

DEC 12 2016

December 8, 2016

Dear Rockville Planning Commission:

I, Jean Schendel, the next door neighbor to Mimbachs on Grand Lake am unable to attend the public hearing on Tuesday, December 13, 2016 regarding the setback variance so I am writing to voice my concern.

My concern is that it is in hindsight of their building project that Mimbachs are seeking what should have been their initial variance. I am against them being granted this variance without some compensation towards the affected neighbor, Ruethers. It is my understanding that Holly Ruether alerted them to the problem when they were in the initial stages of building the foundation of their new lake home. Mimbachs ignored her request to stop the building and they either ignored the setback requirements of the law or they were granted permission by the city to continue to build. If they don't need to follow the law, why do we have laws?

What is to stop Mimbachs from crossing the line on my side of their property? I am truly concerned that if they do not remove their older free standing storage garage, which appears to impede their own access to their own driveway on Ruethers side because they have needed to use my driveway for large truck access, they will build without my knowledge a new driveway on my side of the property line. I also would mourn the loss of more green space. Already Mimbachs have suggested that my lot is maybe only a 47 foot lot rather than the 50 foot lot I am paying taxes on. How can this be? Was it resurveyed to their advantage? When we bought the lot I understood that Mimbachs and my family had split a 100 foot lot right down the middle.

My family and I would like to continue the good relations we have had with the Mimbach family over the many years, but we feel that laws have to be followed to insure fairness to all.

Sincerely,



Jean Schendel

December 4, 2016

We would like the City of Rockville planning and zoning and city council members to know that we oppose the granting of any variance of any kind on property 21567 Agate Beach Road. On the following grounds.

1. The code violation that you are considering a variance for has been in violation from the very beginning of the project. The original building was a non-conforming structure on a non conforming 50ft lot. It sat too close to the lakeshore and violated the 10 foot side yard setback of current zoning code. To build a new home on that non conforming lot requires by code that the exact same footprint be used. It was not. The Ruether's informed the city of these violations in January 2016 when the construction was still in foundation stage and were told by the city there was nothing they could do. We all signed affidavits opposing the ongoing construction at that time. No variance notices were sent to us before this construction began and we were never given the opportunity to speak at a variance meeting. Seven months later we still oppose the entire construction project.
2. The 50 foot wide lot is the direct result of the property owner's doing as it was divided from a 100 foot lot and then the Mimbachs built the original cabin. This disqualifies them from receiving a variance per Section 30 Subd. 2 (1) "The unique circumstances did not result from sthe acts of the property owner". Katie Mimbach has owned that land forever. If they claim they had enough room to meet the 10 foot side yard setback on both sides, then they themselves created illegal increase in the encroachment by expanding the footprint and extending the street side of the new structure by 13 feet and moving the encroachment even closer to the Ruether house. All of this was done either in bad faith or without knowing the facts and not caring what the facts are in re the side yard encroachment. The "plot plan" submitted is fraudulent as it represents a 10 foot compliance and misrepresents the configuration of the proposed structure in relation to the north property line.
3. This is purely an economic-based request which arises out of a desire to have a "McMansion" on the site, instead of an appropriately remodeled cabin. Thus, the request cannot comply with Section 30 Subd. 2 (2)of your city zoning code.
4. It changes the character of the neighborhood – they did not follow the "building line" required by Shoreland District Section 11. The zoning administrator can relax the 75 foot setback provided they build on the "building line" which they did not. Now, instead of having a single story structure that was ahead of the building line, there is a huge, overly tall structure that, itself, violates the Shoreland District height regulations [Section32 subd. 10j], blocks views and dominates the skyline. By changing the character of the neighborhood, Mimbachs have disqualified themselves from a variance per Section 30 subd. 2(4)

