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APPLICATION FOR APPEAL

Office of License, Inspections and Environmental Protection
Commerce Building
8 Fourth St E, Suite 200
Saint Paul, MN 55101
651-266-9008

RECEIVED

OCT 22 2015

By: City of St Paul DSI

Zoning office use only

File no. 15-172899

Fee 440.00

Tentative hearing date:
11/18/15

APPLICANT

Name Summit Hill Association
Address 860 St. Clair Avenue
City St. Paul St. mn Zip 55105 Daytime phone (651)222-1222
Name of owner (if different)

PROPERTY LOCATION

Address 1174 Grand Avenue
Legal description: Rm2 multiple family zoning district
(attach additional sheet if necessary)

TYPE OF APPEAL: Application is hereby made for an appeal to the:

Board of Zoning Appeals City Council

under the provisions of Chapter 61, Section _____, Paragraph _____ of the Zoning Code, to appeal a decision made by the Board of Zoning Appeals (BZA) on October, 12th, 2015. File number: #15-163947
(date of decision)

GROUND FORS APPEAL: Explain why you feel there has been an error in any requirement, permit, decision or refusal made by an administrative official, or an error in fact, procedure or finding made by the Board of Zc Appeals or the Planning Commission.

Please see enclosed attachments.

(attach additional sheet if necessary)

Applicant's signature

[Signature]

Date 10/22/15 City agent

1

Summit Hill Association

District 16 Planning Council
860 Saint Clair Avenue
Saint Paul, Minnesota 55105
Telephone 651-222-1222
www.summithillassociation.org
info@summithillassociation.org

October 22, 2015

City of St. Paul
Department of Safety and Inspections
Board of Zoning Appeals
375 Jackson Street
St. Paul, MN 55101-1806

Attn: Yaya Diatta

Re: 1174 Grand Avenue Development Proposal – File #15-163947

On October 12, 2015 The Board of Zoning Appeals approved a Major Variance application for the property located at 1174 Grand Avenue brought forward by Ryan Burke of BleuAnt Design, LLC. The proposal for the project is for multi-family housing, and the developer is requesting a number of variances, including a front yard setback of 22 feet (25 feet required), a side yard setback of 7.5 feet on each side (9 feet required), a rear yard setback of 19 feet (25 feet required), and a coverage variance for 51.4% allowable coverage (35% required).

We would like to appeal the decision based on the findings of the BZA and City Staff as follows.

1. *The variance is in harmony with the general purposes and intent of the zoning code.*

The city found this finding to be met based on the argument that the proposed structure is generally consistent with the size, the form and the setbacks of the immediate multi-family buildings to the East and to the West. The building in fact is not in harmony with the general purposes and intent of the zoning code. To request the extent of the variances in the proposal clearly shows that it is not an appropriate sized building for the lot size. Beyond that the argument that the building is consistent in size is faulty based on the applicants own plans. The proposed height of the building is to be **22.5% taller** than the two existing 30'-6" tall building to West, and **31.5% taller** than the two existing buildings to the East. The existing adjacent buildings are 2.5 stories above grade and the proposed is 3.5 stories above grade. A full additional story on a structure does not meet the cities argument of being consistent with the size and form of the adjacent buildings. The building is also proposed to be 4,905 square feet with the required coverage variance. The adjacent building East has an overall coverage of only 4,160 square feet according to the applicants information. This makes the proposed building **17% larger** in overall building footprint size. **This finding is not met.**

2. *The variance is consistent with the comprehensive plan.*

The city found that this finding is met based on the proposed development "would fit into the neighborhood character." Based on Policy 1.2 of the Housing Chapter of the Comprehensive Plan, 2

Strategy 3.4, which states : [Infill housing should meet] “...design standards so that infill housing fits within the context of the existing neighborhoods and is compatible with the prevailing pattern of development.” As stated above, the existing adjacent buildings are 2.5 stories above grade and the proposed is 3.5 stories above grade. A full additional story on a structure does not meet the cities argument of compatible with the prevailing pattern of development. **This finding is not met.**

