BOARD OF ADJUSTMENT MEETING MINUTES
CITY OF MINNEAPOLIS
ROOM 220 CITY HALL
September 11, 2002

Minneapolis Board of Adjustment:
Ms. Debra Bloom
Mr. David Fields
Mr. John Finlayson
Mr. Paul Gates
Ms. Marissa Lasky
Mr. Barry Morgan
Mr. Peter Rand
Ms. Gail Von Bargen
Mr. Richard White

The Board of Adjustment of the City of Minneapolis met at **2:00 p.m**., on **Wednesday, September 11, 2002**, in **Room 317 City Hall**, Minneapolis, Minnesota, to consider requests for the following:

2:00 p.m.

1. **1065 25th Ave. SE. (BZZ-749, 1st Ward)**
Mark Christopherson on behalf of Jim Eischens has appealed the decision of the Zoning Administrator regarding a notice of violation that a home business operating at the subject property does not comply with the home occupation standards.

Planning Department Recommendation by Ms. Watson:
Staff is recommending **denial** of the appeal of the Zoning Administrator.

1st Motion: Peter Rand motioned to **deny** the application. Gail Von Bargen seconded the motion. The motion failed.
Vote to deny
Yeas: None
Nay: Bloom, Fields, Finlayson, Gates, Lasky, Morgan, Rand, Von Bargen, White
Abstain: None
Absent: None

2nd Motion: David Fields motioned to **continue** the application one cycle to the September 25, 2002 hearing. Marissa Lasky seconded the motion.
Vote to deny
Yeas: Bloom, Fields, Finlayson, Gates, Lasky, Morgan, Rand, Von Bargen, White
Nay: None
Abstain: None
Absent: None

Action:
The Board of Adjustment **continued** the appeal of the Zoning Administrator application one cycle to the September 25, 2002 hearing.

Applicant Statement:
My name is Mark Christopherson. I am an attorney with the Larkin, Hoffman, Daly and Lindgren lawfirm in Bloomington. It is located at 1500 Wells Fargo Plaza, 7900 Xerxes Avenue, Bloomington, Minnesota. I am here today with Jim Eischens who would also like to address the board. I have several exhibits I would like to introduce but to keep things moving along I would like to just reference them for now. There are also some neighborhood residents here today to speak in favor of this appeal.

The issues before you today are being presented in a couple of different ways; in a notice of violation and in a staff report. I have heard some things here today, both from the Zoning Inspector and Planning Staff that I have not heard before.

I think all of this resolves into four issues that the Zoning Inspections Department contends have triggered these 9 separate violations of the home occupancy ordinance. There are issues concerning the residency of Mr. Eischens, who can not have a home occupation without residency, who will demonstrate he is a resident of the subject property. We have tried to demonstrate this to the Zoning Inspections Office. There are also issues concerning signage and Mr. Eischens will demonstrate that he is in compliance with the ordinance. There are also issues with outdoor storage and Mr. Eischens can demonstrate have been remedied. And lastly, there are issues concerning vehicles and there are several pictures in your reports and three are of the same vehicle. We are looking for a determination of compliance with this issues and a remand to the Zoning Department on the issue of vehicles so they can come out and be clear about what does not belong out in the neighborhood. Mr. Eischens will tell you today that he has obtained a commercial parking lot in an industrial zoned area and that he can then take of any vehicles that are in violation of the ordinance.

On the issue of residency, the staff report concludes that Mr. Eischens does not live at 1065 and that this is based largely on prior homestead status and the statements of one or two neighbors. In my discussion with staff it has also been expressed that this is based on the fact that there is a rental license for 1065. The license is for two roomates. The joint lease states who lives at 1065. There has been surmise that Mr. Eischens lives at 2905 32nd Avenue and that is based on part that in the telephone book the name and address are together. That is also in your packet as well as 1065. That is a past residency and he no longer resides there. The lease is for a third party at 2905. We demonstrate where Mr. Eischens lives and the history of his occupancy at 1065.

The situation also alleges that there are two many employees in this office. The notice of violation counts more than the one, it counts Mr. Eischens and his brother Richard Eischens, but as this evidence indicates that Jim Eischens lives there and cannot be counted as a non residential employee. That leaves Richard Eischens who in fact does work there. Richard is not a business partner or contractor.

