



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

Date: July 26, 2007

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 **denying** an appeal of the Zoning Administrator that the property at 709 7th Street Southeast violates the maximum occupancy in the R2B Two-family District.

Recommendation: The Board of Adjustment adopted the staff recommendation and **denied** an appeal of the Zoning Administrator that the property at 709 7th Street Southeast violates the maximum occupancy in the R2B Two-family District.

Previous Directives: N/A

Prepared or Submitted by: Molly McCartney, Senior Planner, 612-673-5811

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

Presenters in Committee: Molly McCartney, Senior 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: 3

Neighborhood Notification: The Marcy Holmes Neighborhood Association was notified on May 17, 2007.

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 June 25, 2007, the applicant was sent a letter by Planning staff extending the decision period to no later than August 25, 2007.

Other: Not applicable.

Background/Supporting Information Attached: Richard Mark has filed an appeal of the decision of the Zoning Board of Adjustment **denying** an appeal of the Zoning Administrator that the property at 709 7th Street Southeast violates the maximum occupancy in the R2B Two-family District. The Zoning Board of Adjustment voted 5-0 on June 7, 2007. The applicant's statement is included in the staff report.

Board of Adjustment Hearing Testimony and Actions

Thursday, June 17, 2007
4:30 p.m., Room 317 City Hall

Board Membership: Mr. Matt Ditzler, Mr. John Finlayson, Mr. Paul Gates, Ms. Marissa Lasky, Ms. Alissa Luepke Pier, Mr. Matt Perry, and Mr. Peter Rand

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

6. **709 7th Street Southeast (BZZ-3588, Ward 3)**

Richard Mark is appealing the decision of the Zoning Administrator that the property at 709 7th Street Southeast violates the maximum occupancy in the R2B Two-family District.

Mr. Finlayson Moved and Mr. Rand seconded the motion to adopt staff recommendation and **deny** the appeal of the Decision of the Zoning Administrator that the property at 709 7th Street Southeast violates the maximum occupancy in the R2B Two-family District.

Roll Call Vote:

Yeas: Ditzler, Finlayson, Luepke Pier, Perry and Rand

Nays: None

Recused: None

Absent: Lasky

TESTIMONY

Steve Poor: – It is kind of an unusual one before us today. Some of us may have heard about sober house living environments recently there was an article in one of the metropolitan papers. The appellant has asserted that the occupancy essentially does not apply to them in this case because of the Fair Housing Act. Under the Fair Housing Act, reasonable accommodation has to be made with residents being recognized as having a disability as Molly mentioned....alcoholism is a recognized disability. The City's interest in this case is not to prevent sober houses, although it is the case that we don't have a particularly good set of regulatory rules in place, supportive housing specifically does not allow inebriated housing and inebriated housing specifically talks about people being recognized as having a disability of alcoholism, so there is somewhat of a catch-22 position that the folks find themselves in here. Inebriated housing, where it is allowed is allowed, as a conditional use permit in the downtown districts. The courts have ruled that just because there is a place you can have inebriated housing and it exists, isn't necessarily the test that should be made....in other words...residents have a right to a higher standard, they have to

