



Request for City Council Committee Action from the Department of Community Planning & Economic Development – Planning Division

Date: January 5, 2009

To: Council Member Gary Schiff, Chair, Zoning and Planning Committee
Members of the Committee

Referral to: Zoning and Planning Committee

Subject: Appeal of the Zoning Board of Adjustment action denying an appeal of the e for property located at 4839 Bryant Ave S (BZZ-4227) by Carolyn Moore.

Recommendation: The Board of Adjustment adopted the staff recommendation and **denied** an appeal of the decision of the Zoning Administrator that property at 4839 Bryant Avenue South is in violation of the Minneapolis Zoning Ordinances Chapter 546 Table 1, as it has been determined by the Zoning Administrator that the current use of the property is substantially similar to a hotel/motel or bed and breakfast, which is prohibited in the R1 zoning district and not a single family dwelling as the appellant asserts.

Previous Directives: N/A

Prepared or Submitted by: Jacob Steen, City Planner, 612-673-2264

Approved by: Jack Byers, Planning Supervisor, 612-673-2634

Presenters in Committee: Jacob Steen, City Planner

Financial Impact (Check those that apply)

- No financial impact (If checked, go directly to Background/Supporting Information).
- Action requires an appropriation increase to the _____ Capital Budget or _____ Operating Budget.
- Action provides increased revenue for appropriation increase.
- Action requires use of contingency or reserves.
- Business Plan: _____ Action is within the plan. _____ Action requires a change to plan.
- Other financial impact (Explain):
- Request provided to department's finance contact when provided to the Committee Coordinator.

Community Impact (use any categories that apply)

Ward: 13

Neighborhood Notification: The Lynnhurst Neighborhood Association was notified on October 9, 2008.

City Goals: See staff report.

Comprehensive Plan: See staff report.

Zoning Code: See staff report.

Living Wage/Job Linkage: Not applicable.

End of 60/120-day Decision Period: On November 11, 2008 the appellant was sent a letter by Planning staff extending the decision period to no later than February 2, 2008. On December 5, 2008 the appellant submitted a letter to CPED Planning Staff that extended the decision period an additional 60 days to April 2, 2009.

Other: Not applicable.

Background/Supporting Information Attached: Carolyn Moore filed an appeal of the decision of the Zoning Administrator that property at 4839 Bryant Avenue South is in violation of the Minneapolis Zoning Ordinances Chapter 546 Table 1, as it has been determined by the Zoning Administrator that the current use of the property is substantially similar to a hotel/motel or bed and breakfast, which is prohibited in the R1 zoning district and not a single family dwelling as the appellant asserts.

The item was scheduled for the October 30, 2008 Zoning Board of Adjustment meeting but was continued at appellant's request at that time.

The item was continued at the November 20, 2008 Zoning Board of Adjustment meeting but was again continued for further Planning Staff research.

On December 4, 2008 the Zoning Board of Adjustment voted unsuccessfully on four separate motions to resolve the item but was unable to come to a consensus and continued the item to the December 18, 2008 Zoning Board of Adjustment meeting with the condition of the receipt from the appellant of a notice granting an extension of the decision clock for an additional 60 days.

The Zoning Board of Adjustment voted 3-2 to deny the appeal of the decision of the Zoning Administrator on December, 2008. The applicant filed an appeal on November 25, 2008. The appellant's statement is included in the attached supporting material.

Attachments:

- a) Appellant Statement of Appeal
- b) Board of Adjustment Hearing Testimony and Actions
- c) Staff Report and Staff Report Appendices A-G
- d) Public Comments after Staff Report Publication

**Board of Adjustment
Hearing Testimony and Actions
Thursday, November 20, 2008
Thursday, December 4, 2008
Thursday, December 18, 2008**

Thursday, November 20, 2008
4:30 p.m., Room 317 City Hall

Board membership: Mr. Matt Ditzler, Mr. John Finlayson, Mr. Paul Gates, Mr. Chris Koch, Ms. Marissa Lasky, Mr. Bruce Manning, Mr. Matt Perry, and Mr. Dick Sandberg

The Board of Adjustment of the City of Minneapolis will meet to consider requests for the following:

2. 4839 Bryant Avenue South (BZZ-4227, Ward 13)

Carolyn Moore has filed an appeal of the decision of the Zoning Administrator that property at 4839 Bryant Avenue South is in violation of the Minneapolis Zoning Ordinances Chapter 546 Table 1, as it has been determined by the Zoning Administrator that the current use of the property is substantially similar to a hotel/motel or bed and breakfast, which is prohibited in the R1 zoning district and not a single family dwelling as the appellant asserts.

CPED Department Planning Division Recommendation by Mr. Steen: The Board of Adjustment moved to **continue** action on the appeal of the Zoning Administrator's decision in reference to the property located at 4839 Bryant Avenue South, to allow CPED Planning staff to conduct further research and investigation into the item. Staff would like to continue this item to a hearing not later than December 18, 2008.

TESTIMONY

Chair Gates: Let's address the items that are recommended for Continuance. Item number 2 is 4839 Bryant Avenue South. Is there anyone here who wishes to speak on that item? I see no one. Item 3 is 4524 Chowen Avenue South, again is there anyone who wishes to speak on that item today? I see no one. And Item 7 is 446 St. Anthony Parkway, is there anyone here to speak on that? I see no one. Mr. Byers, I understand that we're ok on the time clock for all these items, is that correct?

Staff Byers: That's correct.

Chair Gates: Comment from the board or a motion to approve the continuances?

?: So moved.

?: Are we continuing them all for one cycle?

Chair Gates: Yes, that's the motion.

?: I will second that.

Chair Gates: Any comment on that? Mr. Ditzler.

Mr. Ditzler: (unclear comments)

Chair Gates: My understanding is that we have until January.

(unclear tape)

Staff Byers: Mr. Chair, staff is recommending Item 7 is continued two cycles, not one.

?: Alright, I withdraw my motion

Chair Gates: Ok, thank you. Can we get your determination for item 2 again, the amount of time that we have on the clock on that one?

Staff Byers: Sure, my understanding with item 2 is that we have already extended the sixty day period and so the 120 day period ends on February 1.

Chair Gates: Alright, thank you Mr. Byers.

?: I move we continue items 2 and 3 one cycle and item 7 two cycles

?: Second

Chair Gates: Thank you. All in favor? (Ayes all around) Opposed? (silence) Items 2, 3 and 7 are continued.

Thursday, December 4, 2008
4:30 p.m., **Room 317** City Hall

Board membership: Mr. Matt Ditzler, Mr. John Finlayson, Mr. Paul Gates, Mr. Chris Koch, Ms. Marissa Lasky, Mr. Bruce Manning, Mr. Matt Perry, and Mr. Dick Sandberg

The Board of Adjustment of the City of Minneapolis will meet to consider requests for the following:

1. 4839 Bryant Avenue South (BZZ-4227, Ward 13) – Continued from November 20

Carolyn Moore has filed an appeal of the decision of the Zoning Administrator that property at 4839 Bryant Avenue South is in violation of the Minneapolis Zoning Ordinances Chapter 546 Table 1, as it has been determined by the Zoning Administrator that the current use of the property is substantially similar to a hotel/motel or bed and breakfast, which is prohibited in the R1 zoning district and not a single family dwelling as the appellant asserts.

CPED Department Planning Division Recommendation by Mr. Steen: Mr. Finlayson moved and Mr. Ditzler seconded the motion to **deny** the appeal of the Zoning Administrator.

Roll Call Vote: Yeas: Ditzler, Finlayson, and Sandberg. **Nays:** Koch, Lasky, Manning, and Perry. Motion Failed.

Notwithstanding staff recommendation, Mr. Manning moved and Mr. Koch seconded the motion to **grant** the appeal citing there is a gap in the code relating to the duration of the period for which one exchanges accommodations for compensation and that this use is more substantially similar to a rental than it is to a hotel/motel or bed and breakfast.

Roll Call Vote: Yeas: Koch, Lasky, and Manning. **Nays:** Ditzler, Finlayson, Perry, and Sandberg. Motion Failed.

Notwithstanding staff recommendation, Mr. Perry moved and Mr. Koch seconded the motion to **grant** the appeal of the Zoning Administrator citing that there is no substantially similar definition to the use of the applicant's property.

Roll Call Vote: Yeas: Koch, and Perry. **Nays:** Ditzler, Finlayson, Lasky, Manning, and Sandberg. Motion Failed.

Notwithstanding staff recommendation, Mr. Manning moved and Mr. Ditzler seconded the motion to grant the appeal on the finding that this is a single family dwelling for which one may rent subject to the city's issuance of a rental license.

Roll Call Vote: Yeas: Koch, Lasky, and Manning. **Nays:** Ditzler, Finlayson, Perry, and Sandberg. Motion Failed.

Mr. Perry moved and Mr. Ditzler seconded the motion to continue the item one cycle to the December 18 Board of Adjustment meeting with the condition of the receipt from the appellant of a notice granting an extension of the time clock for 60 days.

Roll Call Vote: Yeas: Ditzler, Finlayson, Koch, Lasky, Manning, Perry, and Sandberg. Motion Passed.

TESTIMONY

Chair Gates: Let's go to Item #1, 4839 Bryant Avenue South. Hello, Mr. Steen, welcome.

Staff Steen: Thank you Chair Gates, members of the Board. Item number one is concerning BZZ 4227, 4839 Bryant Avenue South. This item was originally scheduled for the October 30, 2008, and was continued at that point at the request of staff for further research in an effort to find a resolution at the November 20 meeting which brings us to today. The appellant, Carolyn Moore, has filed an appeal of the decision of the zoning administrator that the property at 4839 Bryant Avenue South is in violation of the Minneapolis Zoning Ordinances, Chapter 546 Table 1. It has been determined by the zoning administrator that the current use of the property is substantially similar to a hotel/motel or bed & breakfast, which is a prohibited use in the R1 zoning district and that it is not a single family dwelling as the appellant asserts.

The property is a two story structure designed as a single family dwelling on an 8100 sq ft lot and it is zoning R1 single family district. I apologize for the photo, it's the only exterior photo I have of the property. Enforcement actions on this property began July 29, 2008. Housing received a complaint originating from the City Councilmember's office and inspected the property. At that point they found that the property was being used for short term rentals and notified the zoning department. August 12, 2008, zoning inspectors sent a violation of the property based on the determination that the property was being used unlawfully as a use substantially similar to a hotel/motel or bed & breakfast. On September 10, 2008, the zoning inspector sent an administrative citation to the property owner for failure to discontinue the illegal use of the property and at that point, it was out of those actions, that the appellant filed her appeal.

I won't read off each of the definitions as they are all very similar and you do have them in your staff report, but the City of Minneapolis zoning ordinance regulates the hotel/motel, bed & breakfast uses, they are all very similar as they involve the trading of accommodations for compensation. For example a bed & breakfast home is defined by the Minneapolis zoning ordinance as an establishment in a private dwelling that provides

temporary accommodations to overnight guests for compensation. The zoning administrator has determined that the use of the property is substantially similar to a hotel/motel or bed & breakfast. The property is being used for short term rentals charged on a daily basis and not a single family dwelling as asserted by the appellant. Per Chapter 546 Table 1 of the Minneapolis zoning ordinance, this use is not a permitted use in the R1 zoning district. The appellant has not provided any information that would illustrate that the determination of the zoning administrator is incorrect. Since the writing of the staff report we have received a number of correspondence, multiple correspondences from the appellant's attorney and I will allow them to speak to that in a little while. I do want to note that since the publication of the staff report, CPED staff has received a number of letters which you have also received. E-mails, calls, both in opposition and in support of the appeal. Of those supporting the appeal, nearly all have come from former customers that have rented the property since the spring of this year. As you know there were approximately 8-10. Ten of those letters were e-mails and just recently as in the last few days we have again received a number of e-mails from concerned neighbors who expressed their apologies that they could not make it this evening. That being said, the Department of Community Planning & Economic Development Planning Division recommends denial of the appeal of the decision of the zoning administrator.

Chair Gates: Is that it? Thank you Mr. Steen. Questions for staff, Mr. Manning.

Mr. Manning: Thank you Mr. Steen. Am I correct that the only issue here today is whether this whatever it is, is substantially similar to a hotel/motel or bed & breakfast, not whether having a whatever this is is a good idea in an R1 and not whether it is well run or whether it's a problem for the neighbors or whether people are partying or not, none of those are before us. The only question here is this substantially similar to a hotel/motel or bed & breakfast.

