

## **Minutes of the Building Appeal Board Meeting of July 12, 2017**

The regular meeting of the Building Appeal Board was called to order at 3:19 p.m. Wednesday, July 12, 2017, in the City Council Chambers, 3rd Floor City Hall.

**MEMBERS PRESENT:** Jon Helstrom, presiding; Nancy Kastelic, Jim Herman, John Miller, John Hinzmann,

**MEMBERS ABSENT:** Don O'Connor, Bill Scalzo, Pat Sowl and Dennis Edwards, all excused

**STAFF PRESENT:** Dan Nelson, Terri Lehr, Sarah Benning, Jeff Ahonen and Ellen Kreidler

The minutes of the June 14, 2017 meeting were approved as mailed.

### **NEW MATTERS:**

**File 17-002 An appeal of Jim, Kathy and Grant Abens to grant relief from the ceiling height minimum requirements to allow a rental license to include two attic rooms to be used as bedrooms regarding property located at 11 Trinity Court.**

The staff report was made by Mr. Nelson. Housing inspector, Jeff Ahonen was also present to answer any questions of the board.

Mr. Hinzmann asked how the ceiling height measurements were taken and what the area of the rooms were. Mr. Ahonen replied that he measured the attic rooms at the highest point to the floor and it was 6'5"; the room area was approximately 12'x 14'. He didn't know the exact pitch of the ceiling but stated it was an average bungalow style roof line.

President Helstrom clarified that no area of the room meets the minimum ceiling height of 7' adding that the board did not have the power to circumvent the code. Ms. Benning concurred. Mr. Miller asked if it could be used as a tv room or office. Mr. Nelson explained that the board needs to understand that this was a rental licensing code violation and not a building code compliance issue. He explained that the property contains a 1-family dwelling which is currently licensed as a rental. The owner is trying to increase the number of bedrooms on the license from 2 to 4. These rooms do not comply with the IPMC (Int'l Property Maintenance Code). This code may be more or less restrictive than the building code. The issue at hand was that these two rooms do not meet the requirements of the IPMC; there is no construction occurring which would result in the building code being applied.

President Helstrom stated that this residence has 2 bedrooms on the first floor; the request is to use 2 rooms on the second floor as bedrooms however they do not meet the IPMC. He added that the board does not have the power to change the code. Ms. Benning replied that this was correct. Mr. Hinzmann asked if they could obtain a rental license for 4 bedrooms if they modified the roof so the ceiling height requirement was met. Ms. Benning replied that they could. Mr. Miller asked how many occupants could

occupy the home. Ms. Benning replied that the license restricts the number of tenants based on the number of legal bedrooms, which in this case is 2.

Mr. Jim Abens was present. He explained that he lives in Eau Claire WI and has owned rental properties for 15 years. His son, Grant is a student and needed to find a rental that allowed a dog. They discovered that buying a home was their best option. After looking at 7-8 homes in Duluth, their Realtor, Barb Hansen found this house. They felt it was the perfect solution with its large yard, heated garage and proximity to school. The key wouldn't work at the showing, but based on the well-maintained exterior they felt they didn't even need to see the interior. He said there was a big open room on the second floor finished off with partial walls. He thought it would be an easy job to install drywall and electrical and make this area into two bedrooms. He did not understand why the code was different for a basement than a bedroom on an upper floor. He stated that they have 2 tenants plus their son, who is allowed to use the upstairs room because he is an owner. The other upper room is used as a game room but they would like to rent it to another tenant. He explained that buying the home will be a big mistake for them if they are not allowed to have 3 tenants plus their son in this home. He added that the home is otherwise safe and up to code and is well-maintained.

There was board discussion as to the reason for the requirement being different for a basement than an upper floor bedroom and the ability of the board to grant this request. Mr. Abens also requested a compromise at allowing one of the two upstairs rooms to be used as a bedroom. Ms. Lehr advised that under the city code, licensing inspections are governed by the IPMC. The specific section is 404.3 pertaining to minimum ceiling heights. The code does specifically provide for different ceiling height standards for a basement, however the code in this situation is 7' minimum. As to the question of whether the board can allow a compromise and allow a 3-bedroom rental license, she directed the board to Sec. 29A-32 (h) (2) of the Duluth City Code, which states that 'in no case shall a bedroom be allowed that does not comply with all applicable state and city building and housing codes.' Chapter 29A does not give this board the authority to deviate from codes which relate to bedrooms.

Mr. Abens asked what governing body would have the authority to grant his request. President Helstrom explained that the code itself would need to be modified which is a long process and would not be under the authority of this appeal board.