be provided more choices than just saying there is a few locations that exist on paper to have sober house. Now all that being said, what is the City's interest here in recommending denial of the appeal or upholding the Zoning Administrator, and how did the Zoning Administrator come to this finding? Well there are a couple of things: The City has a history since 1988 in dealing with fair housing and reasonable accommodation, and some of you may have heard that it is often in regards to community residential facilities to supportive housing and other things...Lydia House was a very major case that was before the City and really what is usually and play there, is spacing requirements. So it is the classic argument do you bring the need to the population or do you disperse the population through different facilities out and about. This item before us is not a spacing issue; it is about occupancy, and that is what really makes it different. All that being said, these uses, should they be allowed under reasonable accommodation, are not going to be subject to spacing because they are not under that regulatory scheme, which means, a person could move into a house, they could then rent out to a number of folks, all claiming to have a disability, in this case alcoholism, and really say under the Fair Housing Act, you don't have a lot a regulatory over-say about how many people live here. Now I do think that the sober-house folks agree that they are subject to the building code. They believe in life-safety and fire-code, so they are not going to get around those rules; those rules trump the disability act for the reasonable accommodation, but the City's interest is to make sure that if people are operating these types of facilities that they are legitimate; and that somebody doesn't move into a neighborhood and says "geeze how do I make rent"...well, I need more tenants, and they may even rent to a bunch of people that have "like-minded" lifestyles. They may choose that they don't smoke in the house. They may say that they don't drink. While we generally don't question the veracity of folks, when they are going against the rules we need a higher standard to verify that these folks are disabled. So, at the time the staff report was written, Staff had not received what they believe, sufficient information, to indicate to us or prove to us, through either a clinical diagnosis, or some affidavit verifying that someone came out of a recognized treatment program, that information did not come to us. You may hear from the appellants today that they have that information, but at the time the staff report was written, we did not have that information, and in consulting with the City Attorney, the Zoning Office had to uphold the over-occupancy finding because we didn't have sufficient information that made us pretty certain these folks actually were chemically-dependent. Again, I am not questioning the veracity of the folks' intentions, but the standard that we are looking for, so that the City can separate it out, what is a legitimate sober house with real people with real disabilities that need reasonable accommodation under the Fair Housing Act. Vs. folks that may be operating under the guise of a sober house, but really are a collected, for the most part like-minded people, but really are interested in just making rent on a house. So absent that we have asked you today to uphold the Zoning Administrator. I will say, I don't want get ahead of the appellants, but the appellants have indicated to me before the hearing started that they may have some additional information that we did not have at the time the staff report was written. If that is the case and it is presented, I would respectfully request the Board may want to indulge Staff with some possible ways to deal with that, and I guess I would just like to hold those comments until after the appellants have had a chance to speak. I am also here for questions.

Mr. Ditzler: Mr. Poor, so are you saying that under the Community Residential Facilities that those are the ones that are licensed by the State and provide on-site care because it appears that the applicant does provide on-site care so it is a possibility for them to get licensed by the State...then in that case...if they were licensed by the State, they would not be subject to the occupancy laws and the City would have great leniency with them?

Mr. Poor: CRFs are still subject to certain occupancy rules; they break them out essentially...they are: 6 or fewer have a certain set of rules – there is 16 to 0 up to 32; they all have different sets of rules, so they are still subject to occupancy. Again, I can let the appellants make the argument about why they have/have not sought licensure under the State of Minnesota, but they haven't at this time. I guess because they haven't, were not even classifying them as that use, in other words, what we are not doing here is a substantially similar use analysis, and the reason we are denying the appeal is because this is what they really are, even though they are calling themselves this.....that is not the question before us today, we have tried to keep in narrowly focused...that they are asserting they need reasonable accommodation under the Fair Housing Act because the residents have a disability of alcoholism...so that is the question we answered on the occupancy. It does stem from a Housing order; the housing order is held in abeyance, but I think, in part, we have kept it narrowly framed at that question because if we start to move in other places, they may not have the protection of the appeal and the residents may have to leave and sort the matter out later. By appealing strictly speaking the occupancy the residents are protected, the order is stayed until the resolution of the appeal, so it may be more of a technical matter of why we are not answering that question today, but it is a question that as long as it is narrowly focused around the occupancy, it gives the appellant the protection of the stay of the order.

Mr. Ditzler: So as I am clear, it looks like there are several different categories this could fall into, but the City's stand point, or at the time the complaint came in, it did not fall into any category, so you did not place it into one intentionally.

Mr. Poor: That was not the question before us; we really tried to see the occupancy. I would say this, I would invite you to ask the same question to the appellants who may have their own reasons about why these approaches to these living situations do not seek getting licensed as a CRF, and I think they could speak to that much better than I could. Thank you.

Mr. Perry: Mr. Poor, or maybe Ms. McCartney, could answer this. You were to decide whether you made the right decision based on the information that you had at the time, so there may be new information provided. I want to make sure that what is in our packet and before us is the information that you had at the time that you were attempting to make this decision.

Mr. Poor: With respect to this particular property, the information that is in the packet, for the most part, what we based it on. This item hasn't come across me before so I did a lot of homework and catch up on this, with regard to occupancy. The City has dealt with a lot of reasonable accommodation to the Fair Housing Act, but it was in most cases in regard to spacing, the ¼ mile spacing rule, quite frankly. Sober houses are not recognized in the Zoning Code, so, yes, I looked at other information to help to come to this determination. We consulted with the City Attorney; we met with the appellants to get a better and greater understanding, and frankly had a very helpful dialog with them before the appeal was filed. Essentially what is before you is what we used as the basis for the decision in the staff report, and if we get new information, obviously, we can revisit it? I don't want to get ahead of the process. I would rather you talk to the appellants, but I can talk about some possible things should new information get on the record today that may lead to a different outcome. I'll just leave it at that, I guess.