5. They fail to meet the spirit of the zoning code - - Section 30 subd. 2(5). They misrepresented facts to the city administrator: [1] with their "plot plan" [2] with their application for a "remodel" when what they always planned and what they did was raze the entire original building, expand the footprint, double the square footage, and increase the non-conformity that already existed with the original structure [side yard setback, lakeshore setback, hardcover]. Under Section 14 subd. 4 non-conforming structures may not be "...enlarged or altered in a way which increases its non-conformity". In addition Section 14 subd. 9 says one cannot increase the "floor area by twenty-five percent (25%) or more without bringing the site into compliance with this Ordinance's requirements." All of this was done without asking for a single variance and it was only AFTER a law suit was started costing Ruethers thousands and thousands of dollars that they now seek a single variance to the side yard setback, which is only one of several that they would have had to have gotten. The Stearns County District Court has admonished the Mimbachs that they are likely in violation of several zoning provisions [side yard, lakeshore setback, lot width] and that they would proceed to completion at their own risk. Everything the Mimbachs have done defies the zoning code and demonstrates an attitude of exemption from its requirements that everyone else within the city of Rockville is expected to adhere to.

Sincerely,

Agate Beach property owners.

Joan Schuller
21607 Agate Beach Rd
St. Cloud, MN 56301
12/5/16

Roma K Steel
21603 Agate Beach Rd
St. Cloud, MN 56301
12/5/16

Holly Ruether
21583 Agate Beach Rd.
St. Cloud, MN 56301
12/5/16

John Knuteon 12/8/16
21405 Agate Beach Rd.
St. Cloud, MN 56301

Thomas Steel
21583 Agate Beach Rd
St. Cloud, MN 56301
12/5/16

STATE OF MINNESOTA
COUNTY OF STEARNS

DISTRICT COURT
SEVENTH JUDICIAL DISTRICT

Thomas A. Ruether and Holly L. Ruether,

Plaintiffs,

And

AFFIDAVIT OF LEROY STEINHOFF

Court File No. 73-CV-16-3360

Kathleen Mimbach, Kathleen Mimbach
Living Trust, Matt Mimbach, and City of
Rockville,

Defendants.

STATE OF MINNESOTA
COUNTY OF STEARNS

I, Leroy Steinhoff being first duly sworn on oath and affirmed under the penalties of perjury, state that:

1. I live at 21525 Agate Beach Road, St. Cloud, MN 56301, which is located on Grand Lake in Rockville, Minnesota. My property is within 350 feet of the Mimbach property at 21567 Agate Beach Road.
2. I became aware of the demolition and new construction on the Mimbach property as it happened and as I watched the process continuing.
3. It appears that this building would require a variance in several respects, which would have required notice to me and an opportunity to be heard at a hearing. Had I received a notice of a variance request by Mimbachs, I would have expressed my opposition to the obviously non-conforming structure which the Mimbachs are erecting.

4. I fully support the actions being taken by Thomas and Holly Ruether to force the City of Rockville to enforce its zoning requirements.

Dated: May 5 2016 Leroy Steinhoff
Leroy Steinhoff
21525 Agate Beach Road
St. Cloud, MN 56301

Signed and sworn to before me

Holly Schueller

Dated: May 5, 2016



STATE OF MINNESOTA
COUNTY OF STEARNS

DISTRICT COURT
SEVENTH JUDICIAL DISTRICT

Thomas A. Ruether and Holly L. Ruether,

Plaintiffs,

And

AFFIDAVIT OF (NEIGHBOR)

Court File No. 73-CV-16-3360

Kathleen Mimbach, Kathleen Mimbach
Living Trust, Matt Mimbach, and City of
Rockville,

Defendants.

