

**Excerpt from the
ZONING BOARD OF ADJUSTMENT MINUTES
Minneapolis Community Planning & Economic Development (CPED)**

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MEMORANDUM

DATE: March 29, 2018

TO: Zoning and Planning Committee

FROM: Brad Ellis, Planning Manager, Community Planning & Economic Development – Zoning

SUBJECT: Zoning Board of Adjustment decisions of March 1, 2018

The following actions were taken by the Zoning Board of Adjustment on March 1, 2018.

Committee Clerk

[Lisa Kusz](#) - 612.673.3710

Board members present

Matt Perry, Chair | Ami Thompson, Vice Chair | Sean Cahill | Anja Drescher
John Finlayson | Eric Johannessen | Dan Ogiba | Dick Sandberg | Jacob Saufley

1. 415 1st Ave N, Ward 3

This item was continued from the February 8, 2018 meeting.

Staff report by [Brad Ellis](#), PLAN5725

A. Appeal of the zoning administrator.

Action: Notwithstanding staff recommendation, the Zoning Board of Adjustment **approved** the appeal of the decision of the zoning administrator's decision that the proposed sexually-oriented use at 415 1st Ave N does not meet the spacing requirements of 549.350(b).

Aye: Drescher, Johannessen, Ogiba, Saufley, and Perry

Nay: Cahill, Finlayson, Sandberg, and Thompson

Staff Ellis presented the staff report.

Board member Cahill: Am I correct in saying that we look at the uses of Three Degrees by its primary use to define it?

Staff Ellis: That is correct.

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Board Member Cahill: Did the city see a dramatic case from services or use of the property when Three Degrees moved from 113 5th St to 119 4th St?

Staff Ellis: I couldn't speak to the specific type of religious services they were providing, however, I can tell you that the nightclub portion of it did close prior to their relocation. They did close that and then did become primarily a ministry at that point. That's outlined in the letter from 2008. From that point onward, we agreed that they no longer had a principle use as a nightclub, but instead were a religious institution or place of assembly.

Board member Cahill: Have we ever looked at religious places of assembly or institutions that exist within a multi-tenant space as opposed to a standalone church which is physically stand-alone... has there been any analysis about the fact that this is part of a larger community?

Staff Ellis: I'm not sure exactly how to answer that. What I would say is that a multi-use building has a series of principal uses in it. This outlines a distance from a religious institution place of assembly; this is a religious institution place of assembly within a large multi-tenant building so there are a series of principal uses within this multi-tenant building of which this is one so we do consider this use to trigger the spacing requirements.

Board member Sandberg: Would this portion of the ordinance be enforced if the sexually oriented business was there first and the religious institution was planning to move in?

Staff Ellis: The sexual oriented use would become nonconforming as to the spacing requirements at that point. If it did leave then it would preclude new ones from arriving. If that sexually oriented use did end up leaving for over one year then it would cease to have any more rights and new ones could... however it doesn't work in reverse. We wouldn't preclude a religious institution from establishing within the boundaries within 500 feet of an existing sexually oriented use.

Board member Saufley: Does 3 Degrees currently have any permits that would allow them extended hours as they did when they were a nightclub?

Staff Ellis: No, they do not currently have extended hours. The zoning code no longer regulates hours of operation as it did in 2003. It's now under Licensing and they would receive an extended hours license. They do not have an extended hours license. They don't provide entertainment in that sense.

Board member Saufley: Under what section of the Minneapolis code did the Zoning Administrator determine that 3 Degrees was a religious institution?

Staff Ellis: Since the appeal is specific to the spacing requirements in 549.350 (b), we do consider it to be a religious institution/place of assembly. Generally if a religious institution asserts that they're a religious institution we'll take their word for it, however, they provided additional information. A religious institution/place of assembly is defined in the zoning code.

Board member Saufley: Has anyone from Zoning or City Attorney's office evaluated whether or not 3 Degrees is a religious association from a legal standpoint?

Staff Ellis: In 2008, we did respond to their letter and agree with their assertion.

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Board member Saufley: Do you have any knowledge of whether or not 3 Degrees is incorporated as a religious entity under MN Statute 315?

Staff Ellis: They are incorporated as a nonprofit.