Staff Steen: Chair Gates, Board member Manning, that is correct. The determination was that its use is substantially similar and that use is not permitted in the R1 single family district.

Chair Gates: Thank you for that question, Mr. Manning. Yes, that's correct, this is not a variable item. It's merely to weigh the decision made by the zoning administrator. Further questions, Mr. Koch.

Mr. Koch: Mr. Steen, is the property owner allowed to rent this out at all?

Staff Steen: Chair Gates, Board member Koch, the City of Minneapolis does grant, does allow, single family dwellings to be rented. For that you would need to acquire a rental license for the property. Issue at hand was the intensity of those rentals. The intensity became so intense that it was no longer classified as a single family dwelling but a use substantially similar to the hotel/motel or bed & breakfast use.

Mr. Koch: Was there a turning point? Was there an, ok, if there's more than two tenants a month, or I'm just curious was there a line that was drawn in the sand and the homeowner crossed it, or ...

Staff Steen: Chair Gates, Board member Koch, the city does not specifically list a number of days or a certain duration that the property owners may rent out under the rental license. The closest thing that is listed is the definition of a hotel licensed by the Minneapolis housing ordinance is any dwelling wherein sleeping or rooming accommodations are offered or furnished the general public for a shorter period than the time of one week, with or without meals.

Chair Gates: Ok, thank you. Mr. Perry.

Mr. Perry: Thank you Mr. Chair. Mr. Steen I want to cover some of the definitions so that we're all on the same page here. Under the hotel licensed definition there are two types of housing, rooming housing and lodging establishments. Could you provide definitions on both of those for us please?

Staff Steen: Chair Gates, Board member Perry, the City of Minneapolis does not specifically define those two uses, currently, in the zoning code and that is because there was a conscious effort because they are no longer permitted uses. These uses were no longer permitted uses prior to 1999, I do not have the exact date. However, in the original 1963 code, as it was adopted, a rooming house was defined as a building designed for or used as

a single family or two-family dwelling all or a portion which contains rooming units which accommodate three or more persons who are not members of the keeper's family. Rooms or meals or both are provided for compensation on a weekly or monthly basis, however, like I said, this is a use that is no longer listed in the City of Minneapolis zoning ordinance because it is not a permitted use.

Mr. Perry: And when did that change? At what point what code change did that occur in, was that 1999?

Staff Steen: I believe it was 1999.

Mr. Perry: Ok, I have another definition question. Under Table 546-1 Exhibit or Appendix E-1, I'd like to get a definition of community residential facilities serving 6 or fewer persons. What is a community residential facility?

Staff Steen: Chair Gates, Board member Perry, community residential facility is defined as a facility where one or more persons reside on a 24-hour basis under the care and supervision of a program licensed by the Minnesota Department of Human Services. So that is a specific use that is licensed by the DHS.

Mr. Perry: Alright, I have one last question if I may. Under bed & breakfast I noticed it is defined in part as an establishment in a private dwelling that provides temporary accommodations to overnight guests for compensation. I'm a little bit confused by what overnight means. If I'm staying at a bed & breakfast for three nights, what determines, how is that different maybe than the definition of a hotel license where you're saying shorter than a period of one week. I'm not really clear on what the characterization of overnight is. It would almost suggest by that definition that any rental at any time if a person stayed over one night would be considered a bed & breakfast. What I'm asking is where am I wrong in that interpretation?

Staff Steen: It is in the development standards for a bed & breakfast that it must be owner occupied. That a bed & breakfast must be owner occupied. Now that is not part of the definition, but it is a requirement. It is a development standard for that use, so it is a standard that is applied to that use.

Chair Gates: Explain that again, please. How would that be required if it's not in the definition?

Staff Poor: Chair Gates, Board members if I may. In Chapter 536 of the Development Standards, these are development standards by which the enumerated uses in that chapter have certain requirements. For a CRF, for instance, a community residential facility, that's where you are going to find quarter mile spacing, Department of Human Services ... many of our development standards in effect stand as a proxy for a definition. There are things, there are items in the development standards that for all intents and purposes define a use because of the strict development standards attached to them. Let me try to answer your question, Board member Perry. It's not that the people who own a house can't have unrelated people even renting a room from them, but for a bed & breakfast, which is a particular type of arrangement which is recognized as being some type of, closer to being a hotel than a residence, but in that case they probably have a state tax ID number, they pay taxes, they are an ongoing business, they have certain development standards one of which is that the owner, the ongoing venture, has to be owner occupied. It also takes a conditional use permit, if I'm not mistaken. This was put in back in the 90s, and frankly we only had a few of them that came about. So to answer your question, it not that folks can't stay over at a resident's house, and we have rules about unrelated, well we don't know if people are collecting rent from an unrelated person or not as long as they're under the occupancy and that's more of a tax issue I'd say. But a bed & breakfast is really set up, it's frankly a quasi-motel that the owner happens to live in.

Chair Gates: Thank you Mr. Poor. Ms. Lasky, did you have a question?

Ms. Lasky: I guess you are answering my question in that it's not a bed & breakfast because the owner did not occupy while the guests were there, am I correct, and then I can move on to my next question which is if she or any other person had a rental license, what is the number of days or weeks in which that person resides, persons reside, to fulfill the rental license?

Staff Poor: Chairman Gates, Board member Lasky, let me answer it this way. There is no set number per se, which is a deficiency in the rental license regime that the city has. That, notwithstanding, this came to us frankly out of the rental licensing folks. If you read in the packet, there is an item where licensing actually took the

action. To be candid with you, we had a meeting that I think is referenced in there with the meeting with Joanne Velde and myself and some others, and what I think they found is that there is no actual city ordinance that talks about a specific day. That's a remedy that needs to happen. That being said, by their own judgment, with their business line, familiar with the rental licensing regime that is in place, they themselves agree that this is not, that that's why they didn't take the license. It doesn't fit the correct definition of the use of a property that qualifies for a rental licensing. That being said, I think it's important to remember that there's a section of the code I don't have in front of me but even if someone is granted a license that doesn't necessarily give them permission for a use that's unlawful relative to the zoning code. The way I like to characterize it is that with the exception of very few uses, one of them being a CRF, where in the development standards a Department of Human Services license is required to fit that definition, most of the time licensing can help us define or determine what a use is but it very seldom is a particular license strictly defining what a use is like a DHS license with a community residential facility. So I guess our position would be that irrespective if they have a rental license or not, if we had found out that this activity was occurring and that they had been found to have a rental license, I still think that we would be where we are today with the action the city has taken. It just may have led to a revocation of a rental license subsequent to an action here. So the license, our office position is that's not determinant on the use. The zoning administrator's determination is not reliant on whether there is a rental license or not for the purposes of determining the use of the property.

Chair Gates: Further questions for staff? Yes, Mr. Sandberg.

Mr. Sandberg: Yes, I think my question is do you have a standard that you will be using or have used for the minimum amount of time that a tenant may stay in a place. The one week that's referred to here in a hotel, is that the criteria or what criteria will you be using in the future for this kind of issue?

Staff Poor: Chairman Gates, Board member Sandberg, the rental, the housing section, the housing division I should say, will come to their own conclusion about what standard that they issue a rental license on and the duration of the folks staying there. They'll make their own determination and they'll do whatever ordinance changes they think are necessary to make that more clear. From our determination, what we looked at is we have a house that's clearly being rented to folks, most of which by the appellant's own submission of data, don't even live in the cities. And it's being marketed on websites as if it is a rental property. The fact is that they don't live there but they are renting the property without a rental license seems to me that it is much closer to being a hotel or a bed & breakfast. I'm not sure that the duration of the stay is as important to me as is the fact that it's being marketed as a motel/house that you can rent to enjoy for parties and the rental licensing section did agree they haven't given a rental license. It doesn't have the protections of a rental license. If the city rental licensing regime was changed in a way that said you can do this overnight and they were granted a rental license, that may change how we have to look at our ordinances but absent that, and given that by their own accord people are not, in fact it's unpredictable how long they'll stay there because you can go to their website and you can pick midweek, nightly, weekends, and different dates so it's somewhat hard to determine a standard by which we would say well if you would only do it five days a week it's ok. I guess our position is I don't know what standard of duration I would say that you are not operating some type of thing other than a single family dwelling. It seems to me again, our challenge here is to find a use, to find a place to classify this use. Frankly, if we're not able to even accomplish that through substantially similar use, we would just say you're not allowed at all. I mean, if we said a nuclear power plant is not allowed in an R1 district and somebody is doing some kind of nuclear powerage or some kind of generation of power that deals with radioactive material or something like that, but it's not in the code, I doubt we're going to say you're substantial similar to a nuclear plant, we'd probably just say you can't do it. So frankly I think that we've been somewhat generous in our approach to say if you are closer to anything, you are probably closest to being like a bed & breakfast or a motel. But frankly that's being somewhat generous. Our task, we don't necessarily have to do that analysis. We can do the same substantially similar use analysis and say you're not really similar to anything. But it did seem that it was reasonable to say that if you are closest to something that is enumerated in the code, it's a bed & breakfast or a motel, so that's the determination that we've made.

Chair Gates: Mr. Koch.

Mr. Koch: So just to be clear, you're giving, there's a certain amount of doubt, and we know kind of what it's not we're just not sure what it is. So what you're doing is giving the benefit of the doubt to the ordinance as opposed to the owner, right?

Staff Poor: Well, I would challenge the board to tell me what it is substantially similar to. I mean if you look at the use table and if it's not enumerated as a permitted use on the table, you don't have the authority to say it's allowed. So I would challenge the board if the zoning administrator has made the improper determination here, I challenge you to tell me what it is. And if it's a single family, well then so be it. But I'm not really sure, I guess I don't find how you get to calling this a single family dwelling even if it's a rental single family dwelling. But that's your burden not mine, at this point.

Ms. Lasky: I understand where you're coming from and I'll try to broaden the definition a little bit. We know there are month to month rentals in the City of Minneapolis. There's lot and lots of them, high end, low end, whatever. If the owner chose to use their home as a month to month rental they could, within the city guidelines, get a rental license and rent this month to month and be within the city guidelines as a rental unit whether the person stayed there two days out of that month or all 30 days of the month, or 60 days, that would be not in violation, correct?

Staff Poor: Well I don't want to speak, I can't speak with the same authority that I like to speak about the zoning code about the rental license regime, but I think that's true. I think that is in fact accurate.

Ms. Lasky: So if we find that they are a hotel and cannot function as a hotel, they can still be licensed as a rental and function somewhat within those guidelines and still be a month to month rental.

Staff Poor: I think that's a fair statement.

Ms. Lasky: Ok, I just wanted some sort of ... ok.

Chair Gates: Mr. Poor, I wonder if you might give us a little bit of context from this issue. I wonder if this has happened elsewhere in the city that you know of. If other cities are dealing with this kind of an issue. Maybe you can talk a bit about what the city's interest might be in regulating a use like this. I'll just give you a brief anecdote on why I'm asking the question. As I often do, I go by sites to look at them before the meeting and I happened to have my 10-year old in the car this time and he asked why I was stopping at this house and I explained what the issue was to him. He said, well what about during the Republican convention when everybody was renting out their houses. This kind of thing is happening seemingly not to this extent but it happens from time to time around town. So can you kind of broaden the discussion here to give us some context on this issue?

