Yaya Diata

Approved by:



Glenna Bogen, Secretary