



RE: BZA File 20-069819 Sullivan Property Investment LLC

Position Statement of SARPA in support of the William Garman Hargens and Mary Staples Thompson Appeal of Variances granted by the Board of Zoning Appeals regarding 542 Portland Ave.

The Summit Avenue Residential Preservation Association (SARPA) is dedicated to the preservation of the historic, residential, and urban park character of Saint Paul's historic Summit Avenue. The SARPA board of directors approved the support of the above appeal at its November 2, 2020 meeting:

SARPA supports the above referenced appeal and requests that the City Council reverse the BZA approval of the variances.

As noted in the Hargens/Thompson Statement of Grounds for Appeal the above referenced appeal is concurrent with an appeal of the HPC decision for the same property. SARPA has filed a Position Statement in support of the HPC appeal. The relevant portions thereof are not fully restated here but are incorporated herein by this reference.

The State of Minnesota through the Open Meeting and other statutes mandates meaningful public access to meetings of public bodies. The City of Saint Paul through its ordinances mandates that its citizens must be given meaningful opportunity to provide their input to those same public bodies. In addition to mandating transparency and public input our statutes ordinances and rules and regulations mandate that the substantive law expressed in them must be followed by public bodies. The reasons underlying these basic principles are so powerful as to be self-evident. The actions of our public bodies such as the Board of Zoning Appeals, the Heritage Preservation Commission and this City

Council have profound impact on the residents of Saint Paul and if those residents are shut out of the decision-making process without a meaningful chance to be heard or if the governing statutes and ordinances are not adhered to we have a government of fiat and exclusion not a government of laws and inclusion.

Open Meeting and Public Input Issues:

SARPA's Open Meeting and Public Input concerns are substantive: the BZA violated the Open Meeting law. They are also precedential: if the decisions made in violation of the law are allowed to stand it is an invitation to future violations on other matters equally important to SARPA's mission.

As SARPA observed in connection with the HPC appeal, the Hargens/Thompson BZA appeal demonstrates that the methods utilized by the BZA and staff in this case effectively thwarted the ability of the appellants and other concerned citizens to meaningfully present their positions, facts and analyses for consideration by the BZA and staff. Because the BZA hearing and the HPC hearing were scheduled to overlap concerned citizens could not make their positions known effectively in either hearing. Because the technology was insufficient to allow all participants to present public comments or to even hear and understand what was being said, not only did the City violate the Open Meeting Law but concerned citizens were effectively shut out of a process they were legally entitled to participate in. In addition, it is simply unjust to have city staff working actively with a developer on such a complex project which will affect many Portland Avenue neighbors and Summit Avenue itself for many months as set out in the appeal and then give the public only very short notice and insufficient opportunity to be heard.

Substantive Law Issues:

The BZA decision is not supported by applicable law and should be reversed. The Hargens/Thompson appeal demonstrates that the City

staff and then the BZA granted variances that are not permitted under applicable law. The legal analysis supporting this is set forth in Statement of Grounds for Appeal and speaks for itself. SARPA will not repeat it.

In summary SARPA is particularly concerned that it appears as if, although the City staff and the BZA purported to make findings that the requested variances satisfied the zoning code requirements for such variances, those findings were essentially pretextual. The concern is that they appear to reflect a predetermination that this project would be allowed to go forward notwithstanding the requirements of the zoning code. As just some examples:

- This proposed project is obviously extremely oversized for the lot. This fact was not really considered in granting the variances.
- The sole access to the new triplex is limited to a very narrow driveway with only an easement over half of it and the developer does not have authorization from the owner of that half. Beyond the legal issues this raises what is the likelihood that the tenants of the proposed triplex will actually navigate that disputed driveway to park? Street parking which even now is extremely limited will become even tighter. How will snow be removed?
- The variances conflate the concept of additional housing with the concept of additional affordable housing. This effectively reads the zoning code requirement relating to “housing affordability” out of the law.
- There is nothing about the property itself that creates the need for all of these variances. The developer has manufactured the claimed need for them by its own desire to maximize the economic return it can realize on this property. This is not a legal basis for granting variances.

For these reasons SARPA supports the above referenced appeal and requests that the City Council reverse the BZA approval of the variances.

Summit Avenue Residential Preservation Association

By its Interim President /s/ Wendy Caucutt

and its Board Members /ss/ Katherine Cairns; Thomas Darling; Francis Luikart; J. Gray Quale; Harry Walsh; and Carolyn Will