Staff Poor: Chairman Gates, I think everyone would acknowledge that when the RNC, the Republican National Convention, came to the Twin Cities/St. Paul, that we all had heard news stories, frankly, about people trying to rent out their houses and they used it as some kind of proxy for how many people were actually showing up or not. If that's the case, and I'm sure it was, it may not have been lawful either. Frankly, we didn't get complaints about those things. It was not, we were not given specific addresses, we were not told it was a problem necessarily that we had to address. I'm going to shy away from kind of the larger context because frankly I think we've gotten out with our side of the story and the appellant has their side of the story, and they have very competent legal help on their side that will address some of those contextual questions you have. I think I'd rather let them take a stab at that first, but I would say here's what the City's interest is: the City's interest is that generally speaking when you think of the livability and the welfare of the neighbors who live next to this house, this establishment, whatever it may be, there are livability issues there and I think that people have a reasonable expectation that even if it's a rental property that there, again we have a rental licensing program and that's because we hold somebody accountable for the behavior of the occupants of the house. The property owner has to get a rental license and they're expected to screen their tenants to manage their property, to upkeep their property, and I think there's a reasonable expectation by the neighbors that they will see the same families show up for at least 30 days consecutively, or they may not show up very much but they know who lives there and if there's a problem with the property they can contact the landlord or the city through the rental license. In this case it appears and I think that you may hear this from some of the testimony is that people never know who's going to be there because it's whoever rented the property for this week. I know, I don't know if the folks that

were going to show up last time to testify are here or not but I can tell you that they intimidated me outside in the hall that they did have some experience with some of the people who showed up here earlier that it had been rented out for I believe a wedding, large numbers of people. I think by the appellant's own acknowledgement that she had learned some lessons about early rentals and tried to put a better management plan in place. So the city has an interest in saying do we really want a commercial activity in a residential neighborhood when it had never had commercial zoning, had no non-conforming rights to any type of commercial use, had always been established probably as a homesteaded property for many years. I think there's a reasonable expectation from the neighbors that that's what they would be living next to. I think that quite frankly when that changed is when the city heard about it.

Chair Gates: Thank you. Mr. Koch again.

Mr. Koch: Have there been any police complaints regarding parties, are you aware of?

Staff Poor: I'm not aware of any police complaints, I don't know if Mr. Steen is aware of any but I was not aware of any.

Mr. Koch: And could anyone have a wedding there?

Chair Gates: I believe the wedding was actually there at the house right?

Mr. Koch: I'm just curious, do you need a permit or is that a non-permitted use? I just want to get some context.

Staff Poor: I'm not sure, because I don't want to go too far, I think that first off I'm talking about a wedding, a civil service, a rental, I'm not sure that that's a germane question per se.

Mr. Koch: Well you brought up complaints against this property and was it in regards to what's going on in the house or the fact that we don't know who's going to be living there. As a neighbor I have a right to know who's going to be going into that house. I can understand that.

Staff Poor: Chairman Gates, Board member Koch, what I would say is this. I don't think that we would allow people to rent out their house to have weddings. That's called a reception hall or a rental hall. So again, I think that if somebody lives there and a family member is having a wedding there, I'm not so sure, we're not that draconian, but if somebody starts renting out their hall or their house as a rental hall we'll be back here talking about it.

Chair Gates: Sure, sure, thanks Mr. Poor.

Mr. Perry: I do have one last question if I may, on a definition. I'm going to bring it back to the definitions that we're trying to work with before the appellant gives their presentation. And this is for you Mr. Poor. You have said that this is similar to a hotel/motel or a bed & breakfast and I want to know that in fact you are saying either one of those. Because when I look at the definitions, there are very specific characteristics that I see and they're not ... a bed & breakfast is very different from a hotel/motel and in fact I see two different things for a hotel/motel license. It seems that your statement is rather broad when you say hotel/motel or bed & breakfast.

Staff Poor: Chairman Gates, Board member Perry, I guess the way I would answer this is at the time we first started dealing with this issue it frankly was not clear if Ms. Moore was living at the property or not. So when the original zoning inspector worked with housing and wrote the order, I think at that time we weren't, because Ms. Moore had been talking to some folks from the city, in fact there was some confusion over mailing addresses and some other issues, is that I think when the original order that was appealed was written that it was written in a broader sense so that in the case if she actually did reside there, which I guess resides there and goes out of town to rent it, or if she was residing there and renting to more folks than would be allowed under the occupancy, that I think the original order was written somewhat more broadly because we hadn't had, it was indeterminate if she actually was living there all the time or not or was claiming to live there or not. And I think

that since then we've heard that she's not residing there, she's residing at a different family member's residence.

Mr. Perry: So would you be asking us to look at that it is substantially similar to a bed & breakfast then, or a hotel/motel? Given the information they have.

Staff Poor: Member Perry I'm not sure it matters that much. I mean if you did say it was a bed & breakfast and let's say she agreed to live there, she still would have to rezone it to R3 and get a conditional use permit. I want to make that point in that again even if you wanted to use the property in the manner she's using it there is a mechanism by which to get there. I don't think we're being unreasonable in applying the zoning code to this property. But clearly it is being asserted that it's a single family property that is rented out and our office has made a determination that this is not substantially similar to a single family dwelling that is rented out under what most people normally rent out which is month to month or six month lease or one month.

Mr. Perry: I think that is very helpful and I think your position has been made very clear and I thank you for your indulgence, Mr. Chair, for that last question.

Chair Gates: We'll take one last brief question from Mr. Ditzler.

Mr. Ditzler: Mr. Poor, would you say that it is fair to categorize that all of the definitions that we have been over and over again deal with the fact that housing is temporary, transient, and is for people who do not consider it their primary residence. They do not live there and that is a common characteristic of the definitions of this property that you are claiming is more closely associated with than with the standard single family dwelling?

Staff Poor: Chairman Gates, Board member Ditzler, I do think that's a fair characterization. The folks coming here are not really, from what we've seen just in the guest registry and people commenting, is that they're not really residents they are here to visit and to stay and enjoy which is much more akin to people who come to a city and stay in a hotel and a bed & breakfast. They're not really here working or raising families, they're stopping to visit and staying at this particular property. In fact their competition is hotels and other places they might stay at.

Mr. Ditzler: So part of your rationale is they are using this as temporary lodging not as a place to live as in a primary residence. It is temporary as in a bed & breakfast, hotel/motel, licensed hotel, or whatever the other 26 definitions are that are on there.

Staff Poor: I think that's implicit in those definitions.

Mr. Ditzler: I would agree.

Staff Poor: Not explicit but implicit in what we think of as a hotel or a bed & breakfast.

Mr. Ditzler: That's what I got when I read the definitions and I wanted to make sure that's what you ...

Chair Gates: I think we should probably move on here.

Ms. Lasky: I need to play devil's advocate here, having rented furnished apartments short term to people who come to the city to work or do student teaching or something else that would be in place of looking for a hotel. They are coming for 30 days or 60 days or something and are renting furnished apartments. There is a market for furnished apartments that are in competition with hotels, etc.

Staff Poor: If I may respond to that comment, that's why we have a residence in the city. That's been a recent trend where they came in as part of planned unit developments but I can assure you they have lodging licenses or some type of license with the city as a hotel. That is true, that's a business model that's been successful.

Ms. Lasky: But truly, there are different layers of this but

Chair Gates: I think we should hear from the appellant ...

Staff Poor: I do want to make one more point if I may because I think Mr. Steen touched on it. The city made a conscious effort to eliminate rooming houses. Rooming houses were frankly, they had a derogatory nickname. They were flop houses. People were allowed to stay overnight. The city made a conscious judgment that they wanted to eliminate these as a permitted use. Frankly, the only reason we still have board & lodging licenses on the books is because of certain requirements the state places on the city to inspect residential facilities that have commercial kitchens that may service handicapped folks or other disabled folks with assisted living. The state foists that responsibility upon the city and therefore we still have kept and still create new board and lodging licenses but they are not for rooming houses.

Chair Gates: Thank you Mr. Poor. The appellant is here I believe, good evening.

Bill Griffith: Good evening Mr. Chair and board members. My name is Bill Griffith. Would you like an address?

Chair Gates: Please.

Bill Griffith: 1500 Wells Fargo Plaza, Bloomington. Representing the appellant in this case. Thank you for your time this evening. If this didn't involve a client I would say this is an interesting academic argument and discussion. Obviously we've got a client here, Mr. Carolyn Anderson Moore, who is very very interested in this discussion here this evening because it affects the use of her single family home. I'd like to kind of like work backwards and address some of your questions so we get this kind of defined a little bit and then work to some of the larger issues if I may.

First of all this has never been used as a wedding site. People attending a wedding rented the home and stayed there during the time of the wedding but they did not hold a wedding in the yard so it hasn't been used as a reception hall. There was one large family gathering, much like I might have in my home or you might have in your home. That's no longer allowed by her rental license, I mean her rental agreement with anybody who comes to stay on the property, so she has corrected that in deference to her neighbors. With regard to the neighbors, there are five to six written comments in your record that are positive, so I want to let you know that there are a number of positive comments from neighbors.

Chair Gates: We've seen those.

Bill Griffith: Ok, thank you. Now getting to the issue of the use. I believe the Chairman or others asked about the type of use. It is a vacation home rental, that's the way that we would define it. Your code, and again as a home owner, we don't distinguish between what office we're in in a city, we look at all the regulations and how they affect the use of property. Whether we're in the housing code or the zoning office, I appreciate that you're the zoning board of appeals, but as a homeowner what Ms. Moore does is she looks to see what regulations affect the use of her single family home and how she can lawfully use that home. So pursuant to that when she first received notice, she went to the housing office and obtained a license, a rental housing license, to have rental housing. I think it's important to note, and your staff has noted, that there is no time limitation on that. It could be for a day, it could be for a month, it could be for a year. And so I think that the board has properly pointed to the problem or maybe the gap in your own codes and I say codes because obviously it's the housing code and the zoning code kind of working together to regulate the use of this single family home. In doing that, she certainly wanted to be within the lawful use of the property, as a single family home as it is currently zoned. So what is the distinction? The distinction is that a vacation home rental is not a hotel. It is not a motel. It is not a B&B and no matter how many times we say that tonight, we don't make it one just by saying it. And obviously what you look to is the precision in your ordinance in defining these various uses and I think you've hit on some of the problems in the precision. The precision is not there defining a vacation rental home. Now in our discussions with staff and the reason for the continuance is that we believe, and Ms. Moore believes that this should be regulated. That it's proper to regulate short term stays in a single family neighborhood. That there would be legitimate concerns of single family homeowners and that those should be regulated. And accordingly, she's undertaken a number of steps if you will to self regulate since these notices were first received. For instance, she updated her license agreement to provide that there can be no parties. That there can be no more than five people in the dwelling unit and that there can be no pets. Ok, those are regulations that frankly

wouldn't affect me in my single family home. I could have larger parties as long as they're not noisy I could have pets, and I could have more than five people in my home. But she has done that to basically self-regulate her use in deference to her neighbors and I believe her neighbors appreciate that. But getting back to the main issue tonight, your ordinance does not regulate this use. This use is not a B&B. Why, because she doesn't serve breakfast, she doesn't occupy the home, those are requirements in your performance standards that as your staff noted are bound up and read with the definition of the use. So, for instance, and again, I'm not going to read the whole code to you but I think these are important points. For instance, the homeowner, the owner and operator of the bed & breakfast, shall occupy the property as his or her primary residence and reside in the home when it is in operation. Well she doesn't do that. Why? Because her renters, her short term renters come and occupy the entire house, not a couple of rooms. They don't come because she makes breakfast for them, they obviously want to be able to occupy and use the entire house as a rental. Separate kitchen facilities shall not be available for guests, meals shall be prepared and served by the operator and shall be available to registered guests only. Again, that's the nature of a B&B. Many of you have probably stayed in a B&B and you would say when I go up to the cabin and rent for the week that's different from staying in a B&B. They're different considerations. This is the cabin in town, if you will. The short term rental, just like when I rent a cabin or you rent a cabin. The hotel definition is pretty clear. The use shall provide a minimum of 50 guest sleeping rooms except when located in downtown districts. Well we're not in a downtown district and we don't have 50 sleeping rooms. Further, the definition of hotels says that there is an interior hallway connecting units and leading you outside through the lobby. There is no lobby here. Again, this is a single family home and a short term stay. And then finally I think the motel definition is very clear because the rooms have to have access to the outdoors, to the outside directly, and to parking spaces nearby. So clearly we're not within the zoning code. Now what are we? We are a short term rental, as I said. We're a vacation home rental and that is allowed, in our view, it is allowed by your code. Because what happens as you know, and you've probably heard this before as the Board of Adjustment and appeals, is the drafter of the code, the city that is, has to use some precision in its drafting. And if there are ambiguities it relates to a question that a board member made here, if there are ambiguities, they are read in favor of the property owner. That's a matter of well settled law, it's in our appeal letter, and so you can't just make it up and say ok now we're going to put this round peg in this square hole because it feels about right to us. What you need to do, I believe, is you need to either decide to regulate vacation rental short term stay or you need to clearly prohibit it which I think would be a bad result. But you need to do each of those by an amendment of your ordinance. And that's why we asked for the continuance because we'd be happy to participate in that discussion. In fact, Ms. Moore has now e-mailed a number of vacation rental home owners both here in the city and elsewhere to come together around this issue because clearly with over a hundred thousand plus of these vacation rental homes worldwide this issue is not going to go away tonight, tomorrow, or the next day. It's a benefit to your community besides. If you have people who come and they can rent a home and they can stay longer in your community, then they can do more in Minneapolis. They can spend more time here, and I think that might even be your slogan, do more or spend more time or whatever it is. But the point is that they stay longer, they spend time here, they enjoy sporting events, and frankly some of them wouldn't come here if they had to stay in a hotel for a week or two weeks. Now the longest stay she's had so far is two and a half weeks, but clearly that could be over a month if the renter wanted to stay for over a month. I know people who have stayed in properties that I've stayed in who've stayed the whole summer. That kind of knocked me out of the box because they were staying for the entire summer, but the point is it is really driven by the vacation renter who decides how long they are going to stay. So, I've been all over a couple points, I'm going to focus those points (tape gap) ... as I conclude. Number one: we think that it's clear this is not a hotel, a B&B, or a motel by your own definitions and the city would have to be more precise in its definitions to put this essentially inside or outside the box. I mean, that's your task as a city to define your zoning code. Second: your housing office must believe that as a rental unit, because they've issued a rental license for the unit, so we are lawfully operating under a rental license today and will continue to do so and will meet whatever inspections programs, in fact that's the point of the program is that the house has now been inspected and found to be safe and habitable and that's a good and positive thing. And then finally rather than spend time and effort on appeals, we would like to as we offered almost two meetings ago, sit down with your staff and work through these issues and come up with a reasonable regulation program. In the meantime, our client will clearly self-police and if there are any concerns she will address those because she's on the property frequently. She doesn't reside there, she rents it under a license, but she's there frequently as people turn over.