Board member Saufley: Under 317A? I admit this is tricky; I'm throwing this at you from left field. There are certain statutes that to...

Staff Ellis: There were very specific statutes; I'd have to refer back to the report for the exact number. It's 317A.

Board member Saufley: So no knowledge if they're incorporated under 315?

Staff Ellis: I do not know. I'd leave that to 3 Degrees to answer.

Chair Perry opened the public hearing.

Dennis Johnson: I'm here on behalf of TnT. Just by way of background, we started working on this project on behalf of TnT in October 2017. We did our research and didn't see that there were any impediments to putting a potential adult use on 451 1st Ave. I met with zoning on November 9th and received approval to proceed with our project. As a result of that, I met on November 20th with the Licensing Division, Michele Harvet, who accepted our application for the adult use and we paid our fee and we were on the road. That afternoon, Mr Ellis contacted me and told me there was a mistake that was made, that they felt this didn't meet the distance requirements. I informed my client as of the 9th that everything was a go. On November 29th, Mr Ellis sent me an email saying he was formally telling me we were violating the distance requirements. On December 12th, we received another email saying it was the official notice that gave us ten days to appeal, which is what we've done. Our summary of this is that I believe that the zoning people are looking at the definition of religious institution/place of assembly as an organization, but that's not what it is under your ordinance. Specifically, his finding indicated that the 3 Degrees church is considered to be a religious institution/place of assembly. You need to go to your own ordinance which specifically identifies what the definition of that is. The definition that Mr Schiff will go through with you relates to a building, not an organization. You can't identify 3 Degrees as this definition because it doesn't fit the definition you have in your ordinance. I think there's a fundamental flaw in the analysis by the zoning department because they're not looking at it as a building, they're looking at it as an organization. We don't know if they've done everything properly. They can address that. I do know that under the tax exempt law from the federal government, there's case law that says you have to have some ownership in the building where you're asking for a tax exemption. They do not own part of this building, they're tenants. I think there's a question as to whether or not they appropriately have a proper tax exemption as a church that qualifies as a church. More importantly, when you look at your definition, there's no way that you can identify that this relates to an organization. I would also point out one other area I ask you to consider and that's that we looked at the Minneapolis ordinances as to wherever they related to this definition. Wherever you talk about the definition like in 543.200 which deals with on premise signs, 537.120 which talks about accessory uses... they all refer to building requirements. They all relate to sizes of a building, to where the building is located. Everything that's talked about in this ordinance relates to a place of assembly or religious institution as a structure or facility, not an organization.

Board member Saufley: Can you help me connect the dots between the organization and the building? It seems like from the materials I've reviewed that they use the building itself for their activities.

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Notwithstanding the fact that we might have a definitional conflict between organization and building... can you just help me connect the dots on how you can contend that they don't use the building as a place of assembly?

Dennis Johnson: I think the most important thing is that if you go to exhibit C in your packet. It seems self-explanatory, but it hasn't been discussed a lot. This is the definition that they're referring to when they talk about... the appellant can't be within 500 feet of this type of place of assembly. The first paragraph deals with something we're all familiar with. I call it the Basilica clause. If you have a regular church, a mosque, just a freestanding building that we all know is a church or a mosque, that is considered to be a place of assembly. And then it says "or other facility used for prayer". This relates to a building. It doesn't relate to an organization. The second portion is what I think applies to our case and that is "or... a special purpose building which is architecturally designed or adapted where its primary use is for religious congregation." This is a spot on the fourth floor of an office building which has law offices, a radio station, Pizza Luce, and a nightclub in it. It's not a building that was designed for a religious institution. 3 Degrees has put themselves into a building and you can't as a result of that turn that building into a place of assembly or religious institution. It seems to me that this definition says that where they're located does not come within the definition which precludes us from our distance requirements.

Board member Saufley: Am I correct then in understanding that you would disagree if I were to say that that building has been particularly adapted for the primary purposes?

Dennis Johnson: I would say that if you looked at the building it's an office building. That's all it is. There's nothing that's been done to that building that is adapted it for the primary use of conducting religious services. It has a pizza joint and a nightclub in it.

Board member Thompson: I still don't quite understand your argument. When I'm looking at the definition for place of assembly, I think the phrase "or other facility that is used for prayer by persons of similar beliefs", that to me feels like you could say a certain floor of a building. If that space, or other facility, is being used by persons of similar beliefs for prayer, I feel like that could potentially meet that definition. Can you explain to me why you feel like it doesn't?

