

**CITY OF COLOGNE  
PLANNING COMMISSION  
RESOLUTION NO. 23-01  
RESOLUTION DENYING VARIANCE FOR 209 PLAYHOUSE STREET EAST**

**WHEREAS**, Bernie and Karen Shambour (“Applicant”) are the applicants for an application related to property located at 209 Playhouse St E (the “Subject Property”); and

**WHEREAS**, the property is zoned C-2 Central Business District and lies within the Shoreland Overlay District, which limits impervious surface coverage to 25%; and

**WHEREAS**, the property currently has a structure consisting of approximately 1,133 square feet that has been used for storage as per the application submitted by the Applicant for at least 85 years; and

**WHEREAS**, the property also currently has approximately 50% impervious surface coverage; and

**WHEREAS**, the Applicant applied for a variance on May 25, 2023 requesting the City to permit impervious surface coverage of 79% of the Subject Property following a nearly complete demolition of the existing 1,133 square foot structure and building a new structure consisting of 2,050 square feet; (“Original Application Submittal”); and

**WHEREAS**, the Applicant submitted a revised application and plan set on August 22, 2023 (“Revised Application”) that reduces the size of the proposed addition to an additional 493.43 square feet and 64% impervious surface coverage and also provided the following list of activities for the building:

- K&B Property Services – volunteer lawn cutting, herbicide application, seasonal power vacuuming, tree trimming, brush removal, snow thrower/loader volunteer services. Light preventative maintenance work such as mower deck blade sharpening, greasing, air-oil filter changing, etc. (no motor repairs)
- Christmas Light and Seasonal Decoration Volunteer Testing and Repairs – Cologne Lions, Benton Gardens, and Shambour Park
- CAP Agency, Carver, Scott, Dakota Counties transfer seasonal items using an aged SUV and pickup truck
- Volunteer Senior auto detailing and moving assistance
- Red Cross Bloodmobile Drive – Volunteer Coordinator Services (since 1988)

**WHEREAS**, the Applicant has not stated which of the uses listed in the C-2 Business District that his proposed activities are consistent with; and

**WHEREAS**, neither the original application nor the amended application state the specific requirements of the Zoning Ordinance from which a variance is sought; and

**WHEREAS**, because of the conflict between the request in the application and the applicable provisions of the Zoning Code, and the emphasis on uses and exhibits related to water runoff in the application, the Planning Commission interprets the application as amended as a request for a variance from the impervious surface coverage requirements and from the list of permitted uses in the zoning district; and

**WHEREAS**, the activities provided by the Applicant in the Revised Application appear to be primarily related to the storage of personal items used for various purposes for volunteer activities or maintenance of their own properties, and includes the repair of motorized equipment; and

**WHEREAS**, the design of the building with no office, two garage doors and a possible floor trench drain are consistent with an auto-repair/motorized equipment repair shop or an expansion of a storage use neither of which is a permitted use in the C-2 Zoning District; and

**WHEREAS**, the C-2 Zoning District allows the following uses as either permitted uses or interim uses:

*Permitted uses.*

- (1) Retail sales conducted within structures, but excluding automobile and motorized equipment sales, truck stops, gasoline and fuel sales, drive-through restaurants and adult-oriented businesses.
- (2) Repair and service conducted within structures, but excluding automobile and motorized equipment repair.
- (3) Professional and business offices.
- (4) Legal, nonconforming residences and accessory uses.
- (5) Accessory apartments.
- (6) Theaters and recreational businesses conducted within structures, but excluding adult-oriented businesses.
- (7) Daycare centers.
- (8) Cabinet making and sales showroom.

*Interim uses.*

- (1) Tractor trailer parking.
- (2) Masonry construction trade business and showroom.
- (3) Churches and pre-schools in renovated pre-existing commercial structures, located on A-Minor Arterial Highways as depicted on figure four of the City of Cologne 2030 Comprehensive Plan.
- (4) Used automobile sales as an accessory use to legal nonconforming automobile body repair businesses.