As I was doing this off the cuff here I want to make sure I've hit all my main points. Oh, one of the things that I'd say is there has been a strong trend to vacation rental properties and Stearns County is one of the first to

recognize that in regulation. So there is at least a model that we could look at in Stearns County for regulation of this type of use. I think one of the things that indicates her desire to be a good neighbor is she did notify her neighbors of this use, she did provide her contact information and encouraged them to call her if there were any concerns. I believe those were my main points. I hope I've addressed your questions. I do think your questions really do indicate the essential issue tonight. That this use in particular is not specifically prohibited in your zoning code. It is part of a single family use that is allowed to be rented both on a short term basis and a long term basis under your housing code.

Chair Gates: Thank you. Questions for the appellant? Mr. Manning.

Mr. Manning: Mr. Griffith I want to thank you for stating your client's position so clearly and thoroughly and also for muddying the waters tremendously. I understand your point that this is, you feel, doesn't meet the definition of a B&B, hotel, or motel because of definitions provided for those terms in 536.10. I think you'd also agree with me that calling a vacation home rental or calling it a whosiewhatsit isn't really the issue, the question is how is the property used. So, calling it a vacation home rental doesn't necessarily ...

Bill Griffith: Sir, you should put whatever name you want ...

Mr. Manning: Whatever name you want. And I also should say that I agree with your general points that this is a popular, increasingly popular, use and probably one that should be desired and well regulated, and I think I speak, I won't speak for anyone else, but I'll certainly say that I appreciate Ms. Moore's efforts to improve the use of her facility. I don't think the issue here is whether she's a good landlord, homeowner, operator or whatever term you might choose. I think that was made clear, and my first question, and I think the board understands that, and for that matter the extensive comments we have both from guests and from neighbors, happy and not happy, are not the narrow issue before us. My question goes to this issue. It's the transient or temporary concept that appears in all four of the definitions to which the city is claiming this is a substantially similar use. Mr. Ditzler inquired earlier that in those four uses as is the case with your client's vacation rental home whosiewhatsit the person who is receiving accommodations in exchange for compensation, I may have gotten that backwards, does not intend to, cannot establish a legal residence either, which would make it different, perhaps. That's my question. From a more traditional rental property, an apartment building, someone who was renting that house to live in for a month or three months or six months or a year as a student or tenant or, can you provide any light from your client's perspective on that distinction – the potential to establish a permanent residence.

Bill Griffith: Certainly, I think the position of our client is that a single family home, as I said, it is rented for short stay and if the city had taken, again, some care to define that term, then we would either be in compliance or not compliance. But the city, in our view, did not define that, did not put a limitation on rental of property and does not provide that it has to be their primary residence. So because of that our client is within your codes both on the housing side and the zoning side. And so your question certainly is part of the discussion but it's not part of the code, it's not part of the ordinance. So if the city believes that's an important consideration you are certainly free to amend your code in that fashion.

Mr. Manning: Mr. Griffith, I'm guessing if it's not in your area of practice I believe it's in the council of Larkin & Hoffman's alley, would you agree with the general statement that the building enforcement, zoning enforcement, rental enforcement are generally speaking granted some leeway in interpreting the codes in front of them because no code could apply to every situation that ever might be encountered in the city and the law in fact recognizes that discretion in this context.

Bill Griffith: Mr. Chair and board members, no I would not agree with that statement. I think the inspection of the property and the enforcement of the code is a ministerial function not a deferential function so it's not like making a zoning amendment, if not you don't have the deference that you'd have in that aspect. Certainly calls have to be made, but calls can be wrong and that's why we have this appeal process. So I think in this case the call was incorrect, I think staff was struggling with what is the whosiewhatsit and where does it fit, and in this case it's outside of the code. And it's clearly within the housing code because they issued a license to use the property as a rental property.

Mr. Manning: Thank you so much.

Chair Gates: Ms. Lasky.

Ms. Lasky: I'm stuck because I'm supporting what the neighborhood is saying, we don't want to see this in our neighborhood, and yet I'm seeing that if the code is not clear in terms of defining what a vacation rental is, I'm in agreement with you, sir, that we can't say well because they have residency somewhere else, this is a hotel, because how many students change their license from Wisconsin to Minnesota because they're going to school for six months. Somebody's going to have to define this a little better for me that we are responsible for a loose code and thus going to be penalizing someone for it.

Chair Gates: Ok, so that's a position of your statement but not a question.

Ms. Lasky: Much as I want to not see this in the neighborhoods because yes, she can function well, she's being responsible, but the other people who are not going to be ... this is a very loose code and because of that the code has to be changed. Can I ask a question of Steve Poor?

Chair Gates: Why don't we hold that until we get back to that discussion. Mr. Griffin, is it?

Bill Griffith: Griffith.

Chair Gates: Griffith, alright, thank you for your presentation, it was very nice. I just want to be sure that you are clear that this particular body, this board, doesn't have any authority to alter or rewrite code. We are a citizen board, quasi volunteer board, and we simply interpret matters that come before us, but we have no authority. So while there may be some sympathy for the issue or perhaps there is a gap in the code, this group has a very narrow charter before us, to simply look and decide whether the administrator given the existing code and this particular case, if he made the right call. I have a sense from your presentation that you sort of implied that the code defines what's not allowable in a particular zoning district. My sense is that the code actually defines what is allowable in a district. And the zoning administrator seemingly made a judgment about what the use is and went through the list of uses and didn't find one like that so decided well it looks more like a hotel or a motel or a B&B than anything else. We've talked about the loose fit of the code and how it can't possibly address every single situation so I'm wondering if you looking at the code would make a judgment about what you think this particular use is more like that would be allowable in this district.

Bill Griffith: Thank you Mr. Chair and board members. That's a great question because we did just that when our client hired us. For us the real determinant factor is the fact that the whole house is rented to a family generally, but it doesn't have to be a family but that's generally the case. It's rented for a week, two and a half weeks, it could be two months, so it is a rental. It is like a single family rental and those people don't in turn sublet rooms or create a rooming house or create a B&B, or create a hotel. What they do is they rent a single family home in a neighborhood, generally a family at a time. Also given her own regulations it will be not more than five individuals. So we did look at the code and we said the thing that it is most like is a rental home. A single family home that is rented lawfully under both the zoning code and the housing code as evidenced also, again, by the fact that the city issued a license for that use. So that's the answer.

Chair Gates: Alright, thank you. Further questions? I see none, thanks very much. Is there anyone else here to speak in favor of the application? Yes ...

Angie Toumey: Hi, my name is Angie Toumey, 2313 Cole Avenue SE in Minneapolis. I utilize vacation rentals when I travel, every time I travel whether it be for business or pleasure, family and whatnot. I do utilize it and I do enjoy the ability that that is an option for me and my family to utilize when we do travel. Secondly I am a rental owner in Minneapolis. I operate 10, I own and manage 10 houses and during times where we have just remodeled a house it might not be the prime time to rent to the long term leases so we have in the past and are currently operating a vacation rental or whatsit and I just feel very strongly that this definition of the property, of the whatsit falls closest under a rental property. Like Ms. Carolyn, she rents two weeks a month and it's the same for us. Two weeks a month and whatnot, and following the rules, the three unrelated rule maximum, with all those rules and those laws being followed. I just feel strongly that it is a rental property and the square peg in

a round hole is kind of what I feel the zoning is trying to state this is, if that makes sense, in so many words. I would hate, by stating this is closest to the hotel/motel it's going to eliminate the ability for everyone in Minneapolis, in R1A districts, to own and operate, which I feel is detrimental to even our neighborhoods. Like it was stated, there's rental property owners and some of them aren't so good. The people that might become vacation rental owners, they might not be so good. So, like you said there probably needs to be something set up so we can all have a good operating system, but I don't feel that it is closest to the hotel/motel.

Chair Gates: Alright, thanks very much. Anyone else here to speak in favor? Yes sir.

George Pridmore: My name is George Pridmore, I live at 4845 Bryant Avenue S immediately next door to the south. First I want to make clear that even though you may know me as an inspector for the city I'm just here as a neighbor and a concerned citizen and in no way do I represent the city. It's not the intent of this committee that she's a good landlord or a bad landlord, but I just want to say that I've never been bothered as the immediate neighbor by any of the tenants in this property. But I am concerned, I have 4 houses three of which are rented and I'd like to provide a larger context. You try to define this house but my definition of this house is that this is America and it's her house just like my houses are my houses. That overrules all the petty is it an R21, is it a single family home, is it a B&B. I'd also like to agree with the speaker just prior to me that it's most closely defined as a rental house than it is to a hotel or motel or bed & breakfast. To me that's the closest definition of what's happening with this house. Also these kind of rental properties are becoming very common as are vacation home trades so after I retire, let's say I want to trade my home for a week in Seattle with a gentleman over there. Let's say I'm a retired guy and I want to do this one a week or twice a week or three weeks, how ever many I want to, because it's my house. Now is the city going to tell me I can't do that because I'm going to have strangers in the house for a week or two? Is that what's going to be the upshot of these kinds of proceedings, the zoning codes? This kind of thing as a citizen worries me, telling me what I can do with my property.

Chair Gates: Is that it?

George Pridmore: I don't see the humor, can I address why, what's ...

Chair Gates: No, I think we should end it right there, thanks, unless you have anything more to say.

George Pridmore: No.

Chair Gates: Alright, thank you. Anyone else here to speak in favor? Yes.

Carolyn Moore: I'm Carolyn Moore and I reside with my 82-year old father. When I first began to look into options of renting my house I had thought about the times that I had personally rented with vacation rental property and I always had a really wonderful experience. So what I did is I looked into those options and I went through the Minneapolis codes and I did not see anything that says I couldn't do it. That it was against the law or that it was forbidden or that there was any amount of days that were required for people to stay. And so then I decided that that was the best option for me and I put it on the website. I rent, I do regulate, I run a very tight ship. I do regulate who stays there. I rent the whole house to families most coming to visit their own families in the neighborhood. That is, those are my rentals and I think that you can see the positive comments coming from the people who have stayed there. These people not only stay in the whole house for whatever one week, two weeks, or more, they occupy the whole home and they are required in the lease agreement, I have a very detailed lease agreement, that I require them to sign and they are required to adhere to the neighborhood, policies, rules, and regulations including to and not limited to putting out the trash on trash day and putting out the recycling on recycle day and no parties and they fit into the neighborhood like any single family in my neighborhood. I care about my property and I care about all the neighbors. I care about them and I would not allow something dangerous or unethical or wrong and I clearly feel very strongly that I should have a right to rent my house this way. The last time in October we were allowed a continuance with the idea that we were going to sit down with the city to try to come up with a positive way of working this out so that there are some regulations because not everyone will run as tight a ship as I do and micromanage their property like I do. And I would feel that we deserve that time with the city to try to work something out because the economic times, as things get

worse for people there's going to be more and more people doing rentals like this and at least then it should be regulated. So everyone is just as careful ...