Dennis Johnson: That's an individual facility. In other words, I think the only way you can read this definition is that they're talking about a freestanding building. They refer to a church, temple, synagogue, and mosque because it refers to certain religions. They don't want to preclude other religions from having a facility that all it is for religious institutions. We don't have that here. We have a building whose primary use is not for religious facilities, it's an office building where they happen to put 3 Degrees church in the middle of it. I would disagree that when you have that other facility that it relates to a freestanding building that is for a particular faith.

Board member Thompson: Explain to me a little bit more about why you feel that sentence only applies to a freestanding building and not a floor in a larger building.

Dennis Johnson: I think if you do a logical interpretation of the reading of the definition, they're referring to specific types of religions that have specific types of buildings. They don't want to stop people from developing a facility that's not for a traditional religion.

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Board member Cahill: My understanding is that you're saying that the definition under 520.160, how we look at the fine primary use is by the scope of the entire building itself. Would you agree that a tenant who essentially owns that entire building who is a religious organization, that would satisfy the definition?

Dennis Johnson: Only if the building itself is architecturally designed and adapted for that. I think there's a facility portion to this that everybody is missing that has to be present in order to meet this definition.

Board member Cahill: So you'd disagree that, let's say if someone takes out a storefront church where it's a storefront, an independent facility being rented by a religious organization and it's used solely for that religious purpose, would you feel that'd meet your definition?

Dennis Johnson: That could be considered facility if it's a freestanding facility and it only has that faith in there.

Gary Schiff: Thank you for taking the time to consider this case today. For those that don't know me, my name is Gary Schiff. For three years I sat on the Zoning Board of Adjustment. For 12 years I served on the City Council as chair of the Zoning and Planning Committee and for 12 years I sat on the Minneapolis Planning Commission. Through those roles, I myself have written dozens of zoning code amendments, adjudicated public hearings on land use disputes using the zoning code for hundreds of hours during much of the previous decade. I'm here today to thank you. The appeal of the zoning administrator, although this application is used rarely, this gets to the point that the zoning code is a living breathing document. It's interpreted and is used as part of our flexible zoning in the city of Minneapolis every day. We interpret this document in ways that match new challenges, new uses in our city, as well as to manage conflicts. Behind all of it has to be a government purpose. We don't regulate everything in the zoning code, as you know. It's a careful balancing act of what to regulate and what government purpose there is behind that regulation. In overturning the zoning administrator, you will be acting consistently with the Minneapolis City Council's prior decision that 3 Degrees does not fit the definition of a religious place of assembly. That would be the most conservative or safest argument that you could make today, is that you want to be consistent with previous actions of the City Council. I believe they were correct in 2006 and I believe that to act consistently today would be to overturn the zoning administrator. In 2006, the City Council had many findings as to why this was not a religious place of assembly. It cited the fact that church services to take place, the facility is operated and held to the general public as a nonalcoholic nightclub featuring Christian musical performances by local, regional, and national touring acts. That same decision also found that there are religious uses at the facility such as bible study, baptisms, weddings, and funerals. That same finding also found that 3 Degrees was an outreach program of Living World Christian Center in Brooklyn Park and that the conditional use permit for extended hours of operation for its use also supported the fact that it was a nightclub. In 2006 the City Council found that it was a nightclub and that any religious purposes were accessory in nature. I will acknowledge that 3 Degrees has changed their business model since 2006, but I think they meet the definition even less today than they did in 2006. The decision before us today is not debate what is a religion, prayer, or worship or to make a decision on if it's a legitimate church. The zoning code doesn't care about those issues. The zoning code does not regulate religious entities. The zoning code does not regulate religious activities. The zoning code regulates religious buildings. That's consistent throughout the definition of religious place of assembly. For you to go outside of that realm and to decide you're going to make a decision based on someone being a religious entity or someone being a nonprofit filed with the state or somebody who has as minister with a degree and a diploma. To use any of those factors is to go outside the zoning code and outside land use regulations that our zoning code is concerned with. When one Googles images of a church, synagogue, temple, mosque, or strip club, these are the images that come up in the results. This is what the zoning code regulates, the proximity of these buildings towards each other. We

