

## **Minutes of the Building Appeal Board Meeting of April 13, 2016**

The regular meeting of the Building Appeal Board was called to order at 3:00 p.m. Wednesday, April 13, 2016, in the City Council Chambers, 3rd Floor City Hall.

**MEMBERS PRESENT:** Jon Helstrom, presiding; Bill Scalzo, John Hinzmann, Don O'Conner, Pat Sowl, Jim Herman, John Miller and Matt Becka

**MEMBERS ABSENT:** Nancy Kastelic

**STAFF PRESENT:** Dan Nelson, Sarah Benning, Karen O'Donnell, Kyle Deming and Ellen Kreidler

The minutes of the March 9, 2016 meeting were approved as mailed.

### **NEW MATTER:**

**File 15-004 An appeal of Gary Nelson of the demolition order of a detached garage located at 429 N. 63rd Ave. West.**

Kyle Deming of the Planning Division was present to answer any zoning questions. Mr. Deming explained that the garage was constructed in 1975 after the board of zoning appeals incorrectly granted a variance. Mr. Nelson referred the board to the recommendation of the staff report. He explained that staff recommended denial for the reasons stated in the report. He stated that the use of the property has morphed and grown beyond the original intended use.

Greg Gilbert addressed the board and explained that he was the legal representative of the property owner. He requested submittal of a handout to the board.

**MOTION:** Hinzmann: To suspend the rules to accept documentation from the appellant.

**SECOND:** O'Connor

**MOTION PASSED:** Unanimously

Documents submitted included:

1. Estimate from Nate Lind Construction LLC to remove existing trusses and install new trusses with 8/12 vault on one side for hoist and storage trusses on the other side; new soffit and fascia, install 30 year architectural shingles: \$7,940.00
2. 5 photos of the subject property dated April 13, 2016 showing the exterior of the structure and the yard areas.

Mr. Hinzmann asked if the dumpster shown in the photo was still on-site. Mr. Gilbert replied that it was, however it was only there for clearing out for the anticipated remodel and would not be there permanently. President Helstrom asked if there was a vehicle behind the dumpster. Mr. Gilbert replied that this was a storage shed. President Helstrom questioned whether there was an additional structure on this property.

Dan Nelson of 117 N. 29<sup>th</sup> Ave. W. addressed the board. He stated that the storage

shed has been on the property for 30 years; they use this shed to store antique wood. He further explained that when his father left he was put in charge of the property. Mr. Herman asked if the motorhome shown in the January 2016 photos was still on the property. Mr. Nelson replied that it was still on the property because it contains some of their building supplies, but that it will be moved. He added that the reason the dumpster is still on-site is because they needed to get a report from Twin Ports Testing before they could put any materials in the dumpster. He stated that he had a copy of that report. He explained that they haven't made any progress because they wanted to handle this appeal first. President Helstrom observed that it appeared that the dumpster was already full. Mr. Nelson (owner) replied that people from the neighborhood have thrown things in his dumpster; they do have receipts found with names of individuals included in the items thrown in the dumpster. They intend to turn this information over to the Duluth Police.

Mr. Miller asked if the property was used as a commercial operation. Mr. Nelson (owner) replied that it was not. He explained that they use the property to store vehicles. His grandfather purchased the property for his father. They have sentimental reasons for wanting to keep the property. He added that his father used to work on his own personal vehicle once and a while. Mr. Nelson (owner) stated that they also own commercial property on 18<sup>th</sup> Ave. W. & Superior Street which is where they would do any work on vehicles. He stated that they only want the subject garage to store old cars and to remember their grandfather. They would not have anything parked in the yard.

Mr. Miller observed that there is a long history of violations at this location and the property has not always been used for just inside storage. He added that he has driven past the property over the years and witnessed many vehicles parked outside in a condition of disrepair. Mr. Nelson (owner) explained that for a while they were under the impression that the property was zoned commercial because they have paid taxes at a commercial rate ever since they purchased the property. He stated that when they found out the property was not zoned commercial they stopped. He added that based on the tax records they have been paying commercial taxes.

Don O'Connor explained that the purpose of the board is to hear from the appellant why they feel the building official was in error in issuing the demolition order. He stated that this structure was condemned based on the damage exceeding 60% of the value. He asked the applicant why he felt the building official was in error. Mr. Nelson (owner) replied that the estimate from their contractor was only \$7,940 which he did not feel was 60% of the value. Mr. O'Connor asked what the property was valued at. Mr. Nelson (owner) replied that he didn't have that information; he attempted to go to the assessor's office today, but found out they moved to the St. Louis County Courthouse.