Chair Gates: Thank you very much, You have questions? Yes ...

Mr. Ditzler: Thank you Ms. Moore for your testimony. I'm assuming that the prime reason for doing the whosiewhatsit is monetary because from a landlord perspective there's obviously considerably more administration and work on your part to do this version as opposed to doing what we would consider maybe a traditional rental property where you sign a longer term lease which is obviously going to be less time and resources on your part as the owner. Considering that you are spending time with your elderly father I would think that if time is the factor it's much easier to do the traditional route than to do this route. Obviously this route appears to have more financial incentive, is there other incentive as to why you have chosen to go this route as opposed to a traditional rental with your house.

Carolyn Moore: It does help with my livelihood, yes, it does. I live and take care of my 82-year old father who is not in good health.

Mr. Ditzler: Ok, thank you.

Chair Gates: Ms. Lasky?

Ms. Laksy: In support of the applicant I will say that it is much easier to get rid of a short term bad

Chair Gates: Is this a question?

Ms. Lasky: Ok, I'll hold onto that.

Carolyn Moore: I agree with that wholly and I have talked with my neighbors and that's one thing is that I said if there ever is a problem with anyone and no one has ever called me, but if there ever is though pick up the phone and call me. The thing is nobody can choose their neighbors. You know, is there someone who's going to, if I long term rent, could I get somebody a perfect neighbor in there? If I don't, then you know, they're in there. It's pretty darn hard to get them out once they're long term renting. If there is an issue with a short term rental, they are out of there. They're gone.

Chair Gates: Thanks, Ms. Moore. Anybody else to speak in favor? Anyone here to speak in opposition? I see no one. Let's close the public hearing on this item and hear from the board.

Staff Poor: Chair Gates, if I may, I would like to clarify a few items if I may. I'd like to address two points briefly and then I'd also like to make a few other comments, but I can tell you in conversations with the housing rental license, we have been in discussions and they are prepared to revoke the rental license. They felt it was important to let this hearing run its course. The appellants are asserting they have a rental license. I can tell you that there has been preparation and there has been strong consideration to revoke that license. So while it may be the case they have a license today, I don't think that should be taken as an imprimatur as it's being suggested that the city believes that is a correct course of action. I don't believe that's fair and accurate. It's not. It's procedural in the fact that the license has not been moved to be revoked. The second thing is that in fact we did meet with Ms. Paris, the attorney representing the client. We did have productive conversations. The board last time only carried this item over one cycle, not two, in good faith we sought to go longer. So I don't want it to be characterized by Ms. Moore that the city did not engage in honest, well intentioned, and sincere discussions to work this out. The timetable did not afford us to go more forward with that and there has also been, quite frankly, an open recognition that whatever the outcome of this is, that we will have to work through a resolution. In other words, whether the board sides with us or not today, things will have to be worked on in the end game. So I don't want the board to be thinking the city promised one thing and did another, because that is not the case. That is not the case at all.

Chair Gates: Alright, thank you Mr. Poor. Is that a question, Mr. Perry?

Mr. Perry: Yes, I wanted to ask Mr. Poor something that was brought up by the appellant's attorney. My interpretation of the zoning code is similar to the Chair's in that it defines what is permissible or explicitly what is not but in general what is permissible. If we did not agree with your assertion that this was substantially similar to a hotel/motel or bed & breakfast I believe then it would be considered undefined. What would be the results of that from a zoning perspective?

Staff Poor: Chairman Gates, Board member Perry, I guess what I would refer you back to is Section 525.80, the last sentence of which says if said use is not sufficiently similar to any other use regulated in the zoning ordinance the use shall be prohibited. I mean that's one answer, so if we don't find some way, it's prohibited. If I may, I'd like to address something where the appellant's attorney cites case law. And while I'm not a lawyer I do feel I have some latitude to speak about the case law relating to this. When they cite a case in the packet and it talks about the plain and ordinary meaning of its terms and then they go on to cite here the plain and ordinary meaning of the terms provided in the city's zoning ordinance allow the appellant's use of the rental and other ordinances may be construed strictly against the city and in favor of the appellant. The housing code does not provide time limits for home rental and there is no other applicable code or regulations that allows the city to interpret the code against the appellant. They then go on to say there are a number of cities and counties that are dealing with this expanding type of private short term rental use. I would suggest that vacation home rental, to quote the appellant's attorney, is not in Webster's dictionary. It's not a widely, it may be widely known colloquially, what we mean, but I'm not sure it's a well understood definition. Stearns County I think has the highest per capita of vacation cabins if you will, so it's not unexpected that they would probably deal with this issue first. But I would suggest that vacation home rental is not exactly the most common definition of renting a property. I just wanted to make that point, I have some other points I'd like to make in response to Ms. Moore but I guess I'll reserve that and field your questions instead.

Chair Gates: Thank you, I'd like to wrap up the questions with staff. Is that a question for staff Mr. Finlayson?

Mr. Finlayson: Oh, no.

Chair Gates: Good, Thank you. Any final questions of staff and then I'd like to just confine our discussion to the bench here. Mr. Finlayson.

Mr. Finlayson: It's fairly simple to me.

Bill Griffith: Mr. Chair, excuse me,

Mr. Finlayson: I'm sorry, I'm speaking. You've had your turn.

Chair Gates: Mr. Finlayson, hang on a second.

Bill Griffith: I'm sorry, if the hearing is closed I'll sit down. I thought it was still open.

Chair Gates: Yeah, no it is closed.

Bill Griffith: Ok, thank you, alright. My apologies, I thought the hearing was still open.

Chair Gates: Alright, it's alright ... Mr. Finlayson?

Mr. Finlayson: It seems like everyone involved with this was vaccinated at birth with a phonograph needle. This is pretty simple. Notwithstanding an inspector who has no respect for the code, but it's not incumbent upon the city to anticipate every new use that may come along. Society is in constant flux and change. It's a normal and ongoing thing. But the code sits there to define what is a permissible use. This is not a permissible R1 use. The zoning administrator has said that it is not. It's not incumbent upon us to find a definition as to what it's closely like, it's most like what it is itself which is unto its own self. So, therefore, I move we uphold the decision of the zoning administrator. Thank you.

Chair Gates: We have a motion to approve the decision of the zoning administrator.

Mr. Ditzler: If we do that then the situation ...

Chair Gates: Is there a second?

Mr. Ditzler: I'll second it at this time, but I'd like to hear more discussion.

Chair Gates: We have a motion and a second, go ahead Mr. Ditzler.

Mr. Ditzler: I'll second it at this time, but I'd like to make a comment. One of the more interesting discussions that I found was between Mr. Manning and Mr. Griffith. It seems to be just a difference of opinion, but I thought that the chairman summed it up more concretely in the fact that when I look at the testimony as to what this property is that has been delivered by the applicant, by the people and witnesses around it, I do not see that definition as allowable use in the R1 district. I believe in my experience on this board when we come up with issues that seem to fall between the cracks, that it is the zoning administrator's job to decide what to do with those items. That's one of his responsibilities. Not that we just default and it just gets to go on until the city comes around to correcting it and going through the process. That is his job to do that. And it appears to me that in this situation he was specifically supposed to do that job and I feel that he has interpreted the facts correctly and has made the correct call. For me one of the issues is that without getting into a lot of definitions is that the use of that property is temporary and whatever way you want to determine that that the people who stay there do not use it as a residence, they do not have utility there, they do not receive mail there, they do not do a lot of things that tenants of longer term, even on a month to month basis, would do and so it is different than that. It is more different from that than it is alike to it and I think that is how the zoning administrator came to the conclusion that he has. Personally I also feel that there is possibly some political thing going on here in that the city of Minneapolis does not like single family home rental, period. Considering it's a thousand dollars to convert your house to single family, if you own a single family house it's a thousand dollars to convert it to rental now as of November 1. So your rental license for the first year is about twelve hundred bucks and on your duplex you bought it's about 80. The city has sent a clear message to property investors and owners that this is not what they want and the zoning administrator, this call seems to be along those lines as well. So the voice from the city, while they may be needing to address an important issue that's come up and maybe this is something that we do need to look at, at this point to say well go ahead and do it until we figure out how to regulate it has not been common practice with the city and it's not been common practice of the zoning administrator, and I think he's in line with his past calls. That's why I would support his decision.

Chair Gates: Thank you, Mr. Ditzler. Mr. Perry.

Mr. Perry: Thank you. I believe that one thing should be made clear in that regardless of what decision we make with regards to the ability for the zoning administrator to interpret the code correctly in this case, the use that is going on now is not permitted. If we say it is one of these uses, it's not permitted. If we say it is not aligned with one of these uses, then it's undefined and it's not permitted. I look at the definitions before me, the data that's before me, and I do not think that any of these things, well some of them come close, any of the actually define this new type of use. So my feeling is that the zoning administrator, while trying to do their best, and actually trying to be helpful in finding a place for this type of use in the existing code, really doesn't have enough of the code to work with to be able to do that. I do not think that vacation rental by owner is defined in the code and nothing in here is similar enough to it, substantially enough similar to it, so I will not be supporting the motion.

Chair Gates: Thank you, Mr. Perry. Other comments, Ms. Lasky.

Ms. Lasky: I will not be supporting the motion for basically the same reasons. It's not defined in the code and I can't agree with it. It's not defined in the code and as long as it's not defined in the code I can't, I mean that code is just too ambiguous. I don't read it that way so I'm just simply not going to be supporting the motion. Whether I agree with vacation rentals or not, I'm just not going to be supporting the motion.

Chair Gates: Thank you, Ms. Lasky. Other comments, Mr. Koch.

Mr. Koch: It seems that Mr. Poor has made the right call here but only in the result of saying look, this isn't defined so I gotta defer to what I know and what I know is the code and this seems to me like a hotel. I disagree that it's similar to a hotel or a bed & breakfast, however, and so I can't support the motion because I don't believe it's similar to a hotel or a motel or a bed & breakfast. Whether I should feel that it's allowable or not is not at issue here. It's, ok, did Mr. Poor make the right call in saying that this is just alike a hotel/motel or bed & breakfast and it's not.

Chair Gates: Thank you, Mr. Koch. Mr. Sandberg.

Mr. Sandberg: Thank you, Mr. Chair. I will be supporting the motion although I don't think it's as clear cut as Mr. Finlayson initially stated. But I do believe that the zoning administrator is saying, what he is saying here is the use is not similar to a single family residence as we normally see it and these are somethings that are maybe more similar to. I think he used the words substantially similar and not being used as is enough to support his conclusion here.

Chair Gates: Thank you, Mr. Sandberg. Mr. Manning.

Mr. Manning: As I'm sure the appellant's lawyer is, I'm counting, and I've got a 3/3 tie so I feel I should speak at this time rather than let the vote just roll out, although I realize this will put you in an awkward position but we are here to make decisions. There's a hole in the code and the hole in the code is related to the length of the rental. I agree with Mr. Finlayson that the, neither the code, in this context or in any of the variance context we could see can, or should be required by law to anticipate every future use or everything anybody might do with their home. I am however persuaded that given the gap in the definition of a rental and the exclusion from rental of things that are B&B hotels and motels, in other words by defining those we have excluded them from rental, I find this substantially more similar to a rental than to the three uses that would be prohibited here. So I think my reasons for not supporting the motion don't in fact match up with the other people who have spoken so far, thank god we don't have to write a plurality opinion, but I will not be supporting the motion for those reasons that I have just stated.

Chair Gates: Thank you, Mr. Manning. Mr. Ditzler, did you have a final comment? No. We've heard from everyone, we have a motion and a second to approve the zoning administrator's decision and to deny the appeal. Please call the roll.

Clerk: Ditzler.

Ditzler: Yes.

Clerk: Finlayson.

Finlayson: Aye

Clerk: Koch

Koch: No

Clerk: Laksy

Lasky: No.

