

Board of Appeals

May 4, 2023

Members Present: Clay Dietrich, Justin Schoenberg, Kevin Bartram

Members Absent: Brian Berg, Dave Obermiller, Mike Wild

Others Present: Shawn Ouradnik, Chris Rose, Michelle Lemar, Ryan Erickson, Daryl Bachmeier, Keith Leier

Chairperson Clay Dietrich called the meeting to order at 9:30am

Kevin Bartram made a motion to approve the minutes from April 7, 2021, seconded by Justin Schoenberg. No one was in opposition and the motion was declared carried.

There was no unfinished business.

New Business

A. Appeal to Administrative Decision 613 1 Ave N, Submitted by Kilbourne Group

Shawn discussed change of use for property at 613 1 Ave N, Fargo. 20,070 sq. ft. building, 3 levels, estimated sq. footage of 6690 per level. Recent remodel in 2001 for first floor ballroom/assembly, A3 in current code. Used for events on temporary basis. Has not been occupied by permanent tenant for over 6 months. If a space has not been used in 6 months or more we ask for a change of use permit to be applied for. This does not happen very often because remodels permits usually happen between tenants. In 2019, inquiries were made to use this space for similar use as is being looked into today. At that time, the building official did say it would require being sprinkled. At that time, 1997 UBC was cited as denial for a permit that was applied for as the code states that assembly over 5,000 sq. ft. with consumption of alcohol does require sprinklers. Document was shared by Fire Dept. showing there are hazards present and things need to be addressed. IBC and IEBC change of occupancy verbiage was shared. Because it was used as ballroom (A3) and now wants to be used as a bar (A2) it would be a change of intensity. Section 104 was referenced in both 2021 IBC and 2021 IECC in regards to duties and powers of building official and code official. No permits have been applied for. This was all discussion and determination from that discussion.

Kevin asked about the 2019 building official ruling. Shawn clarified that the building official at that time did require the building to be sprinkled. Justin asked what type of event was going to be held there. Shawn was unsure of what the event was but because the sprinklers were required, it was believed that alcohol was going to be consumed. Justin asked about the 6-month trigger. Shawn explained that when a building is vacant for 6 months or more, it is an internal trigger to look at the building and make sure all life safety measures are up to code. Station Fire in 2003, second worst fire in the US. That building was not up to code and multiple deaths occurred because life safety was not up to code. We don't want that to occur here and that's why we look at these provisions.

Justin asked if it were under 6 months would this change of use would be required. Shawn shared that it might not have been triggered, but we still would look at getting the building up to code so the people are safe. Clay asked if a business was being told to shut down because of covid so they were closed and reopened would they have to follow this 6-month rule as well. Shawn replied with no because that same tenant was still there, ownership did not change so they would not fall under this guideline. The

address in question had temporary use of this space but there has not been a permanent tenant. A3 to A2 would require this building to be brought up to code regardless of the vacant time. Under code provisions, any change in the level of activity within would require this. There was some discussion about the 6-month trigger being somewhat irrelevant and not really coming into play here because it was vacant for so long. It would be a change of intensity requiring the update and not the 6-month trigger.

