

MINUTES
BOARD OF ZONING APPEALS
15 W KELLOGG BLVD, ROOM 330
ST PAUL, MINNESOTA, JULY 16, 2018

RECONSIDERATION: from 7-2-18

PRESENT: Mmes. Bogen, Maddox and Trout-Oertel; Messrs. Rangel Morales, Miller and Saylor of the Board of Zoning Appeals; Mr. Warner, City Attorney; Mr. Benner II and Ms. Crippen of the Department of Safety and Inspections.

ABSENT: None

The meeting was chaired by Gloria Bogen, Chair.

Jean E Schroepfer (#18-073086) 1185 Dayton Avenue: The applicant is proposing to convert an existing single family dwelling into a duplex. The following variances are being requested: 1) A minimum lot width of 50' is required for a duplex; the existing lot width is 39.6' for a variance request of 10.4' and 2) A side yard setback of 9' is required; the existing side setback is 3.8' on the west side for a variance request of 5.2'.

Mr. Benner explained that the Board heard this case at the previous hearing, there was some miscommunication about when the applicant would like to have the hearing scheduled on staff's end. The applicant had told one of our other staff members to schedule the hearing for July 16, 2018, it was written down on a post-it note and was lost in paperwork on his desk and he did not get the message until after the last hearing on July 2, 2018. The applicant was out of town at the time of the previous hearing. To give the applicant an opportunity to have the Board hear her side, he scheduled the hearing for today. He was advised by Mr. Warner that the Board could make a motion to reconsider the matter. Mr. Rangel Morales asked which application was it? Mr. Benner stated 1185 Dayton Avenue where staff recommended denial on findings 3, 4 and 6, of the conversion of the single-family home into a duplex. Ms. Bogen stated that the staff report is part of our handouts today. Mr. Benner stated that staff will go through the photos and staff report again and then the applicant will have a chance to speak.

Mr. Rangel Morales moved to reconsider this case. Ms. Maddox seconded the motion which passed on a voice vote of 6-0.

Ms. Bogen reopened the public portion of the hearing.

Mr. Benner showed slides of the site and reviewed the staff report with a recommendation for denial based on findings 3, 4 and 6.

The applicant **Jean E Schroepfer**, 271 Summit Ave Unit 1, was present. Ms. Schroepfer read the handout she provided into the record:

(The ***bold italics*** are from Ms. Schroepfer's handout. Regular typeface in within the document below are her comments that were summarized from the document by her.)

We agree on core issues about using 1185 Dayton as a duplex. A. My side lot and lot width variances are in harmony with the general purposes and intent of the zoning code. (Finding #1)

1.1185 Dayton exceeds off-street parking requirements with six spaces.

2. With 1200 square feet for one apartment and 2200 square feet for the other, 1185 Dayton exceeds space requirements to be used as a duplex.

3. Allowing 1185 Dayton to be used as a duplex will conserve its value, justify expenditures for its maintenance and modernization and extend its economic life.

B. My variances are consistent with the comprehensive plan. (Finding #2)

C. Using 1185 Dayton as a duplex will not affect anyone's greenspace or light and air access (Finding #3). Please refer to the enclosed photo that demonstrates that my west-side neighbor has complete use of his setback and benefits from mine. And his hedge spills over into her lot. She contended that this neighbor has full use of his setback area as well as hers if he wants because that is not the activity side of her building. She has enough space with the 4-foot setback to maintain her property.

D. My variances will not permit any use that is not allowed in my zoning district. (Finding #5)

ERRORS

I. Staff ignored statutory policy to make housing available to persons with disabilities.

Subd. 6A requires persons with disabilities not be excluded by municipal zoning ordinances or other land use regulations from the benefits of normal residential surroundings. She contended that 1185 Dayton does not need to be licensed facility in order to be used by persons with disabilities, it only has to be a duplex. The bedrooms and bathrooms on the first floor are accessible to wheelchair, available to persons with disabilities, but only if the first floor can be used as an apartment separate from the upper floors. She argued to fully include that 1185 Dayton must be permitted to be used as a duplex.