Mr. Gates: Any other questions? I see none. Thank you. Is the applicant here to speak?

Mr. Richard Mark: 4925 Coventry Road West, Minnetonka, MN 55345 - Good afternoon Board members, my name is Richard Mark, and I am here to appeal. I don't know how aware you are of the situation that took place...basically, we are the University House, and that house was set up to provide a safe sober living environment for kids at the University level that want to go to school and stay sober at the same time, in a safe living environment. That was the purpose of the house, and that is what it was set up under. We were advised at the time that there was this Fair Housing Act that would protect us if we were going to put more than the allowed amount of people in it. Our purpose was, I think, well spirited, to provide that house. I had gone to the University and I'm also in recovery. I know the perils of trying to stay sober at the college level. The pressure on these kids to drink, to go back into using, and so what we really set out to do, and we continue on that process, is to try and provide a safe sober living environment for these kids, and that is what we are trying to do. I don't know if you received in your packet something that the applicants do need to agree to....

Mr. Gates: Yes we do...

Mr. Richard Mark: There is a great set amount of rules and regulations that they need to live by. Steve mentioned that he wants proof of the fact that these people are truly alcoholics. I did not really know how to do that, other than the fact that I have 2 members of the house here that you can speak to. I am certainly willing to try and get them to petition their treatment centers for their records, that could provide that. I can't go after that because there is anonymity involved in that, so in asking them to do that, go through that process, I have done that...we are in the process of doing that. I can certainly provide that...if that is what it takes to get this done. I don't know how that proves to anyone that these people are in recovery other than the fact that if they are not recovery, they are out of that house. It is very, very clear that we ask them to leave if they are not adhering to all the rules of this house.

Mr. Gates: Thank you Mr. Mark. Can you tell us how University House goes about establishing that an applicant for residency here is actually in need of its services?

Mr. Richard Mark: Well, there is an interview process. It is a pure orientated interview process. These houses are democratically run. They are run by the people who live inside the house, as well as overlooked by myself and one other person, Erik Reed, who is the other owner of the house, and we are the Directors of the house, so that everybody that comes to apply for admission into the house is put through an interview process and asked pretty...some very tough questions about who they are, what they are, how serious they are about their recovery. They are asked a number of things like: Do they have a sponsor? What steps are they working on? How many meetings they are attending? Then we follow-up on that. We basically follow-up with where they are coming from. If they are coming from a treatment center, we will call the treatment center and talk to their counselor or whoever is the person in charge of their case...we will talk to them and ask who they are. The other thing about the University House is that there are a lot of houses out there that take people at certain levels of their sobriety; we want kids, typically with 90 days of sobriety because we are not looking for the typical chaos that can happen sometimes in some of the houses, so that is one of the other things we look at. We look at character issues and the best people to judge these people on who and what they say that they are are the other people living in that house.

Mr. Gates: It sounds to me like the University House process is geared more to towards trying to verify that an applicant is suitable for the recovery process, but do you actually take the step of trying to confirm that in fact the applicant is an alcoholic; that there is a medical diagnosis from a Dr. that says this person is an alcoholic?

Mr. Richard Mark: We don't typically ask for any kind of medical records. I have with me, John Curtiss, who might be able to speak more to how you define an alcoholic in terms of medical issues or whatever the case might be. What we will do is we will ask them a variety of questions about where they have been, who their sponsor is, where they are hanging out, who the people are that they are hanging out... whoever they have gone through or the places that they have gone through, or whatever... We do make the phone calls and make sure that they are telling us the truth. Have we asked of yet to write down the treatment center they have attended...only if they are transitioning from that treatment center as opposed to another one. They may come from another sober living house, in which case, we will call that sober living house and ask them about their character and what their judgment is on the applicant.

Mr. Gates: So Staff has asked that you provide some evidence of diagnosis, and to this point that has not come forward, is there reason why you don't want to do that?

Mr. Richard Mark: No, there is no reason why I don't want to do that; other than the fact that it really needs to be done. I can't go after that information, only the applicants can, and so I have asked the applicants to do that, and they are in the process of doing that...I will be more than happy to do that.

Mr. Gates: Can you comment on the issue of the CRF or the supportive housing...shed some more light on that? I think if I understood correctly inebriate housing cannot be supportive housing; is that correct?

Mr. Poor: Chairman Gates, under the definition of the zoning code they are separate uses and supportive housing in fact has a list of about 7 items specifically that if they are these things, are not supportive housing, and by the way, student housing is one of them, so they've kind of have the double whammy of inebriate housing and student housing, by definition of the Zoning Code, unless it was to be amended, couldn't be supportive housing..