3. *The applicant has established that there are practical difficulties in complying with the provision that the property owner proposes to use the property in a reasonable manner not permitted by the provision. Economic considerations alone do not constitute practical difficulties.*

The city found that the size of the parcel makes it challenging to construct a multiple-family building comparable in scale, spacing and bulk to the existing adjacent apartment buildings to the East and to the West of the site that are also zoned RM2, and that the requested variances are needed to permit a reasonable use of this property to allow a development consistent the form of the existing buildings in the immediate area. What the city fails to recognize, is the fact of Economic considerations alone do not constitute practical difficulties. Again, the size and scale of this property could be reduced and be more consistent with the adjacent properties, which are 2.5 stories above grade. A multi-family building of less than 3.5 stories above grade, or smaller in overall footprint could be proposed for this size and have fewer, or reduced variance requests. This is not the only option for a multi-family building on this site, it is the option that maximizes the allowable density, and therefore its profitability, creating the need for the variances due to economic concerns. **This finding is not met.**

4. *The plight of the landowner is due to circumstances unique to the property not created by the landowner.*

The existing landowner applied for the rezoning of this property to an RM-2 zoning classification. And as stated above this is not the only option for a multi-family building on this site. The owner purchased the property while it was a BC zoning classification, and has created the circumstances of the desired variances by requesting to build a multi-family building that is pushing the boundaries of the requested zoning classification on all sides, and overall coverage. **This finding is not met.**

5. *The variance will not permit any use that is not allowed in the zoning district where the affected land is located.*

A multiple-family dwelling is a use allowed in the RM2 zoning district, and 8 units is allowed based on the density and lot area requirements. This finding is met.

6. *The variance will not alter the essential character of the surrounding area.*

Again, the cities argument would have you believe that the proposed building is similar in scale and massing to the existing buildings immediately adjacent to this property and will not change the character of the existing area. This building **is not comparable in scale and massing** to the adjacent properties. By mass, or volume (length x width x height), the proposed building is **20% larger** than the adjacent building to the West, and **42.7% larger** than the adjacent building to the East. This is not comparable, it is a physically larger proposed building than the existing properties in the immediate area. **This finding is not met.**

We have had a number of meetings on this in the past, both formally to act on previously requested variances that were denied by the Planning Commission and informally to bring the neighbors and the developer together to discuss concerns of the neighborhood as well as plans for adjustments and mitigation by the developer. There were a number of neighbors at the most recent meeting speaking against the project. The key issues that they spoke about were.

- The overall scale of the building in comparison to the existing apartment buildings, and how this would be the largest of the group. There was a feeling that there has been little change from the previously submitted, unsuccessful proposal.
- The additional traffic in the dead end alley that the proposed underground parking would present.
- The height of the building in comparison to the adjacent buildings, and how this height has gotten higher than previously proposed. There is also concern that there are elements of the building that are undefined, and are extending beyond the stated building height, and possibly beyond the allowable height per code.
- The overall request for variances from the previously denied planning commission submittal has changed very little from what was proposed to the BZA on October 12, 2015.
- There has been additional information brought forward to our zoning and land use committee from a number of residents that is provided in a separate attachment.

We have had a number of meetings regarding this matter with several ZLU Committee Meetings as well as Full District Council Boards Meeting to try and flush out some of the main concerns of the neighborhood. Our recommendations are as follows.

The overall feeling of our ZLU committee was that, though the use of the lot as multi-family may be the most appropriate use for the site, the number and size of the variance requests were too great for the development as proposed. The applicant is not requesting a variance on just one side or even two, but the request is to push the property beyond the limits on all four sides, as well as the overall allowable coverage requirements for the zoning districts.