II. Staff erred in finding that 1185 Dayton was operated successfully as a single-family dwelling, that the character of its locality is single-family, and that its use as a duplex would have any negative effect on its locality. She contended that staff acknowledged dominance of multi-family dwellings and yet incongruously concludes that allowing 1185 Dayton to be used the same way would alter the essential character of the area. The character of the area surrounding 1185 Dayton is residential mixed 1- to 6-unit buildings. Its immediate locality is indisputably multi-family. She asked the Board to refer to the next page in her handout. The zoom of the area land use map, she has colored in the multi-family properties on the map. She explained that the next two pages show that she has a duplex on one side of her property and a tri-plex on the other side. The character of the area is mixed multi-family and single-family homes. North of her property one out of three properties are multi-family. To the south two out of three are multi-family buildings. More than half of the properties on the same side of the block with the same size of lots as her property are multi-family buildings. They agree that the character of the neighborhood is mixed 1-6-unit buildings. She contends that 1185 Dayton fits in perfectly it copies the existing uses of its closest neighbors. Ms. Schroepfer stated that the status of rental versus owner occupied is not an element of essential character. The status is fluid whether a person rents or owns changes over most people's lifetimes. It is irrelevant. Staff exasperated her neighbors' prejudices about renters against renters with his inflammatory statements in finding 6. She read finding 6 from the staff report, with emphasis. "Allowing too many rental properties in an area could deter homeownership and *negatively* impact the existing properties that are *owner occupied*. These variance requests could further *exacerbate* the influx of rental properties and alter the essential character of the neighborhood." These statements are not only false but insulting to the huge percentage of our community who rent their homes and to

the entirely too small percentage of people who, like her, provide these home rental opportunities. Ms. Schroepfer stated that she is a small building landlord providing safe, attractive affordable stable housing for 47 years. Ms. Schroepfer discussed her years of being a landlord in St. Paul, noting that she has purchased and rehabilitated seven homes in her 47 years. She contended that renters choose to use their surplus resources on something other than the building that they live in. People have many different reasons for not purchasing and maintaining a property. The decision to rent has no effect on the value of the homes that they live in or their neighbors. She stated to support her claim that rental properties do not devalue a neighborhood she presented her property tax evaluation statement for 1185 Dayton which has been a rental property for the entire nine years of ownership. When she purchased it Ramsey County Assessor reduced the value to \$90,000 which was a little more than she paid for it. She then invested another \$160,000 repairing and improving it. Nine years later Ramsey County values it at \$430,000. This is a rental property that has gone from \$90,000 to \$430,000. Staff gives no reasons to support its implications that owner occupancy should be preferred. No ideal percentage of rental property versus owner occupied property, no reasons why that percentage might be ideal. No reasons how the opportunity to rent a home might deter someone from owning it. No specification of any negative impact.

III. Staff misinterpreted statutory guidelines regarding the nature of an owner's "practical difficulties" in complying with an ordinance. Ms. Schroepfer contended that practical difficulties do interfere with 1185 Dayton's use as a single-family dwelling. The historic use of 1185 Dayton does not support its use as a duplex. Whatever use it had, which she does not know, utterly failed by 2008. She contended without her intervention the City would have demolished it. St. Paul then had a crisis of abandoned housing, no funds were available to pay contractors with the necessary skills to make the necessary repairs. This was the third level 2 vacant building that she rescued. It had set vacant for a year with no other offers. She contended that there are practical difficulties to use 1185 Dayton as a single-family dwelling. Ms. Schroepfer stated the practical difficulties: 1. The first floor is handicapped accessible; the second floor is not. People who want to rent 1185 Dayton cannot unless they team up with relatives to pay the rent on the rest of the house. It has 6 large bedrooms and occupants want to use them. She contended that this is a problem when she rents to unrelated adults. She contended economic concerns are a difficulty, the ability to rent the entire building is essential to justify the \$430,000 of value. 2. Lenders now include a percentage of rental income in qualifying a purchaser. Its use as a duplex would increase financing opportunities for a new owner.

IV, Staff misinterpreted statutory guidelines regarding an owner's plight and self-inducement of that plight. Ms. Schroepfer stated that the historic use of the building has substantially been expanded that created safety and structural issues. Although this house was originally built as a single-family home, more bedrooms must have been needed, because the structure had been expanded the attic had been expanded with two additional bedrooms and a bathroom. However, the roof structure was too low for these uses. Only children could stand up in these rooms and there was no window on the second level to escape from fire. The floor joists were not strong enough to support the weight of the structure, people and furniture to allow anyone to live up there. Its historic use had been terminated, its rehabilitation required substantial expenditures to justify her \$160,000 expenditure in correcting the deficiencies listed by the City of St. Paul, and required that the second floor be made habitable rather than removed. She contended that