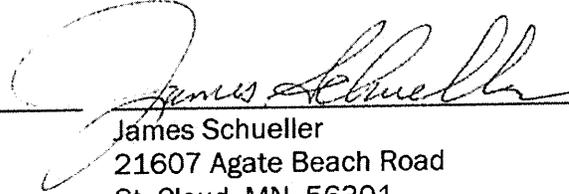
STATE OF MINNESOTA
COUNTY OF STEARNS

I, James Schueller, being first duly sworn on oath and affirmed under the penalties of perjury, state that:

1. I live at/own property at 21607 Agate Beach Road, St. Cloud, MN 56301, which is located on Grand Lake in Rockville, Minnesota. My property is within 350 feet of the Mimbach property at 21567 Agate Beach Road.
2. I became aware of the demolition and new construction on the Mimbach property as it happened and as I watched the process continuing.
3. The Mimbach construction appears to be such that would require a variance in several respects, which would have required notice to me and an opportunity to be heard at a hearing. Had I received a notice of a variance request by Mimbachs, I most likely would have appeared to express my opposition to the obviously non-conforming structure which the Mimbachs are erecting.

4. I fully support the actions being taken by Thomas and Holly Ruether to force the City of Rockville to enforce its zoning requirements.

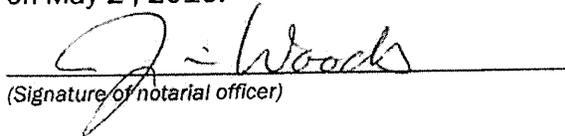
Dated: May 2, 2016



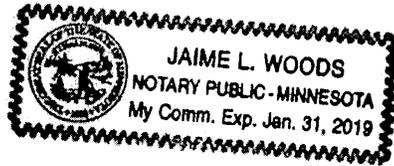
James Schueller
21607 Agate Beach Road
St. Cloud, MN 56301

Signed and sworn to before me

on May 2, 2016.


(Signature of notarial officer)

(Stamp)



STATE OF MINNESOTA
COUNTY OF STEARNS

DISTRICT COURT
SEVENTH JUDICIAL DISTRICT

Thomas A. Ruether and Holly L. Ruether,

Plaintiffs,

And

AFFIDAVIT OF (NEIGHBOR)

Court File No. 73-CV-16-3360

Kathleen Mimbach, Kathleen Mimbach
Living Trust, Matt Mimbach, and City of
Rockville,

Defendants.

STATE OF MINNESOTA
COUNTY OF STEARNS

I, Jean Schendel being first duly sworn on oath and affirmed under the penalties of perjury, state that:

1. I own property at 21553 Agate Beach Road, St. Cloud, MN 56301, which is located on Grand Lake in Rockville, Minnesota. My property is within 350 feet of the Mimbach property at 21567 Agate Beach Road.
2. I became aware of the demolition and the actual size of the new construction on the Mimbach property when Holly Ruether called me on March 31, 2016.
3. I have received pictures of the the Mimbach construction and it appears to be such that would require a variance in several respects, which would have required notice to me and an opportunity to be heard at a hearing. It is my understanding that the sheer size of the building is illegal because they built out to the back, upwards another story, too

close to the lake and they already have a free standing garage on a 50 foot lot. Had I received a notice of a variance request by Mimbachs, I most likely would have appeared to express my opposition to the obviously non-conforming structure which the Mimbachs are erecting.

4. I fully support the actions being taken by Thomas and Holly Ruether to force the City of Rockville to enforce its zoning requirements.

Dated: 5/3/16

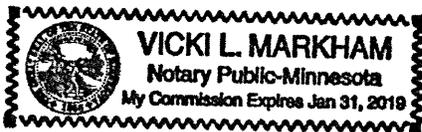
Jean Schendel

Jean Schendel
1309 Kings Run Drive NW
Rochester, MN 55901

Signed and sworn to before me

Vicki L. Markham
(Signature of notarial officer)

Dated: 5/3/16



State of Minnesota
County of Winnetka
This instrument was acknowledged before me on 5/3/16 (date) by
(name(s) of person (s)).
Jean Schendel
Vicki L. Markham
Signature of notarial officer
Title or Rank Judge
My commission expires: 1-31-19

STATE OF MINNESOTA
COUNTY OF STEARNS

DISTRICT COURT
SEVENTH JUDICIAL DISTRICT

Thomas A. Ruether and Holly L. Ruether,
Plaintiffs,

And

AFFIDAVIT OF ROMA STEIL

Court File No. 73-CV-16-3360

Kathleen Mimbach, Kathleen Mimbach
Living Trust, Matt Mimbach, and City of
Rockville,

Defendants.