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don't regulate prayers and activity, which could take place in any space. We're not here to decide if they are religious officially, church officially, or unofficially. That's not our concern under the zoning code. It's the regulation of these buildings and their proximity to each other. And yes, because this is a tenant in an office building, this clause should not apply and cannot apply. If we're to decide that anyone who says they're a church is a church, anyone can go online today and become a minister, what a religion is changing dramatically in 2018. This is in the news today of a religion that has embraced AR-15s as the staff in the bible that God wants. Again, we're not here to decide whether or not this is a religion or make judgement on people's right to pursue religious freedoms or worship as they choose. Elizabeth Glidden in 2006 made statements on the record that get to this issue that the Council recognized in 2006. We always knew this day would come that somebody would ask "what is a religious place of assembly?" I think Council Member Glidden said it succinctly when she spoke about going to school at a university that had a chapel. She said "there are many institutions in our society that have these things, but we don't call them churches. For instance, hospitals have chapels, but they are still hospitals. Colloquial schools or colleges have chapels and set times to go to chapel if we desired, but it didn't change the fact that its primary purpose was a college." So again, the activity that takes place at 3 Degrees is immaterial. The fact that they incorporated as a nonprofit with the state of MN under 317A is also immaterial. This is an outline of 317A and what 317A does. It allows someone to incorporate as a for profit or nonprofit and to have their name registered with the state of Minnesota. It is not government recognition of a religious entity. Our government does not recognize religious entities. We don't have government recognition of religion in our country. Because this is a first amendment case, I just want to remind you that the government has the power to zone and enact reasonable time, manner, and place restrictions on first amendment adult uses. The problem arises when apparently reasonable zoning regulations come in conflict with the first amendment and the protection of adult entertainment. I believe those first amendment rights force you to carefully look at your regulations in a very narrow way and today's not the day to broaden the definition of what a religious place of assembly is. What is 3 Degrees and would the zoning code say they are? That's an interesting question. I went to their website and saw how they described themselves. That is attachment D in your packet. The words in bold...3 Degrees began as an outreach of living world Christian Center for people who wouldn't necessarily step foot inside a church to provide a safe and entertaining place for all Christians. When the pastors met as volunteers, the ministry purchased and renovated the American Legion building in 1994 and then decided to relocate to the heart of the entertainment district. In the rest of that exhibit, you will see that they describe themselves as a ministry. A religious entity that is engaged in religious activities. The word ministry doesn't appear in our zoning code, nor should it. That is my overall statement and I'll stand for questions.

Board member Cahill: I'm going to disagree a little bit with your characterization. I'm looking at the definition that you provided and the last clause notes that it could be a facility that is particularly adapted for the primary use of conducting a regular basis religious services. We do look at an activity then. Would you agree with that? That the use and activity is what we're looking at, maybe not the quality of the activity?

Gary Schiff: I would argue that the key word in that sentence is facility, not the activity that is showing up. If we regulated prayer or religious exercise as an activity it would show up on our conditional use table in the zoning code. It never appears anywhere because we're just concerned with the building itself.

Board member Cahill: I see this not so much as a question if 3 Degrees is a religious institution, I think in some ways it is. I think the question turns on can a tenant in their primary use overcome an owner or the rest of the tenant's private use within that same building? That's where I'm seeing the distinction.

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Board member Thompson: I have a question about your assertion that zoning laws don't think of use. If you look at your Exhibit B, which is the zoning code around sexual oriented uses, the word uses is in the name of that code and the first sentence says "no sexually oriented use shall be allowed within 1000 feet."

Gary Schiff: We do regulate adult uses. We do not regulate religious activity.

Board member Thompson: I understand your argument, but I'm not exactly convinced of it. Can you tell me, did you do a Google image search for "other facilities"? You did synagogue, church, temple, and mosque. I understand that the argument is that "other facility" would be a freestanding building, but I would need a stronger argument to be convinced that other facility couldn't include a floor within a building that has other uses.

Gary Schiff: I would argue that the MN building code and the rest of the zoning code uses the word facility to describe buildings. I didn't engage in that Google search. What happens with a prayer room? If a prayer room opens up at the IDS Center, does that make the IDS Center a religious place of assembly? We see prayer and spiritual activity happening in many types of spaces, but the zoning code isn't interested in regulating all those spaces, it's just the buildings.