Mr. Gates: What about the CRF?

Mr. Poor: Again, if I may, I think the question we thought might be better asked by the appellant was why they hadn't sought being licensed as a residential facility through the MN Dept. of Human Services?

Mr. Richard Mark: The reason is that we do not provide any kind of counseling. That's just something we don't provide. It is a democratically run sober living environment; we do not provide any outside counseling or psychological help.

Mr. Gates: There is no on-site case management?

Mr. Richard Mark: No; not at all. It is regulated by myself and Erik who are owners of the house. We attend a house meeting every week, in which case, we ask them where they are in

their recovery, how the house is going, are there any problems amongst the member of the house, and that is basically how we do that, and we immediately reply to any problems they are having, but we do not provide any psychological counseling; therefore, we never felt or thought or were told that we needed State Licensing.

Mr. Ditzler: Mr. Mark...I have a question for you about your interview process...none of the questions at all or intended to be insensitive. I just need to ask for the record. This interview process, it sounds like you do with new, future potential residents, they would be invited to reside there, is that when the decision is made...you are asked or invited to come reside at the property?

Mr. Richard Mark: Correct.

Mr. Ditzler: Does anybody keep written files on the residence as far as what transpired during that interview process; is any written documentation kept at all on site of who is there?

Mr. Richard Mark: In our case, we haven't, but I need to tell you...as a result of this we have started an organization called MASH, which is Minnesota Association of Sober Houses, in that process, what we are trying to do is self-regulate this thing, which will help the City determine who the good guys are, who the bad guys are because we will go into those houses and determine are they safe? Are you doing the right thing? Are these houses simply there just as owners of homes because you are there trying to make money, or are you truly trying to help us? So, we are forming that organization in the guidelines of that organization, we will still start documenting the application process, but we haven't.

Mr. Ditzler: Who is the property owner in this case?

Mr. Richard Mark: That would SMR Properties....myself, Erik Reed and a guy named Bob Schom.

Mr. Ditzler: Thank you very much.

Mr. Finlayson: Yes...you are the owner of the property then...are the individuals living there, living there on a basis that's gratis? Does someone provide them with subsidized living out of this, or are they individually paying separate rents to you?

Mr. Richard Mark: They are individually paying.

Mr. Gates: I see no further questions. Thank you Mr. Mark. Is there anyone else here to speak in favor of the application? Yes sir....

Mr. John Curtiss: Members of the Board, my name is John Curtiss...I reside at 1258 Goodrich Avenue in St. Paul. I am the President of the retreat, which is a recovery program in Wayzata, and we have sober-living homes in St. Paul, 2 on Summit Avenue, a block away from the Governor's Mansion and 1 on Grand Ave. and 1 on Holly. I am also the President of MASH, and I am on the Board of the National Association of Halfway Houses, which started in Minnesota in St. Paul, in 1966. Sober housing has been in place in the Twin Cities in Minnesota in particular, but throughout the country, but starting really here, 50 years ago. There are

thousands of sober houses around the country, and the purpose of the sober houses are to really provide a safe sober place for people to go once they've completed treatment. Instead of going back to the "burning" house or to the neighborhood where all of their friends are using like they used, is the create a family environment where people can support each other, raise the bar so to speak in terms of the quality of their lives. When they come into a sober house, they are all acknowledging that they are alcoholic and chemically-dependent. They have been through treatment of some kind. Some have been to many treatments. The point is to create a community of support to help them to live a new life. The Minnesota Association of Sober Homes was formed really to be a State Arm of the National Association...to really kind of oversee the quality of the houses that have developed over the years in the twin cities. We have criteria for life-safety, for the application process on how somebody gets in and the criteria by which they have to live to remain in the house, how we handle people who are struggling/conflicts, and there are many people living in sober houses who in addition to working full time or going to school are also having therapy with a therapist to deal with other issues that may be going on, but the sober houses are residences; it is housing, it is not a clinical setting, there is no treatment, there is no counseling service, so it is not a program that requires licensing by the Dept. of Human Services for counseling services, because the people have had counseling services. This is on the back-end of it where they are trying to find a safe, sober place to live. When Richard talked to me a 1 ½ - 2 years ago with his vision that he wanted to create a safe and sober place for kids to go – to live while they are in college, we stepped up and said that we would love to help you do this. So we developed their criteria, their business plan, their application process, their list of criteria that guests have to live within while they are there, and basically gave them the model by which to follow, to create a quality sober house, and I have to say Richard is doing a great job with that. Any questions:

Mr. Ditzler: Under the development of the business plan, did you have any conversation with the City about what you were going to do?