STATE OF MINNESOTA
COUNTY OF STEARNS

I, Roma Steil being first duly sworn on oath and affirmed under the penalties of perjury, state that:

1. I live at 21603 Agate Beach Road, St. Cloud, MN 56301, which is located on Grand Lake in Rockville, Minnesota. My property is within 350 feet of the Mimbach property at 21567 Agate Beach Road.
2. I became aware of the demolition and new construction on the Mimbach property as it happened and as I watched the process continuing.
3. It appears that this building would require a variance in several respects, which would have required notice to me and an opportunity to be heard at a hearing. Had I received a notice of a variance request by Mimbachs, I would have expressed my opposition to the obviously non-conforming structure which the Mimbachs are

erecting. The building is not in line with the rest of my neighbors and it blocks my line of sight to the South.

4. I fully support the actions being taken by Thomas and Holly Ruether to force the City of Rockville to enforce its zoning requirements.

Dated: 5/5/2016 Roma Steil
Roma Steil
21603
Agate Beach Road
St. Cloud, MN 56301

Signed and sworn to before me

Holly Schueller
Dated: 5.5.16



DEC 12 2016

ARLO H. VANDE VEGTE, P.A.

ATTORNEY AND COUNSELOR AT LAW

12800 INDUSTRIAL PARK BLVD.
SUITE 252
PLYMOUTH, MN 55441-3929
PHONE: 952-475-2219
FAX: 763-450-1555
EMAIL: arlo@dvvlaw.com

December 9, 2016

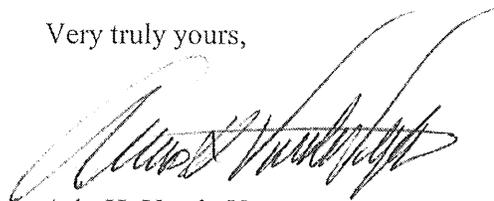
City of Rockville Planning Commission
229 Broadway Street East
P.O. Box 93
Rockville, MN 56369

RE: After-the-fact variance application for 21567 Agate Beach Road [Mimbach]

Dear Members of the Planning Commission:

I write this letter as counsel for Thomas and Holly Ruether. Attached please find a Memorandum which my clients wish to be part of the record in this after-the-fact variance proceeding. We are asking that the application be denied and/or tabled pending the outcome of the litigation. Thank you.

Very truly yours,



Arlo H. Vande Vegte

cc: Tom and Holly Ruether
Harry E. Burns, Esq.
James Thompson, Esq.
Thomas Jovanovich, Esq.

MEMORANDUM

TO: City of Rockville Planning Commission

FROM: Arlo H. Vande Vegte
Attorney at Law
12800 Industrial Park Blvd., Ste. 252
Plymouth, Minnesota 55441
952-475-2219

RE: After-the-fact variance application for 21567 Agate Beach Road [Mimbach]

This matter is in litigation. Suit was commenced in Stearns County District Court, naming not only the Mimbachs but the City of Rockville in April of this year. Counsel for the Ruethers were retained in March. On March 23, 2016, a letter was sent to Adam Ripple, Rockville City Attorney, detailing the Ruethers' complaints and concerns - notably the issuance of building permits in spite of the fact that several variances were required. *[Exhibit A]*. This letter requested a response by April 1, 2016. **No response was ever received thus resulting in a law suit against the Mimbachs and the City.**

The Ruethers brought a motion for a temporary injunction stopping construction before trial which was heard before the Honorable Vicki E. Landwehr on May 9, 2016. While Judge Landwehr denied the injunction, she did state that the Ruethers' have demonstrated a reasonable likelihood of success at trial. In her factual determinations she further noted that the Mimbach property is non-conforming because of the very side-yard setback violation for which this variance is sought; because the lot is only 50 feet wide; and the western wall of the structure is within 75 feet of the shoreline. She further found that Mimbachs were building a structure that would be "expanded beyond the original structure footprint"; would include a second story "with a height of approximately 35 feet, more than doubling the square footage of the original structure."¹

