

BOARD OF ZONING APPEALS STAFF REPORT

TYPE OF APPLICATION: Administrative Review **FILE #**17-215020
APPLICANT: Kyle Coglitore
HEARING DATE: January 17, 2018
LOCATION: 2083 Marshall Avenue
LEGAL DESCRIPTION: Roblyn Park Additionst Paul Lot 20 Blk 5
PLANNING DISTRICT: 13
PRESENT ZONING: R3
ZONING CODE REFERENCE: 67.708
REPORT DATE: January 3, 2018 **BY:** Jerome Benner II
DATE RECEIVED: November 13, 2017
DEADLINE FOR ACTION: March 13, 2018 (Extension letter sent on December 6, 2018)

A. **PURPOSE:** This property was a registered Student Dwelling as defined in Sec.67.702. of the Zoning Code. However, its status was revoked after being found in violation of the Student Dwelling ordinance due to over occupancy. The applicant is appealing the revocation under Sec.67.708, which allows a revocation of a student dwelling status to be appealed to the Board of Zoning Appeals.

B. **SITE AND AREA CONDITIONS:** This is a 50' x 179' lot with alley access to a two-car detached garage.

Surrounding Land Use: This area has a mix of low- to medium-density housing to the north (R3), west (R3) and south (R4), with commercial uses (B3) and higher density (RM2) housing to the east.

C. **BACKGROUND:** This property has been a registered student dwelling since the ordinance became effective in 2012. The applicant purchased this property in 2013 and has been the owner since. On September 14, 2017, an inspection was made by a Department of Safety and Inspections (DSI) fire inspector in response to a complaint regarding over occupancy. The inspector found that the property was occupied by a total of nine (9) students. The zoning code allows a student dwelling residence to be occupied by no more than four (4) undergraduate students in any unit per Sec.67.702. The

inspector sent a letter on September 18, 2017, informing the owner that the student housing status of the property has been revoked due to the lack of compliance with ordinance after multiple warnings. The applicant/owner was given 10 days to appeal the decision to the Board of Zoning Appeals.

D. ZONING CODE CITATION:

Section 61.701 Administrative Appeals.

The board of zoning appeals shall have the power to hear and decide appeals where it is alleged by the appellant that there is an error in any order, requirement, permit, decision or refusal made by the zoning administrator in carrying out or enforcing any provision of this code.

Sec. 67.702 Student dwellings.

Within the SH student housing neighborhood impact overlay district, a student dwelling is a one- or two-family dwelling requiring a fire certificate of occupancy in which at least one (1) unit is occupied by three (3) or four (4) students. For the purposes of this article, a student is an individual who is enrolled in or has been accepted to an undergraduate degree program at a university, college, community college, technical college, trade school or similar and is enrolled during the upcoming or current session, or was enrolled in the previous term, or is on a scheduled term break or summer break from the institution.

Sec. 67.708 Revocation of status as registered and established student dwellings.

The Department of Safety and Inspections may remove properties from the list of registered and established student dwellings under the following circumstances:

1. Suspension or revocation of fire certificate of occupancy;
2. Residence by more than four (4) students in any units;
3. Residence by less than three (3) students for more than twenty-four (24) of the preceding thirty-six (36) months.

E. FINDINGS:

1. *Background of Student Dwelling Ordinance.*

The appellant purchased this property in June of 2013 as an established student dwelling as defined in Section 67.702 of the zoning code. A student dwelling is a one- or two-family dwelling requiring a Fire Certificate of Occupancy in which at least one (1) unit is occupied by three (3) or four (4) students. For the purposes of this provision, a student is an individual who is enrolled in or has been accepted to an undergraduate degree program at a university, college, community college, technical college, trade school or similar and is enrolled during the upcoming or current session, or was enrolled in the previous term, or is on a scheduled term break or summer break from the institution. The Student Overlay District is bounded by I-94

on the north, Snelling Avenue on the east, St. Clair Avenue on the south, and Mississippi River Boulevard to the west.

2. *History of over occupancy.*

On March 16, 2016, DSI – Fire Inspection received a citizen complaint stating that this property may be over-occupied. The inspector responded to the complaint and found that six (6) to eight (8) students were residing in this single-family dwelling. City records indicate that the property owner admitted to the fire inspector that the residents that were not on the lease were storing their belongings in the garage in order to evade enforcement action from the city.

On September 13, 2017, DSI received another citizen complaint regarding a potential over-occupancy at this property. On September 14, 2017, a fire inspector went to the property and found that it was occupied by nine (9) students. The fire inspector contacted the property owner to inform him of the over occupancy complaint and made arrangements to meet the owner on site on September 15, 2017, to discuss those issues among other property maintenance problems. The inspector found the property to be in compliance as the four (4) students who were living in the house were also listed on the lease. Additionally, the over occupied rooms were vacated. The fire inspector gave a verbal warning to the appellant stating that any more complaints regarding over-occupancy may result in the revocation of his Student Housing Certificate of Occupancy.

3. *Applicant's Claim*

As stated above, the DSI fire inspector met with the appellant at the property on September 15, 2017. According to the appellant, after the fire inspector left the house, the tenants on the lease told him that the additional residents rented a moving truck to store their belongings and planned on moving back into the house after the inspector left the property. The property owner became worried that he would lose his Student Housing Certificate of Occupancy, so he had his girlfriend file an anonymous complaint on his property as a good faith effort to demonstrate transparency and being a responsible landlord.

The fire inspector sent a Correction Notice to the appellant on September 18, 2017, stating that his Student Housing Certificate of Occupancy has been revoked due to over occupancy. The appellant claims that since his girlfriend called in the complaint on his behalf, the certificate of occupancy to rent to students should not have been revoked. The applicant submitted a photo illustrating the time of the call to the City complaint line, however, he did not indicate whom his girlfriend had spoken to at the city.

Although the appellant has lost his privilege to rent the property to three (3) or more undergraduate students as defined in Section 67.702 of the zoning code, he still has

the ability to rent to four (4) unrelated adults or a family as defined in Sec.65.111 of the zoning code.

- E. **DISTRICT COUNCIL RECOMMENDATION:** District 13 – Union Park District council has submitted a letter voicing their opposition to the appeal.
- F. **CORRESPONDENCE:** Staff has received three letters of opposition to the appeal.
- G. **STAFF RECOMMENDATION:** Based on the evidence provided by the appellant and city records, staff recommends that the BZA finds that the fire inspector did not err in the decision to revoke the Student Housing Certificate of Occupancy.