

Department of Community Planning and Economic Development – Planning Division
Appeal of the Decision of the Zoning Administrator
BZZ-4746

Date: April 22, 2010

Applicant: Steve Calvin

Address of Property: 2604 Chicago Avenue

Project Name: Appeal of the ZA determination regarding “birth center”

Contact Person and Phone: Steve Calvin, (612) 669-2052

Planning Staff and Phone: Shanna Sether, (612) 673-2307

Date Application Deemed Complete: March 18, 2010

End of 60-Day Decision Period: May 17, 2010

Ward: 6 **Neighborhood Organization:** Phillips West; adjacent to Midtown Phillips

Existing Zoning: OR2 High Density Office Residence District

Zoning Plate Number: 26

Legal Description: Not applicable for this application

Proposed Use: Birth Center

Appeal of the decision of the Zoning Administrator: interpretation that a “birth center” is a *hospital* and instead contends that the use is a *clinic, medical or dental*

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 appellant has filed an appeal of the decision of the Zoning Administrator regarding the interpretation that a “birth center” is a *hospital* and instead contends that the use is a *clinic, medical or dental*. According to the appellant, a birth center is predominately outpatient prenatal care, providing prenatal appointments, ultrasounds and annual exams. In addition, a birth center is place for women to give birth with the help of midwives; however, no medications or invasive procedures occur. The appellant has stated that they expect approximately 25 births per month. The length of stay for patients is typically 12 hours or less, but not longer than 18 hours. If the use is determined to be a *clinic*, additional land use applications will be required including a conditional use permit to extend the hours of operation beyond what is allowed in the OR2 District and a variance to reduce the required parking.

Licensure legislation is under review by both the MN State Senate and House of Representatives; the proposed bill intends to define birth centers as “a facility licensed for the primary purpose of performing low-risk deliveries that is not a hospital or licensed as part of a hospital and where births are planned to occur away from the mother’s usual residence.” While the proposed statutory definition differentiates birthing centers from hospitals for the specific purposes of the legislation related to licensing, birthing centers are not currently distinguished from hospitals in state statute or in the City’s zoning ordinance.

The appellant argues that the use of the property is a *clinic* and not a *hospital*. *Hospital* is not currently defined in the zoning code. *Clinic* is defined in the Minneapolis zoning code as:

Clinic. An establishment where patients are admitted for medical or dental exams and treatment on an outpatient basis only.

A zoning code text amendment is currently being considered that revises a number of the code’s definitions. In order to provide further clarity to differentiate clinics from hospitals, staff has proposed the following definition as part of the amendment:

Hospital. An establishment where patients are admitted for medical, surgical, or psychiatric treatment for outpatient and/or inpatient, overnight accommodation.

Findings:

1. *Clinic* is defined in the Minneapolis zoning code as: “[a]n establishment where patients are admitted for medical or dental exams and treatment on an outpatient basis only. Staff believes that patients the scope of services provided at the proposed birth clinic are

beyond medical exams and treatment. Further, the intended use of the property as a birth center is not outpatient in nature.

2. *Outpatient* is not defined in the zoning code. If a word is not defined in the zoning code, the zoning administrator applies the common meaning as required by section 520.160 of the zoning code.

520.160 Definitions. Unless otherwise expressly stated, or unless the context clearly indicates a different meaning, the words and phrases in the following list of definitions shall, for the purposes of this zoning ordinance, have the meanings indicated. All words and phrases not defined shall have their common meaning.

To find a word's common meaning, a dictionary(s) is referenced. For example, the American Heritage Dictionary defines *outpatient* as "a patient who is admitted to a hospital or clinic for treatment that does not require an overnight stay"¹

3. A person who gives birth during the late p.m. or early a.m. hours is, in all likelihood, going to be spending the night at the facility, which is not consistent with the common understanding of the term outpatient.
4. Hospitals are intended to accommodate urgent medical situations that can and do occur 24 hours per day and that can also require a period of time for recovery. Further, hospitals are not subject to zoning code section 547.60 for regulations of hours open to the public, which exempts them from maximum hours of operation. Therefore, the use of a "clinic" cannot be open to customers beyond the hours permitted in the district, which are 7am – 10pm Sunday through Thursday and 7am to 11pm Friday and Saturday. These proposed hours of operation are not consistent with the nature of this use.

RECOMMENDATIONS

Recommendation of the Department of Community Planning and Economic Development – Planning Division for the appeal of the decision of the zoning administrator:

The Department of Community Planning and Economic Development – Planning Division recommends that the Board of Adjustment adopt the above findings and **deny** the appeal of the decision of the zoning administrator's interpretation that a birth center is a *hospital* and instead contends that the use is a *clinic, medical or dental*, for the property located at 2604 Chicago Avenue South in the OR2 High Density Office Residence District.

Attachments:

- 1) Zoning Administrator interpretation in an e-mail dated March 9, 2010.

¹ "outpatient." *The American Heritage® Dictionary of the English Language, Fourth Edition*. Houghton Mifflin Company, 2004. 05 Apr. 2010. <Dictionary.com <http://dictionary.reference.com/browse/outpatient>>.

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- 2) Written descriptions and findings submitted by the applicant
- 3) Zoning map
- 4) Site survey
- 5) Floor plans
- 6) Photographs