



CITY COUNCIL AGENDA ITEM

To: Mayor Graham and City Council

From: Ted Shekell, Planning Director
Walter Denton, City Administrator

Date: January 17, 2008

Subject: A **MOTION** to reconsider the decision of the Zoning Hearing Officer to approve the variance to allow six dogs for the subject property at 719 S. Vine.

List of committees that have reviewed: At the Community Development Committee meeting on January 14, 2008, the Committee reviewed the Zoning Hearing Officers decision to approve the variance at 719 S. Vine Street to allow six dogs for the subject property at 719 S. Vine. The Committee recommendation was split 2-2. The committee discussed their options, which included affirming the Zoning Hearing Officer's decision, amending conditions, or rejecting the variance altogether. The Committee had a split vote of 2-2, with Mouser and Albrecht in favor of amending the decision to include removal of the doggy door and elimination of the fence condition. West and Medford were in favor of staff's recommendation to place the two foster dogs in another home. This will go before the City Council on January 21, 2008.

Background: Petitioners Robert Aydt and Theresa Shamblin of 719 S. Vine St submitted a **Petition for Variance to exceed the permitted number of dogs and/or cats which is regulated by the definition of a kennel and its use in an SR-3 Zoning District.** The applicants currently own 6 dogs over four months of age. On December 7, 2007, the Zoning Hearing Officer ruled to approve ZHO2007-31, a petition requesting a variance to exceed the permitted number of dogs and/or cats which is regulated by the definition of a "Kennel" and its use in the "SR-3" Single-Family Residence Dwelling District. Article I: General Provisions, Administration, & Definitions of the City of O'Fallon Zoning Ordinance defines a Kennel as, "Any structure or lot on which (4) four or more dogs and/or cats over four months of age are kept." The Zoning Hearing Officer approved the Variance with the following conditions:

- a) Petitioner shall not own, harbor or otherwise allow any additional animals to occupy or stay at 719 S. Vine and Petitioner shall through attrition of her current animals come into compliance with the O'Fallon Zoning Code limiting the number of animals to three.
- b) Petitioner shall construct a 6-foot high privacy fence around the rear of her home in accordance with the plan submitted and in accordance with the building regulations of the City of O'Fallon. This fence shall be constructed within 60 days of the date of this decision.
- c) Petitioner shall remove all animal waste promptly and keep her property clean and free from any noxious odors.
- d) Petitioner will allow no more than three (3) dogs outside at any given time.

The City Council voted to review the ZHO's decision at their meeting on December 17, 2007, and the matter was set before the CD Committee on December 14, 2007. At that meeting the Committee discussed the ZHO's decision and ultimately did not reach a decision. The Committee was split 2-2 on whether to reaffirm the ZHO's approval of the variance. Specifically, the two positions were:

a) Reaffirm the ZHO's decision but add a condition that the "doggie door" be removed and the privacy fence requirement eliminated, and

b) Staff's recommendations which were similar to the ZHO's except that staff recommended the applicant find a new home for the two "foster dogs" they recently added to their already existing 4 dogs.

Alternate Recommendation by staff and legal counsel

In light of this split vote, staff suggests, in consultation with Dan Vogel, consideration of an alternative position that may address the interests of both resident groups and the facts involved in this particular case. Specifically, the Council may wish to decide the request for the variance as follows:

1. Deny the variance request but temporarily stay (or withhold) enforcement of the specific zoning violation relating to exceeding the allowed number of dogs subject to the following two conditions:

2. The Petitioner would be granted up to one year to bring the property into compliance with regard to the maximum number of dogs or cats permitted by the code provided that the following conditions are maintained:

- a) Petitioner shall not own, harbor or otherwise allow any additional animals to occupy or stay at 719 S. Vine from those existing at the time of the variance request.
- b) Petitioner shall remove all animal waste promptly and keep property clean and free from any noxious odors.
- c) Petitioner will allow no more than three (3) dogs outside at any given time.

3. Petitioner shall continue to be subject to all applicable laws and be subject to compliance with nuisance, peace disturbance and other requirements that may require additional measures or subject Petitioner to penalties as provided by ordinance if such laws or the conditions of this variance decision are violated.

Legal Considerations, if any: None

Budget Impact: None

Staff Recommendation: Reconsider the ZHO's decision and approve the alternative position outlined above for the subject property at 719 S. Vine.