Judge Landwehr decided that the temporary injunction would not issue because the house was up and enclosed and some interior work had to be finished. Thus, to stop its construction prior to trial would not ***"mitigate the current zoning***

¹ Section 14 subd. 4 of the Zoning Code provides that non-conforming structures may not be "enlarged or altered in a way which increases its non-conformity". Section 14 subd. 9 provides that the floor area may not be increased "...by twenty-five percent (25%) or more without bringing the site into compliance with the Ordinance's requirements." Both of these provisions, among others, have clearly been ignored and violated.

ordinance violations or prevent possible harm to Plaintiffs.” She, thus, agreed that there are zoning violations and she issued the following specific warning to the Mimbachs:

The Court cautions Defendants that, because Plaintiffs may prevail at trial, any additional expenses they incur to complete the construction project may only serve to increase the amount of their economic loss if the house is ultimately ordered removed after trial.

A copy of Judge Landwehr’s order of May 25, 2016, is attached. [*Exhibit B*].

Be advised that claims currently pending **against the City** in this lawsuit include claims for mandamus; inverse condemnation; injunction; and violation of the constitutional right to equal protection of the laws because all other property owners needing variances in similar situations in the City of Rockville have had to subject themselves to the variance process provided under the City’s zoning code thus providing them with the right to notice and hearing prior to the issuance of any variance. In this case no such right was observed.

This variance application is considered by the Ruethers to be a joint effort by the defendants, including the City, in this lawsuit to avoid the equal protection claim on an after-the-fact basis only brought now despite knowing for months that the side yard setback violation was and is there. The application does not pretend to address the multiple other zoning code violations which require variances and will do little, if anything, in Plaintiffs’ opinion, to remedy the constitutional violation that has already occurred. Indeed, granting the variance may exacerbate the violation in view of the several other variances required which are not being sought or required and the blatant ignoring of the side yard setback that has existed for over a year. The Mimbachs submitted a “plot plan” that was, at best, misleading and, at worst, fraudulent. They represented to the City that the new home would be precisely parallel to the property line between them and the Ruethers which was not, and never has been, the case. They further represented that the structure was ten feet from the line when the City had records in its possession, stating that the Mimbach house was “9’ from line”. Any addition to the length of the structure to the easterly side would and did only make the side yard setback violation worse. This was ignored. It is one thing to merely miss something in the plan review process. It is another to then find out about it and wrongly deny its existence until court proceedings, document exchanges and depositions demonstrate the futility of the claim that no variances were needed at all. That had been the position of the Mimbachs and the City. This belated variance application is moot anyway. The City’s staff issued the Certificate of Occupancy months in advance of this variance application so, until the Court rules one way or the other, the new structure will remain in place.

ARLO H. VANDE VEGTE, P.A.

ATTORNEY AND COUNSELOR AT LAW

12600 INDUSTRIAL PARK BLVD.
SUITE 210
PLYMOUTH, MN 55441-3929
PHONE: 952-475-2219
FAX: 763-450-1555
EMAIL: vande74@earthlink.net

March 23, 2016

VIA FACSIMILE AND U.S. MAIL

Adam A. Ripple
Attorney at Law
Rinke Noonan
Suite 300 U.S. Bank Plaza
1015 W. St. Germaine St.
P.O. Box 1497
St. Cloud, Minnesota 56302

RE: 21567 Agate Beach Road Building Project - Mimbach Property [City of Rockville]

Dear Mr. Ripple:

Please be advised that this office and the Burns Law Office have been retained to represent Thomas and Holly Ruether whose homestead lies adjacent to and Northerly of the above-described property [21583 Agate Beach Road].

