

Community Planning and Economic Development - Planning Division Report

Appeal of the Decision of the Zoning Administrator
BZZ-2791

Date: February 16, 2006

Applicant: Kathleen Theibert

Address of Property: 4353 Beard Avenue South

Contact Person and Phone: Kathleen Theibert, (612) 227-0192

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

Date Application Deemed Complete: January 17, 2006

End of 60 Day Decision Period: March 20, 2006

Appeal Period Expiration: February 28, 2006

Ward: 13 **Neighborhood Organization:** Linden Hills Community Council

Existing Zoning: R1A Single Family Residential District

Appeal of the decision of the Zoning Administrator: Kathleen Theibert has filed an appeal of the decision of the Zoning Administrator which states that her establishment, The Cottage House, is not authorized to conduct a retail sales business as the principal use in the R1A Single Family District for the property located at 4353 Beard Avenue South.

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.

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Background and Analysis: The subject property is located at 4353 Beard Avenue South and is zoned R1A Single Family District. The appellant's business, The Cottage House, is classified as a retail sales and service use under the zoning code. Table 546-1 of the zoning code does not list retail sales and service uses as either permitted or conditional; thereby making it a prohibited use.

Zoning Enforcement was notified of this business based on several neighbor complaints. On November 29, 2005 the Zoning Enforcement Office notified the appellant that the R1A District does not allow for the operation retail sales as the primary use. Zoning Enforcement witnessed this business in operation over three days, December 9, 2005 through December 11, 2005. In addition, Zoning Enforcement witnessed the use of several signs. The first was a sandwich board sign, approximately 3 ft. by 2 ft. located in the public right of way (see photo). The second, third and fourth signs were visible on the property (see photos). On December 9, 2005 the Zoning Enforcement Office again notified the appellant that a retail sales is not allowed as a primary use in the R1A District (please see attached letter). The appellant has appealed this decision of the Zoning Administrator. Upon inspection of the structure on December 9, 2005, Zoning Enforcement witnessed the lack of kitchen and bedrooms.

The appellant has argued that she was conducting a garage, yard, or moving sale in accordance with Minneapolis Zoning Code section 537.110. The section of code states:

Garage, yard or moving sale. Garage, yard and moving sales shall be allowed accessory to a residential use, subject to the following:

1. Only two (2) such sales shall be allowed per dwelling per year.
2. Such sales may be conducted for a period of time not to exceed seventy-two (72) consecutive hours.
3. Items offered for sale shall not have been bought for resale or received on consignment for the purpose of resale.

According to witness by Zoning Enforcement, the residential components of a dwelling unit have been removed from this structure; therefore the business conducted on the subject property was not an accessory use to a residential use. In addition, according to witness by Zoning Enforcement and signage visible, the sale was conducted over a period of three days, December 9, 2005, through December 11, 2005. Therefore, the business conducted at the subject property was not conducted in accordance with Minneapolis zoning Code section 537.110.

The appellant has argued that she was in compliance with the standards set forth in the Minneapolis Zoning Code section 535.450. Article VII of Chapter 535 Regulations of General Applicability addresses Home Occupations. The purpose of this article is to regulate home occupations to ensure that they do not adversely affect the character and livability of the surrounding neighborhood and that a home occupation remains accessory and subordinate to the principal residential use of the dwelling. The establishment, The Cottage House, does not comply with the standards found in 535.450, specifically, the following sections:

- (2) Only the residents of the dwelling unit and not more than one (1) nonresident employee shall be employed by or engaged in the conduct of the home occupation on the premises. For the purpose of this section, "nonresident employee" shall include an employee, business partner,

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independent contractor or other person affiliated with the home occupation who is not a resident of the dwelling unit, but who visits the site as part of the home occupation.

(4) Interior alterations or modifications that eliminate the kitchen, living room, all of the bathrooms or all of the bedrooms of the dwelling shall be prohibited.

(8) Signage shall be restricted to one (1) non-illuminated, flat wall, identification sign not to exceed one (1) square foot in area.

(10) No retail sale and delivery of products or merchandise to the customer or client shall occur on the premises except where accessory to any services provided (such as hair care products sold accessory to hair cutting or computer disks accessory to accounting services.)

(13) The home occupation shall not generate excessive customer or client traffic that is detrimental to the residential character of surrounding properties or the neighborhood. For purposes of this provision, more than five (5) customers or clients per day may be determined to be an excessive and detrimental level of traffic. This number shall apply per dwelling unit, regardless of the number of home occupations, except that in the case of two (2) family dwellings, the number shall apply to the two (2) family dwelling. The factors to be used for such determination shall include but not be limited to:

- a. The characteristics of the neighborhood, including land uses, lot sizes and lot widths.
- b. Street type, width and traffic volumes.
- c. The availability and location of off-street parking and the extent to which the home occupation contributes to on-street parking congestion.

The appellant has stated that she does not live at the subject property; therefore she is a nonresident employee. The applicant has not provided proof of persons living in the unit or their employment there. Zoning enforcement witnessed that the kitchen and bedrooms had been removed from the structure; therefore, interior alterations and modifications have been made. The signage is in excess of what is allowed per section 535.450 (8). Retail sale was conducted on the premises, per witness by Zoning Enforcement. Customer and client traffic exceeded 5 persons per day, per witness by Zoning Enforcement. Therefore, the establishment, The Cottage House, was not in compliance with Minneapolis Zoning Code section 535.450.

Staff makes the following findings:

- (1) The establishment location at 4353 Beard Avenue South is zoned R1A.
- (2) Retail sales are not allowed in the R1A District as the business has been conducted.
- (3) The zoning office has classified this establishment as retail sales based on a site visit.
- (4) The appellant has provided no information as a part of the appeal to show that her establishment should not be classified as retail sales.

Based on the above findings planning staff agrees that the Zoning Administrator has correctly interpreted the zoning code.

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Recommendation of the CPED Department Planning Division:

The Department of Community Planning and Economic Development – Planning Division recommends that the Board of Adjustment **deny** the appeal of the decision of the Zoning Administrator that the establishment, The Cottage House, is not authorized to conduct a retail sales business as the principal use in the R1A Single Family District for the property located at 4353 Beard Avenue South.