Board member Thompson: I have a follow up question. What do you think the intent of the ordinance is that's talking about distance between religious institutions and a sexual use? Do you think the intent of the ordinance has to do with the use or the facility or both?

Gary Schiff: I think intent is the question here. I think that when that section of the zoning code, those definitions, we written it was proximity of buildings... I think it was the embarrassment factor. The idea that should somebody have to walk by a strip club or see a strip club when they're walking to their place of worship. Is it next to each other? Does it have a lack of logic for an urban streetscape? That is the compelling government interest. To stop a strip club from opening across the street from the Basilica. But when a church is defined as a tenant in a multi-story office building, then I don't understand what the government purpose is, particularly when the church has chosen to locate in the only zoning district where adult uses are allowed.

Board member Thompson: What if a building that was built as a church has its use changed and it's no longer being used as a place of worship? Would you still feel that the intent of the ordinance would be to keep the separation between that building which looks like a place of worship different from a sexual use?

Gary Schiff: That's a great question, I hadn't thought of it. But yes, should one of the churches in downtown Minneapolis go dark and become a nightclub, would this restriction still kick in? That's a great question. I think by your definition we'd be in a tough way to overlook that. The definition is so specifically talking about buildings that we have opened ourselves up to that possible conundrum.

Board member Thompson: Ok, so you think the intent of the ordinance for someone walking along the street to not feel bad about a nightclub being next to a building that looks like a church.

Gary Schiff: That's what I understand, yes.

Board member Ogiba: I'm looking at Exhibit E. You give a tenant list for 401 N 2nd Ave. Do you know approximately how many square feet of leasable space is within that entire building?

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Gary Schiff: I do have that information here. It is 112,000 square feet of tenant space located in the five story warehouse building built in 1891.

Board member Ogiba: Great. And do you of that, approximately how many square feet are occupied by 3 Degrees church?

Gary Schiff: I do not.

Chair member Sandberg: I think you answered most of my questions with Ms Thompson's. We have a set of zoning ordinances that are both form based and use based. This one mixes the two and we don't usually see that. I would see both of these items as uses. I would see one as an adult use and the other as religious assembly use. Your argument is that the use doesn't apply to the religion here, the structure does, but the structure doesn't apply to the adult use, but the use does.

Gary Schiff: My argument is that the definition of religious place of assembly in the zoning code was written to regulate religious buildings. I don't see the word space. I don't see the concern about, for example, the YWCA on Lake Street may have a church that uses a meeting room once a week. It's not any space where prayer takes place. It's not any space used for worship. It specifically cites types of buildings in the first half of the sentence and then you've got the use of the word "or". It says "or a special purpose building." Or has two meanings. "Or" is used as a conjunction to introduce a synonym or explanation of preceding word or phrase. "Or" spells out things that were not identified in the first half of the sentence.

Chair member Thompson: You said you didn't see the word "place" anywhere in 520.160, it's the first word. "Place of assembly."

Gary Schiff: Yes, of course, that is the name of the definition. The word "space" is not used to define where people worship. We don't regulate spaces.

Chair member Thompson: So to you, a space and place is critically different?

Gary Schiff: Because we're talking about a definition of the phrase that was invented at the time the code was revised in 2001, I think they had a choice. They could have said the space used for religion. They could have said a space where people worship.

Chair member Thompson: So if it said "space of assembly" you'd say yes that it applied to the use, but because this says "place of assembly" this means it applies to a building?

Gary Schiff: That's the term. Now you look to the definition of the term to find out what it means. When you look at the definition of the term, place of assembly refers to types of buildings.

Chair member Thompson: Ok, I follow your argument.

Nancy Aleksuk: My husband and I are the co-pastors of 3 Degrees. We are a 501(c)(3), we are recognized by the state of Minnesota as well as a religious institution so we do have a tax exempt status and the federal government recognized us as well. We are a church. We hold church services. We have our own facility. Yes, we have neighbors and we share a building, but we do have our own specific church facility within the building. We don't go borrow rooms, for instance, and turn it into a church. We actually have a church and our website is 3degreeschurch.com. If you look at the church website, it has our history. We started out as

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an outreach and our primary focus was to hold Christian concerts in a nightclub setting just to basically reach people with the gospel in a different way. In the process of that time, we started a church in the background. My personal opinion is that the city made a mistake when they first granted that situation back in 2006 because we were holding church services. I understand at the time that it was a secondary use. Our only use now is as a church and the city did recognize us as a religious institution place of assembly when we incorporated ourselves as a ministry in 2008. They've continued to recognize us since that time. I take issue with them saying we're not.