Clerk: Manning

Manning: Nope

Clerk: Perry

Perry: No

Clerk: Sandberg

Sandberg: Yes

Chair Gates: Alright, that motion fails. Further discussion? Yes, Mr. Manning.

Mr. Manning: Mr. Chair, I'd like to move to overturn the zoning administrator and I grant the appeal.

Mr. Koch: I second that motion.

Chair Gates: There's a motion and a second to grant the appeal. Further discussion?

Staff Byers: Chair, may I remind the board that you will need to make findings of fact for that decision and that we will need to affirm those findings at our next hearing if the motion is adopted.

Chair Gates: There aren't the standard four questions that we might see for a variance. So it's simply, I would think, a statement from Mr. Manning might suffice.

Mr. Manning: My statement is that there is a gap in the code relating to the duration of the period for which one exchanges accommodations for compensation and that this use and all facts of this use have been essentially stipulated by the parties, this use is more substantially similar to a rental than it is to a hotel/motel or bed & breakfast.

Chair Gates: Thank you, Mr. Manning. Do we have conversation on that? Mr. Perry.

Mr. Perry: Yes, Board member Manning if you had not said that I think I would have supported the motion. I do not feel that this is substantially similar to anything and for your finding of fact I cannot support that motion.

Chair Gates: There's a motion on the floor. Mr. Ditzler.

Mr. Ditzler: Nope, I'll wait until the motion vote. If it fails I'll voice my concern.

Chair Gates: Further comment? Please call the roll.

Clerk: Ditzler.

Ditzler: No.

Clerk: Finlayson.

Finlayson: No

Clerk: Koch

Koch: Yes

Clerk: Laksy

Lasky: Yes.

Clerk: Manning

Manning: Yes

Clerk: Perry

Perry: No

Clerk: Sandberg

Sandberg: No

Clerk Gates: That motion fails. Is there an alternate motion?

Mr. Perry: I'd like to make a motion that the appeal of the zoning administrator is denied, I'm sorry upheld, and the finding of fact is simply that there is before us no substantially similar definition to the use of the appellant's property.

Ms. Lasky: The zoning administrator's decision is upheld?

Mr. Perry: I said denied.

Ms. Lasky: Oh, denied, I'm sorry. I mis-heard.

Chair Gates: Is there a second?

Mr. Perry: There is no definition before us that is substantially similar to the use of the property in the way the appellant is using it.

Chair Gates: I'm looking for a second. Mr. Koch, right. Mr. Ditzler?

Mr. Ditzler: Did Mr. Poor read from the code that if it's not defined then it's prohibited? So by the motion that he has just stated, he's just stated that it's a prohibited use, because he just ... am I wrong by you saying if it's not defined by the code and the code said if it's not defined it's prohibited ...

Mr. Perry: If I may, Mr. Ditzler, as stated originally, it's not a question of whether it's prohibited or not. From my view, it's prohibited regardless. If it's not defined, it's prohibited. If it is defined, as the zoning administrator stated, it's prohibited. What the question before us is not whether it should be prohibited or not but whether it is substantially similar to one of these definitions before us or not. My claim is it is not substantially similar to anything in the code right now. It's a new use and it's not substantially similar.

Mr. Manning: Mr. Chair, if I might, I think that the portion of the code that Mr. Ditzler was referring to was 525.80 which concludes by saying if said use is not sufficiently similar to any other use regulated in the zoning ordinance the use shall be prohibited. So Mr. Ditzler's question is, if your proposed finding is this isn't substantially similar to anything that's permitted, the default, it appears under 525.80 is that it is prohibited.

Mr. Perry: If I may, Mr. Chair, I will just repeat that I don't think that the question before us is whether this item, whether the use is allowable or prohibited but whether there is something in the code that is substantially similar. My contention is there is nothing in the code by definition that is substantially similar to the use as the appellant is using the property today.

Chair Gates: Let me read the full text of 525.80 and then you might want to respond to that further, Mr. Perry. 525.80 substantially similar uses. Whenever an application contains a use not included in the zoning ordinance the zoning administrator shall issue a statement of clarification finding that the use either is substantially similar in character and impact to a use regulated herein or that the use is not sufficiently similar to any other use regulated in the zoning ordinance. Such statement of clarifications shall include the findings that led to such conclusion and shall be filed in the office of the zoning administrator. If said use is not sufficiently similar to any other use regulated in the zoning ordinance the use shall be prohibited. Which would seem to support my previous statement that the code basically defines what is permissible in a given zoning district, not what is not permissible. So based on that do you have a clarification or does your previous statement stand?

Mr. Perry: I stand by my previous statement.

And I would agree because had the zoning administrator said you know I'm not going to allow this because it's not like anything in the code therefore it's prohibited I would support that. But what he's saying, he's trying to help us out by saying it's more like a hotel and a bed & breakfast and that is prohibited, so let's prohibit this. Rather than saying you know it's not defined therefore it's prohibited. That's what I'm saying, it's not defined, it's not similar to a bed & breakfast, it's not similar to a hotel, so because it's not defined, I mean again they're not asking whether it's prohibited or not, is it like a hotel or a bed & breakfast or not and it's not.

Chair Gates: Alright, but then taking that logic one step further, if it's not like a hotel or a motel or a B&B and it's not like any other use in the zoning ordinance, the use, quote, the use shall be prohibited.

?: That's fine, I don't care whether it's prohibited or not. I care, the question before us is was the zoning administrator right in calling it substantially similar to a hotel/motel or bed & breakfast and I don't think it is.

Chair Gates: Alright, we have a motion and a second. I believe you have a statement of finding of fact on that, please call the roll, Ms. Phillips.

?: May I have the motion read?

Clerk: Mr. Poor said that it was not, if it was not defined in the code it is prohibited. This is not defined in the code, but what he's saying is that it's substantially like a bed & breakfast or a hotel. That is what you're voting.

Chair Gates: Why don't we get Mr. Perry to restate the motion.

?: That's not the motion as I understood it. I'm not sure what I understand.

Staff Poor: May I, Mr. Gates? I just want to read from the appeal.

Chair Gates: Must we?

Staff Poor: Well I think it would it might be helpful because there's actually two parts as we're saying ... we are saying the zoning administrator that the current use of the property is substantially similar to a hotel/motel or bed & breakfast which is prohibited in the R1 district and is not a single family dwelling as the appellant asserts. It seems to me, and I'm not trying to hang myself here, but it seems to me that you're also saying if you don't think it's a bed & breakfast and you don't think it's a hotel but you also don't think it's a single family it seems to me just so we're clear, I mean you can say that we got it wrong and it is a single family that may not neatly fit the licensing regime which the city has in place which I think is some of the comment I heard here.

Ms. Lasky: Yes.

Staff Poor: I'm just trying to help you not to get deadlocked here.

Chair Gates: Alright, thank you Mr. Poor. Mr. Perry.

Mr. Perry: I am moving that the appeal of the decision of the zoning administrator be upheld, granted, with the finding of fact being there is nothing in the code that is substantially similar to the use of the property as the appellant is using it.

?: You just gave an argument to deny the appeal based on code.

Chair Gates: We have a motion and that's the fact attached to it so you can make your judgment, Mr. Finlayson, and it was seconded by Mr. Koch I believe.

Staff Byers: A clarification that the motion is to grant the appeal, not to deny.

Mr. Perry: Grant the appeal, yes, I'm sorry that I mis-stated that originally. Grant the appeal.

Chair Gates: Ms. Phillips, please call the roll.

Clerk: Gates. Oh, I'm sorry.

Chair Gates: I don't believe I'm voting on this, thank you.

Clerk: Finlayson.

Finlayson: No

Clerk: Koch

Koch: Yes

Clerk: Laksy

Lasky: I'm sorry to say this, the intent is right but I have to say no.

Clerk: Manning

Manning: No

Clerk: Perry

Perry: Yes

Clerk: Sandberg

Sandberg: No

Chair Gates: That motion fails. Mr. Manning.

Mr. Manning: If I might move that we're not going to be able to (unclear)

Chair Gates: I don't think we're quite there yet.

Mr. Manning: You don't think so? If you've got one more finding I'd like to hear it.

Chair Gates: I think it's a matter of semantics and we have some pretty particular members here tonight, but I'd heard some general agreement about the fundamental issue but it's a matter of exactly the spin that's put onto it.

Mr. Perry: Let me try one more then, if I might. I would propose that this is not a, no I can't, sorry.

?: Propose it's a single family house, that's the only option left. That the use is similar to single family. If that's what we have to, we have to.

Ms. Lasky: No, try again. Try it.

Mr. Manning: I'm not sure I'm the right creative force to try this but I would move to grant the appeal on the finding that this is a single family dwelling for which one may rent subject to the city's issuance of a rental license.

Ms. Lasky: Ok, stop there. That's good.

Chair Gates: Do you want to repeat that last part?

Mr. Manning: Grant the appeal, it's a single family dwelling which one can rent, subject of course to the city's I believe to grant or not grant rental licenses.

Mr. Ditzler: I will seconded that opinion to say that it is more like a single family rental than anything else.

Ms. Laksy: Yes, as the ordinance stands today.

Chair Gates: The motion is seconded, Any further comment?

Mr. Perry: I will not, not that it matters at this point but I've stated my case pretty clearly and I don't think there is anything in the code. I think this is a good opportunity for the city council to define something in the code so that we can have clarity on this since it is a growing way of using property and avoiding foreclosure in many cases. I don't believe it is similar to anything and I won't support the motion as, primarily for the finding of fact.

Chair Gates: Thank you, Mr. Perry. Final comments? Please call the roll.

Clerk: Ditzler.

Ditzler: No.

Clerk: Finlayson.

Finlayson: No

Clerk: Koch

Koch: Yes

Clerk: Laksy

Lasky: Yes.

Clerk: Manning

Manning: Yes

Clerk: Perry

Perry: No

Clerk: Sandberg

Sandberg: No

Chair Gates: That motion fails. Mr. Manning?

Mr. Manning: I have one comment, Mr. Chair. I think we may all be, or there may be a majority or agreement that the applicant is in violation of the code. It's the reason that the zoning administrator stated that we don't agree on. If we can somehow restate the zoning administrator's justification here we could come to a decision here but I think what our indecision is is the rationale or the statement of rationale.

Chair Gates: I believe that the zoning administrator's position is a matter of record now. It's in our packets, it's been discussed here for an hour and a half and I don't think that's going to be changing here any time tonight. I

wonder if council might give us, I don't recall any time recently at least since I've been chair, where we've had an issue like this where we haven't been able to reach some kind of an agreement on it.

Staff Byers: Mr. Chair and board members, as you know you have several decisions for taking an action to approve, approve with conditions which you cannot do in this case, to deny, or to continue. There is also an option open to applicant's to withdraw, we don't have a withdraw in this case. We do need a board decision. If you do not make a decision tonight, then it will be continued on to your next agenda item so I hope that that's useful information and I guess I would point out to you that at the staff level we do our best to do analysis and make a presentation to you in the body of the report to help you, but certainly if we chose to make a presentation differently or put in or take out different pieces of information, then the code would still remain regardless of what we brought before you.

Chair Gates: And Mr. Byers can you remind us about where we stand in terms of the time clock if this item is to be continued.

Mr. Byers: Mr. Chair, we've had a couple of continuances, so I'll refer to Mr. Steen for the exact status on that.

Staff Steen: Mr. Chair, the clock will expire February 2 so we do need to account any appeals and publication in that timeframe.

Chair Gates: Does that mean we can extend it one cycle or not?

Staff Steen: I believe we'd be pushing it pretty closely. I don't have the exact dates at this point but I don't know that we could do that at this point.

Staff Byers: We appreciate the difficulty in taking a decision, but that is part of your duties as appointed officials.

Mr. Perry: Well, Mr. Chair, if I may?

Chair Gates: Mr. Perry.

Mr. Perry: I think this item actually needs to be continued. I don't think we're going to get any, we're here more tonight, we've exhausted I think all manner of possibilities tonight. I would like to get specifically, in order for us to fulfill our responsibilities on this board, I would like to know specifically if the clock would run out if we continue one cycle. I don't think we can make a responsible decision unless we know that.

