

**Minutes  
Board of Appeals  
City Commission Chambers  
City Hall**

**Tuesday, September 25th, 2012, 8 a.m.**

**Members Present**

Daryl Christensen, Dave Van Nieuwenhuyzen, Liz Squyer, Tim Fonder and Jarrod Smart

**Guests Present**

Jeff Goldade, Dave Erickson, Jamie Scherer, Paul Bengford, Butch Warrington, Dean Lanier and Dave Dandar

**Approval of Minutes of Last Meeting**

A motion was made by Mr. Van Nieuwenhuyzen and a second was made by Mr. Fonder to approve the minutes of Tuesday, August 14, 2012. Yeses, 5. Noes, 0.

**New Business**

Because Dave Dandar was not present for the first appeal on the agenda, the meeting commenced with the second appeal.

- 1. Appeal No. 3-2012.** Jamie Scherer of Lloyd Companies and Dave Erickson of Van De Walle and Associates were present to request the installation and restoration of windows on the south elevation of the Tri State Creamery Building which is located at 524 N. Main Avenue. The board was requested to review a "Restrictive Covenant Agreement" as an alternate to the relocation of a platted property line to accommodate the installation of window openings on an existing wall that is located on a property line. The south elevation of the Tri State Creamery building previously abutted the Youth Enrichment Services building which has been razed to accommodate the new construction of the Uptown Lofts, a four story multi use apartment building. The original window openings were sealed from the interior of the Tri State Creamery building when the Youth Enrichment Services building was built. The building code and the existing building code do not allow new openings in an exterior wall located on a property line. Lloyd Companies have submitted a "Restrictive Covenant Agreement", which is intended to be signed by the two corporations that own the respective properties. The document eliminates the future construction of any structure within the north ten feet of the Uptown Loft property to accommodate the installation of the windows on the south elevation of the Tri State Building. Because a restrictive covenant or easement is outside of the scope of the building code the Board was requested to review the easement to allow the opening on the south elevation of the Tri State Creamery building. The

secretary specified that a precedent has previously been set with the approval of a no-build easement to allow window openings on the north elevation of the Shriver's building located at 230 S. Phillips Avenue. Additionally it was specified that the code does not recognize easements as it relates to the fire resistivity of an exterior wall or for the installation of openings in close proximity to a lot line. Easements are subject to change by the respective property owners without review as it relates to code compliance. Mr. Van Nieuwenhuyzen asked Ms. Scherer what the intent of the windows are. Ms. Scherer replied that the intent was simply to provide natural light into the adjoining spaces that otherwise have no views to the exterior. A motion was made by Ms. Squyer and a second was made by Mr. Fonder to approve the easement as an alternate to the existing platted property line to allow the intended openings. The motion failed. Yeses, 3. Noes, 2. The Chairman requested an explanation of the vote from the Board. Mr. Fonder had a concern about an approval of the motion would create a precedent for alternates to platted property lines in favor of easement submittals. Mr. Van Nieuwenhuyzen specified that the intended windows are not technically required. There are windows to the exterior on the west elevation in the existing suites, and that the installation of the intended windows can be accomplished by the replatting of a property line. The secretary specified that a property line located between three and five feet will allow the exterior exterior elevation to have 15% of the area comprised of non-fire protected openings. A subsequent motion was made by Mr. Van Nieuwenhuyzen and a second by Mr. Fonder to deny the request to utilize the "Restrictive Covenant Agreement" as an alternate to replatting a property line. The motion passed unanimously.

2. **Appeal 2-2012.** David Dandar was present to request the installation of openings in the north elevation of the Boyce Greeley Building located at 231 S. Phillips Avenue to accommodate the current remodeling of the third story into new apartment/condo dwelling units. The north elevation of the building is located on an adjoining property line and has windows which are allowed to be maintained due to the historic significance of the existing structure. Mr. Dandar has requested the penetration of the north elevation to accommodate dryer vent openings, and fireplace and furnace flues, and similar equipment. The secretary noted that the building code and the existing building code do not allow any new openings on a wall located on an adjoining property line. Mr. Dandar has submitted an "Encroachment Easement" that would be mutually signed by his corporation and the adjoining property owner to grant the openings. The document specifies that the adjoining property owner, the grantor of the easement, will not interfere with the permitted use of the easement area in the future. Because this is outside of the scope of the building code, the Board again was requested to review the easement

to allow the openings in the north elevation of the Boyce Greeley building. Whereas the existing windows are specifically required as egress windows from sleeping rooms on the third story, Mr. Dandar said that the penetration of the exterior walls are necessary in lieu of extending piping and flues up to the roof because the upper level uses are intended to be condo units that precludes the shafts through the units. The consensus of the Board was that this proposal is different from the previous appeals because the windows exist, they contribute to the historic nature of the building, are required for the intended use and that the proposed openings are a minor consequence as it relates to the existing openings. A motion was made by Mr. Van Nieuwenhuyzen and a second was made by Mr. Fonder to approve the easement to allow dryer vents and fireplace flues to penetrate the north elevation. Further discussion resulted in two amendments to the original motion that were subsequently approved as part of the main motion; the first to include furnace flues and similar mechanical equipment; and to revise the "Encroachment Easement" to include a no-build clause for a minimum of ten feet onto the adjoining property. The motion passed unanimously.

3. Steve Goldade of Lightowler Johnson Associates represented TMI Hospitality which has recently submitted plans for the Marriot Fairfield Inn and Suites, an 82 unit hotel to be located at 4035 N. Bobhalla Drive, adjacent to the Sanford Pentagon complex. The four story structure will be a V-A construction, a wood framed one-hour type of construction, and will be protected throughout with an NFPA 13 automatic fire extinguishing system. At issue is whether the exterior bearing walls are required to be fire rated with regard to an exterior fire exposure. Table 601-Fire-Resistance Rating Requirements for Building Elements clearly indicates that an exterior bearing wall is required to be of a one-hour fire resistive construction. Staff interprets that said fire resistivity is applicable to both an interior and exterior fire exposure. Mr. Goldade specified that the footnotes of Table 601 references Table 602 Fire-Resistance Rating Requirements for Exterior Walls Based on Fire Separation Distance which additionally references Section 705.5 Fire Resistance Ratings for exterior walls which states that the fire resistance rating for an exterior wall located greater than ten feet from an interior lot line is allowed to be fire rated from an interior fire exposure only. The utilization of exterior wood panel sheathing to accommodate shear capability for structural purposes is requested in lieu of exterior gypsum sheathing. The secretary noted that previous interpretations have required an exterior fire exposure as it relates to type of construction provisions. Although, a recent interpretation from the technical division of the International Code Council indicated that Table 601 references Table 602 which in turn has a direct relationship to Section 705.5 that eliminates a requirement for an exterior protective membrane as it relates to an exterior fire exposure. A Motion was made

by Mr. Smart and a second was made by Mr. Van Nieuwenhuyzen to not require an exterior fire exposure as it relates the exterior walls and the type of construction. The motion passed unanimously.

  
Secretary