correcting the deficiencies resulted in mansion like space 34,000 square feet due to its 1,205-square foot foundation. Raising the second floor to habitable height and pitching the roof over it to fit in with its Victorian neighbors, even without dormers. The character of the neighborhood is not mansions but multi-family, mostly subdivided dwellings. It is surrounded by multi-family homes to the extent that multi-family properties change the character of single-family neighborhood. She stated that she argued against this but to any extent that it might be true 1185 Dayton could not be more dramatically affected by its surroundings. The original platted lot is very deep and narrow. She contended that none of these plights are self-inflicted. She did not create the state of disrepair. The previous attempts to add more space, the large foundation, the width of the foundation, the shape of the lot or the multi-family character of the neighborhood. She did create a wheelchair accessible space on the first floor, and contended that they should not be a basis for denial. The disparate treatments requiring 50-foot-wide lots and 9-foot setbacks create unreasonable restrictions on the use of 1185 Dayton as a duplex. It is a neighborhood that is zoned for small and multi-family buildings and is characterized by them. It was platted just like its neighbors with a deep narrow lot. It has enough square footage to support a duplex. Its original foundation was located less than four feet from its west lot line consistent with the same westward shift as its western neighbor. The condition that is unique to 1185 Dayton compared to its neighbors is its disparate treatment under the zoning ordinance neither a greater lot width nor a greater west side setback would make 1185 Dayton's use as a duplex any more reasonable than it already is. It would be unreasonable to prevent it from being used the same way as its neighbors, with the same sized lots and setback issues. The lot width at its narrowest point at the front sidewalk is 39.68 feet, staff used a rounding error, at the back the lot is about 40 feet. She needs a variance somewhere between 10-feet and 10.32 feet not 10.4 feet. She contended that it exaggerates prejudicially the scope of her request. Ms. Schroepfer contended that duplexes are the perfect residential structure it allows occupants connection to the earth, flexibility in use, additional income for the owner when needed and additional affordable housing opportunities for renters when offered. They promote community stability support and preserve the tax base. 1185 Dayton in particular because it meets all the criteria for allowing variances to allow it to be a duplex. She asked that the Board support her variance request to allow her to use 1185 Dayton as a duplex.

Mr. Rangel Morales asked if Ms. Schroepfer if she had a chance to review the minutes from the previous hearing, a lot of the questions he had at the previous meeting were concerning how the unit was being used over the course of the last 9 years, since 2009. Ms. Schroepfer stated all nine years a single-family home. Mr. Rangel Morales stated that what was concerning was that people that came to testify against the petition had indicated that the building was already currently being used as a duplex. Ms. Schroepfer replied that is incorrect. One of the letters that was printed out showed the sign in the window with a sign with her phone number on it to have people call her if they have questions about what is going on. Mr. Rangel Morales continued that the other part was that the unit was already being used was advertised for sale as a duplex. Ms. Schroepfer stated that after she applied for the variance she posted an add on craigslist coming soon, this is what it would be like to try and attract anybody in the market who might be interested in it as a duplex, because she had applied for it. To see who is out there and whether or not she is on the right path. She stated that she did not have any response to that and has restored the ad to duplex like privacy is how it is posted now.

Mr. Rangel Morales stated that some of the testimony, some of the information that the Board received from the neighbors was that the unit was being used probably by college students. Ms. Schroepfer stated that she has had young people and that has been the market. She had somebody in a wheelchair for four years, she had a multi-generation family with older people that could not handle stairs, they only lasted a year. The last four years has been young adults. She has kind of avoided college students because she makes her tenants show income, that they have jobs that is what she is looking at. Whether or not they are taking classes is something else. But they have to have enough income. That has been a lot of the market and they are ready to move right in with their money. Mr. Rangel Morales asked if there is a way that Ms. Schroepfer assures that there are no more than four people. Ms. Schroepfer stated that there is one lease and their names are on there. This last group there was a name on the mail box that she happened to notice. She asked them who is this. They told her that person lives with his girlfriend and only gets his mail here. She told them they needed to remove his name off the mailbox. There are six bedrooms and they want to use them. She stated that she used to be a social worker and they used to go in and look in peoples' closets, she does not do that. Mr. Rangel Morales stated that his question at the previous hearing was directed at that, he was on the fence about whether or not this met the findings. He had wanted to ask Ms. Schroepfer those questions to allow her to provide her explanations. The other portion that he heard from Ms. Schroepfer what seems concerning was that in 2009 the variance was denied and the house was still built to function as a duplex. One portion of Ms. Schroepfer's testimony here today was that the plight was not self-inflicted, her argument is that this house is now a house for people with disabilities and she built the house to be that way without it being approved by the City. How is that not self-created? Ms. Schroepfer stated that she built with building permits. Mr. Rangel Morales stated that he understands that. A good portion of the testimony was that the building was built up to code it just could not be used as a duplex. But based on the photos that the Board saw of the unit being on craigslist for sale or for rent as a duplex, it looked like the building was built like a duplex. Whether or not it was being used as a duplex over the course of the last 9 years, he thinks that there is some discrepancy about that, but aside from that. When Ms. Schroepfer says it was not caused by her, the plight is not self-inflicted and she is using this disability ramp, if the variance was not approved why not just build it as a single-family home that did not have the extra addition back in 2009. Ms. Schroepfer replied that she went into a lot of detail, the second floor had already been finished when she purchased the house, with two bedrooms and a bath. But they did not meet the code because the roof was too low, an adult could not stand up in it and the code likes firefighters to be able to stand up in it. Ms. Schroepfer contended that when doing a vacant building the City generates a work list she had to show that she not only had enough money to purchase it but to also complete all the repairs. The City dictated the repairs that were needed. She had to choose whether to close off the second floor but she still had to do plumbing and wiring to bring it up to code. Mr. Rangel Morales stated that the Board got a lot of that information before and we know that she met with the neighbors and discussed with them her plans of what she wanted to do with the house when she purchased it in 2009. He continued that Ms. Schroepfer had provided the neighbors with two options. Option A and option B is that fair? Did that occur? Ms. Schroepfer replied no. Mr. Rangel Morales asked that did not occur? Ms. Schroepfer replied no, she does not remember. Mr. Rangel Morales replied that was some of the testimony from some of the neighbors in the area at the time. That Ms. Schroepfer tried meeting with them and provided them with two options. One option was to just develop the property that was called option A. The other option was to develop it as a duplex and that was option B. The neighbors had proposed option A and that is what they suggested and at that point Ms. Schroepfer applied for a variance which was denied, and immediately after the variance was denied she still went ahead with option B. Which was to build it as a duplex. From his perspective this is what he is hearing we have neighbor saying that it is currently being used as a duplex, we had a craigslist posting that showed that it was listed as a duplex. (Staff provided a copy of the letter showing options A & B, that had been placed in neighboring mailboxes.) Ms. Schroepfer stated has not been used as a duplex while she has owned it. She does not know what use it