Mr. John Curtiss: No, because they had been going on for years. The business plan really identifies what quality sober housing has looked like for many years in the Twin Cities. I worked for 20 years at the Hazelton foundation...sent a lot of people to sober houses, and I actually lived in one at 23 years old; moving out of Hazelton 31 years ago; and it is basically a group of people who said let's all live together and support each other to be sober.

Mr. Ditzler: In your estimation, and just maybe to speak to the scope of it, in your professional experience, are other sober homes experiencing the same violation of occupancy as this one?

Mr. John Curtiss: Yes. It is happening across the country, and in most cases, they have resolved the Fair Housing Act and the 3-unrelated persons. Many communities have created those zoning criteria, and when it relates to alcoholics, chemically-dependent people, the Supreme Court has ruled and the federal courts have supported it, and many examples across the country that when you are dealing with a group of disabled individuals, they can live together as a single family to promote recovery. There is a recent case, the City of Boca Raton, vs. a Sober House in Boca Raton, that is probably the most recent case that has gone to Federal Court and there are several other cases across the country that really promote that this is a group of people that need to live together as safe-supportive group.

Mr. Gates: Has any information been presented to Staff regarding the affiliation with MASH. Is that new evidence that we are hearing here today or is that something which Staff had heard before?

Mr. Poor: Chairman Gates, I do believe that it was mentioned in the face-to-face meetings that we had. If I may, I think the new information I was trying to elude to is in some conversations is that the appellants may not have had a fullness of the understanding of what verification we were looking for. So, I think they have a fuller understanding, and I think they spoke to that. The office understands that medical records are private, but they can be released, and that they may take some time to obtain them, and I think what we are hearing today is the appellant saying that they are in process to gaining some of the verification we are looking for. If I may, the reason that the verification is important is that there is no one in the planning department who is able to clinically diagnose an alcoholic. I certainly am not. I think I may know one when I see one, I have one in my family, but I do not know one for the purposes of defining them. That is why we are asking for this standard. We are not even making an argument that this particular Sober House, by all accounts from the Housing Inspection, a very clean house; well kept and well run. Were not arguing that this is simply a merging of economic interest, in other words, you don't have to have 7 people there, that is just the house you happen to buy...you could have bought a single family with 4 bedrooms....we are not saying that....we recognize that these folks get a benefit from living together, supporting each other in that environment, but we do not have the skills to pick people who have a disability and people who don't, and we believe that there are existing program and people in the medical and psychological professions who are well suited to do this, and that is why we have asked for this high burden to be placed on the appellants, because we don't feel we are able to do it, quite frankly.

Mr. Gates: Thank you Mr. Poor. Any further questions? Thank you. Is there anyone else here to speak in favor? Yes sir.

Chris Edrington: 1891 Grand Avenue, St. Paul – I operate a company called St. Paul Sober Living and I own several Sober Houses in St. Paul and Mpls. And I would just like to say to a couple of the questions you guys asked that when people are generally referred to sober living from a clinical setting, like a treatment center or halfway house, 99.9% of them are, sometimes people come straight from the street or from a regular living situation, but have already been to treatment before; they tried it but it didn't work, so typically, that is the model, and like Richard was saying, and I know in John's organization, when I get an applicant my first call is "who was your most recent clinical, and we have a discussion with them about is this the appropriate level of care, so that I think needed to be said, and I also think that what is clearly important, I have been in this setting in Colorado, I have a Sober House in Colorado, and I went through the whole Planning and Zoning and City, and what came from that was that self-governance which MASH is going to do and do very well in the State of Minnesota, I think is probably going to answer a lot of questions and aide all of you guys in your pursuit to put this thing in a box and the association is very well organized and very well determined to set in motion the right kind of criteria; what is a Sober House, what is a well run sober house, do they belong here....You don't have just people looking to fill a house full of people and looking to fill just for income purposes. Those people are going to hurt us anyway. The atmosphere we create in our Sober Houses is crucial in the process of recovery. I have been sober for 8 ½ years and I lived in one before I got sober and I don't want to get on the soapbox about that, but I want you guys to understand that we have done a lot of work around trying to make this thing work within City, State, Federal

regulations, whatever they are, and it frankly scares me to death that the regulations are going to start to turn without recognizing that this self-governing organization, at least with the State of Minnesota is going to alleviate most of that and a lot of the processes that Richard has gone through with his house he came and sought people like John and I who has been doing this a lot longer than he has, and we helped him with a lot of the pieces of how he does it, and he does a very good job of it. I just wanted to clear up a couple of those things. And I've been doing it for a long time, so.