This letter is intended to advise you of the grave concerns our clients have regarding the construction of, essentially, an all new home at 21567 Agate Beach Road in Rockville. In part our concerns are with the actions of the Mimbachs. However, we are particularly concerned and disappointed with the actions/inactions of the City of Rockville regarding this project. What has and is happening is the construction of a new home which plainly violates several of the city's ordinances. Brand new footings and foundation are in place to accommodate this construction. The building's footprint, square footage and sight line obstruction are all substantially altered and increased. None of this was done with a variance of any kind.

The Mimbach property is, and, for years has been, a non-conforming use. It is a 50 foot wide lakeshore lot. The improvements already encroached into the 50 foot lakeshore set back by two feet even before this project began. In addition, there was non-compliance with the ten foot side yard setback requirement. The orientation of the original residence on the property was set so that its footprint tapered well into the ten foot setback area on my client's side. This angled orientation of the Mimbach residence and the fact that its Northeasterly corner came less than ten feet from the common boundary line was open and conspicuous for a long time prior to this construction project. The thirty foot extension on the street side of the house not only draws the Northeast corner of the house closer to the property line but adds to the non-conformity.

In addition, on the lakeward side of the house, some sort of masonry structure has been

*Board Certified as a Civil Trial Specialist
by the Minnesota State Bar Association*

EXHIBIT A

installed which is not just the "deck" the site plan shows. It has masonry sides, a concrete floor and a center drain. It is believed strongly that the floor of this excavated and masonry-constructed area is below the 100 year water mark of the lake. Exactly where the drain leads is unknown. All of this amounts to an increase in non-conformity but also holds environmental implications.

I am attaching a copy of the materials contained in the City's file on this property to, among other things, show that the Mimbachs misrepresented the orientation of their structure in their proposed plan when they applied for a building permit. When the city asked them to provide lake and side yard setback information they represented a ten foot compliance on my clients' side. As noted above, the structure does not sit, and never has sat, as represented in that site plan. However, to be certain, my clients are in the process of obtaining an as built survey to demonstrate precisely this encroachment. We will provide that upon receipt.

Subdivision 4 of Section 14 (Non-Conforming Uses) of your client's zoning code specifically provides that "A nonconforming structure may not be enlarged or altered in a way which increases its non-conformity." The addition to this home does exactly that with respect to the side yard setback. The lakeward side masonry structure also increases the non-conformity which pre-existed the construction project.

Subdivision 9 of Section 14 of the zoning code prohibits the increase in floor area by more than 25%. The addition of a second story and the thirty foot addition on the street side causes an increase far in excess of 25%. Single family residential district use standards limit the building height to 35 feet. [Section 17, Subdivision 6]. This structure is now at 35 feet 8 inches according to the plans.

There are also hardcover concerns. The city called for mitigation because it calculated an 841 square foot excess, but it is unclear as to what that mitigation would be or even how the calculation was done.

We asked our clients to retrieve the city's file which was done on March 22, 2016. There is no evidence of any inspection of any kind by the building inspector. My clients have requested that the property be inspected on multiple occasions. It may be that the inspector has been to the property and has not forwarded his inspection reports to the city, but that would be unusual. The city inspector does not respond to my clients' inquiries. Yet, this building project continues unabated. The foundation, framing, Tyvek, roof, etc. are all in place. In the meantime my clients have been asking questions and trying to get the attention of the city for months without success.

Given these circumstances, it is clear that the city staff has not and is not performing the duties required by the city's laws. I must advise you that Mr. Burns and I have informed our clients that unless some definitive action is taken immediately to enforce its own laws, we will need to bring an action in district court seeking, among other things, a writ of mandamus and/or injunctive relief.

At this time we respectfully request the following:

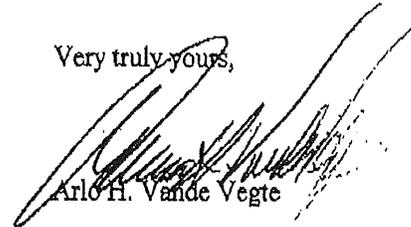
1. To the extent that there have been no inspections of the foundation,

framing, plumbing, electrical, etc., that those be done immediately. To the extent that there have been such inspections we would appreciate receiving copies of the inspection reports.

