



**Request for City Council Committee Action
From the Department of Community Planning & Economic Development**

Date: May 6, 2004

To: Council Member Gary Schiff, Zoning and Planning Committee

Prepared by: Carrie Flack, Senior City Planner

Presenter in Committee: Carrie Flack, Senior City Planner

Approved by Neil Anderson, Supervisor, CPED Planning-Development Services

Subject: Appeal of the decision of the Zoning Board of Adjustment by Spiros Zorbalas.

BZZ 1568 – 3120 Holmes Avenue South – Spiros Zorbalas has appealed the decision of the zoning administrator, director of inspections, planning director or other official involved in the administration or the enforcement of the zoning ordinance, specifically in reference to Section 546.50 Maximum Occupancy for 3120 Holmes Avenue South.

RECOMMENDATION: The Board of Adjustment adopted the staff recommendation and denied the appeal of the decision of the zoning administrator, director of inspections, planning director or other official involved in the administration or the enforcement of the zoning ordinance, specifically in reference to Section 546.50 Maximum Occupancy.

Previous Directives: N/A

Financial Impact (Check those that apply)

No financial impact - or - Action is within current department budget.

Community Impact

Other: See attached.

Background/Supporting Information

Spiros Zorbalas has filed an appeal of the decision of the Zoning Board of Adjustment. The appeal is associated with the decision of the Zoning Board of Adjustment to deny the requested appeal of the decision of the zoning administrator, director of inspections, planning director or other official involved in the administration or the enforcement of the

zoning ordinance, specifically in reference to Section 546.50 Maximum Occupancy for property located at 3120 Holmes Avenue South.

The appellant has stated that the decision is being appealed because the Board has erred in its decision by upholding the enforcement of the Zoning Code Ordinance 546.50, which violates both Minnesota State law and the US Fair Housing Act. The appellant's complete statement of the action being appealed and reasons for the appeal is attached.

At the March 4, 2004 Zoning Board of Adjustment meeting, eight (8) Board members were present. All eight members present voted to adopt the staff recommendation and denied the requested appeal of the decision of the zoning administrator, director of inspections, planning director or other official involved in the administration or the enforcement of the zoning ordinance, specifically in reference to Section 546.50 Maximum Occupancy for property located at 3120 Holmes Avenue South. The March 4, 2004 Board of Adjustment minutes and the Planning Department staff report are attached.

Community Planning and Economic Development – Planning Division Report

Appeal of the Decision of the Zoning Administrator
BZZ-1568

Date: March 4, 2004

Appellant: Spiros Zorbalas, SZ112 Inc.

Address of Property: 3120 Holmes Avenue South

Date Application Deemed Complete: January 13, 2004

End of 60 Day Decision Period: March 13, 2003, extended to May 12, 2004

Appeal Period Expiration: March 15, 2004 3:30 p.m.

Contact Person and Phone: Spiros Zorbalas, 612-870-8500

Planning Staff and Phone: Carrie Flack, 612-673-3239

Ward: 10 **Neighborhood Organization:** ECCO

Existing Zoning: R2B, Two-family District

Appeal of the decision of the Zoning Administrator: Spiros Zorbalas has appealed the decisions of the zoning administrator, director of inspections, planning director, or other official involved in the administration or the enforcement of the zoning ordinance, specifically in reference to Section 546.50. Maximum Occupancy.

Background: Spiros Zorbalas has appealed the enforcement of Section 546.50 Maximum Occupancy of the zoning ordinance. The appellant was cited by the Inspections Department as over-occupying the dwelling located at 3120 Holmes Avenue South. The dwelling is allowed a maximum of 3 unrelated occupants and 5 unrelated occupants are residing in the dwelling. The appellant has stated that the 5 occupants consist of four men and one woman; some of the five housemates have known each other since elementary school and all five housemates went to Wayzata High School and have additional common ties through their parents. An affidavit from one of the housemates is attached further explaining the relationships. The appellant has stated that Chapter 546.50 is unenforceable based on the argument that it violates Minnesota Statute 363A and the civil rights of citizens of the State of Minnesota. The appellant further asserts that the Inspections interpretation of 546.50 discriminates based on familial, marital status and sexual orientation as a direct result of the ordinances plain meaning since it forces different interpretations for different factual scenarios. The appellant's full statement and supporting information is also attached.

