

**Minutes of the State Appeals Board**  
**Appeal #11-01**  
**Thursday, December 29, 2011**  
**Preliminaries: 8:25 AM; Hearing 8:40 AM**

**Preliminaries:**

- Appeals Board Members included Gary Hagedorn, Building Official for the City of Blaine; Kathi Osmonson, Fire Marshal/Building Official, City of Moundsview; Thomas Downs Jr., Structural Engineer with BKBM Structural Engineers; Ron Wasmund, Building Official, Inspectron Inc.; Thomas Gray, Building Official for the City of Victoria. The EX-officio (non-voting) member was Michael Godfrey from Construction Codes and Licensing Division (CCLD). Doug Nord also from CCLD took meeting minutes.
- Michael Godfrey welcomed the board members and thanked them for taking part in this appeal. Michael Godfrey introduced the board members and handed out the rules of procedure to the board and went over those rules. Michael Godfrey went over the subject of the appeal; a change of use in an existing structure requiring an accessible route.
- Gary Hagedorn nominated Thomas Downs as chair of the meeting. Kathi Osmonson seconded the motion. Motion carried.

**Hearing call to order:**

- Thomas Downs called the meeting to order at 8:40 AM. He introduced the applicant; Dee Holsinger, and the building official for the City of St. Cloud, Don Winter. He explained the applicant and building official as well as other interested parties would have time to present and then he would close that off and allow time for the board to have discussion amongst itself before coming to a decision.
- Dee Holsinger introduced her husband Tom, and Peg Gustafson who is president of the St. Cloud Downtown Council. Dee stated they opened their retail business in 2010 with the idea they would have access to the basement for retail sales. Dee explained this was an old J.C. Penny store with retail in the basement. Dee handed out a blueprint to the board members showing the basement in question with no storage noted in the area she had intended to use. Dee states this plan was submitted to the building official in 2010 when they were going to do some first floor remodeling and in order to do the work on the first floor the building official required her to have storage noted in the basement or she would have to install an elevator. Dee also handed out a letter from her architect which states; Dee had to agree to have their firm add the word "STORAGE" or she would have to install an elevator. Dee feels the basement has been nothing other than retail and this is not a change of use. Dee feels that Don Winter forced her into noting storage on the plan in order to get the first floor project moving forward and to get the business open.

- Peg Gustafson gave some history of the building and space in question; noting Norby's a retail store had been in three spaces and also used the basement for retail.
- Ron Wasmund asked Dee Holsinger for some clarification as the plan she gave the board members here at the meeting doesn't show storage called out in the basement area she would like to use.
- Dee Holsinger states the reason storage was noted on the plan submitted to the building official in 2010 was the building official required it in order to do work on the first floor.
- Gary Hagedorn asked Dee Holsinger if she submitted a plan with storage shown and why?
- Dee Holsinger stated she wanted to open the first floor of the business and that noting storage in the basement was the only way she could move forward as putting in an elevator was cost prohibitive.
- Kathi Osmonson asked the same question of Dee Holsinger and Dee responded with the same answer.
- Ron Wasmund asked Dee Holsinger if she met with the city prior to leasing and did you know of what was going to be required.
- Dee states she did meet with the city and knew what the building official was requiring.
- Ron Wasmund stated the board is here to see if there is a change of use in the basement. Ron asked if there was any other use of the basement between Norby's retail use and the lease by Dee Holsinger.
- Both Dee Holsinger and Peg Gustafson stated no.
- Tom Downs asked Don Winter to go ahead with what he had to present.
- Don Winter stated the building has had numerous uses and there was an elevator when the basement had retail. In 1989 the whole building was used for office space. Don also stated in 2005 it was noted by the local fire marshal the basement was used for storage. In 2010 a permit was issued for retail on the first floor and the architect was asked to identify the use of the basement which was designated as storage. Don states in May of 2011 the basement was being used for retail which was an illegal change of use and the owner was addressed with an administrative order and the use was ceased in August of 2011 and it is now being used as storage.