The Summit Hill Association/District 16 Council does not feel that the required conditions have been sufficiently met in order to allow for the numerous requested variances for this proposal, other than the front yard variance, and we would ask that the City Council deny those requests for this development.

Sincerely,

Philip Wahlberg
SHA Vice President
ZLU Committee Chair

cc: Ward 2 council member, Dave Thune

ATTN: Summit Hill Zoning and Land Use Committee

CC: Tom Beach, Jamie Radel and Yaya Diatta (City of St. Paul)

RE: OPPOSITION TO SCALE OF DEVELOPMENT AT 1174 GRAND AVENUE

FROM: Below-signed residents

DATE: October 6, 2015

In the words of the late great Yogi Berra – “it’s déjà vu all again.”

This most recent proposal is almost exactly the same size as the previous submission that was made this summer. That proposal was denied by this committee, the SHA board, the City Zoning Committee, and eventually the City Planning Commission. In fact, the only real difference is that developers now seek to take advantage of some changes to city ordinances and are now proposing an even taller building.

However, as set forth below, the developers ignore separate standards for the East Grand Avenue Overlay District which provides a clear basis upon which to vote against height and other dimensions when they negatively impact neighborhood density and solar exposure.

The developers also ignore that, even setting aside height and side setbacks (for which they still need a variance), the building they propose grossly exceeds the permitted 35% lot coverage standard. The proposed building would in fact take up approximately 52.4% of the lot. City staff cites this as a 17.4% variance. However, this is a basic math error that even the Saint Paul Zoning Committee has noted. To determine the increase of one percentage over another, one does not simply subtract. In fact 52.4% ((4,995 sq feet) coverage is almost 50% more coverage than 35% (3, 330 sq feet).¹

To add insult to injury, the developers’ most recent submission comes even after you and the committee invited yet another public comment (the third total) to try and reach common ground on this proposal. Not surprisingly, the concerns of the neighborhood are the same as when we met with these developers in February.

Side-by-Side Comparison

| First Submission – July 2015 | Second Submission – October 2015 | Difference |
|---------------------------------|----------------------------------|--|
| Footprint: 52.4% or 4995 | SAME | NO CHANGE. Still requesting a 50% variance increase in the existing footprint requirement. |
| West Setback – 7.5 (17.5 total) | SAME | NO CHANGE. Only difference is |

¹ 52.4/35=1.497, therefore 52.4% is 49.7% more lot coverage than 35%

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| | | |
|--|--------------------------|--|
| between buildings) | | that now, the general ordinance no longer requires ½ the height of the building. In comparison to the other four adjacent buildings, this will be the widest with a width of 45 feet as opposed to 40 and 42 feet. |
| East setback –7.5 (16.5 total between buildings) | SAME | |
| Height: roof line of 36 feet plus structure above it | 37.4 feet plus structure | TALLER STRUCTURE being requested. There is now no variance needed from the general ordinance for the initial roof line, but as you can see from the scale drawing (street scape #1) this will be a full story taller than the other adjacent buildings. Additionally, there are elements of the building that extend beyond the initial roof line, and above the limit permitted by the general ordinance. Moreover, because the building is in the East Grand Ave Overlay District, there is grounds to refuse the scale of the project based on height because it adversely effects density. |
| Alley setback – 19 feet | SAME | Only change appears to be that the units contained in the building will be 25 feet back. Nevertheless, it still will be closer to homes on Lincoln than the other buildings and will further narrow a challenging 1-way alley. |
| Front setback – 20 feet | SAME | |
| | | |

THE DEVELOPERS' REQUESTS FOR SIDE SETBACK VARIANCES, A REAR SETBACK VARIANCE AND AN EXTREME LOT COVERAGE VARIANCE SHOULD BE DENIED.