Analysis: The appellant has filed an appeal pursuant to section 525.170 of the zoning code. The appellant is appealing Chapter 546.50 of the Zoning Ordinance identified below based on Chapter 142 of the Code of Ordinances (attached). The City of Minneapolis maintains that the Inspections Department has correctly interpreted and enforced the zoning code.

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

twenty (20) 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.

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 maximum occupancy of a dwelling unit located in the R4 through R6 Districts shall not exceed one (1) family plus four (4) 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.

520.160 Definitions. *Family.* An individual or two (2) or more persons related by blood, marriage, domestic partnership as defined in Chapter 142 of the Minneapolis Code of Ordinances, or adoption, including foster children and domestic staff employed on a full-time basis, living together as a permanent household. This definition of family is established for the purpose of preserving the character of residential neighborhoods by controlling population density, noise, disturbance and traffic congestion, and shall not be applied so as to prevent the city from making reasonable accommodation where the city determines it necessary to afford handicapped persons living together in a permanent household equal access to housing pursuant to the Federal Fair Housing Amendments Act of 1988.

142.20. Definitions. (a) Domestic partners are two (2) adults who:

- (1) Are not related by blood closer than permitted under marriage laws of the state;
- (2) Are not married or related by marriage;
- (3) Are competent to enter into a contract;
- (4) Have no other domestic partner with whom the household is shared, or with whom the adult person has another domestic partner;
- (5) Are jointly responsible to each other for the necessities of life;
- (6) Are committed to one another to the same extent as married persons are to each other, except for the traditional marital status and solemnities. (91-Or-015, § 1, 1-25-91)

Findings: Based on the definitions above, staff believes that the Inspections Department has correctly interpreted and enforced the Zoning Code.

Recommendation of the City Planning Department:

The City Planning Department recommends **denial** of the appeal of the decision of the zoning administrator, director of inspections, planning director, or other official involved in the administration or the enforcement of the zoning ordinance, specifically in reference to Section 546.50. Maximum Occupancy.

HEARING AGENDA

Minneapolis Zoning Board of Adjustment:

Ms. Debra Bloom

Mr. David Fields

Mr. John Finlayson

Mr. Paul Gates

Ms. Tonia Johnson - *Absent*

Ms. Marissa Lasky

Mr. Barry Morgan

Mr. Peter Rand

Ms. Gail Von Bargen

The Zoning Board of Adjustment of the City of Minneapolis will meet at **2:00 p.m.**, on **Thursday, March 4, 2004** in **Room 317 City Hall**, Minneapolis, Minnesota, to consider requests for the following:

1. 3120 Holmes Avenue South (BZZ-1568, Ward 10)

Spiros Zorbalas has appealed the decisions of the zoning administrator, director of inspections, planning director or other official involved in the administration or the enforcement of the zoning ordinance, specifically in reference to Section 546.50. Maximum Occupancy.

TESTIMONY

Carrie Flack (staff): Presented the report and recommendation to the Board of Adjustment.

Finlayson: Anyone else to speak in favor of staff's position? Please make your comments in regard to the validity of the ordinance as opposed to any other facts about the property or its use.

Tom Sopoci: I live at 3125 Humboldt Avenue South, directly across the alley from the residents in question. The staff decision I think is one that the neighborhood supports. I am sure the staff considered the ECCO Neighborhood and the hard work that they have gone through in the last several years with working on their zoning within the neighborhood and their decisions. I also think they are being consistent in how they are looking at this particular situation and dealing with it in zoning. Personally, I think that the reason for the zoning is to provide a frame work for the City of Minneapolis, to interpret and work with the different uses within the city. I work in that field, specifically I am an architect. I work in the City of Minneapolis and I think that the zoning staff here is interpreting this correctly.