- Dee Holsinger states she has a letter from the architect which states she was forced to note storage in the basement to get a permit for the first floor in 2010.
- Don Winter states, the basement uses have been storage, offices, and when retail there was an elevator. Don states the elevator shaft was filled in from the basement to the first floor.
- Kathi Osmonson asked when that occurred.
- Peg Gustafson states in 1970.
- Don Winter agreed with that.
- Ron Wasmund asked if there was an elevator when J.C. Penny used the space for retail.
- Don Winter stated yes.
- Thomas Downs asked for other comments.
- Kathi Osmonson asked if the building was sprinklered.
- Peg Gustafson stated yes.
- Don Winter states partially.
- Don Winter explained a little more on the layout of the building in regards to the address numbers.
- Dee Holsinger went over stair to the basement and the area used by the restaurant that was located next to her space. Dee explained there are two exits out of the basement.
- Ron Wasmund asked Dee Holsinger to explain her leased space and what part of the basement she intended to use.
- Dee Holsinger stated the area under the old restaurant will continue to be storage and only the area previously used as retail would be used for retail.
- Thomas Gray asked Don Winter if the basement was used for retail, are there other issues that need to be addressed.

- Don Winter states other than accessibility the only issue is ventilation. Don stated that this will set a precedent for other downtown businesses.
- Gary Hagedorn asked if other options such as a platform lift have been looked into as much less expensive than an elevator.
- Don Winter states this was mentioned many times.
- Dee Holsinger isn't sure that this was ever brought up.
- Peg Gustafson stated this is an issue of change of occupancy.
- Dee Holsinger states she came into Construction Codes and Licensing Division and met with Curt Wiehle regarding this issue. Dee states there is some flexibility if it had been retail.
- Kathi Osmonson states Curt Wiehle is with the state and not the authority having jurisdiction.
- Don Winter states flexibility only if the building itself was historic, which it is not.
- Thomas Gray states there are several statements from the electrical and heating inspectors saying the use during their visits was storage in the basement.
- Kathi Osmonson asked Dee Holsinger if she was aware of the basement being used for office space.
- Dee Holsinger stated no.
- Don Winter states it's recorded at the local fire marshal's office. Don also states he's not aware of evidence of Norby's using the basement.
- Dee Holsinger shows a plan to the board that shows a sales area in the basement.
- Thomas Downs asked Don Winter if there was any permit documentation of storage in the basement prior to 2010.
- Don Winter states no.
- Thomas Downs asked if the existing elevator was code compliant.

- Don Winter stated it's not in service now. The owner is planning to upgrade the elevator to access the second floor as the intent is to put in living units on the second floor but the elevator would not go to the basement level.
- Thomas Gray stated that Norby's left in 1990 and plans show sales in basement area. He asked Don Winter if any other plans show a change. Don states no other plans show a change but observation has been documented its use has been storage.
- Dee Holsinger stated if there was a change to storage it should be documented, which there is none.
- Thomas Downs closed public discussion at this time and stated the board will now hold its discussion.

#### **Board Discussion**

- Gary Hagedorn states there has been a change of use over a period of time in this basement area. Plans submitted in 2010 showed storage in the basement as identified by the architect. The elevator has been removed and it is clear to Gary that this is a storage area.
- Thomas Gray stated this was retail at one time but storage afterwards, even though there is no documentation, it appears to be storage.
- Kathi Osmonson agrees with Thomas Gray and letters from inspector's state it has been used as storage.
- Ron Wasmund believes a change was made from retail in the basement to storage by documentation of inspectors and fire department.
- Thomas Downs asked if the second floor was occupied.
- Don Winter stated no.
- Thomas Downs stated he believes it had been retail over the years and there is no proper documentation of change therefore he believes it is still retail. Storage was only noted in 2010 in order to move forward to be able to open.
- Thomas Downs asked if there are any other comments from the board.
- Ron Wasmund asked Don Winter when the county used the building for offices, did they use all floors including the basement for office or storage use and is this documented.

- Don Winter states it's not documented, but assumes used for office or storage. Don also stated records are not exactly accurate.
- Thomas Downs asked the board if there was a change of use in the basement from retail to storage.
- Gary Hagedorn stated he believes there was.
- Thomas Downs asked Gary Hagedorn if he wanted to make a motion.
- Gary Hagedorn made a motion that there was a change in use.
- Kathi Osmonson seconded the motion.
- Thomas Downs asked for a vote of those that were in favor of the motion.
- All Board members voted in favor of the motion with the exception of Thomas Downs.
- Thomas Downs asked for a vote of those not in agreement of the motion.
- Thomas Downs voted against the motion.
- The board ruled there was a change in use by a vote of four to one.

Thomas Downs adjourned the board meeting at 9:30 AM.

Respectfully submitted,

Doug Nord  
Michael Godfrey