MINUTES OF THE MEETING OF THE BOARD OF ZONING APPEALS
CITY COUNCIL CHAMBERS, 330 CITY HALL
ST PAUL, MINNESOTA, MAY 16, 2011

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

ABSENT: Gloria Bogen*
*Excused

The meeting was chaired by Joyce Maddox, Chair.

Guadalupe Alternative Programs (#11-130256) 472 Concord Street: Three variances in order to build a new single family home. 1) The footprint of the house with attached garage is allowed to occupy 35% of the lot, or 964 square feet, a lot coverage of 1,232 square feet is proposed that would occupy 45% of the lot for a variance of 10% or 268 square feet. 2) A side yard setback of 4 feet is required and 3 feet is proposed from the west property line for a variance of 1 foot. 3) A rear yard setback of 25 feet is required and a setback of 14.5 feet is proposed for a variance of 10.5 feet.

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 3 regarding the variance request.

The applicant **GUADALUPE ALTERNATIVE PROGRAMS**, 381 Robie Street East, was not present.

There was no opposition present at the hearing.

Because no one was in the audience to testify, Ms. Maddox did not open the public portion of the meeting.

Ms. Maddox requested discussion from the Board.

Ms. Linden questioned Mr. Diatta whether the District Council gave any indication about how they were feeling about this project? Mr. Diatta stated that he spoke to WSCO about a week ago and they did not seem to like the proposed design of the home. They wanted to meet with the applicant and have him tweak the design of the house. Their meeting is not until tomorrow so he is not sure if they will speak to the applicant or if it is even on WSCO's agenda.

Ms. Linden further questioned when did Mr. Diatta try contacting the applicant? Mr. Diatta replied that the applicant called during the day today and spoke with Debbie, stating that his architect is out of town and was not sure if either of them would make it to the meeting. Mr. Diatta tried to call the applicant but the applicant was not available. He left his cell phone number but the applicant has not called back.

Ms. Maddox said that even if we wanted to lay it over we do not know whether that is agreeable to the applicant or if he could even meet with the District Council? Mr. Diatta replied that is correct.

Ms. Maddox asked if the BZA were to deny this variance and if the applicant were to go back to the District Council, would he pay another fee to came back before the Board again? Mr. Diatta stated he thought we could work something out on the fee. Ms. Lane responded that we certainly would charge another fee. Ms. Maddox asked is it because he did not show up for the hearing? Ms. Lane responded that usually if there is another application within such a short period of time, DSI will charge the applicant the fee minus the cost of figuring out who all the property owners are. It amounts to a break of $70 off of the filing fee.

Mr. Courtney stated that he always wants to listen to what the District Council has to say, but in this case he thinks that there is nothing in the findings that staff doesn't like, it is the way the house is built. He suggested approving the building of the house subject to conditions, and staff should use the conditions to have the house built what the staff wants it to be built.

Ms. Maddox requested that Mr. Warner comment on Mr. Courtney's suggestion. Mr. Warner stated that the BZA could certainly do that. He questioned staff whether the basement front window violates the design guidelines for single family homes? Ms. Lane responded no it meets the guidelines. The design guidelines does not limit the number of front entrances to one, it just says that it has to have a front door or at least a front door that is within the front 25% of the front of the building that it is identifiable from the street as a front entryway. Sometimes there will be a porch with an entryway into the side and that is acceptable. It says you have to have a front entrance but it does not say that you can only have one and it does not say that you cannot have a walk-out basement level. Technically it meets the design standards. Mr. Warner noted that the applicants are not asking for anything regarding the front yard. Ms. Lane stated that with the separate entrance to the lower level there is a question about what they are going to do with that lower level. There is a large window in the front, what is the potential? What is the reuse of that building if someone were to purchase it? The Guadalupe Alternative Programs is building this to sell to someone and when a prospective purchaser sees a lower level like that, it is very inviting to create a separate unit or parking in the front yard.
Ms. Linden stated that she thinks the way this is structured could lead down the road to the City dealing

with someone trying to turn this into a duplex either legally or illegally.

Ms. Morton stated that she has a problem with this 25 foot lot. Putting a new home on a 25 foot lot is going to require variances; it just does not fit.

Mr. Courtney stated he is going to make a motion. First off, it is a 29 foot lot, it is a buildable lot and we have to let them build a house there. Part of the reason they are looking for this variance is because they have to attach the garage. If they didn't have a garage they could probably build a house there. Unless legal counsel tells him it is illegal, he thinks the Board should pass the variances with conditions that it not be used for a duplex, get rid of the two entrances, and give them the variances. Mr. Courtney stated that at some point they get to build no matter what and looking at what is there now, sooner is better than later.

Mr. Warner stated that he thinks that the motion to grant the variances is reasonable. It would be better if the Board of Zoning Appeals added some conditions to the variance request to protect adjacent property owners. For instance, the foot print is fine but don't excavate the front yard or put in a second front entrance. That would be better than saying it is up to City staff to require those conditions. Mr. Warner stated as a staff member we do not have that authority, the Board of Zoning Appeals does have that authority and you should exercise it.
Ms. Maddox stated no excavating the front yard and only one front entryway.

Mr. Ward stated a window is permissible but no door; it can be a basement with a look out window.

Ms. Maddox asked staff whether they typically put a condition stating "no second kitchen in the basement" on variances? Ms. Lane replied that the resolution could say that or not, the property is in a single-family zoning district so it is quite clear that a second dwelling unit is not allowed. You might want to say that they cannot have a second kitchen. Sometimes people will add a bar area in their basement, but if there is clearly not a separate entrance to that area, and is clearly within the same unit, we don't have a problem with it. It is only when there is a second kitchen and there is a separate entryway that the City gets concerned.

Mr. Ward stated if you eliminate the excavation it cannot be made into a duplex and you also eliminate the option of parking in the front yard as well. It would also eliminate retaining walls and it would eliminate the possibility of someone wanting to use it as a duplex or of a realtor from trying to list it as a duplex erroneously, and having someone buy it and saying their realtor told them it is a duplex.

Ms. Maddox questioned whether that would be a friendly amendment to Mr. Courtney's motion? That the front yard not be excavated and that the second front entrance be eliminated. Mr. Courtney replied yes, and if you want to put on the variance that it shall not be used as a duplex, or that there shall not be a second kitchen, he is also in favor of all that as well.

Ms. Lane requested that the Board also address finding #4 of the staff report. Mr. Courtney stated that finding 4 does not address any of the variances being requested. The variances are the lot coverage, a side yard setback and a rear yard setback. None of that has anything to do with the retaining wall or the two doors. Ms. Lane questioned Mr. Courtney whether he had some language that he wanted staff to use? Mr. Courtney replied that would be language saying that the requested variances will not alter the essential character of the area. Ms. Lane questioned whether Mr. Courtney wanted the resolution to say "providing that the front yard is not excavated and there is only one front entrance, it will not change the essential character of the area." Mr. Courtney and Ms. Maddox agreed with Ms. Lane's proposed language.

Mr. Courtney moved to approve the variance and resolution based on findings 1 through 6, subject to the conditions that the front yard is not excavated and that there is only one front entrance.

Mr. Ward seconded the motion, which passed on a roll call vote of 5-1(Morton).

Submitted by: Approved by:

Yaya Diatta Gloria Bogen, Secretary