Board member Cahill: In terms of the services you provide, what are they?

Nancy Aleksuk: We have church services on Sunday morning at 10:30. We have a Wednesday night service at 7pm. We have a monthly men's meeting, a monthly women's meeting, a couple of bible studies, and three prayer groups that meet weekly.

Board member Cahill: Is that throughout times of the day?

Nancy Aleksuk: The prayer groups are usually after hours.

Board member Cahill: Does anyone else use that space that you're in?

Nancy Aleksuk: No.

Board member Cahill: Approximately how big is the space you have within the building?

Nancy Aleksuk: It's probably around 6000 square feet.

Board member Cahill: And what kind of facilities are you using there? Is it a couple offices, prayer space?

Nancy Aleksuk: No, we actually have a space that is built out. We have a sanctuary, a couple kid's ministry rooms that also serve as prayer rooms, and we have an area that we use as our fellowship area. It's set up permanently with our tables and chairs and that's where we serve coffee and rolls in the morning.

Board member Cahill: When you're conducting regular services, do you have any presence on the street?

Nancy Aleksuk: We have a sign that we put out every Sunday morning that says "3 Degrees Church. Welcome" and directs people.

Board member Cahill: Do you have any other activities within the building?

Nancy Aleksuk: Not other than church functions.

Board member Drescher: According to your website, you moved quite a few times since 1992 and this your current space.

Nancy Aleksuk: We started in 1989 in northeast Minneapolis. We outgrew that facility and bought another facility and outgrew that one and moved downtown in 2003. When the recession hit, the church that we were an outreach of was not able to continue to fund that part what we were doing. We wound down the concert part of what we do and incorporated ourselves after we split ways with the parent church. We didn't

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want to walk away from the people we serve every week. Many of our people take public transit so this proposed site really is in a direct path of travel for our congregation. We've been in our current location since 2011.

Board member Drescher: You think this will be your final place? You do rent, correct?

Nancy Aleksuk: Right now this is our home, it's what we can afford to do. We would like a larger facility. There's a space on the corner of the building that we're interested in pursuing so we can expand our congregation.

Board member Drescher: What was your original intent when moving to the downtown warehouse district? It is an entertainment district.

Nancy Aleksuk: At the time our primary focus as to do concerts so we wanted to be in a more central location. We were also very purposeful. We understand that there are a variety of uses in the vicinity. Even in our first location, we were very purposeful to not be directly in the path of a strip club. It was a little bit of a shock in 2006 when that whole situation happened, which is why we've been pretty diligent since that time in making sure that people understood what our function was and what we're doing.

Board member Ogiba: You do rent in this building, correct?

Nancy Aleksuk: Correct.

Board member Ogiba: Within this building there are multiple points of entry that I can see. Are any of the entries into this particular building exclusive use of 3 Degrees church or are they all multi-tenant accessible entries?

Nancy Aleksuk: Right now it's all multi-tenant.

Board member Thompson: It seems like what this is coming down to is an argument over definition of the place of assembly and religious institution. You said you came here to testify that you think you meet that definition. You've heard their argument so far that the wordings of church, synagogue, mosque, temple, or other facility that is used for prayer refers to a freestanding building. Do you have any information or thoughts about that or a response to that?

Nancy Aleksuk: I feel like we have church home and we do have a facility. I've never heard that argument that was presented today and I'm not an attorney so I wouldn't necessarily know how to come at that other than we do have our own facility. It's dedicated specifically for 3 Degrees church and we use it multiple times a week and we function as a church and have a congregation. I think it'd be a surprise to the folks in zoning since they did agree with our initial letter to the city in 2008 that we met that definition and they would recognize us as a religious institution/place of assembly.