The variances the developers are seeking are as follows:

- 1) A Front yard setback variance of 3.4 feet
- 2) A rear yard setback variance of 6 feet

6

- 3) A side yard set back variance of 1.5 feet
- 4) A lot coverage variance of nearly 50%

Minnesota Statute Sec. 462.357, subd. 6 establishes the legal standard for when variances to local zoning ordinances may be granted:

Variances may be granted when the applicant for the variance establishes that there are ***practical difficulties in complying with the zoning ordinance***. "Practical difficulties," as used in connection with the granting of a variance, means that the property owner proposes to use the property in a reasonable manner not permitted by the zoning ordinance; the plight of the landowner is ***due to circumstances unique to the property not created by the landowner***; and the variance, if granted, ***will not alter the essential character of the locality. Economic considerations alone do not constitute practical difficulties***. (emphasis supplied).

As was mentioned both in this committee's past vote and that of the City Zoning Committee, these developers have failed to demonstrate why a smaller sized buildings with fewer units is not practical (they are currently proposing eight). Of course, it would be feasible to build a four or six unit building that has the same dimensions as the other four adjacent apartment buildings. However the developers are driven by profit and that in and of itself is not enough to satisfy this element. Do not be misled by their argument that the size of the building is being driven by the number of necessary parking spaces. In fact, assuming the requested variances are granted, the number of parking spaces increases the number of units they can build under the code.²

The inappropriateness of their request is underscored by the fact that the setbacks and coverage variances the applicants are seeking will result in a footprint that is almost a 50% increase over what is allowed by ordinance for this size lot. To say the scale of this building won't change the essential characteristics of the block is a fraud. With the exception of the front set-back variance, which is in keeping with the façade line of adjacent buildings, there is no legal basis to grant any of the variances the developers are seeking. Thus, all of the variances requested by the developers should be denied.

THE DEVELOPERS MUST PROVIDE THIS BODY AND THE CITY WITH A CLEAR CALCULATION OF THE SQUARE FOOTAGE.

Moreover, Note (c) to Sec. 66.231 of the City Code indicates clearly that "[n]o multiple-family dwelling shall be built, nor shall additional dwelling units be added to an existing building to create three (3) or more dwelling units, on a lot that is less than nine thousand (9,000) square feet in area." According to a May 27, 2015 Neighborhood Planning Committee report, this sentence was recently moved to the beginning of that note in a separate first paragraph "so it doesn't get missed." It is suspect whether the

² See Sec. 66.231 of City Code requiring 1500 square feet per unit, but allowing the square footage to be increased by 300 feet for underground and certain other parking spaces. So on an approximately 9000 square foot lot, to build 8 units, the developer needs 10 qualifying parking spaces.

lot actually meets the minimum requirement of 9,000 sq feet required for any multi-family building with more than three dwelling units.³ Here, the developers' own survey indicates the lot dimensions are 149.88 ft x 60.08 ft x 150.01 ft x 59.95. Depending on the angles of the slightly irregular quadrilateral lot, the lot is probably around 8,998 square feet. Of course this is close to 9,000 square feet, but considering the developers want to build eight units where not even three may be allowed, this point should not be overlooked. In fact, you should insist that the developers provide this body with a clear calculation of the square footage.

THE DEVELOPERS' HEIGHT PROPOSAL MUST BE REJECTED

With respect to height, at first blush it may appear that the developers no longer need a variance. The new ordinance generally allows RM2 buildings to be built as tall as 40 feet, and the developers are proposing an initial roof line that is just under 40 feet. (See City Code Sec. 67.602(3).) However, there are extending portions of the building that are well above this height. For purposes of review, the roof line must be considered to be the highest roof line on the building—which here appears to be the roof of the stairwell.⁴ To the extent the building actually exceeds 40 feet, as set forth above, you should consider that the developers actually need a variance for height, which should in turn be denied.

