



Construction Services & Inspections Division
Planning & Economic Development Department

Room 100
411 West First Street
Duluth, Minnesota 55802



218-730-5240



permittingservices
@duluthmn.gov

BUILDING APPEAL BOARD AGENDA
Wednesday, August 9, 2023 – 3:00 p.m.
City Council Chambers, 3rd Floor of City Hall

1. Call Meeting to Order
2. Roll Call
3. Approve minutes of June 10, 2020 meeting
Approve minutes of June 14, 2023 meeting
4. Old Business: An Appeal to Reverse a Condemnation for Demolition Order of the Building Official for 631 East 3rd Street
 - a. Staff Report dated June 7, 2023
 - b. Exhibit C – Condemn for Demo Initiation Form
 - c. Exhibit D – Demolition Order dated April 25, 2023
 - d. Exhibit E – Building Appeal Board Application
 - e. Letter to Timothy Johnson dated July 14, 2023
5. New Business: Potential Changes to the City Code related to the Building Appeal Board
6. Election of Officers
7. Adjournment



MEMO

Date: August 2, 2023
To: Members of the Building Appeal Board
From: Blake Nelson, Secretary of the Building Appeal Board
Re: Items on the August 2023 BAB Agenda

There are three notable items on the agenda, old business related to 631 East 3rd Street, new business related to potential changes to the City Code Chapter 10, and election of officers.

New Business

At the June 14, 2023, meeting of the Building Appeal Board, the members discussed the appeal from Mr. Timothy Johnson related to 631 East 3rd Street. After approximately 2 hours of discussion among the board members and after reviewing written information and weighing comments shared by the appellant, the draft minutes reflect the following action from the board:

Motion made by Board Member Scalzo, seconded by Board Member Wallin to table the appeal until August 9, 2023 with the following conditions:

- A sidewalk obstruction permit to be applied for immediately
- The property to be continuously secured
- Provide proof of ownership
- Provide documentation for sufficient funds to repair, plus a contractor's estimate and timeline for completion for such repairs and/or documentation that the property has been listed for sale.

Motion unanimously approved. Motion passed.

City staff sent the appellant a letter mid July reminding him of the Boards motion and conditions, and asked that proof of meeting the conditions be shared with city staff by end of business on August 1 for inclusion in the meeting packet. As of the morning of August 2, no information was received from Mr. Timothy Johnson. A sidewalk obstruction permit was applied for by the property owner and issued by Engineering, but no other documents or correspondence has been received by staff.

Chapter 10

City staff would like to have a short conversation with BAB members about the potential of amending Chapter 10 of the City Code. There are several areas that staff would like to change, specifically the number of members on the board in section 10-5 of the City Code, the 15-day period to appeal demolition orders in 10-5(d), and changing the general reference of "building official" to "code official" in section 10-3. Staff can provide strikeout/underline language at the next meeting, but wanted to gauge BAB support and get comments before proceeding.

Building Appeal Board
Wednesday, June 10, 2020
Virtual WebEx Meeting

MEMBERS PRESENT: Nancy Kastelic, presiding; Shawn Krizaj, Bill Scalzo and John Hinzmann

MEMBERS ABSENT: Don O'Connor, John Miller, Rick Wallin

STAFF PRESENT: Wendy Rannenberg, Sandy McComb, and Ellen Kreidler

1. ROLL CALL
2. Approval of the minutes of the August 14, 2019 meeting. This item was approved unanimously.
3. NEW BUSINESS

An appeal of the Fire Marshal's determination that building owner, OCH Bookstore, LLC must remove the deadbolt lock installed at the top of the stairs leading from the first floor (Michigan Street level to the second floor (Superior Street level) on property located at 206 E. Superior St. Present on behalf of applicant: Matt Thibodeau, Tygen Fryberger, Greg Strom, Aaron Dean
MOTION Appeal Denied:

- a) On December 6, 2019, the Duluth Fire Marshal, Sandy McComb sent a correction notice to OCH Bookstore, LLC that stipulated the owner must provide the minimum number of means of egress doors or exit doors in accordance with MSFC 1104.23.
- b) Minnesota Fire Code Section 102.4 requires that any alterations, additions, changes in use or changes in structures required by this code, which are within the scope of the Minnesota State Building Code (MSBC) shall comply with the MSBC.
- c) The door at the top of the stairs is required to be unlocked and accessible to occupants in the first floor in order to maintain compliance with MSBC Section 1305.1015 because, without the useable door, the common path of egress for the first floor exceeds 100 feet, triggering the requirement for a second exit.
- d) The door at the top of the stairs is required to be unlocked and accessible to occupants in the first floor in order to maintain access to required plumbing fixtures in compliance with MSBC Section 2902.
- e) Reinspections were conducted on/about February 7, 2020 and February 20, 2020. At the time of inspection, the exit door at the top of the stairs had a keyed deadbolt installed.
- f) An appeal was filed on March 6, 2020 by Aaron Dean of Moss & Barnett on behalf of OCH Bookstores, LLC.
- g) At their June 10, 2020 hearing, the Building Appeal Board heard testimony from all persons who came to speak on behalf of the appellant and received video evidence submitted by the appellant. The record closed on June 10, 2020 after due deliberation by the Building Appeal Board.
- h) The Building Appeal Board determined that the Fire Marshal had correctly applied the fire code.

Annual election of officers

- a) Nancy Kastelic elected president
- b) Bill Scalzo elected vice-president

Meeting adjourned 4:15 pm

Building Appeal Board
Wednesday, June 14, 2023

MEMBERS PRESENT: Brian Morse, presiding; Nancy Janzig; Bill Scalzo; Justin Hoffman; John Miller; Rick Wallin; Shawn Krizaj

MEMBERS ABSENT: Don O'Connor; Mark Pleml; John Hinzmann; Jordy Sargent

STAFF PRESENT: Blake Nelson; Ethan Scrivner; Jon Otis; Steven Robertson; Bonnie Engseth

1. ROLL CALL

3. NEW BUSINESS

An appeal to reverse a Condemnation Order of the Building Official for 631 E. 3rd St.
Present on behalf of applicant: Timothy Johnson, William Paul, Attorney

- a) Blake Nelson presented the staff report to the board and answered questions from the board about the demo order.
- b) Board Members asked the City Attorney questions about the ownership of the property. There is an expired contract for deed on the property. The attorney stated that it still meets the criteria for ownership. The applicant's attorney stated they are working on getting the final warranty deed as proof of ownership.
- c) Board Member Wallin asked the applicant if repairs were completed on previous fires and if the building was covered by insurance. The applicant stated that he paid for the repairs and the building is not insured.
- d) Board Member Hoffman asked if the property has been listed for sale. Applicant stated it has not been listed but there are interested parties.
- e) Board Member Wallin asked about the estimate of repairs. Applicant submitted documentary evidence from Northland Consulting Engineers and Stretar Masonry regarding the property.
- f) Motion made by Board Member Janzig, seconded by Board Member Krizaj to accept the documents submitted by the applicant.
- g) Steven Robertson stated we will recess for 5 minutes to read the submitted documents.
- h) Board Member Morse called the meeting back to order.
- i) Motion made by Board Member Wallin to deny the appeal.
- j) Board Member Wallin retracted the motion to allow more testimony against denial of appeal.
- k) There was a lengthy discussion regarding the safety and security of the building to the public as well as the applicant needing more time to secure financing for the possibility of repairing the structure or listing it for sale.

Motion made by Board Member Scalzo, seconded by Board Member Wallin to table the appeal until August 6, 2023 with the following conditions:

- A sidewalk obstruction permit to be applied for immediately.
- The property to be continuously secured.
- Provide proof of ownership.
- Provide documentation of sufficient funds for repairs, plus a contractor's estimate and timeline for completion of such repairs and/or documentation that the property has been listed for sale.

Motion unanimously approved. Motion passed.

