

Mayor Fred Froehlich called the Public Hearing to order at 6:00 p.m. on July 10, 2024 in the city maintenance garage.

In addition to Mayor Froehlich; Councilmembers: Mary Wels, Phil Radel and Kevin Ostermann were present. Councilmember Matt Anthony was absent. Others in attendance included Vanessa Drill, Darin Drill, Robert Vose, Aaron Lambrecht, Ashley Black, Gene Black, Daniel Sheeks, Dale and Renita Lange, Jason Plath, Mithell Kunkel, Matt Quade, Nick Valle, Ruben Bermudez, John Graupman, Jeff Holmin, David Havemeier and Casey Schmidt.

Members and guests sited the words to the Pledge of Allegiance.

The purpose of the public hearing was Consider the application by Stickney Hills Ingredients for an after-the-fact-variance allowing the modifications, additions and expansions made at the facility located at 734 6th Street, Nicollet. Stickney claims the facility and operations at it are “grandfathered” legal non-conformities.

Stickney Hill Ingredients council shared the following letter:

Dear Mr. Mayor, Members of the City Council, and City Attorney:

Our firm represents Stickney Hill Ingredients, LLC (“**Stickney**”) and MasterMark, LLC (“**MasterMark**”) (collectively with Stickney referred to herein as the “**Owner**”) in connection with the Owner’s Land Use Application (the “**Application**”) for an “After-the-Fact” Variance from the City of Nicollet, Minnesota (the “**City**”) under the City’s Zoning Ordinance (the “**Code**”). The Application is in favor of the Property and scheduled to be reviewed by the City Council on July 10, 2024. Please find this letter in support of the Application and have the same included in the City’s file related to the same.

OWNER’S RESERVATION OF RIGHTS.

Notwithstanding the foregoing or the content of the Application, the Owner submitted the Application and requests the relief stated therein solely upon the direct request of the City. The Owner continues to maintain (1) the Property continues to exist as a legal non-conforming use protected under Minn. Stat. § 462.357; (2) such use has been continuous; and (3) such use has not been unlawfully expanded through the project described in the Application (the “**Project**”). Instead the Project was completed to continue the legal non-conforming use in the same manner as was conducted at the time of the adverse zoning through a series of repairs, restoration, improvements, and replacements, all of which are expressly permitted under Minn. Stat. § 462.357, and by extension the Code. It is for these reasons that the Owner fails to see the need for or the legal precedent for requiring an after-the-fact variance. Based on these contentions, the Owner reserves the right to rescind its Application and this letter at any time, or further this argument at any point, including on appeal to any municipal governing body, or before the Minnesota District Court.

OWNER’S REQUEST FOR AN AFTER-THE-FACT VARIANCE.

Minnesota law and the Code prescribe standards under which zoning variances may be granted. Both Minnesota law and the Code authorize the City Council to issue variances, when an applicant establishes that there are “practical difficulties” that result from the strict enforcement of a zoning control.¹ In addition, any variance, if granted, must result in the proposed use being in harmony with the general purpose and intent of the zoning requirements that are otherwise in place.²

Minnesota law defines “practical difficulties” which are necessary for granting a variance to mean the following:

1. The property owner proposes to use the property in a reasonable manner not permitted under the current zoning ordinance;
2. The plight of the landowner is due to circumstances unique to the

property not created by the landowner; and

3. The variance, if granted, will not alter the essential character of the locality.³

The Application and the Property satisfies each of the foregoing, and therefore the City must find that “practical difficulties” exist at the Property, thereby entitling Owner to a variance permitting the Project to remain as constructed.

I. The Applicant’s proposed use is reasonable for the Property at issue.

The statutory practical difficulties requirement for a zoning variance does not mean that property owners must show the land cannot be put to any reasonable use without the variance; rather, the property owners must show that they would like to use their property in a reasonable manner that is prohibited by the ordinance.⁴

Under this factor, the question is not whether the Owner’s overall use of the Property for food manufacturing production within the area is reasonable, as such use is already legally permitted as a legal nonconforming use; instead, the question is whether it is “reasonable” to permit Owner to expand its lawful nonconforming operations at the Property to permit various efficiencies and to install numerous safety-related improvements needed to better protect both employees working at the Property, and the general public.