Staff Byers: I apologize, I had a question from the applicant. Jake was talking about the clock so I missed the date. (unclear) We don't have access to it. Mr. Chair, it could be, it can actually be continued indefinitely if the applicant puts in writing that they release us from the clock. That's always possible. After that, or short of that kind of a decision, which we don't have anything in writing at this point, it could be continued to the next cycle though we can't clarify at the moment whether or not an appeal of this appeal could be satisfied within the 60 days and I can tell you that I don't think we'd make it if it was continued two cycles into January.

Staff Steen: Mr. Chair, that is because of the, I do not believe that we have the most recent schedule because of the new year. The entire schedule has not been written so there was some question about the dates and that's why we don't have a concrete date that we can go.

Chair Gates: Alright, Mr. Manning.

Mr. Manning: (unclear)

Mr. Gates: Mr. Griffith.

Mr. Griffith: Mr. Chair and members, thank you, I don't think we'd waive the clock but we would certainly continue 30 days on the back end. We certainly don't want to put anybody in a box but we don't want to have an

indefinite time period so if it's 30 days or 60 days that they need on the back end we are happy to grant that to work this out.

Chair Gates: Would that be a binding statement?

Staff Poor: Chairman Gates, just to dovetail what he said is under 1599 the city has the right to extend the 60 day clock. The appellant would have to extend past 120 days and frankly procedurally we don't accept open ended anyway. So if we were to say if the appellant was to say they would grant us an extension out 150 days or something to that effect but they would have the ability to do that. We would not have to act tonight. If the appellant was to draft something on that order tonight we would certainly accept it and that might offer some time here.

Chair Gates: Mr. Griffith could you clarify the extent to which you are willing to grant this extension?

Mr. Griffith: Yes, I think it should be sufficient, I believe the mandate is early February, so end of March, March 31, would be probably sufficient time to conclude this.

Chair Gates: 60 days.

Mr. Griffith: Sure, 60 days is fine.

Chair Gates: And you will draft a note here by hand tonight before you leave and give that to staff so that we have that on the record? Thank you.

Mr. Perry: Mr. Chair, may I move that we continue this item one cycle.

Staff Byers: Board members, may I politely suggest that any motion be conditioned on receipt of that written request from the applicant.

Mr. Perry: Conditionally on the receipt of the appellant, I'm sorry ...

Chair Gates: From the appellant of a notice granting an extension of the time clock for 60 days.

Mr. Perry: Thank you.

Chair Gates: Is there a second?

Mr. Ditzler: Second.

Chair Gates: All in favor? (ayes all around) Opposed? (silence) Continued.

Thursday, December 18, 2008
4:30 p.m., **Room 317** City Hall

Board membership: Mr. Matt Ditzler, Mr. John Finlayson, Mr. Paul Gates, Mr. Chris Koch, Ms. Marissa Lasky, Mr. Bruce Manning, Mr. Matt Perry, and Mr. Dick Sandberg

The Board of Adjustment of the City of Minneapolis will meet to consider requests for the following:

2. 4839 Bryant Avenue South (BZZ-4227, Ward 13) – Continued from December 4

Carolyn Moore has filed an appeal of the decision of the Zoning Administrator that property at 4839 Bryant Avenue South is in violation of the Minneapolis Zoning Ordinances Chapter 546 Table 1, as it has been determined by the Zoning Administrator that the current use of the property is substantially similar to a hotel/motel or bed and breakfast, which is prohibited in the R1 zoning district and not a single family dwelling as the appellant asserts.

ACTION: Mr. Ditzler moved and Mr. Finlayson seconded the motion to **adopt** staff recommendation and **deny** the appeal of the decision of the Zoning Administrator based on the determination that the current use of the property is substantially similar to a hotel/motel or bed and breakfast, which is prohibited in the R1 zoning district and not a single family dwelling.

Roll Call Vote: Yeas: Ditzler, Finlayson, and Sandberg. **Nays:** Koch and Perry. **Absent:** Lasky and Manning. Motion Passed.

TESTIMONY

Chair Gates: This is item #2, 4839 Bryant Avenue South. This was continued from our previous meeting, the last meeting, during which we heard this item at great length. We don't wish to go over previously covered territory any more than we have to tonight. I'd like to hear a brief statement from staff about what might have transpired since our last meeting and to just summarize what we've already been through. I will reopen the public hearing to take testimony from any member, any one who did not speak at previous meetings, and then I will grant the appellant a minute or two to talk at the end of that and then we'll close all the public testimony and discuss it ourselves. So, Mr. Steen, go ahead.

Staff Steen: Chair Gates, members of the board, Item #2, BZZ 4227, pertaining to 4839 Bryant Avenue South, is an appeal of the Decision of the Zoning Administrator. Carolyn Moore has filed an appeal of the Decision of the Zoning Administrator that the property at 4829 Bryant Avenue South is in violation of the Minneapolis Zoning Ordinances Chapter 546 Table 1 as it has been determined by the Zoning Administrator that the current use of the property is substantially similar to hotel/motel or bed & breakfast which is a prohibited use in R1 zoning district and that it is not a single family dwelling as the appellant asserts. As you said, the item was originally scheduled for the October 30, 2008, meeting of the Board of Adjustment. It was continued at that time at the applicant's request. At the November 20 Board of Adjustment hearing it was continued for further research on staff's behalf, and at the December 4 meeting there were four motions where there were no conclusions made. As a result, the Board passed a motion to continue the item one cycle to the December 18 Board of Adjustment meeting with the condition of the receipt from the appellant of a notice granting an extension of the time clock for an additional 60 days. The appellant has provided CPED staff with that letter granting an extension of the clock to April 2, 2009. Once again, it is CPED Planning's recommendation to deny the Appeal of the Zoning Administrator. That's all I have.

Chair Gates: Thank you, Mr. Steen. Your brevity is appreciated. Let's hold off on the appellant if we may. We'll bring you up at the end and if we have any guests who wish to speak in favor of the application, aside from the appellant, we'll hear those now. Anyone here to speak in favor of the application? I see no one. Anyone here to speak in opposition? Yes ... if you could give us your name and address for the record.

Sam Ingraham: My name is Sam Ingraham, I live at 4830 Bryant Avenue ... this is my husband Greg.

Chair Gates: And you did not speak at any of the previous meetings?

Sam Ingraham: No we did not. We have submitted two letters to the Board. I am appealing or urging you to deny the appeal of Ms. Moore on the basis that vacation rental is not right for single-residential zoning. That because this is residential, there is no residential in vacation rental. There is nobody living there, and that's my concern, or my husband's and my concern, is that they're not part of the neighborhood, part of the community,

and that's very important to us. We certainly understand if Ms. Moore needs extra income. We certainly would never deny her the right to rent to a family. We have rental property on our, in our neighborhood, but those people are living there and they are part of our neighborhood, part of our community. So we feel strongly that this is not acceptable in single-family residential zoning.

Chair Gates: Alright, thank you very much. Yes sir.

Javier Guzman: My name is Javier Guzman and I live at 4831 Bryant Avenue South along with my spouse and children. We are the immediate next door neighbors to the property in question. We've been 14 year residents of that property.

Chair Gates: And you have not spoken here previously?

Javier Guzman: I have not spoken here before. We are strongly opposed to granting a variance for use of a vacation home rental for the following reasons: number one is that this property has frequently been used for entertaining parties, which to us in the neighborhood pose parking and noise nuisances. During the warmer months we've seen very frequent parties, graduation parties, wedding receptions, family reunions occurring on that property. There were comments posted on a home and away contact website which was submitted by the applicant and approved by the applicant property owner which substantiated the frequent gatherings and entertaining, including filming a reunion of about 40 people. These parties occurred both during the weekends and on weeknights which interrupt the night routine of our three school age children during the springtime. The proximity of our home to the 4839 Bryant makes that property wholly unsuitable for any business where frequent gatherings are held. I have a photograph, the photograph which I'm showing here was taken from our bedroom to the backyard patio area of the adjacent property where such gatherings and parties are held. The distance from the window you see here to the backyard property is about 13 feet. I also have another photo, this bottom photo here is taken from our sunroom/living room to the adjacent property. There's a driveway and then a side door there and the distance from this window here to the driveway is about 20 feet. That driveway and entryway is where frequently guests are greeted and gatherings can be had when there are multiple people are on the property. Basically we can hear just about everything that's going on when that happens. While it is well within the rights of the property owner to hold gatherings and parties, the frequency of such gatherings by other individuals and groups, some of them very sizable, once again poses a significant nuisance to our home, to other adjacent homeowners, and to our neighborhood. So, item number two, even without the parties and the traffic of numerous short term guests that pose a nuisance to us my wife enjoys spending a lot of time out in the front yard tending to the lawn and garden. On many occasions guests from the adjacent property have stopped her to ask for directions to shops, parks, and restaurants. One guest commented on how the adjacent property was a nice hotel. My wife and I have been made to feel like we are a defacto concierge service for the adjacent property and indeed because the property owner does not live there anymore we feel like we know more about what goes on on that property than the property owner herself. Another reason is that short term rental business may increase security risks in our ... *(tape gap due to equipment failure)*.

(missed opposition testimony from Lisa Broek and Florence Melin)

Chair Gates: ... that might be different from what we heard last time, we'd be happy to hear that. If not, that's quite alright.

Carolyn Moore: Hi, I'm Carolyn Moore, the owner of 4839 Bryant and I just understand that this is a legal issue. And I understand that I am opposing the interpretation of the zoning administrator of how I'm using the house. I want the board to know that I use my single-family home. Number one, I do have to short term rent it and number two when I'm not short term renting it I am living there so the house is not sitting there empty as the neighbors have stated. I have a 15-year old son who goes to a school close by and I share custody, so when I am not taking care of my 82-year old father I am at the house with visitation with my 15-year old son. It's not an ideal situation but families for generations have had to do what they've had to do and this is what I have to do. With the difficult economic times, I'm not asking for a handout and I'm not deserting my father. In regard to the neighbor's comments, it's not a party house. If anybody, I talk with the people who rent the house out. They're visiting families in the neighborhood. They are families visiting families in the neighborhood. If there's any inkling at all that there's a party, I've actually had some people want to have a party and I've turned them down. I've

said no, I've turned them down. I have a very strict lease agreement I ask them to sign. It states no parties, no pets, no smoking. The people who have commented, and I think you've seen the comments, are very appreciative and very respectful of the neighbors and the neighborhood. I can't control what other people say to neighbors as they're passing and maybe asking directions. I come from a very large family myself. I'd never use the home any different than the people who are visiting and staying in the neighborhood. The neighbors have expressed some concern with property values, but I have to say that the market has actually done that in itself, not me renting or short term renting my single family out in which I partially reside in. The one thing that could take down the property values faster than anything is a boarded up foreclosed upon home. We've seen plenty of that. As far as the proximity of the neighbors complaining of looking in the windows and seeing that they built a big addition, and that's neither here nor there, but anyway I wanted to say that as far as the legal facts, but I understand. When I looked, and I looked into the short term rental, I went over and over the Minneapolis ordinances. I looked at everything in the ordinances to see what short term rental was, what long term rental was. There was nothing, nothing that stated how many days, how long, how short, that I had to rent out my house or could rent out my house. Nothing stated, there was nothing clear, and that is why I short term rented. I never in a million years ever thought I was doing anything wrong. There are thousands and thousands of vacation rental homes in communities, cities, all over this country, Minneapolis, St. Paul, and the surrounding communities as well as over the whole world, There is well over a hundred thousand of these vacation rental homes and I clearly and very micromanage my property. It's not that I just disappear and don't care, I'm there all the time. So as far as that I'm appealing the zoning administrator's interpretation and have been forced to have to hire an attorney to look into the legal facts behind it. Thank you.

Chair Gates: Thank you Ms. Moore. Let's close the public hearing on this item. Before we get comment from the board maybe this is a good time to remind ourselves of the very narrow nature of the question before us. It's an appeal of the zoning administrator's decision and our question is to decide, given the set of facts before the administrator, was the correct decision made. This is a unique case, we haven't seen a vacation rental by owner issue before us, at least as far as I can recall, and I think in our conversation last week we all asked questions which were very broad in nature trying to understand the root of the case. There was some speculation about what precedent there might be set by granting or denying this issue. There was some speculation that the code itself needs to address this and perhaps a vote one way or another might send a message to the council to rewrite the code or what have you. Really none of that should be our purview here tonight. We should simply be looking at whether or not with the existing code and the question before the administrator, was the proper decision made. Mr. Perry.