Meeting adjourned at 4:40 pm

BUILDING APPEALS BOARD

STAFF REPORT

BAB File #23-001

DATE: June 7, 2023

Plat Parcel 010-3830-10690

Legally described as Lot 0000 Block 072 Portland Division of Duluth

APPELLANT: Timothy Johnson
1702 W. 3rd St.
Duluth, MN 55806

FILING DATE: May 11, 2023

APPEAL REQUEST: An appeal to reverse a Condemnation Order of the Building Official.

LOCATION OF PROPERTY: 631 E. 3rd St., Duluth, MN 55806

BACKGROUND DATA:

- The building at 631 E 3rd St is a two-story brick structure with basement (4,476 gross sq. ft.) built in 1902. On April 22, 2023 a fire occurred causing extensive damage to the roof system and 2nd floor units. The lower level received fire, smoke and water damage. Basement area was flooded due to fire extinguishing methods.
- Photos of the structure fire are provided in Exhibit A.
- The building was not insured.
- The fire has left the south, east and west walls above the 2nd floor unbraced, creating an unsafe condition along the City right-of-way sidewalks (Third Street and Sixth Avenue E.).
- Plat Parcel 010-3830-10690 comprises (3) separate structures: Eight-unit apartment, garage and two-story duplex. The demolition order is for the eight-unit apartment complex only.
- St. Louis County assessor records indicate the assessed value (2022) of the building prior to the fire at \$284,700, provided as Exhibit B.
- The Building Official's good faith estimate, of cost to repair and rehabilitate the building to an occupiable condition exceeds \$340,000. The work required will include the repair of all damaged portions of the building/structure, as well as work required to make the entire building comply with applicable codes.
- The Building Official's cost of repairs are provided in Exhibit C.
- Property damage exceeded 60% of the 2022 market value of the building(s) located on the parcel.
- Pursuant to Duluth Legislative Code Section 10-3, a demolition order was issued on April 25th, 2023. Demolition order CDEMO2304-003 is provided in Exhibit D.
- Pursuant to Duluth Legislative Code Chapter 29A, a condemnation for habitation order was issued on April 24, 2023.
- Tax payer Timothy Johnson (owner listed as John Ramsey according to County assessor details), appealed the demolition order. See Appeal application form Exhibit E.

- Fire Incident history:
- 8/11/2020 -First fatal fire incident at apartment building, main floor apartment, incident report provided as Exhibit F.
- 4/4/2021 -Second fatal fire incident Apartment #2, minimal damage, incident report provided as Exhibit G.
- 4/22/2023 -Third fire incident -building received over 60% of damage to all portions, structural, electrical, plumbing and HVAC, incident report provided as Exhibit H.
- 4/24/2023 -Site inspection by Building Official with Fire Marshal and Life Safety officer to determine extent of damage. Utilities have been cut off to building, water service was still active due to it serving the adjacent apartment on the same parcel (313 N 7th St.).

CODE REFERENCES:

The City has adopted the MN Building Code by Ordinance.
City Ordinance Chapter 10 Article II Section 10-3.

STAFF RECOMMENDATIONS: It is the recommendation of the Building Official that the eight-unit apartment building known as 631 E 3rd St. be torn down due to significant damage caused by the April 22nd fire. The remaining 2-story duplex (313 N 7th Ave E.) can remain on parcel.



Internal Info CSI xxx-vA082321-0821

Condemn for Demo Initiation Form

Property Address 631 E 3rd St

PIN(s) 010-3830-10690

Date of Initiation 4/24/23

Condemnation Date Notes CDHT on 4/24/23

Brief Description of Damage (70 characters max) Extensive fire Damage + Smoke

Assessor's record market value of building (ASSESSOR IMP VALUE) 284,700

60% of Improvement value (60% IMP VALUE) 170,820

Estimated total repair cost ÷ assessor's record value (PERCENT DAMAGE VALUE)

Owner name John Ramsay

Notification (other than owner) Tim Johnson - 1702 W 3rd St.