Keith with Kilbourne stated they are not bringing a bar into the space. Daryl, architect, representing Kilbourne spoke about the building. Basic description stone building is not on national registrar but does have historical significance. Was the Avalon Event Center in 1999 and continued for 16 years. New tenant would be similar to Avalon. Had small concerts and diner theaters, which are assembly use. Will continue as assembly use. Appealing the 6-month vacant rule to bring building up to code. Never has been a requirement in city code. Code states change of occupancy would be 1) any change in occupancy, was assembly and still assembly. 2) change of purpose of or level of activity, not changing. Change of use not applicable being it's not changing. Owner intends to abide by current fire code and that permit should remain valid. Change of use or change of occupancy doesn't change so why is this being required. Building code governs current buildings. IBC states legal occupancy shall be permitted to continue if not changing use. No mention of vacancy in this section. No mention in any code to dictate compliance with a 6-month trigger. Kevin asked about new tenant and if they are proposing any changes. Keith said there would be cosmetic changes to spaces but nothing much else. Kevin asked about permit process and said it seems like the Avalon benefitted from a favorable occupancy rating for a long time; operated as A2 but classified as A3. He stated the 6-month issue is a side discussion and is being used as a way to avoid sprinklers. Daryl talked about the fire permit and said tenant plans to keep things the same. Kevin asked if they were planning to have food and beverage served. Keith said it was a wedding venue before and it would continue to be used as such. Kevin says that being a new permit is going to be required so the new place would be required to be an A2. Splitting hairs over this 6-month when it really is a change of use. Daryl shared some references within in his appeal. Shawn referenced the IBC and IEBC, change of use based off occupancy clarifications. At this time there is no permit application, it was just an ask. It would be going from A3 to A2 so it introduces some new hazards. Keith talked about how this started. No formal submission of plan or permit the discussion today is the building is changing in use and the 6-month trigger is nothing. That is where this started. That is where the basis of the appeal is coming from. Kevin would be sympathetic if it was unused for short period but it has been empty for years so it hard to understand why it wouldn't be looked into. Keith shared building history. They have been actively working...nearly 1 million dollars invested in space. What the tenant is looking to do is cosmetic so the threshold is not triggered to apply change of use. No plans and no permit submitted as we do not know what it will be/look like. Kevin brought up building has been vacant for 5 years and look at policy what months could be used in the future but when it has been empty for this long, some code review should have been done before that money was put into it. Kevin appreciates things have been kept up but they are being asked to make a ruling about something that hasn't had plans submitted and permit not requested. Clay asked if just cosmetic work is done, would it even require a permit. Shawn replied with no but if they are changing use, it would require the permit.

Fire prevention permit came up in discussion. Ryan stated fire code has many operational permits. Issued on annual basis. Public assembly permit not restricted to just A2 for public assembly. Specific to this building was for Avalon issued up until 2015 or 2016. At that time, permit ceased and then some

special event permits were issued. Fire wanted to make sure things were brought up to code and did not issue 2022 permit because of that. In 2023 they would be back to inspect but nothing specific has come of that.

Clay talked about passed domino effects when doing things outside of what it is permitted and then things going wrong. Then it goes back to everyone, including the city, for not doing due diligence. In this situation, it needs to be weighed in as life safety and we have to look at that. That really is the bigger issue. We would love to see the structure be reused but until we know what it is going to be, we can't really make a ruling. More conversations may need to happen in the future. Feels comfortable to talk through 6-month rule but not willing to tie hands of inspections department because you cannot foresee every single circumstance.

Chris Rose shared some history about event licenses. We didn't know what we didn't know and worked to better track event licenses. Historically things haven't been done this way but the city is working to improve it. No one wants to give in on life safety.

Keith talked about code updates and provisions with older buildings. Kevin stated codes we have now could be appealed or modified but wary to fix something that already has fixes. In his 40 years, he has never felt taken advantage of by the city. Maybe some talk can happen about a review but wary trying to fix something that already has a dispute process. Justin clarified building still can be used as A3, just not A2. If they do apply of permit and decide to sell alcohol, they would need to do change of use so right now there isn't a lot to decide on. Clay mention that 6-month trigger was an administrative rule and they can make rules as they see fit. This comes down to an administrative rule not code issue. Inspections is governing body and they have the rights to set up how they run their office. They can't enforce the code as it isn't written but appeal board doesn't have the right to tell them how their office is run.

Shawn asked for a motion that the 6-month timeframe is administrative action and to be used within their office and things will be reviewed with change of use permit.

Clay made a motion that this administrative rule can be used and kept as that, second from Justin, no one was in opposition and the motion was declared carried.

B. Process Discussion

Shawn asked about what the board wants to do if permit is not in place, as in this instance. Does the board want to see a permit in place first because without a permit in place it's hard to codify. Would the board rather we have some sort of permit in place so they are appealing a decision based on permit not discussion.

Clay mentioned they can bring forth appeal based on discussion but they should have the right to appeal without a permit. Justin agreed.

No announcements.

Clay called for motion to adjourn the meeting, Justin motioned, seconded by Kevin. Motion carried.

Meeting adjourned at 11:05am

Respectfully submitted



Shawn Ouradnik
Board Secretary