Mr. Gates: Thank you very much. Anyone else here to speak in favor? I see no one. Anyone to speak in opposition? Before you begin, let me just say, or remind you that we are here to address an appeal of the Zoning Administrator. This is not at all a variance issue, and so it is actually a very narrow set of issues that we are trying to look at here whether or not the correct decision has been made regarding what the single family vs. Inebriate housing whether that decision has been made properly.

Eric Nowman: Mr. Chairman, I understand your point. My name is Eric Nowman, I live at 700 7th Street, almost directly across the street from the house in question, and I'll say very parenthetically that when this home was first indicated to the neighborhood that this was going to be a sober house there was a fair amount of concern just by what that might mean. And I'll say that these have been admirable neighbors they have been quiet compared to what we experience mostly in the university neighborhood, a lot of college kids and what that all means. I can say that on either side of this home we see, we sort of wish that their immediate neighbors to the right and left as quiet as they are. It makes us feel pleased for what they are trying to do. That said... it seems to me that the relevant point here is, should we be allowing three or more unrelated individuals to live in a home? That is, as I understand it the question before you. And you need a high stand to move and say yes that's appropriate. I would argue as many of my neighbors that the Marcy Holmes Neighbors has been severely challenged in recently years with many single family homes being converted to rental. That is a fact of life. It's an economic reality, not much that we can do about that. We'd prefer to have more individuals that are owning in the neighborhood and living rather, than having homes converted to rental. So if you move to converting something to a rental, and you allow more than three unrelated individuals to live there, we ask, I ask as a neighbor, that you have a very high standard. If these individuals are doing ever thing they say they are and can prove it to you; then I have no opposition to what they are asking you to do. At this point, I haven't heard the evidence and I don't think you have either. Thank you very much.

Mr. Gates. Thank you. Anyone else here in opposition?

Diana Hofstede, Council Member to the area: Good afternoon, I believe you received a fax as part of your information from the Marcy Holmes Neighborhood, who's actually voted unanimously to support the decision of the Zoning Administrator that the property at 709 7th Street violated the maximum occupancy of the R2B2 District. The Marcy Holmes policy has long supported and consistent long held position that there be no upgrading of residential zoning in the neighborhood and that 1994 code of ordinances relating to the planning department specifically regarding non conforming use permits. This is not an issue of whether not they are good neighbors, it is an issue of whether or not they comply with the standards before you and that is that the zoning code recognized two types of group living quarters. The community residential facilities and supportive housing, and this particular house meets neither one of those

standards and so the Marcy Holmes Neighborhood and my office supports the Zoning Administrators decisions. Thank you.

Mr. Gates. Thank you. Anyone else here to speak in opposition? I'm sorry, was there a question? Anyone else here to speak? I see no one. We'll close the testimony, and take Board comment. Mr. Finlayson.

Mr. Finlayson. Once again, we're left with an appeal of the Zoning Administrator, where it's a very narrow issue and it's a technicality. If we look at the broad scope of the use as it is, it's a worthy use, there is no argument with that it's promoting sobriety, it's helping individuals with problems, but Mr. Poor has a problem, how does he differentiate between this and a just an over subscribed use of rental property, which is... I mean, this hit the radar, how many are there that haven't hit the radar yet, either sober homes or the other? So he has a standard to apply and it's a simple standard and I do not believe the standard should be corrupted by us. I do believe the City needs to do something about this. I think it needs to do something expeditiously but it has to derive a standard that these homes can be judged by and I think that if a standard is set up it will actually allow them to flourish. I think they should be encouraged. But again, this is an appeal of the decision of the Zoning Administrator, I believe that he made the only decision that he could and he gave compelling arguments as to why he is strapped in this argument and has to go the way he has. I am in complete agreement. I move that we uphold the decision of the Zoning Administrator.

Mr. Rand. Second.