Other Notes

1. All notices should be sent by regular mail and by certified mail, return receipt requested, deliver to addressee only.
2. Publish in DNT twice, at least one week apart.
3. Post condemnation order on the building in one or more locations, with posted notice photographed so that it is clear that the notice is on the condemned building and so that the order can be read in the photo. Save photos to the CDEMO record, and enter detailed inspection note with the name of the person who posted it, where on the building it was placed, and the date of the posting.

Is the building in compliance with UDC regulations? Yes No Check with Zoning Coordinator

Extent of Damage Evaluation

Property Address 631 E 3rd St. Date 4/24/2023

Brief Description of Conditions Extensive fire/smoke damage throughout Bldg.
2nd floor Roof destroyed, electrical + plumbing damage throughout
Apartments (8)

Assessor's Imp Value: 284,700 60% Imp Value: 170,820

Estimated Repairs	
Foundation	NA
Exterior Walls	Shoring of Brick 20,000
Roof & Roof Structure	Total Replacement \$ 70,000
Doors, Windows, Frames	Total Replacement \$ 45,000 30 windows
Porches	NA
Exterior Stairs	NA
Chimneys	NA
Interior Support Structure	Structural Analysis + Correct \$ 40,000
Flooring & Floor Structure	35,000
Interior Partitions & Ceilings	30,000
Heating System	\$ 15,000
Electrical System	Complete Replace \$ 25,000
Plumbing System	Fixtures + RI 27,000
Interior Stairs	Complete Replace \$ 20,000
Other <u>Demo + Clean Up</u>	\$ 15,000
TOTAL EST REPAIR COST	\$ 342,000



Construction Services & Inspections Division
Planning & Economic Development Department

Room 100
411 West First Street
Duluth, Minnesota 55802



218-730-5240



permittingservices
@duluthmn.gov

DEMOLITION ORDER NO. CDEMO2304-003

Date of Order 25 April, 2023

TO: JOHN D RAMSAY
1702 W 3RD ST
DULUTH MN 55806

PARCEL NO: 010-3830-10690

YOU WILL PLEASE TAKE NOTICE, that the building or structure located on the following described property and situated in the City of Duluth, in the County of St. Louis, and State of Minnesota, to wit:

LOT 0000
BLOCK 072
PORTLAND DIVISION OF DULUTH
DULUTH

and known by address as **631 E 3RD ST** has been inspected under the authority of the Duluth Legislative Code (DLC) Section 10-3 and in the opinion of the building official based upon information documented in the official file and records, such building has been damaged or deteriorated to the extent that in the building official's good faith opinion, a reasonable estimate of the cost of repairing and restoring the building is more than 60 percent of the current fair market value of the building, as shown in the records of the city assessor. The Assessor's record indicates the value for this building at \$284,700. Based on standardized construction cost information, the estimated cost to return the building to code compliance exceeds \$170,820. This building has been damaged by causes to the extent of 60 percent (%) of the value of the building.

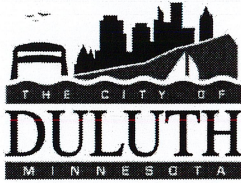
THEREFORE, I, Blake Nelson, Building Official for the City of Duluth, MN, in accordance with DLC Chapter 10, Article II, Section 10-3, do hereby order you to tear down the above described building, including any accessory buildings or structures on the property, and remove said buildings or structures and all material and debris of same from said premises within thirty (30) days from the date of such service.

Pursuant to DLC Section 10-5, any person wishing to appeal a demolition order shall serve written notice of appeal to the building official within fifteen (15) days after receiving notice of such decision, which appeal shall be accompanied by the required fee. The notice of appeal shall contain a complete statement of the matter in controversy and relief requested.