2. That the inspector be compelled and that the other responsible city staff be compelled to investigate the site plan versus the on-site improvements to determine if ordinance violations have, indeed, occurred and then to "red tag" the construction project in the event that investigation demonstrates that our claims of expanding the structure illegally are correct.

Please advise as to how your client intends to proceed at your earliest convenience. However, if we have not heard anything by April 1, 2016, we will proceed with litigation. Thank you.

Very truly yours,



Arlo H. Vande Vegte

cc: Harry Burns, Esq.
Tom and Holly Ruether

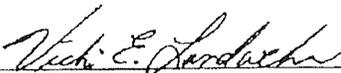
4. Prior to 2015, the existing structure on the Mimbach Property constituted a “non-conforming use” under the zoning ordinances of the City of Rockville in the following ways:
 - a. The lot is 50 feet wide, contrary to the 85 foot minimum lot width required by a City of Rockville zoning ordinance;
 - b. The northerly wall of the structure was within the 10 foot setback requirement of the zoning ordinance section; and
 - c. The western wall of the structure was within the 75 foot setback requirement of Grand Lake.
5. On or about April 1, 2015, Defendants Kathleen and Matt Mimbach submitted four permit applications to Defendant City of Rockville, requesting permits to construct a residential addition, to install plumbing and a fireplace. Defendants submitted elevations and floor plans with their applications.
6. On May 18, 2015, Defendant City of Rockville issued the requested permits.
7. Defendants Kathleen and Matt Mimbach commenced construction in November 2015.
8. At the outset, Defendants Kathleen and Matt Mimbach removed at least 50 percent of the original structure. Defendants did not bring the property into conformance with the applicable zoning ordinances.
9. The permit applications and attached documents indicate that the completed structure will be expanded beyond the original structure footprint, including an addition built onto the eastern street side of the property. The new structure also includes a second story, with a height of approximately 35 feet, more than doubling the square footage of the original structure.

10. As of the time of Plaintiffs' motion, the exterior of the building was complete, with some finishing work on the interior still remaining.

ORDER

1. Plaintiffs' motion for temporary injunction is **DENIED**.
2. The attached memorandum is part of this Order.

May 25, 2016



Vicki E. Landwehr
Judge of District Court

JUDGMENT

I hereby certify that the foregoing Order/Conclusions of Law constitutes that Judgment of the Court.

Date: 5-25-16
George Leck, Court Administrator

By: Wally L. M. Deputy

MEMORANDUM

I. ANALYSIS

A temporary injunction is an extraordinary equitable remedy. Its purpose is to preserve the status quo until adjudication of the case on its merits. *Pickerign v. Pasco Marketing, Inc.*, 228 N.W.2d 562, 564 (1975). Not every change in circumstances merits such relief. Since a temporary injunction is granted prior to a complete trial on the merits of the case, it should be granted only when it is clear that the rights of a party will be irreparably injured before a trial on the merits can be held. *Miller v. Foley*, 317 N.W.2d 710, 712 (Minn. 1982).

The five relevant factors to be taken into consideration when reviewing a request for a temporary injunction are:

- (1) The nature and background of the relationship between the parties preexisting the dispute giving rise to the request for relief.
- (2) The harm to be suffered by plaintiff if the temporary restraint is denied as compared to that inflicted on defendant if the injunction issues pending trial.
- (3) The likelihood that one party or the other will prevail on the merits when the fact situation is viewed in light of established precedents fixing the limits of equitable relief.
- (4) The aspects of the fact situation, if any, which permit or require consideration of public policy expressed in the statutes, State and Federal.
- (5) The administrative burdens involved in judicial supervision and enforcement of the temporary decree.