President Helstrom asked if it was their intention to improve the appearance of the building. Mr. Nelson (owner) replied that it was; they have garage doors on order at Menards but are just waiting for the outcome of today's hearing. He stated that they had a new garage door on the left side of the garage which was destroyed by the fire department when they were called there. He stated that the fire department did more damage to the building than the electrical fire did. He stated that they plan to get new siding or paint it and have already painted the fence on the exterior side. He said that the roof was redone a couple years ago. He stated that their intent was to keep the garage and re-do everything on it.

Mr. O'Connor asked legal counsel how the situation with the zoning nonconformity affected the ability to repair the structure if it was determined to be damaged by less than 60%. Ms. Lehr explained that the zoning code does not allow an accessory building on a parcel without a primary residence. When the variance was granted in the mid-1970's, the garage was intended for use as an accessory structure for the home across the avenue. At some point in time, the ownership was separated and the building was no longer associated with a parcel which contained a primary building. The current code does not allow an accessory building to exist without a primary residence. Mr. O'Connor clarified that if a contractor attempted to obtain a permit to construct an accessory building on this property, that permit would be denied. The building official, Dan Nelson replied that this was correct.

Mr. Nelson (owner) interjected that all they are asking for is new trusses and new garage doors. They do not want to build a new garage and they believe that it is not 60%. He felt that the building official picked that number out of his hat so that he could condemn it. He stated that he would like to see the appraisal value and who went out to look at the damage. He added that no one went inside the building to look at the damage. President Helstrom pointed out that there are two concerns here: the amount of damage to the building and the nonconforming use. Mr. Nelson (owner) stated that they had no idea that the property was nonconforming when they purchased it. He questioned why the former owner was allowed to sell it separately from the house. He questioned why they have paid taxes on the property for nearly 30 years. He believed that they were not at fault for the mistake that was made; they purchased the property in good faith and have paid higher taxes because it was classified as commercial.

President Helstrom asked for a motion. He then asked legal staff if the building official would have authority in the absence of a motion by the board. Ms. Lehr replied that the code requires the board to make a decision on the appeal before them. She referred the board to the criteria listed in the staff report in making their determination: use of the structure, location of the structure or the unique characteristics of the building. She added that the owners must show good cause to this board that they should have the right to rebuild the structure.

Mr. Gilbert agreed with Ms. Lehr adding that the reason for the request before the board was the change in how the owners intend to use it. He felt that the staff report spent considerable time on the history of violations in terms of solid waste regulations and the citation of 25 vehicles on the property along with the photos showing an auto repair yard. He understood that Gary Nelson did run this as an auto repair yard for many years however Gary is now in China and his son Dan is watching the property. He stated that Dan Nelson (owner) has cleaned up the property. Their new photos show the property has been cleaned up and the photos in the staff report are not representative of what the property looks like now. Diane and Gary Nelson would like to use the property for storage – with nothing stored outside. He stated that the use will be different than it was in the past and he felt that difference justified action by the board under Section 10-3(a) to give the owners a chance to remodel the garage and make it a valuable contributing place in the neighborhood.

In reference to the photos in the staff report, Mr. Nelson (owner) explained that there was a truck shown in a photo which they were using to haul all the fire damaged

material out; there was a vehicle which was under a tarp (permitted by code for up to 6 months) which has since been removed.

A motion was made by Mr. Hinzmann to deny the appeal and support the recommendation of the staff report that the building be demolished. Motion was seconded by Mr. Miller.

Mr. O'Conner stated that he understood there were zoning issues associated with this situation however he did not feel that was up for board debate. He felt that the board's responsibility was to decide if the orders were issued in error. If the owner has an estimate for \$7,940 to repair the garage, then the garage would need to have a value of \$13,233 to be at the 60% threshold. He felt that the big question related to the value of the garage. He did not believe that was known and he did not believe the board could deny or approve this appeal until the garage value was known.

Mr. Hinzmann commented that the \$7,940 estimate does not include new doors or any repairs to the exterior or the interior fire damage. He stated that the board does not know the value of the garage or the total cost of repair. He agreed that the board was not dealing with the nonconforming use issue.

The building official, Dan Nelson stated that the demolition order was based on the assessed market value of the garage which was \$10,700. Dan Nelson (owner) replied that he would like to see a 32' x 30' garage built on a slab for that value. He believed that a garage package without including a slab would cost between \$15,000-\$18,000. He felt that the board should have more information before they make a decision. He added that someone could say anything was 60% if there were no facts behind it. He questioned how they could make a decision.