On the issue of outside storage, there were a couple of different pictures regarding maintenance materials and water bottles, and those have been removed.

On the issue of signage, the ordinance allows one sign, one square foot in area. Staff noted three signs during the course of their inspection. One was an 8 ½ x 11-in. sign in the front door directing people to go to the rear if they were looking for the office which is still there. It does not state anything about tenants bringing checks there because he has told all his residents that he will not receive checks in person anymore. There is also a small tag on the mailbox and that has been removed. There is also a sign that has been mentioned with Gopher towing on it and that has been removed. Note that in the staff report Mr. Clarksen has reported that the sign is still present and that is not the case. We have a picture of that. A neighbor asked for it and they have put it up on their property.

That leaves the vehicle issue. Staff went through the trouble of creating a chart there lists the vehicles that are in violation of the commercial vehicle restriction and nearly half of those I believe you will note are not Mr. Eischens. Four belong to Richard Eischens who owns property in the area. I have to assume they were attributed in the report to 1065 because the assumption was that he worked there, as Mr. Eischens will tell you he does not. The inspector also cited prohibitions on commercial vehicles in residential areas and it is not clear which vehicles are to be removed. We first contacted Mr. Vorhis to address concerns and he then went on a lengthy vacation. We attempted to reschedule this meeting when Mr. Vorhis came back but he has apparently left the department. I did contact Mr. Vorhis nonetheless as he asked us to set up a meeting with the Zoning Inspector and the new zoning inspector supervisor and we did that. The supervisor did not show up at the meeting, the inspector did show up at the meeting. We discussed the vehicles and then I watched as a meeting was being scheduled for an inspection of the property on September 5, 2002. My client went out to the site and waited on the date and no one showed up for the inspection. I got a call the next day stating "we are not going to discuss it" we will see you at the Board of Adjustment hearing. That has created alot of frustration and that is why we are asking for a remand on the vehicle issue. Vehicles can be moved to remedy the situation and given the remedy that staff has asked for this is not an unreasonable thing to do.

We are being asked to cease and desist operating the business at this location. The facts pertaining to this residency have been misinterpreted and Mr. Eischens is more than willing to come into full compliance and work with any commercial vehicle issues that remain to the neighborhood. This is a very harsh staff recommendation for Mr. Eischens There are very real costs associated with moving a business, even a small one and for that reason we are asking that you recognize that Mr. Eischens does reside in this home, that he has remedied the conditions identified in the report and that a remand on the vehicle issue be given. Thank you.

Applicant Statement:

My name is Jim Eischens. I would like to say that I am abiding by the home occupation rules, from the number of visitors to the site to traffic. I have always tried to work with the neighbors and if there are ever problems I do my best to solve them. This summer I put up a privacy fence to help alleviate privacy issues between my property and the next door neighbor's property. I would like to compromise or come to some sort of solution

with all of the mentioned issues. I took a petition around the neighborhood to find out if the home occupation that I am operating is adversely affecting other in the neighborhood. I have three pages of signatures that I would like to share with you today. The one neighbor I did not receive a signature from is the one person that you received a complaint from; it is in your report.

The one vehicle parked behind my residence has not been determined to be a commercial vehicle and it has not been determined whether or not it conforms or does not conform to the commercial vehicle standards. I also use this vehicle for my personal use and believe I should be able to park it there. In the meanwhile, because there was the notice of violation sent to me, I am trying to work something out with the city. I was able to secure additional parking for these vehicles in a commercially zoned area.

I have read the opposing letters which are based upon a lot of fabrication to try and sway your opinion. One complaint for example is that they never see me and if I live there how could they never see me? I am here to tell you that I work seven days a week and I come and go constantly. I want to establish with the Board today that I have a history of always maintaining compliance on my property and have never been ticketed and I intend to maintain this pattern and if the commercial vehicles have become the issue I will solve the problem in the meanwhile without getting the clarification from zoning. Open communication would save time for everyone.