In short, it has been well-documented that to date all improvements made by Owner have been limited to within the four walls of the existing building located at the Property with the exception of the replacement of a detached preexisting and obsolete chiller (the “Chiller”).⁵ The Chiller installed by Owner replaced a previously-existing Chiller which was rendered obsolete and ineffective. For background, the Chiller is necessary to inhibit bacteria growth and lower energy waste by providing temperature control efficiencies directly on site. In addition, Owner’s planned future improvements to the Property, which have been submitted for the City’s approval⁶, have all been submitted in order to specifically address the City’s concerns and requests associated with various safety considerations and the overall reduction of waste water discharge. The failure to approve such an expansion would directly result in Owner’s inability to reduce its waste water discharge expressly required by the City under the terms of that certain SIU Agreement dated February 25, 2024 (the “City Agreement”).

Given the related improvements have each either been (1) contained within the four corners of the permitted existing building, (2) needed for property and product safety and efficiencies, or (3) expressly needed to remedy City concerns, the Owner’s use of the Property can only be considered reasonable under the circumstances.

II. The plight of Owner is due to circumstances unique to the property not created by Owner.

Upon reviewing a variance application, the uniqueness of the subject property generally relates to the physical characteristics of the particular piece of property, that is, to the land and not personal characteristics or preferences of the landowner.⁷ In the present case, the Property is unique in that it constitutes a legal nonconforming use in desperate need of modernization and improvements to safely and effectively address various city, county, and state requirements which will be enforced against both the Property and the Owner’s business - none of which were created by the Owner. Without the ability to expand and perform such improvements, the Owner will not be able to satisfy its obligations within the City Agreement, nor meet the general safety standards required of the reasonably prudent business owner. Relatedly, it should be noted that failure to approve the Application will undoubtedly continue to place high stress, wear and tear on the City’s vital drainage infrastructure as the Owner will continue to be permitted to operate on the Property regardless of the City’s decision related to the Application given its legal nonconforming use status.

III. The proposed use will not alter the essential character of the locality.

Under this factor, the zoning authority should consider whether the resulting structure will be out of scale, out of place, or otherwise inconsistent with the surrounding area.⁸ Given the surrounding locality as it presently exists already includes the operation of a food manufacturing site, which again is not the question presently before the City, the limited expansion of the Chiller site located on the Property cannot be found to materially alter the essential character of the surrounding area as a similar improvement already existed on site. The Application does not seek to materially remodel or expand the present operation, but instead seeks merely to modernize the existing site for safety and efficiency purposes as outlined above. As a result, approving the Application cannot be found to alter the essential character of the surrounding area.

IV. The proposed use is in harmony with the general purposes and intent of the City's existing zoning ordinance and comprehensive plan.

The overall present use of the Property is not otherwise in accordance with the current Code as it is instead a legal nonconforming use seeking to expand for the reasons noted herein and expanded within the Application. Given this fact, and bolstered by the fact that the City does not presently have a published comprehensive plan to review, this factor is generally moot and should therefore be interpreted in favor of the Owner's Application. The Application is instead in harmony with the present legal nonconforming use and therefore the Application cannot otherwise be found to disrupt or clash with the intent of the City's existing zoning ordinance.

We appreciate your thoughtfulness as you review the Application and related materials and weigh the concerns that have been raised in this letter. As set forth above, the Application satisfies both the statutory and municipal requirements which would support granting the variance requested in the Application and permit Owner to proceed with expanding the Chiller site located on the Property and the operation of the Property in accordance with its business. Accordingly, we respectfully request that the City Council approve the Application and the requested after-the-fact variance.

Sincerely,

WINTHROP & WEINSTINE, P.A.

/s/ Nicholas P. Valle

Nicholas P. Valle

Fred Froehlich– asked chiller is it the same size?