Board member Thompson: Can you speak to how your organization has maybe grown or changed or shifted in the present since Elizabeth Glidden's quote? It's from a 2006 transcript from a City Council meeting. There's a paragraph beforehand where she's talking specifically about 3 Degrees and it says "there are many institutions that in our society that have just those things" she's talking about churches being inside of hospitals and similar things, but yet we don't call them churches. She says "for example, hospitals have chaplains and chapels, times and places to worship, but they're still considered hospitals. Colloquial schools

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and colleges have chapels. I attended a college that had a chapel that had set a time when classes stopped and you had the opportunity to go to chapel if you so desired. It didn't change the fact that it's primary purpose was a college and it held itself out as a college." This in context to what your organization was in 2006. I'm wondering if you can tell me if your organization is different today and that for some reason this argument may not match what you are today.

Nancy Aleksuk: We operated very much like a nightclub, minus the alcohol. We had bands that came in every weekend and we had a cover charge. We sold tickets online. If you walked in you would think you were walking into a nightclub. If you walk in to 3 Degrees now, you know you're walking into a church.

Board member Thompson: You are here to testify that you are a place of assembly, correct? I get the sense that you don't have any objection to being near other buildings that contain sexually oriented uses since you moved into that area of downtown so your motivation to be here is to contest that you are a place of religious assembly.

Nancy Aleksuk: Correct. We were very purposeful in where we located ourselves the first time around as well as when we moved out of the club facility. We were well aware of the 500 foot buffer. That's been very important to us because we do have a lot of congregation members that have been sexually abused in their past or have different types of addictions. So to have a clear path of travel is very important. We also have people with special needs and it'd be hard for them to get to a church if we weren't centrally located.

Board member Ogiba: In looking at your website, I see you do an archive of sermons that are podcastable. Do you any other live broadcasting or is it just recorded and archived?

Nancy Aleksuk: We don't have that kind of technology. We just record our services and then upload them.

Board member Saufley: Are you opposed to sexually oriented businesses near your location?

Nancy Aleksuk: Yes.

Chair Perry closed the public hearing.

Board member Finlayson: This is the decision of the zoning administrator. If the zoning administrator says it's a cat and it barks, then he's wrong. If it meows, it's a cat and he's right. We have an adult oriented proposed business going in and the city code says place of assembly/religious institution and lists several types and then it says "or other facility". To me, this is clear cut. I support the opinion of the zoning administrator.

Board member Cahill: I have a question for staff. Just by way of comparison, I think I proposed the question to Mr Schiff in the way that I see this as a conflict between the use of tenant defining the use of an overall building or is it possible we can look at this as many multiple tenants within their own facilities within one larger building, all exercising their own primary use. How does the city ordinance draw distinction between the two? Should we look at this as the building as a whole or should we use see this as an independent facility within a larger building?

Staff Ellis: The city would indicate the latter. We have a use table. Religious institution/place of assembly is an institutional public use. It's in table 549-1. It's a use. So then you refer to the definition of the use. Most uses can be part of a mixed use building. You have a series of different principal uses in this building. There

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are offices and restaurants. Any time any tenant goes into a multi-tenant building, zoning staff reviews that building permit to make sure and determines the use. Downtown it's less of an issue for the most part because more uses are allowed, there's no parking requirement, etc. Zoning looks at this as a mixed use building with a series of principal uses. Each of those principal uses could have some form of accessory use to them. In this case, we did determine that 3 Degrees church is a religious institution/place of assembly.

Board member Ogiba: I disagree with my fellow board member Finlayson. I found the appellant's case to be quite accurate. In looking at some of their breaking apart of the definition of a place of assembly and religious institution, specially, the city goes out of its way to name buildings that specifically identify with certain religions. It would be of my belief in reading this that you can create an endless list to every possible building of every possible religion if you didn't give at some point and some sort of context and capture of that. I think for them it was very much intended to talk about the physical building. Maybe "other facility" is the catch all. That moves on to where it's talking about primary use. Mr Ellis used the term principal use. Looking at a tenant that's leasing 6000 square feet in a 100,000 square foot building doesn't qualify as the primary use of that building, it's still a multi-tenant. We're talking specific to the building, specific to the property, we're looking at all these things carrying through. I simply don't believe that this particular use leasing within the space was the intent of what the city had in describing the place of assembly or religious institution. I side with the appellant here in believing... and disagreeing with the decision of the zoning administrator.