**WHEREAS**, storage is not listed as a permitted or interim use, and as such is considered a non-conforming use in the C-2 Business District; and

**WHEREAS**, Section 153.007 of the Cologne City Code does not permit the expansion or enlargement of nonconforming uses; and

**WHEREAS**, the subject property is within the Shoreland Overlay District, being approximately 915 feet from Benton Lake, which the Minnesota Pollution Control Agency has declared to be an impaired body of water; and

**WHEREAS**, the maximum allowed impervious surface coverage in the Shoreland Overlay District is 25%;

**WHEREAS**, Minnesota Statute Section 462.357, subd. 6 provides:

- a. Variances shall only be permitted (a) when they are in harmony with the general purposes and intent of the ordinance and (b) when the variances are consistent with the comprehensive plan.
- b. Variances may be granted when the applicant for the variance establishes that there are practical difficulties in complying with the zoning ordinance. "Practical difficulties," as used in connection with the granting of a variance, means that (a) the property owner proposes to use the property in a reasonable manner not permitted by the zoning ordinance; (b) the plight of the landowner is due to circumstances unique to the property not created by the landowner; and (c) the variance, if granted, will not alter the essential character of the locality.
- c. The board of appeals and adjustments or the governing body as the case may be, may not permit as a variance any use that is not allowed under the zoning ordinance for property in the zone where the affected person's land is located.

In order to grant a variance, the request must satisfy all three of the practical difficulties criteria listed.

**WHEREAS**, the Planning Commission held a public hearing at its meeting on July 17, 2023 and then tabled the consideration of the variance to a future meeting to provide the applicant with an opportunity to redesign the building to be contained within the existing structure footprint; and

**WHEREAS**, the public hearing was properly noticed and scheduled for July 17, 2023; and

**WHEREAS**, the application was reviewed by the Planning Commission at its meetings on July 17, 2023, September 5, 2023 and October 2, 2023;

**NOW, THEREFORE, BE IT RESOLVED**, that the Planning Commission does hereby make the following findings of fact:

1. The above recitals and accompanying comment memo from Collaborative Planning, LLC are hereby incorporated as findings of fact.
2. A variance related to the expansion of the non-conforming use is not in harmony with the general purpose and intent of the ordinance, because it requests permission to expand a use which is not allowed in the district. A variance from the impervious surface requirements would be inconsistent with the purpose and intent of the City ordinances and would be counter to public policy indicated in state statute, which is to regulate and reduce the amount of impervious surfaces.

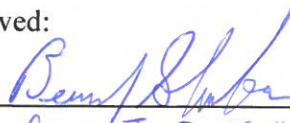
3. The variance requested is not consistent with the comprehensive plan.
4. The application does not establish practical difficulties in complying with the ordinance. The proposed variance does not meet criteria 1 and 2 of the practical difficulties analysis:
  1. The proposed use is not reasonable in light of the disharmony with the general purpose and intent of the ordinance. The Zoning Ordinance provides for the continued use of non-conforming structures and uses subject to the terms of Section 153.007, but does not permit the expansion of those non-conforming structures and uses. Per the application, the property has been used in this scale and manner for the past 85 years and could continue but for the existing condition of two walls of the building. The applicant has not proposed a repair or replacement plan that stabilizes the existing building or reconstructs a new building of the same size and scale on the same footprint as an option.

The use is not permitted in the district, and the Zoning Ordinance and Minnesota law do not permit variances for the expansion of non-conforming uses. If a new building is desired, it has not been shown that it could not be constructed on the same footprint without expansion, which may be permissible under Minnesota law.

2. The plight of the landowner is due to circumstances created by the landowner and are not unique to the property. There is nothing unique about the property that prevents the Applicant from complying with City ordinances. The applicant desires to expand a non-conforming use by approximately 43%, and to do so by increasing the impervious coverage on the property. If a property owner were to construct on a vacant lot they would be required to meet both the performance and use standards of the Zoning Ordinance. No circumstances have been provided to identify why the circumstances are unique to the property, nor has the property owner demonstrated that they could not stabilize the existing building without the need for an addition.
3. A variance will not significantly alter the essential character of the locality. A maintained structure would be more attractive than one that has deferred maintenance. The existing building does not have apparent historic value that would be recommended to preserve. Nearby properties are in the older portion of the city and consist of a mix of homes, commercial structures, utility structures and park land. The proposed structure is considerably larger than the existing building.

**BE IT FURTHER RESOLVED** that the Planning Commission hereby denies the application to issue a variance to permit impervious surface coverage of 64% to allow an expansion of a non-conforming use in the C-2 Zoning District.

Approved:



By: BEANIE J. SIMMONS

Dated: 10/2/2023

Attested:

  
Michelle Morrison  
City Clerk