After further discussion, the board determined that relief could not be granted. The role of the board was not to clarify the reason why the code was different for a basement; one would need to ask the drafters of the code. The board's function was to apply the code. Because Section 29A-32(h)(2) specifically states that the board cannot grant a variance for the requirements for a bedroom, there was no relief that could be granted. For these reasons, Mr. Hinzmann made a motion to accept the recommendations of the staff report and to deny the appeal.

Motion: Hinzmann: To deny the requested appeal.

SECOND: Herman

MOTION PASSED: Unanimously

**File 17-003 An appeal of Natalie Menten to grant relief from a demolition order regarding property located at 2101-5 W. 3rd Street.**

A staff report was presented by Dan Nelson. Mr. Nelson stated that the board was sent an extensive packet with background information. He pointed out Exhibit F which was a copy of an email from Wendy Rannenberg to the owner which laid out the information the owner would be required to have at this meeting.

Mr. Hinzmann ask if there was documentation as to how the \$450,000 estimate of the cost of repair was determined. Mr. Nelson replied that this was outlined in Exhibit C. He stated that his estimates utilized the assessed value (\$71,400) as the basis of determining whether the building meets the 60% threshold set by the code. In this case he said the building square footage is over 13,000 sq. ft. with a 20' x 20' area which has a collapsed roof. He calculated the repair estimate based on the damaged 20' x 20' area multiplied by 3 (2 floors + a roof structure). He spoke with various engineering firms and contractors and got a general price per square foot to restore the building of this design. The estimates he received varied from \$175 - \$225 per square foot. To be conservative, he used \$150 per square foot in estimating the cost of repair. The total cost of repair based on this formula was \$425,000 and only encompassed the damaged portion of the building. He added that the remainder of the building is vacant and in disrepair. It has a broken roof leader which has resulted in major water damage to the interior. The entire building must be brought up to a minimum code standard. Looking at this project as a whole, the owner would be required to hire a design professional and have engineered plans put together. The owner will need to apply for permits and Construction Services would permit and inspect the work.

Mr. Hinzmann asked if the entire building must be brought up to code. Mr. Nelson replied that they would be required to meet a habitable standard for life safety and exiting issues prior to the issuance of a certificate of occupancy. He felt that some old systems would need to be brought up to code such as the exiting, heating and electrical systems. The building is open to the weather and it was impossible to say what condition the electrical system was in. Mr. Herman asked if he had been inside the building. Mr. Nelson replied that he conducted a minimal walk through in areas that were safe. He referred the board to the addendum to the staff report and explained that the owner has removed unbraced walls on the front and side of the building adjacent to the triplex next door. The triplex tenants were allowed to move back into their building.

Mr. Hinzmann asked how long the building has been unoccupied. Mr. Nelson replied that he was not sure how long it has sat empty; the last use was an auction house. President Helstrom asked if the building was insured. Mr. Nelson replied that it was not.

Mr. Nelson explained that it was in the best interest of the city if the owner was able to fix the building. He recommended that the board follow the criteria in the orders and require a design professional to prepare plans, to ask for accurate estimates for repair and to verify that the owner has the financing in place. It would then be up to the owner to determine if they are able to meet those conditions and get the building up to code.

Natalie Menten was present to answer any questions of the board. She explained that she had a \$38,000 estimate from a contractor who had been through the building but she did not have a signed contract. She felt the building was undervalued by the county and that the damage did not meet the 60% criteria of code. She was concerned that because of the demolition order she would be required to bring the rest of the building up to current building code standards. She said it was inspected in June of 2016 by the city housing inspector and nothing was in disorder. She disagreed that the cost of repairs was in excess of \$400,000. She explained that she purchased the property in late 2015. It was previously the Brent Loberg auction house until sometime in 2015 and was vacant for only a short time.

Mr. Miller asked her intended use of the property. She replied that there would be no change in use; it would remain a commercial building with the upstairs possibly office space or altered to residential. Her intended use would be commercial and retail with warehouse/storage.

Mr. Hinzmann asked if she would be able to meet the recommendations of staff regarding posting a bond and insurance. He asked if she could have a written estimate from contractors based on architect/engineered plans. Ms. Menten replied that she assumed she could get liability insurance but she had never purchased a bond before and didn't know if that was possible. She said she could get estimates for repairs, but as to having a hard copy of an estimate she didn't see where this and the other items discussed were required by code. She added that she had already completed the demo of the unsafe unbraced walls.