Board member Drescher: We're talking about a distance of 480 feet. If you moved that institution 20 feet over, the people still have to pass it. It's a short distance. It's behind the block and it's not in a straight line. I support the appellant.

Board member Sandberg: I disagree with the appellant's argument that it's all structure based on whether an adult oriented use can be close to a religious institution. I think it's both the use and structure applied to religious institution. Structure is applicable mostly in cases where a church may exist in a residential block and it needs a different size and height distance from other structures. This part of the zoning ordinance is principal use oriented and I think the use portion of the concept of a church is much more important than the structure or building. Many of the downtown buildings have multiple uses and churches are one of those reasonable uses. I think agree with the zoning administrator. However, I do disagree with the ordinance the way it's written. I think the fact that the city has identified a certain area of the city for adult oriented uses, it was mapped out at one point in time to put those in there where they could be controlled. I think it's unfair to have a charter school or a religious institution or anything else come in and preclude those uses and make that designated area smaller and smaller every time one comes in. I would send this on to the city council to make a decision as to what should be the intent of this ordinance and make it clear.

Board member Cahill: I don't think anything prior to the relocation is a relevant discussion. The old activities that were occurring at the prior location at 113 5th St N I don't find to be particularly relevant so I'm not considering that in any of my decisions. I don't find tax status to be relevant either. The question is on the primary use and scope of the use within this larger building. Looking at the definition under 520.160, I do agree with the appellant in some ways that there are two clauses. A church, synagogue, temple, mosque, or other facility that is used for prayer is one definition. Also joined by a second clause of a special purpose building that is architecturally designed or particularly adapted for the primary use. I do think in both circumstances we are looking at a use. We're looking to the activities provided. I think 3 Degrees church has met that. The entity and its activities within the space to meet the definitions for a primary use. I don't think this is a special purpose building that is architecturally designed or particular adapted for the primary use, but I do believe that the term "other facility" is broad enough to capture the nature of this. I think that the

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zoning administrator did make the correct determination that “other facility” is large enough to encompass a smaller tenant in a larger multi use building.

Board member Perry: The standard of our decision today is to decide whether the property located at 415 1st Ave N does not meet spacing requirements to allow a sexually oriented use. The appellant has made the case that they are meeting the spacing requirements because the distance between them and 3 Degrees is not the issue, it’s whether 3 Degrees is a church or not. If it’s not, then they’re meeting the spacing requirements.

Board member Saufley: Are we deciding whether or not the zoning administrator made a correct decision or whether or not the zoning administrator was reasonably correct in making his decision?

Board member Perry: It’s whether they have interpreted the code properly and made the correct call.

Board member Ogiba: A point of clarification. I don’t think the question is whether or not 3 Degrees is a church itself, I think the question is whether the facility in which 3 Degrees operates qualifies as a church.

Board member Thompson: The appellant makes a logical case. At the moment I’m agreeing with the zoning administrator because what Mr Schiff said at the beginning of his testimony I agree with. The zoning code is a living, breathing document and need the Zoning Board of Adjustment to interpret it and the laws don’t clearly meet a unique situation. It’s logical, but what we need here is a little bit of an interpretation about the building and use. The crux of the matter is the use.

Board member Saufley: I move to vote to grant the appeal (Ogiba seconded).

Board member Perry: I get to vote since there’s a tie. The intent of the ordinance is so that people going to church don’t have to go by or closely go by a sexually oriented use. I understand that. The city’s intent is that. However, the code is poorly written. Our intent is not to rewrite the code here. Our intent is to make sure the interpretation of the code by the zoning administrator was done correctly. In this case, I think not. I think the code is fairly specific. I think the appellant’s position is that we’re talking about a building is very clear in the definition. I can see all sorts of weird situations coming up if you didn’t have it be the way it was. I would expect that the city council needs to review how this code is written and review how they go about meeting the intent that all of us would like to see, including 3 Degrees. I am going to vote yes for the motion. I’m not particularly happy that I’m voting yes for that, but based upon the arguments before us and the code we have to work with, my only conclusion is to do so.

Aye: Drescher, Johannessen, Ogiba, Saufley, and Perry

Nay: Cahill, Finlayson, Sandberg, and Thompson