



CITY COUNCIL AGENDA ITEM

To: Mayor Graham and City Council

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

Date: January 31, 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 28, 2008, the Committee voted 1-2 against sustaining the ZHO's decision to allow the six dogs. Since there was no affirmative vote on any alternatives, the matter comes back to the City Council again without a recommendation from Committee on the Feb 4, 2008, Council meeting.

Background: In the absence of a Committee recommendation or consensus on any alternatives to the ZHO's decision, staff and legal counsel, Dan Vogel, recommend the Council consider the matter with the recommendations shown below. We believe it is important to uphold the City's current laws to help ensure a broader precedent is not set that could adversely affect the city's future ability to enforce the law regarding kennels and dogs in residential areas. At the same time we also believe it is important, in light of the facts of the case, to give the applicant additional time to adequately address the issue and come into compliance with the law.

Therefore we recommend:

- A. *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:*
- B. *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:*
 - 1) *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.*
 - 2) *Petitioner shall remove all animal waste promptly and keep property clean and free from any noxious odors.*
 - 3) *Petitioner will allow no more than three (3) dogs outside at any given time.*
- C. *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.

It should be noted that the ZHO recommended the variance be approved with the following conditions.

- 1) *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.*
- 2) *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.*
- 3) *Petitioner shall remove all animal waste promptly and keep her property clean and free from any noxious odors.*
- 4) *Petitioner will allow no more than three (3) dogs outside at any given time.*

There was discussion by various aldermen in the Committee meeting on Jan 28 about re-affirming the ZHO's decision with the following condition: *"Reaffirm the ZHO's decision but add a condition that the "doggie door" be removed."* While discussed as an option, this was not approved by Committee.

It should also be noted that the original staff recommendations were very 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 rather than the applicant being allowed to maintain all 6 dogs at the present time.

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.