Kevin Ostermann– does chiller push the same amount of product vs older one – uses for silos outside - drying the milk – started drying – change the use – did the previous owner bring in the whey as well

Phil Radel – it does leak the - Ruben glycol spill yes - falter

Mary Wels – you didn't contact MPCA until the city stated you do so on spill – why the increase in wastewater into system – why is silo there if not installed

Danny Sheeks – asked about new condenser there was never anything there before was just an empty pad when they moved in. Asked about plans for truck bay how are you going to back the trucks in – stated your whole plan looking at the numbers is for you to get bigger and bigger – not what this city wants or needs

Ashley Black – asking city council for deny request – Stickney has well known history of broken promises – has made modifications and expansions –she listed all the inconveniences of the business and the last 2 years of errors - used shirts that employees took off for spills – waste water smells like rotten milk, going down the street and into the city system– resident property values decreasing – if approved the city is setting a dangerous precedent – they don't mow their lawns – the fire dept reminded them of parking by fire hydrant several times – blocking of 6th St with trucks – the drivers can't make the turns into the bay – limited visibility for trucks to come into the plant – road has deteriorated from wastewater runoff that was frozen – trucks that rattles our walls and constant diesel smell from trucks running comes through the walls of our house – please go back to

your city meeting minutes when Stickney was looking to purchase you stated that you would hold them to a standard when they came to town

Gene Black – asked about backing trucks bay for receiving/unloading on 6th St back in you can't touch the alley as the trucks are not the right tonnage for alley – I drive truck for a living and there are times I make holes bigger on a street due to my truck load size – what are you doing with the tanks on the east side asked council if they applied for a permit for something that was never there – they aren't doing apples to apples they will ask later is there intentions

Jeff Holmin – commercial property owner – all this work done without building permits – walls and piping – he stated to Stickney so you are agreeing this is an expansion – you are asking for expansion really – work inside without permits – you are asking for forgiveness rather than permission – running a business in a residential zone – I pay more in property taxes than your business does in taxes - Matt Quade(Stickney) – been working in the industry for 38 years and I can tell you I've done over 100 internal projects and have never had to take out permits for piping and walls

Casey Schmidt – Schmidt Trucking – I put up walls in Stearns County and never got a building permit – haul out of the plant multiple trucks – I have commercial building myself in Belgrade and they don't require permits – there is no permits needed for the work that they have done

Aaron Lambrecht – Nicollet resident and a contractor for Stickney – has worked in many industrial facilities – AMPI butter plant in New Ulm and so on – stated there is a significant disconnect between work that requires permitting vs work that doesn't require permitting – significant gray area what is being told to the city and what is being told to the residents of what is required by code for permitting – highly suggest that someone dig in what truly is required by code vs what truly isn't required by code – process piping is not required by code to be permitted unless it is high pressured “steam” – it's in the cities best interest to look into the law by code and truly understand and not use emotions – it's only fair for Stickney that the city does it diligence on requirements – a lot of discrepancy of weather the work is permitted – the property sets on the county property right of way and all the work done takes a tremendous amount of planning – waiting on county approval

Jason Plath – are you going to be drying the product – lots of dust – when it rains my truck looks like a milkshake and house as well – with silos steady stream used to come out – asked what are the pallets that the driver back-ins – stated would've been cheaper for you to go and buy a bunch of land out in the country and build the plant that you want in a perfect world

The public hearing was adjourned with leaving the record open at 7:35 pm on a motion which was made by K. Ostermann, which was seconded by P. Radel, and which carried with all voting in favor.

City Attorney Robert Vose stated the record will remain open until July 15, giving Stickney Ingredients a deadline to respond to the public hearing comments. July 27 is the deadline for the council to act on the variance request. Thursday, July 25, 2024 @ 6:00 pm is set for a special meeting to deny or approve variance.

The meeting was adjourned at 7:42 p.m., which was approved on a motion made by M. Wels, which was seconded by K. Ostermann, and which carried with all voting in favor.

Vanessa Drill, City Clerk/Treasurer