Mr. Perry: Thank you, Mr. Chair. Usually we have a bit of discussion. Since we've gone through this at least through one cycle, I'm going to start out with a motion which is to grant the appeal of the zoning administrator and the finding of fact I'll go through the definitions one by one. The zoning administrator has said it is similar to a hotel/motel or bed & breakfast and in fact it has to say substantially similar to a hotel/motel or bed & breakfast. As we've heard its use, I look at bed & breakfast and I see that one of the key components is overnight guests and I conclude that that implies a very short term, meaning one night or two nights. While that might have been the case at one time, it does not seem to be the case at present. When I look at the hotel definition, one of the requirements is access to the outside through interior hallway connect to the main lobby, that's clearly not the case with this property. In the motel definition, motel is defined as having rooms separate entrance providing direct access to the outside and that certainly isn't the case with this property either. Again, the hotel license definition includes a time period which is a shorter period of time than one week and while at some point there were indications that was happening, that does not seem to be the case anymore. So my contention is that, in fact, there is no, of the four things that the zoning administrator said that it was substantially similar to, it is in fact not. I'd like to add one other thing, to address some of the concerns that have been cited by those in opposition. I'm a block club organizer, I understand that this type of use presents some challenges, but I also understand that in these economic time the alternative may be foreclosure and that creates an even larger set of safety challenges. But again I think I've presented finding of fact for the fact that the zoning administrator was not correct in claiming they were substantially similar to those four items.

Mr. Koch: I'll second that motion.

Chair Gates: Ok, Mr. Perry, we have a motion and a second. Further discussion, Mr. Ditzler.

Mr. Ditzler: I will respectfully disagree with Board member Perry. I read that definition of a bed & breakfast differently than he does. I believe that the phrasing that determines is how long the tenants are there is temporary and not the word overnight. I think overnight guest describe the nature of staying there and that temporary refers to the duration. And I believe that temporary could mean a day or two days or two weeks. I believe that is open to interpretation which the zoning administrator in my opinion has interpreted correctly. I think that with all of the definitions, again, as I go back to when we had whenever it was the last meeting and I tried to decompress and review this again, it was that for me the big difference is tenancy and that the reason this property or this use doesn't seem to be defined anywhere, but it is most similar and substantially or essentially similar, whatever word you want to use, to these uses, even though it is not exactly like one of them, but none of them contain tenancy. A rental unit of a single family home denotes tenancy. That is where the individual lives. That's where they receive mail. It's where they have utilities. The City of Minneapolis' guidelines for regulating rental are based on tenancy for many different reason which we won't get into right now. I guess that's a little off the point, but to speak to your point, Chairman Gates, to stay on the topic, I do believe it is most similar to a bed & breakfast and that temporary refers to the duration of the overall stay and that overnight is a description of the type of use that they are having at that building. So I will not be supporting the motion.

Chair Gates: Thank you Mr. Ditzler. Mr. Sandberg.

Mr. Sandberg: Thank you, Mr. Chair. I also would not support this motion for the same reasons that Mr. Ditzler stated. I believe that we can look at the definitions of hotel/motel, bed & breakfasts and look at what's similar amongst them and use that as a basis rather than some of the detail descriptions of a hotel, hallways and so forth, and what is similar amongst them is they are establishments that provide temporary accommodations or lodging for compensation and that really is what vacation rental by owner is. It's an establishment because it's being advertised on the internet, it's offering temporary accommodation or lodging, and it's for compensation. So I believe it's more similar to those uses than it is to a single family residence which the zone is requiring it to be. The zoning code treats temporary use by customers for compensation differently than it treats single family residents, permanent residents, or established tenancy. And I think that the zoning administrator was appropriate in declaring this a use that is not permitted. That fact that it is not expressly prohibited doesn't mean that it's permitted. I think that the zoning ordinance is clear that for something to be permitted it has to be expressly permitted and the fact that it's similar to something else or not similar to anything doesn't mean that it would be permitted. So I think that for the reasons that the zoning administrator stated, I would agree that it is not a permitted use.

Chair Gates: Thank you, Mr. Sandberg. Mr. Finlayson.

Mr. Finlayson: I will not be supporting the motion.

Chair Gates: Alright, I think we've heard from everyone. Mr. Koch.

Mr. Koch: You know, on the continuum of hotel/motel on one side and a single family home and to speak to that is, I mean we live in the City here, living 13 feet away from the other house is going to be expected. I mean I live next door to a place where a pilot rents out half of a duplex. He's there two weekends a month. I would love for a family to live there with kids and a dog and everything else but the case is, hey, he lives down in Atlanta, Georgia, and this is where he doesn't collect his mail, I wouldn't say that he has tenancy there but it's a great place for him to go and stay two weekends a month. And I wouldn't want to prohibit that, because essentially what we'd be saying is that you can't rent out short term like that. I mean I don't know the arrangement with the owner, whether he rents it out for two weekends a month or for the whole month, I don't know and it doesn't matter to me. But the idea that short term rental is ok because the length of rental and length of stay is not a requirement in the zoning code. We're not saying, ok, anything shorter than a month means that you're not a tenant, you haven't established tenancy there. It's like, home is where you hang your hat.

Chair Gates: Thank you, Mr. Koch. So we have a motion to grant the appeal based upon the findings stated by Mr. Perry. Please call the roll.

Clerk: Commissioner Ditzler?

Mr. Ditzler: No.

Clerk: Finlayson?

Mr. Finlayson: No.

Clerk: Koch?

Mr. Koch: Yes.

Clerk: Perry?

Mr. Perry: Yes.

Clerk: Sandberg?

Mr. Sandberg: No.

Chair Gates: That motion fails. Mr. Ditzler.

Mr. Ditzler: I'd like to move that we deny the appeal and uphold the findings of the zoning administrator.

Mr. Finlayson: Second.

Chair Gates: Further discussion?

Mr. Perry: I might want to add something. I think what is at the heart of most of this is the duration of time that something is rented out and I keep keying in on the fact that this has to be something substantially similar because we're looking for something in the code but substantially similar. That's why I won't be supporting the motion and why I made the motion beforehand. I think this is in a continuum it's farther away from the items that are defined. Among other things I don't see the substantially similar. I understand they might be similar, more similar than other things that are defined in the code, but I don't see the substantially argument having been made. Thanks.

Chair Gates: Thanks, Mr. Perry. We have a motion to approve the staff recommendation and to deny the appeal. Please call the roll.

Clerk: Commissioner Ditzler?

Mr. Ditzler: Yes.

Clerk: Finlayson?

Mr. Finlayson: Aye.

Clerk: Koch?

Mr. Koch: No.

Clerk: Perry?

Mr. Perry: No.

Clerk: Sandberg?

Mr. Sandberg: Yes.

Chair Gates: That motion carries. The appeal is denied, the appellant can speak with staff about options from this point forward. Best of luck to you, thank you for coming down.

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Appeal of the Decision of The Zoning Administrator
BZZ-4227

Date: October 30, 2008

Applicant: Carolyn Moore

Address of Property: 4839 Bryant Avenue South

Contact Person and Phone: Caroline Moore, 612-968-9454

Planning Staff and Phone: Jacob Steen, (612) 673-2264

Date Application Deemed Complete: September 30, 2008

Publication Date: October 24, 2008

Public Hearing: October 30, 2008

Appeal Period Expiration: November 10, 2008

End of 60 Day Decision Period: December 1, 2008

Ward: 13 **Neighborhood Organization:** Lynnhurst Neighborhood Association

Existing Zoning: R1 Single-Family District

Appeal of the decision of the Zoning Administrator: Carolyn Moore has filed an appeal of the decision of the Zoning Administrator that property at 4839 Bryant Avenue South is in violation of the Minneapolis Zoning Ordinances Chapter 546 Table 1, as it has been determined by the Zoning Administrator that the current use of the property is substantially similar to a hotel/motel or bed and breakfast, which is prohibited in the R1 zoning district and not a single family dwelling as the appellant asserts.

Zoning Code Section Authorizing the Request: Chapter 525 Administration and Enforcement; Section 525.170.

525.170. Appeals of decisions of the zoning administrator. All findings and decisions of the zoning administrator, planning director or other official involved in the administration or the enforcement of this zoning ordinance shall be final subject to appeal to the board of adjustment, except as otherwise provided by this zoning ordinance. Appeals may be initiated by any affected person by filing the appeal with the zoning administrator on a form approved by the

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zoning administrator. All appeals shall be filed within ten (10) calendar days of the date of the decision. Timely filing of an appeal shall stay all proceedings in the action appealed, unless the zoning administrator certifies to the board of adjustment, with service of a copy to the applicant, that a stay would cause imminent peril to life or property, in which case the proceedings shall not be stayed. The board of adjustment shall hold a public hearing on each complete application for an appeal as provided in section 525.150. All findings and decisions of the board of adjustment concerning appeals shall be final, subject to appeal to the city council as specified in section 525.180.

Background and Analysis: The applicant is appealing the decision of the Zoning Administrator that the property at 4839 Bryant Avenue South is in violation of the Minneapolis Zoning Ordinances Chapter 546 Table 1 (Appendix E), as it has been determined by the Zoning Administrator that the current use of the property is substantially similar to a hotel/motel or bed and breakfast.

The subject property is a single-family dwelling on an 8,052 square foot lot zone R1 Single-Family District. The property owner received an administrative citation on September 10, 2008 for failure to discontinue the use of the property as an illegal hotel/motel or bed and breakfast. The current Zoning Ordinance does not permit either a hotel/motel or bed and breakfast in the R1 Single-Family District.

A *Bed and breakfast home* as defined by the Minneapolis Zoning Ordinance (520.160) is an establishment in a private dwelling that provides temporary accommodations to overnight guests for compensation.

A *Hotel* as defined by the Minneapolis Zoning Ordinance (520.160) is an establishment containing rooming units providing temporary lodging accommodations to the general public, with rooms having access to the outside through an interior hallway connected to the main lobby of the building, and which may provide additional services such as restaurants, meeting rooms, entertainment, and recreational facilities. A hotel shall not include any use which could be defined as a motel.

A *Motel* as defined by the Minneapolis Zoning Ordinance (520.160) is an establishment containing rooming units designed primarily for providing sleeping accommodations for transient lodgers, with rooms having a separate entrance providing direct access to the outside, and providing automobile parking located adjacent to or near sleeping rooms.

A *Hotel, licensed* is defined by the Minneapolis Housing Ordinance (244.40) as any dwelling wherein sleeping or rooming accommodations are offered or furnished to the general public for a shorter period of time than one week, with or without meals. It shall not include rooming houses or lodging establishments.

The use of the property was verified by both Staff in the Housing Division of Regulatory Services and Zoning Enforcement following numerous inspections. A complaint for this address originated from a Council Member's Office, which prompted Housing and Zoning Staff to perform an inspection on the subject property. Staff observed the property to be operating as a use substantially similar to a hotel/motel or bed and breakfast (Appendices C & D). The applicant has not provided any evidence to the contrary or provided any information stating how the property is being used other than the following statement:

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“My property located at 4839 Bryant Avenue South, Minneapolis, Minnesota is not being used as a hotel, motel or bed & breakfast and therefore I am not violating the Minneapolis Ordinance Code 546.30. There is nothing in this code that disallows short-term rental to families visiting Minneapolis” (Appendix A).

According to the historical building records, the structure was built as a single family dwelling in 1951. Licensing indicates that this the property has historically functioned as an owner-occupied single family dwelling until July 1, 2008 at which time the property owner received a rental license.

Findings:

1. The property was built as a single family dwelling in 1951.
2. The Zoning Administrator has made a determination that the property is currently being operated as a use that is substantially similar to a Hotel, Motel, or Bed and Breakfast.
3. A Hotel, Motel, or Bed and Breakfast is not a permitted use in the R1 Single-Family District.

Recommendation of the CPED Department Planning Division:

The Department of Community Planning and Economic Development Planning Division recommends **denial** of the appeal of the decision of the Zoning Administrator.

- Appendix A: Application (per applicant)
- Appendix B: Area Map
- Appendix C: Housing Inspections Summary
- Appendix D: Zoning Inspections Summary
- Appendix E: Residential Districts Use Table
- Appendix F: Additional Documentation
- Appendix G: Correspondence from concerned parties