Support Statement:
My name is Naomi Austen and I live at 1055 25th Avenue Southeast. This is a high rental neighborhood. It is about 50 % rental and a lot of college students live here. A lot of the landlords never come around and that is very frustrating. I find Jim around a lot. When we are working on our home he helps out and gives is suggestions of what to do. I would rather see a landlord live in the neighborhood so they can witness the problems and be part of the neighborhood than not. Absentee landlords are a problem. I am leaving a letter from my husband who also agrees that Jim is a good neighbor.

Support Statement:
My name is Jeffrey Williams and I live at 1041 26th Avenue Southeast. I have lived in this community pretty much my whole life, close to 40 years. I do not think that this is a problem. Parking commercial vehicles in neighborhood is standard throughout the city. Jim does not have the traffic. Jim lives at 1065. Anytime that I am looking for Jim I can walk right over to his house and walk right in and Jim is there. It is not like a store front or gas station where the traffic is going all day long. The board members need to understand that and understand the value of a home business. For you not to allow this I really think is unjust.

Support Statement:
My name is Erin Holts and I live at 1060 24th Avenue Southeast. I live across the alley from this house and I do not feel that there is a large amount of traffic or an abundant amount of people coming to and from this site. The noise is always kept down and the property is always kept in tact. The area is a college neighborhood and I am in favor of it.

Oppose Statement:

My name is Judy Fox, I live at 1069 25th Avenue, and I am the person Mr. Eischens refers to as the one neighbor. I would like to point out that there are other people here in opposition to this application and that you have all received letters from additional neighbors in the staff report. The client traffic is just excessive. It is no where near the five people allowed. I want to say briefly that I was out working on my porch all Labor Day weekend and began counting the people coming into the property next door. From nine in the morning to four in the afternoon on Saturday there were 70 people. I agree that this time of year has the biggest turnover but there were 200 people walking in and out of that property. For me it not only an issue of quality of life it is an issue of security and privacy. It is not hard to see very quickly that I am a single woman living alone. I am not normally a frightened person but there is not a police department in the world that would not tell you to watch out for strangers walking through your yards. Mr. Eischens does not live at the property. In addition to Lori and Jim and the one brother, there is an additional brother who is named Patrick and a whole bunch of kids who work for Mr. Eischens mowing yards and things like that. The truck traffic is excessive and unsightly and parked dangerously. There are always items stored in the yard and I am not surprised that the yard has been picked up temporarily for the photos.

Oppose Statement:
My name is Jo Stimmer and I live about half of a block from Jim. My concern is the parking of trucks on Talmage Avenue between 24th and 25th. Both my wife and I have nearly been hit trying to get out the alley because there are trucks parked where they block traffic. I have called the council members office and the police department but nothing was done. I have a petition of signatures from residents in the area against the parking of vehicles on Talmage Avenue. I want something to be done about that because it is dangerous.

Board Member David Fields:
The only issues for me are the how this can be remedied with the community and whether or not Mr. Eischens lives in the home. I would really like to have this established one way or the other.

Board Member Paul Gates:
I would have to say that I agree with that except that I think that the issue whether this occupation is customarily associated with the use of a dwelling has not been addressed and I would like to see that addressed here. It should be discussed.

Board Member Marissa Lasky:
I believe that this issue is strictly whether or not the applicant can establish that he lives in the home and not historically what has happened in the past. I believe that it is more pertinent to address whether or not this business is pertinent to a home use. I have been doing property management for 30 years with no complaints, so it can be done. I would like to give the applicant a period of time to rectify the complaints, at the earliest I believe that 60 days is what he would need.

Board Member Gail Von Bargen:
I would not go into the issue of whether this was a homesteaded property or whether or not Mr. Eischens lives in the house. To me it seems that the amount of traffic that is associated with this business that we have heard of coming and going and that has been

witnessed both by employees and the neighbors seems to exceed the amount allowed for a home based business.

Board of Adjustment Barry Morgan:
It seems that maintenance is the biggest issue. Mr. Eischens is a hands-on type of person who handles as many problems as he can. If he were to have a maintenance facility somewhere else, where all of these commercial vehicles wouldn't be parked in the neighborhood, I think that would be a reasonable thing. I like the idea of providing someone time to work through a situation, however, if I know that I have 60 days to keep stuff off of my property I can handle 60 days and after that you can go right back to square one.