Finlayson: Thank you. Is the applicant present? Do you care to make a statement? Please state your name and address for the record.

Spiros Zorbalas: My address is 2413 Girard here in Minneapolis. I am the managing member of the property management company that manages this particular location. The reason that I made this appeal is because we manage quite a few properties citywide. We have some 2,000 units in the metro area that we manage. I also have other people who are in my field and when this enforcement actually came about. We have seen this happen before to people and we feel that, although I don't have an issue with how the inspections has interpreted the way the code is written, I believe it is unenforceable. I believe the way the ordinance is, is illegal and violates not only the Minnesota Human Resources Act, but specifically public policy that is laid out in the Minnesota Statute Section 363.02, Subdivision 2. That is the basis for my appeal. You have heard here before you that they are interpreting it right, but in there lies part of the problem. Let me talk a little bit about that. 363 A.02 Subdivision 2 (and this is in my documents I set forth) before you, it specifically says that, "It is a public policy of the state to secure for persons in the state freedom from discrimination. Subdivision 2 states, and "Housing and real property because of race, color, creed, religion, national origin, sex, marital status, disability status with regard to public assistance, sexual orientation and familial status." I read through Ms. Lansing's email that you have as part of your packet from the City Attorney's office. Going down her points one at a time. She doesn't believe that this statute particularly applies. She specifically points out in the third paragraph down, she talks about Section 363 A.09, which makes some additional reference to whether I really have standing on this issue here to appeal this. That is, it doesn't really apply to the city, it only applies to property owners. Point 02, the statute that I just referred to, is a state wide public policy statement. Point 09 as you read further down talks specifically about the obligations of/and unfair discriminatory practices relating to property management. Although she is correct that it applies to property owners, it puts property owners and property management companies like ourselves in very odd situations. Not only does it violate the general sub-section above it, but we are now forced to sort of be police on behalf of the state and decide whether people are domestic partners or they're not domestic partners and try to really enforce and discriminate whether three people or five people can live together based on this. So, let me give you an example that we have come across. You may have two domestic partners, two women who may or may not based on how Inspections interprets it. That is part of the problem here. The Inspections Department, the enforcement part of this, have been given a very vague and broad power to interpret this. So, if you have two women who have three kids, let's say, say they are adopted children and these are two women who are domestic partners. In this particular situation they could not live together. If Inspections went in there and said well these two women are not committed to one another, because if you look down, look at page two of the test that Mr. Eliason laid forth in terms of domestic partners (sub-section 6) one of the things they need to ask these people when they go in, is they have to determine at least if these two people (the two women in my example) are they committed to each other. If they are quote "committed". How do we know if they are committed or not? Maybe they ask them, maybe they don't? Then they are domestic partners and maybe they can live together. But if they are not committed, then this family can't live in this household together because there are five (5) different people there. Where as if you had a married couple and they had three (3) kids this would not be an issue. So, we get put in very odd situations where we are asked to in one way be subject to what could be Federal Fair Housing Violation Acts on the Federal level. So, not only (I did not bring this up in my appeal) but not only are there State issues within the municipality and state, but there are clearly issues that go beyond the boundaries between the State and Federal Fair Housing Act. So, we think that this statute is a very vague and broad and limited in