THE STANDARDS OF THE EAST GRAND AVENUE DISTRICT OVERLAY SHOULD BE ENFORCED

In addition, because 1174 Grand Avenue is located within the East Grand Avenue Overlay District, the TN2 design standards in section 66.343 of the City Code apply. (See City Code Sec. 67.602.) Those standards clearly establish a basis to limit building scale to manage over-sized development:

Transitions in density or intensity shall be managed through careful attention to building height, scale, massing and solar exposure. City Code Sec. 66.343 (b)(2)

Because the proposed building is on a dead-end alley, the increased density and intensity that would be created by an eight unit condo building where a small house now exists must be curbed. To do so, we urge that you seek to enforce the standards of the East Grand Avenue District Overlay and recommend the City's Board of Zoning Appeals deny any project that is larger in scale than the adjacent properties next to it. This would also help to ensure that solar exposure is not negatively impacted.

³ This provision is in addition to the minimum lot ratio of 1500 square feet per unit required for RM2 buildings. A careful reading of Sec. 66.231 indicates that the only "minimum lot area per unit" calculation is increased by underground parking spaces and that the threshold minimum of 9,000 square feet for any building with three or more dwelling units is not adjusted for parking spaces..

⁴ For purposes of determining height limits, Sec. 63.102 of the City Code provides that "[t]he height limitations of this code shall not apply to mechanical service stacks, tanks, ventilation equipment, chimneys, church spires, flag poles, public monuments, and similar equipment; provided..." The proposed large obtrusive stairwell and other elements that jut above the initial roof line are not within the spirit of the exceptions allowed. Moreover, to the extent those elements exceed 50 feet, an additional setback variance of half of the height exceeding 50 feet, plus the initially required nine feet, is required by ordinance.



Summary: The developers continue to want to build a building that is wider, longer, taller, and denser than any of the four adjacent buildings that they continue to claim they are try to match. For all of the reasons you indicated in your submission to the City Planning Commission and more, this committee should continue to reject the developers' proposal. It is, as best—as indicated by the developers on a number of occasions—simply an attempt to test the boundaries to see how much they can get in terms of a variance before finalizing the project. That type of behavior simply is not in harmony with the needs and demands of our community at large.

In the end, nothing has changed. These developers indicated they may consult with a new architect; would consider a different design; would look at options for fewer units. Yet, here we again and nothing is actually different. If the previous denial was appropriate – surely another denial too is necessary for the sake of consistency and preserving our neighborhood. Please vote to deny approval of this project.

Proposed resolutions:

1) Recommend that the Board of Zoning Appeals deny all of the developers' requested variances, with the exception of the front setback variance.

2) Recommend that Board of Zoning Appeal require the developers to demonstrate that the lot meets the minimum standard of 9,000 square feet for multi-family dwellings with three or more units.

3) Recommend that the Board of Zoning Appeals require the developers to indicate the actual height of all elements of the structure and urge that they require a variance for any element over 40 feet that does not meet the exceptions set forth in City Code Section 63.102

4) Recommend that Board of Zoning Appeals deny the project on the basis that the project is in the East Grand Avenue Overlay District and that the scale of the proposed project will adversely increase density and intensity on the dead-end alley and will negatively impact solar exposure.

Sincerely:

- Amanda Karls & Andrew Rorvig (1171 Lincoln Avenue)
- Lyndon & Christy Shirley (1187 Lincoln Avenue)
- Winnie Moy (1185 Lincoln Avenue)
- Margaret Keefe (1195 Lincoln Avenue)
- Josh Peltier (1167 Lincoln Avenue)
- Steve Hancock & Jill Stedman (1200 Lincoln Avenue)
- Mark King & Jonathan Lubin (1177 Lincoln Avenue)
- Mark & Bonnie Genereux (1165 Lincoln Avenue)

- Andy & Gina McCabe (1186 Lincoln Avenue)
- Karyn Wrenshall (1201 Lincoln Avenue)
- Carol & Joe Bell (1196 Lincoln Avenue)
- Tom & Kristi Kuder (1176 Lincoln Avenue)
- Laura & Ryan Willemsen (1180 Lincoln Avenue)