Ms. Kastelic stated that various numbers had been presented and that required more clarity where everyone could agree to an estimate for repair. She stated that she reviewed the appraisal from Twin Ports Appraisal, adding that she had worked with this appraiser in the past and that he was very reputable. In looking at valuations, comps are typically what a business banker would look for and the dated comps in the appraisal would not have been accepted by a bank as a valuation. She stated that the building will need to be brought up to code and this would entail more than a quote from a general contractor. She stated that there is a huge gap in the numbers presented from \$40,000 to \$400,000 and she did not believe she could make a decision without seeing more tangible numbers. Her suggestion was to have an engineer provide a report of what will be needed to bring the building up to code. She believed this would be the best investment for the owner so they can wrap their arms around what lies ahead and then the board would be able to determine how they could help. The actual estimates may be \$300,000 or it may be much less; the board needs to know what that estimate looks like before they can decide on this appeal.

Ms. Menten agreed, stating that she spent time at the public library reading the building code and found that a layperson cannot understand all the requirements however based on what she read she did not believe she would be required to install an elevator. Her entrances and wide hallways and the ramp with the exits all seemed to be code compliant. She questioned whether other old buildings when damaged to a certain amount are required to be brought up to current building code. Ms. Kastelic replied that there are many complexities of the code and if the code required an elevator or a ramp

that is what would need to be done. She added that this was the very reason she wanted Ms. Menten to have someone with a code background and expertise to evaluate the building and insure that code requirements are met.

Ms. Menten stated that the past 4-5 weeks have been challenging. Ms. Kastelic believed that by following the recommendation of the city to bring in a structural engineer it would save the owner time and money in the long run. President Helstrom added that an architect may need to look at areas not within the purview of an engineer. Items such as the mechanical system and electrical system should be evaluated. Once plans are prepared the owner could take them to several contractors to obtain bids. Mr. Miller agreed, stating that his career involved developing construction projects. He felt it needed to start with an architect and engineer to work through to preparing plans. He added that the bank financing piece also needs to be included in the process.

President Helstrom asked staff if there were old building plans on file. Mr. Nelson replied that there were not; he had already researched this.

Mr. Hinzmann felt it was appropriate to table this matter for a month until more information could be submitted by the appellant relevant to engineering reports, and an architectural assessment. Also, he wanted more specifics on the total cost. He added that this would reveal whether it would be out of line for the board to require a \$200,000 bond.

Mr. Nelson stated that the owner had been informed of what the board would need and referred to the email exchange provided in the staff report. He felt it had clearly been laid out in the staff report as to what the owner will need to do to rehab this building. He explained that the owner will be required to have a design professional and demonstrate to the board that financing is in place. If tabling this matter allows the owner the time to prepare the information the board needs, he stated that he would be supportive of that motion. He added that the city does not want to demolish the building, they would prefer that the owner repairs the building. President Helstrom asked the applicant if they had received the information in the staff report. Ms. Menten replied that she did not have the staff report but she did have the letter that suggested she have all the reports for the board however based on what she read in the code she did not believe that she would be required to have an architectural report. She added that she did not wish to expend money on the project until the board hearing for fear of being out additional money if the appeal was a dead end.

Mr. Miller asked how long the building can remain standing without more sections falling down in view of the partial collapse. Mr. Nelson replied that in conjunction with the demolition order, his office issued an abatement order to eliminate the immediate hazardous condition. The owner hired a contractor and took the collapsed area down to a level where the building is stable. The adjacent tenants are back in their building and the barricades around the exterior have been removed. There is no imminent danger. The concern is that the building remains open to the weather and the longer it sits in this condition the more it will deteriorate. Mr. Herman asked if it was known what caused the roof collapse. Mr. Nelson replied it had not been determined however the building lacked maintenance and was in disrepair. He added that an interior roof leader was broken and there was water entering the building.

Ms. Kastelic asked the applicant how willing she was to move forward now that she understood more of the requirements. Ms. Menten replied that she still questioned the formula used to determine the building met the demolition criteria and she was nervous about the additional requirements. Ms. Kastelic explained that while an appraiser may say the value should be higher than the assessed value, the board cannot use the appraisal. She added that the repair estimate must include everything to bring the building up to code. Ms. Kastelic stated that she was not convinced by anything she had been given that the \$40,000 verbal estimate would bring the building up to code. Until there were written estimates to achieve code compliance and they could compare this to the assessed value, she could not make a determination on the merits of the appeal. She again asked the applicant how open they were to getting the information needed. Ms. Menten replied that she was open to this but did not want write out a check to an architect before she could have a conversation regarding all possible avenues they could explore.

MOTION: Hinzmann: To table the appeal until the next hearing in one month.

SECOND: Miller

MOTION PASSED: Unanimously

There being no further business the meeting adjourned at 4:20 pm.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Dan Nelson". The signature is stylized with a large, looping "D" and "N".

Dan Nelson  
Ex Officio Member/Secretary

DWN:ek