Mr. Ditzler: I think I am also going to support the motion. I'm extremely sympathetic to the applicants and I'm a little surprised due to the long history of these types of living facilities in Minnesota and maybe throughout the country that this hasn't come up on the City radar – state radar that a special exception hasn't been made for this but, I also am extremely sympathetic to Mr. Poor situation and how unfortunately I do believe that somebody is going to take advantage of the situation and that some neighborhood and community is going to have an issue to deal with someone who is going to perpetrate a house under these guises and that's not going to be the case at all. I believe, and Staff can correct me if I'm wrong that the applicant will have, if we support the Zoning Administrator's decision that they have an appeal process to that and that would go to whom? Just for clarification.

Mr. Poor: The appellants would then further their appeal on the Zoning and Planning Committee of the City Council.

Mr. Ditzler: Okay. And while I do think that that and or City Council is probably the body that should directly be the ones to address this issues and not us since at least form my opinion, there are pretty substantial ramifications either way on this, for lots of people. I think that we have people who we pay and elect to deal with those problems and they are not us. I will be supporting the motion.

Mr. Gates: Mr. Poor, as long as you're here, I hear from Mr. Finlayson that the city needs to establish a standard by which it can review these applications. What I heard from you is that you're essentially establishing your own standard, or a de facto standard of needing to see some evidence of clinical diagnosis. Is that correct?

Mr. Poor: Well, I can assure you that I had consultation from the City Attorney's Office and others to come up with a standard that seemed reasonable in its application and not overly burdensome nor insurmountable. Quite frankly because if that was the case we'll be defending my decision in court, so we felt that we had to find a standard that seemed reasonable and not insurmountable to the appellants to sort out as we've discussed here at nauseam. To separate out what is a legitimate sober house and what isn't. I would like to address one point for Mr. Ditzler. We have had a few of these come on the radar. They have been extremely painful discussions as you might imagine and some of the folks, particularly a young guy who lived on Park and 18th last year, and he actually did try exhaustively to get licensed as a CRF to find every other possibility and there is a reason there is a licensure process. It has burdensome requirements. The appellants are correct it talks about programs and because you're offering services, those services and the providers and scrutinized and licensed and so it isn't, I won't tell you, it isn't simple to just say, hey, go get licensed as an CRF, people have tried that. I have no doubt many of these things exist, I think that most people frankly gave up fighting with us and just lived as a collective of people living with very like minded purposes but said I can't fight City Hall and do both so we're going to just only have this many people living here. So I don't doubt that these have been for many, many years. It can go on to Zoning and Planning Committee, should and I would add, quite frankly, that if they don't get relief through the appeals process through the City they can go to court. And they can seek relief there. It's not desirable on either side, but that is available to them as well.

Mr. Gates: Well, to push the point a bit further Mr. Poor. If it's denied here, yes the applicant can appeal further, but they also seem to be quite confident that they can actually produce the evidence that you are asking for.

Mr. Poor: Well, and that's right, so one of the things that I've mentioned earlier is if the Board feels that they don't have enough information or that the appellant maybe wasn't clearest about the burden of proof they were being asked to provide you this board could continue it one cycle and revisit it. However, should you choose to do that the same set of facts in addition to some verification of folks coming out of a program would be before you. Staff would in all likelihood if they had that information recommend approval. So you could continue it a cycle and see what evidence comes before you and Staff and see where you end up on that or you could act on it today and move it forward to the Zoning and Planning Committee. At that Committee they would be afforded the same opportunity to prevent further evidence as well. So you've got a number of choices.

Mr. Gates: Well if it was not continued here and it was denied here, the applicant could both appeal and, if I understand correctly, come back to the Zoning Administrator with the additional evidence and at that point, could the Zoning Administrator reverse his own decision and the issue be resolved that way?

Mr. Poor: Not entirely. The City Attorney has advised us that because as we have seen today, the sensitive nature of these decisions revolving particularly around folks with disabilities and reasonable accommodation under that Fair Housing Act often as we've discussed, these are half-way houses, they are with no disrespect to anybody with these conditions, they are not always looked favorable upon the neighbors. And they can be considered highly contentious whether they're supportive housing or half-way houses or CRFs or maybe even Sober Houses in some

folks minds move into the neighborhood. We don't, the City doesn't think that it is wise that one person, no matter how well intentioned or well informed make that decision, behind closed doors and without the ability to let people who may have a different opinion have an appeal. Therefore, should they come in with additional evidence, we may, the matter will still, in this case be before the Board of Adjustment, because the Zoning Administrator may recommend a Staff to recommend approval, but he doesn't have the authority to just overturn it by fiat. It needs to be done by a decision body in an open hearing, with a public hearing process that affords folks who may have a different set of opinions the chance to be heard and appeal it.