MOTION: Hinzmann: To deny the appeal

SECOND: Miller

MOTION FAILED: In favor: Miller; Opposed: O'Connor, Scalzo, Hinzmann, Herman, Becka; Abstained: Sowl

A motion was made by Mr. Hinzmann to grant the applicant one month to provide complete contractor estimates to bring the building into code compliance and he also wanted verification of the assessed value of the garage prior to the fire. The repair estimates should be submitted to the building official prior to the hearing so that a determination can be made as to the extent of damage.

MOTION: Hinzmann: To table this matter until the next hearing to allow the appellant time to obtain complete contractor estimates to bring the building into code compliance and documentation of the assessed value of the garage prior to the fire. The information should be submitted to the building official prior to the hearing so that a determination can be made as to the extent of damage.

SECOND: Scalzo

MOTION PASSED: Unanimously

President Helstrom clarified that the assessed value is the value of the building only and not the total value of the property including the land. Building Official Dan Nelson

stated that the assessed market value on 9/11/2015 of the garage only was \$10,700 so 60% of that amount would be the determining factor of whether this meets the criteria for demolition. Mr. Herman asked if there was a list of code deficiencies. Building Official Nelson replied that there was no itemized list; it was determined that due to the fire incident the damage exceeded 60% of the pre-fire value of the garage and therefore met the criteria for demolition orders.

### **OLD MATTERS:**

**File 11-003 An update on the appeal of the AAMC (Armory Arts & Music Center) who were granted a stay of demolition for a period of 12 months to allow the continued progress on addressing the items needed to lift the demolition order for property located at 1301 London Rd.**

Mr. Nelson outlined the matter as indicated in the staff report. He stated that the recommendation by staff was to lift the demolition order to allow the Armory to sell the building and enter into a purchase agreement with the Boisclair Corp. and to obtain a certificate of occupancy within 24 months.

President Helstrom asked if this would be a one-year stay of the demolition order. Mr. Nelson replied that it would be an actual lifting of the order. Ms. Lehr added that this would mean that the matter would be off the board's docket unless or until a new demolition order is lifted. Mr. Nelson clarified that the building may not be occupied until a certificate of occupancy has been issued; there is a great deal to achieve before this can happen.

Mr. Hinzmann asked if the memorandum of understanding had been executed. Mr. Nelson replied that it is proposed, not agreed upon yet. Mr. Hinzmann asked what would happen if the MOU was not executed. Mr. Nelson replied that he would be required to re-issue the condemnation for demolition orders which would include their right to appeal that order to the board. Mr. Hinzmann asked what amount of time he would give them before he re-issued orders. Mr. Helstrom added that the board was under the understanding that they would presented with an executed MOU at today's meeting. Mr. Nelson explained that they anticipate the sale to be completed within a year then the 24 month time period to complete the project. He added that the MOU cannot be signed until the board has lifted the order.

Mr. O'Conner asked if the historic designation impacted the ability to re-issue demolition orders in the future. Ms. Lehr replied that this would not impair the ability of the building official to issue orders; it would trigger statutory obligations and rights of the property owner in the event that the city actually moved forward with demolishing the building. Mr. O'Conner stated that at the last hearing the board tabled the matter for one month so the board could see the purchase agreement and the financial information from Boisclair.

Lori Boisclair addressed the board and introduced herself as the president of the Boisclair Corporation. She stated that they have an executed purchase agreement with the AAMC which includes two addendums extending the due diligence/inspection period. Upon completion of the inspection period they are to close within 20 business

days. To date, they have completed the hazardous material study, they have a building assessment report and they have a drill floor inspection report. She stated that they understand what needs to be done to remedy the issue with the drill floor. They also had a water infiltration study, they have walked the culverts, they have had a market study and have talked to leasing consultants regarding retail tenants. They have toured many new market tax credit investors. They have worked with SHPO on designs. On the former Perkins property, they propose to construct 58 apartment units. She explained that their main focus is the Armory with apartments phased in later.

President Helstrom asked if a copy of the purchase agreement is on file with the inspection department. Ms. Boisclair replied that she did not believe it was, however she had a copy with her today.

MOTION: O'Connor: To accept submittal by Lori Boisclair of the purchase agreement

SECOND: Herman

MOTION PASSED: Unanimously

President Helstrom noted that the purchase agreement should have been submitted prior to the hearing. In addition the board had required a letter from a banking institution. Ms. Boisclair explained that they are looking at new market tax credit allocation and the CDFI's have not been awarded for 2016; there is no bank involved until the awards are allocated. Mr. Helstrom noted that they had not met the requirements of the last meeting. Ms. Boisclair replied that she had the sources and uses document with her.