its enforcement, and although they are interpreting it a certain way it's illegal because it enforces discrimination in its interpretation. That is really the basis for this appeal. The City Attorney really did not go into any of that. I believe I addressed some of that in the context of my letter as well as my support and that is really the crux of our argument. Inspections can really go in and how do they really decide who is whom in this household? Yes, perhaps it is easy. Do they go in and ask people are you two men domestic partners or aren't you? You know. Then it puts the domestic partners in a weird situation and then they have to talk about their sexual orientation and then to what level? Maybe they don't want to talk about their sexual orientation, and if they don't then they can't live together in this situation. So you could have two sets of domestic partners to give you an example, living in a household. That is four (4) people, right? They can't live together. However, if these were two (2) married couples they could live in that household, couldn't they? So, you get all kinds of weird interpretations about this statute and I think it does apply citywide and that is why I made the appeal. I think this is a citywide issue, not just to our particular lot. But, I think it is a citywide issue that applies throughout the city and needs to be looked at, it needs to be changed. There are a lot of different ways that you could change this ordinance in terms of maximum occupancy just based on individuals without having to go into whether they are domestic partners or not or what their sexual orientation is or what their marital status is. And that is really the crux of our argument, is that you are delving into some privacy issues that I think Inspections may or may not have a hard time. I think they do a very good job at trying to enforce their ordinances and that is really not the issue here for us. It is not really to do with what Inspections has done. It is how this ordinance is written and interpreted. That is why we are appealing. Questions that I may answer?

Finlayson: I see none at the moment. Thank you. Is anyone else here to speak in favor of the applicant's position? I see no one. We will close the public portion of this item. In addition to my earlier remarks with regards to having discussion solely on merits of whether the Zoning Administrator has the authority to make this decision or not and ignoring the facts about the house, I would suggest (we have no constitutional law experts here) limiting the discussion strictly to Zoning Administrator's code.

Bloom: I actually would like to make a motion, in looking at the case and looking at the facts presented and looking at the definitions that are given to us from the city code, I believe the Zoning Administrator made the correct interpretation. There is no question in my mind on the definitions. I would like to move staff recommendations.

Fields: Second that, with one comment for historical sake. I think it is pretty clear on what we have to decide on. The Zoning Administrator interpreted the letter of code correctly. Obviously letters of the code can be ambiguous in their interpretation. But I also think the spirit and the intent of this code is being addressed also and I think in terms of the code as it exists, it is meant to prevent over-crowding of residences and structures. For residents who are strangers to one another in structures that could be perhaps unsuitable for housing that many people. And that is simply what the issue I think the Zoning Administrator was looking at. He had the authority to make the decision and these other issues are debateable and interesting, but should be taken to a higher floor. And some of them have been in terms of interpreting the Federal Fair Housing Act, recently in Minneapolis concerning housing for persons with disabilities. That is the floor it should be taken to not here.

Lasky: I just wanted to say that some of the information he gave was incorrect. I have twenty five years of housing management. I have not had thousands of units, but hundreds, and I have never had this situation where an Inspector would not accept the status of a gay couple. You can have a couple and two other unrelated individuals living together. This probably would not come up if the economics of rental housing would not have changed recently. There are people that are trying to find ways to make it work. It is just economics that's all it is. It is even worse by the University. The University is where I manage a lot. I don't see this changing that. **(Two sentences – could not hear from tape)**. It is economics and to intensify the number of people in the residences just to accommodate them. This hurts me personally in my business, I would rather not see that happen. **Could not hear from tape the rest of comments of Ms. Lasky from the discussion.**

Rand: I concur with the comments and I would also say that the Zoning Administrator enforces and comments on Zoning Ordinances, not on law. So that is why I feel that this is in the realm of what the Zoning Administrator has to do. The point is the definition of family, definition of partnership and so forth, isn't in the Zoning Ordinances. That's in law, state law or federal law. That is why I think it's definitely appropriate that this Board should support the Zoning Administrator's opinion on this matter.

Finlayson: Thank you. Anything further?

Please call the roll:

Bloom: Yes
Fields: Yes
Finlayson: Yes
Gates: Yes
Johnson: Absent
Lasky: Yes
Morgan: Yes
Rand: Yes
Von Bargaen: Yes

Motion: Carried.