Mr. Gates: Thank you. We have a motion and a second to approve the staff recommendation and deny the appeal. Is there further comment?

Mr. Perry: Mr. Chair, I'd just make a brief comment because I think other Board members have said this already and several ways, but, I really, I'm not going to pre-suppose what the solution to this is, but I think it is reasonable for the City in order to meet it's regulatory obligations to have some sort of proof, I don't know what that proof is, and I think that needs to be worked out by some policy makers, but given the facts before us, and the need for the City to have that reasonable level of proof and predictability for all residents and all sorts of operations, I'm going to support the motion.

Mr. Gates: Thank you. Any further comment? Please call the roll.

Ditzler: Yes

Finlayson: Yes

Luepke Pier: Yes

Perry: Yes

Rand: Yes

Mr. Gates: Motion carries, the appeal is denied.

Department of Community Planning and Economic Development – Planning Division Report

**Variance Request
BZZ-3588**

Date: June 7, 2007

Applicant: Richard Mark

Address of Property: 709 – 7th Street Southeast

Contact Person and Phone: Richard Mark and Eric Reed, 612-670-3898

Planning Staff and Phone: Molly McCartney, 612-673-5811

Date Application Deemed Complete: April 27, 2007

Public Hearing Date: June 7, 2007

Appeal Period Expiration: June 18, 2007

End of 60 Day Decision Period: June 28, 2007

Ward: 3 **Neighborhood Organization:** Marcy Holmes Neighborhood Association

Existing Zoning: R2B Two-family District

Appeal of the decision of the Zoning Administrator: Richard Mark and Eric Reed are appealing of the decision of the Zoning Administrator that the property at 709 7th Street Southeast violates the maximum occupancy in the R2B Two-family District.

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 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 subject site, 709 – 7th Street Southeast, is a single-family dwelling in the R2B Two-family Residence District. According to City of Minneapolis records, the property has been licensed for one dwelling unit since 1991 and recent building permits have been obtained for a single-family dwelling. (Rental License 531601, BIRE-3044133). As a result of an inspection (Request Number: 07-0550433), the dwelling was found to have six (6) unrelated occupants which exceed the zoning code requirement of a maximum three (3) unrelated persons for a dwelling unit in the R2B District.

546.50. Maximum occupancy. (a) Dwelling units. The maximum occupancy of a dwelling unit located in the R1 through R3 Districts shall not exceed one (1) family plus up to two (2) unrelated persons living together as a permanent household, provided that the family plus the unrelated persons shall not exceed a total of five (5) persons.

The applicants are now appealing the order through an Appeal of the Decision of the Zoning Administrator.

The applicants have stated that the occupancy requirement does not apply to the property because of a conflict with the Fair Housing Act and the Americans with Disabilities Act. The applicant have supplied information that the subject property is a sober living environment for students recovering from chemical dependency, called University House. Chronic alcoholism is recognized as a disability in the Americans with Disability Act. The applicants state that residents of the subject property have completed some chemical dependency treatment program prior to their residence in at the subject property. The applicants have asserted that this type of housing should not have to meet the maximum occupancy requirement of the R2B District. The applicants' statement of appeal and supporting documentation is attached to this report.

The zoning code recognizes two types of group-living quarters that offer programs and services to residents: community residential facilities (CRFs) and supportive housing. Community residential facilities are licensed by the State of Minnesota, Department of Human Services and provide on-site care for residents. Supportive housing facilities are not licensed by the State of Minnesota, but do provide on-site care for residents. CRFs serving six (6) or fewer persons are allowed in the R2B District, but supportive housing is not allowed in the R2B District and both uses have specific development standards that include minimum spacing requirements. At this time, the applicant is not claiming to be either of these uses, and has not supplied information about state licensure.

The Decision of the Zoning Administrator is that the subject site violates the maximum occupancy in the R2B District. The subject property is classified as a single-family dwelling which allows for up to three (3) unrelated persons to occupy the dwelling unit. The applicants have not asserted or supplied information to determine the subject property is another use, such as a CRF or a supportive housing facility. The applicants have presented information in regards to the rules of the residents of the subject property; however, this information does not indicate screening criteria, clinical diagnosis or other information needed to clearly identify that the subject property is exempt from the maximum occupancy regulations because of the Fair Housing Act or the American with Disabilities Act. CPED – Planning Staff recommends that the decision of the Zoning Administrator be upheld and the appeal denied.

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 that the property at 709 7th Street Southeast violates the maximum occupancy in the R2B Two-family District.