Mr. Hinzmann asked if condemnation for habitation would also be lifted if the board lifted the demolition order. Mr. Nelson explained that a certificate of occupancy needs to be issued after the work is completed. He added that the building will undergo a change in use. Mr. Hinzmann stated that his point was that there should be no tenants in the building until it is in compliance. Ms. Boisclair stated that she could not have a tenant or a resident without a valid certificate of occupancy.

Mr. O'Connor asked what they are looking for on the extension of the inspection period. Ms. Boisclair replied that they are waiting for the CDFI's to award their allocations. They also will be going to DEDA, a determination will need to be made whether they will be considered a redevelopment district or a housing district. She explained that eligible costs with a new market tax credit are slightly different when you have a housing component. Depending upon who the CDFI is also dictates whether you can have eligible costs within different districts, and whether it is a redevelopment or a housing TIF district. These questions should most likely be answered by August.

President Helstrom stated that the motion of the last hearing was not met so the board would need to alter that motion, extend it or deny the request. He asked for input from the board. Mr. O'Connor suggested that the board could extend this through August to allow time for Boisclair to get all the questions answered.

Ms. Boisclair asked if the one item which hasn't been satisfied from the last action was only the letter from a banking institution. Mr. O'Connor replied that was correct. Mr. Hinzmann understood that they would not be able to get financing with the demolition

order in place creating a catch-22 situation. There would need to be some sort of leap of faith in the hope that at some point the financial pieces would come together. President Helstrom explained that the board member with the banking background was the member who crafted the wording of the stipulations from the previous hearing and that member was unable to attend the meeting due to illness. He commented that this member would not have requested this information if she did not believe the applicant could provide it.

Ms. Boisclair stated that having the building condemned makes it very difficult for a lender to provide this. She stated that she could get term sheets from lenders however they would be proposed only. President Helstrom read the stipulations of the last action. He reiterated that board was not looking for a firm commitment. Ms. Boisclair replied that she would have no problem getting that. Mr. Nelson referred the board to the MOU, specifically Item #2. He stated that they would have up to one year to provide this. The terms of the MOU must be fulfilled to allow the lifting of the demolition order. Mr. Hinzmann asked whether the city would have the will to move forward on demolition if the MOU terms are not met. He commented that the property has been in a condemned status for a long time and continues to deteriorate. At some point he felt it would be totally unsafe. Ms. Boisclair replied that with all the forensic work that has been completed it has been determined that only the drill floor is structurally unsafe.

Jeremy Enge-Frye of Boisclair addressed the board. He clarified that the building is not deteriorating and that the AAMC has invested 5 million dollars into the building since they took ownership; it is in significantly better condition than it was in 2001. Mr. Hinzmann stated that he recognized that with this proposal there has been a dramatic change from the past. He wondered whether the board should accept the data they have received so far and move forward. Ms. Boisclair stated that she had the sources and uses with her. She added that this was based on working with SHPO and working with their historical consultant and also being familiar with similar projects. She listed several other historical properties that they have rehabbed including the Grainbelt facility in Minneapolis. She felt that the numbers on her sources and uses were very realistic based upon third party inspections and such. She again stated that she had the sources and uses with her for the board's review.

Mr. O'Connor asked for clarification of item #2 in the MOU. Mr. Nelson replied that they need to meet the criteria of the MOU to have the order lifted. Ms. Boisclair added that May 17th was the proposed closing date based on concluding the inspection phase by April 22nd. There was general board discussion on whether the board's action would be to lift the order or issue a stay. It was clarified that the action being recommended by staff was to conditionally grant the appeal in accordance with the MOU being executed and with the understanding that Boisclair will close on their purchase agreement with the AAMC.

Mr. O'Connor appreciated the input from the board member with the banking background and he felt that the MOU does provide financial safeguards that this board member was looking for and allows time for Boisclair to get the remainder of their answers. Mr. Hinzmann made a motion to follow staff recommendation and conditionally grant the appeal.

MOTION: Hinzmann: The appeal of the condemnation for demolition order was

conditionally granted based upon the recommendation of the staff report and in accordance with the memorandum of understanding executed between the City of Duluth, the Armory Arts and Music Center and DNGA, LLC. which provides for the lifting of the condemnation order upon DNGA's closing of its acquisition of the subject property.

SECOND: Herman

MOTION PASSED: Unanimously

**Annual Election of Officers:**

Nomination: O'Connor: To re-elect Helstrom as president

Approved: Unanimously

Nomination: Herman: To re-elect Kastelic as vice-president

Approved: Unanimously

There being no further business the meeting adjourned at 4:07 pm.

Respectfully submitted,

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

Dan Nelson  
Ex-Official Member/Secretary

DWN:ek