Sincerely,

Blake Nelson
City of Duluth Building Official

cc: Water & Gas Credit, Water & Gas Applications, Fire Marshal, Lead Housing Inspector, Police Department, Assessor, Treasurer, MN Power, Housing & Redevelopment Authority



Construction Services & Inspections Division
Planning & Economic Development Department

Room 100
411 West First Street
Duluth, Minnesota 55802

218-730-5240
permittingservices
@duluthmn.gov

Doc 243-C-1219

Building Appeal Board Application Form

City of Duluth MN

Submit this form and the items indicated below to Construction Services & Inspections at the address above.

This completed Application form and additional information must be accompanied by the filing fee of \$133 (check payable to City of Duluth). Appeals must be submitted within 15 days of notification of the decision being appealed.

For appeals requesting the stay of a demolition order, the following information is required to be submitted with the application for appeal:

1. Documentation that the owner has dedicated sufficient funds to pay for the repair of the building
2. A valid contract to have the repair completed within 18 months.

Incomplete applications will be determined incomplete and will not be placed on the agenda.

The deadline for application is 14 days prior to the scheduled Building Appeal Board meeting.

Appellant Name: Timothy Johnson Property location: 603 East 3rd St.
 Appellant Mailing Address: 1708 West 3rd St., Duluth 55806
(street) (city) (state/zip)
 Appellant Phone Number: 218-218-XXXX E-mail: N/A

Type of appeal

- | | |
|---|---|
| <input type="checkbox"/> Housing Code Order (DLC Chapter 29A) | <input checked="" type="checkbox"/> Request Stay of Demolition Order (DLC Section 10-3) |
| <input type="checkbox"/> Fire Code Order (DLC Chapter 21) | <input type="checkbox"/> Other Building Official Order (DLC Chapter 10, Articles II or III) |

NOTE: Appeals to building official decisions administering the MN State Building Code are to the State Appeals Board. See <http://www.dli.mn.gov/about-department/boards-and-councils/state-appeals-board>

Description of item you are appealing: (ie, specific code section, interpretation or order being appealed) Appellant is appealing Demolition Order 4/25/2023 No. 23041-003 DEMO

Statement of the matter in controversy: (see attached)

Relief requested: (see attached)

You may use the back of this form or attach other documents to this application if needed.

Office Use
Date Received
File No.

www.duluthmn.gov
The City of Duluth is an Equal Opportunity Employer.

STATEMENT OF THE MATTER IN CONTROVERSY

1. Whether the fire damaged building at 631 East 3rd Street can be repaired/rehabilitated.
2. Whether the timelines set forth in the Duluth City Code, requiring an owner to appeal a demolition order within 15 days of the demolition order, and include with that appeal proof of dedicated funds to finance the repairs along with a valid contract to make the repairs within 18 months, is arbitrary, capricious and patently unreasonable.

RELIEF REQUESTED

That the owner of the property, Timothy Johnson, be given additional time to potentially facilitate the repair and rehabilitation of the fire damaged building which may include, inter alia, finding a buyer for the fire damaged property who may be able to readily finance its repair.

The property includes a fully occupied and undamaged duplex which is readily marketable on today's Duluth real estate market.

A buyer of the parcel, given additional time, might be able to salvage the damaged building. That person should be afforded time to evaluate that potential even if eventually it is determined and concluded that the damaged building needs to be razed.



Construction Services & Inspections Division
Planning & Economic Development Department

Room 100
411 West First Street
Duluth, Minnesota 55802



218-730-5240



permittingservices
@duluthmn.gov

July 14, 2023

Timothy J. Johnson
1702 W. 3rd St.
Duluth, MN 55806

RE: Building Appeals Board Meeting – August 9, 2023

Dear Mr. Johnson,

Please provide the following information by **August 1, 2023** for the Building Appeals Board Meeting regarding the appeal of the demolition order at 631 E. 3rd St.

- A sidewalk obstruction permit.
- Proof that the property is secured.
- Proof of ownership of the property.
- Documentation of sufficient funds for repairs, plus a contractor's estimate and timeline for completion of such repairs to meet current State Code standards and/or documentation that the property has been listed for sale.

Sincerely,

Blake Nelson
Building Official

BN/be