Dahlberg Bros. v. Ford Motor Co., 137 N.W.2d 314, 321-22 (1965). Potential relative harm, the likelihood of success on the merits, and public policy considerations weigh most heavily. *Minneapolis Fed'n of Teachers, AFL-CIO, Local 59 v. Minneapolis Pub. Sch., Special Sch. Dist. No. 1*, 512 N.W.2d 107 (Minn. Ct. App. 1994).

A. The Nature and Background of the Relationship Between the Parties

The Court gives little weight to this particular factor. Plaintiffs and Defendants Mimbach are neighbors with no existing contractual relationship. The status quo will be preserved regardless of whether or not a temporary injunction is granted. Similarly, a temporary injunction

will not preserve either party's relationship with Defendant City of Rockville. This factor is irrelevant as to whether or not a temporary injunction is warranted.

B. Relative Hardships

A party seeking an injunction must demonstrate that legal remedies are inadequate and that an injunction is necessary to prevent great and irreparable injury. *Haley v. Forcelle*, 669 N.W.2d 48, 56 (Minn. Ct. App. 2003). Generally, the injury must be of such a nature that money damages alone would not provide adequate relief. *Id.*

Plaintiffs present compelling evidence that the Mimbachs' construction project violates several local zoning ordinances. While this is clearly relevant to the ultimate issue central in this case, it does not demonstrate "great and irreparable" harm to plaintiffs so as to justify imposition of an injunction pending trial. The exterior of the building is complete; a temporary injunction halting construction will have no present impact on any existing violations. Plaintiffs' loss of privacy is also unaffected by a temporary injunction halting construction. A stop order would not completely preclude defendants or other third parties from entering the property, so there would still exist the same risk of intrusion on Plaintiffs' privacy.

The potential hardship on Defendants, if an improvident injunction is issued, is greater. Defendants Mimbach would incur delays and costs to this home construction project, as well as forfeit some use of their property for the foreseeable future. This factor weighs against the need for a temporary injunction to preserve the status quo.

C. Likelihood of Prevailing on the Merits

The likelihood of success on the merits in the underlying action is an important factor in determining whether to issue a temporary injunction. *Minneapolis Fed'n of Teachers, AFL-CIO*,

Local 59 v. Minneapolis Pub. Sch., Special Sch. Dist. No. 1, 512 N.W.2d 107, 110 (Minn. Ct. App. 1994).

The Court finds that Plaintiffs have demonstrated sufficient facts in support of their prima facie case that a fact-finder could reasonably find in Plaintiffs' favor at trial. However, the temporary injunction requested by Plaintiffs will not mitigate the current zoning ordinance violations or prevent possible harm to Plaintiffs. As such, while this factor weighs in favor of granting a temporary injunction, it does not outweigh the relative balance of harms.

The Court cautions Defendants that, because Plaintiffs may prevail at trial, any additional expenses they incur to complete the construction project may only serve to increase the amount of their economic loss if the house is ultimately ordered removed after trial.

D. Public Policy and Administrative Considerations

The final two factors are relatively inconsequential in this case. Plaintiffs argue that public policy favors issuance of a temporary injunction to see that laws are enforced. As a practical matter, an injunction prior to trial in this case would not mitigate or prevent further violations of the City of Rockville zoning ordinances. The exterior of the structure is complete, and any violations are ongoing. As such, public policy considerations do not weigh for or against issuance of an injunction at this time.

As for the final factor, the Court is in agreement that little administrative supervision of any temporary injunction would be required. However, as stated above, issuance of a temporary injunction would not serve the purpose of preserving the status quo, because any ordinance violations would continue to exist.

II. CONCLUSION

Although Plaintiffs have established a likelihood of success on the merits in the underlying action, Plaintiffs have not demonstrated a severe and irreparable harm if a temporary injunction is not granted. These are two of the most important *Dahlberg* factors. Plaintiffs' motion for a temporary injunction enjoining Defendants from continuing construction on their property, subject to the caution that the entire building may need to be removed if Plaintiffs prove successful at trial, is denied.

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