had before it became a vacant building, she did find mail that said apartment 2 but she had no idea what that meant. What it was used during her ownership, she did not get the variance, she did not appeal the decision but went ahead with construction. She did scale back her plans, simplified them, no dormers on the third floor. Ms. Schroepfer stated as far as "duplex like privacy" the second floor is on trusses which helps with the sound. The entrance is from the garage so that people on the first floor do not hear kids running through all the time, she imagined the people on the lower floor to be older. It is consistent with a house but does not preclude development as a duplex. The ad in the title said coming soon. Ms. Schroepfer contended that this was imaginary it hasn't happened yet to draw attention from people that might be interested in its use as a duplex. That it would help her neighbors if they knew who was going to be there. Ms. Schroepfer stated that it bothered her neighbors that she never lived in the house, she lives in a four-plex that she owns. It bothered the neighbors from the beginning that she was not going to live there. She stated that she intends to sell the house. Stating that she is 73 years old and has sold the other two vacant building level 2s that she renovated. She sold them both to owner occupants. Mr. Rangel Morales stated that he thinks his question got lost. Having seen the document where there is option A and option B why didn't Ms. Schroepfer just build option A with the ramp as opposed to option B back then? Ms. Schroepfer stated that there was no way that she could continue to use that second-floor bathroom and bedrooms the way they were configured because the roof was not high enough meet the list. At the highest point the ceiling was about 7 feet.

Mr. Miller asked Ms. Schroepfer how many kitchens were in the house when purchased? Ms. Schroepfer replied it has just one kitchen. Mr. Miller asked if it now has 2. Ms. Schroepfer replied no it has one. Mr. Miller asked if what is shown on the site plan is proposed? Ms. Schroepfer replied yes, the floor plan is proposed. Mr. Miller asked what is that space now? Ms. Schroepfer replied that the second-floor has plumbing and wiring for a washer and dryer.

Mr. Benner stated that he did receive an e-mail from Ms. Schroepfer on Thursday trying to figure out the whole scheduling process, he wanted her to be aware of the comments that we received from the neighbors of it possibly being a duplex. "Ms. Schroepfer replied regarding the comment. Although she designed it easy to convert she did not complete many of the features that would be necessary for it to be a duplex. I have never used it as a duplex. She has had one lease for each occupying group signed by all the adults. She has a C of O (Certificate of Occupancy) for one unit covering the whole property and she realizes that she would need a different C of O to use the building as a duplex." He thinks that it is clear that she made it as an easy convert into a duplex.

Rick Cardenas, 66 E. 9th Street, stated that the housing shortage is strong and is being exacerbated by a number of Section 8s that are being closed out all through downtown St. Paul. There are 50 at Mears Park Apartments that are no longer there. They will be vanishing as people move out. Galtier Plaza closed theirs down a couple of years ago and Kellogg closed theirs, the demand for accessible affordable housing has increased to his knowledge. He stated that he went in and reviewed the building today and it does need some additional things on the first floor. He would speak in favor if the first floor could be made an accessible unit. It is convenient to transportation with the Selby bus near and it is close to Dayton and Lexington so it is close to the light rail transit. He stated it is an ideal location for someone to live in the center of where the traffic is and if it were made accessible through some changes, the ramp needs some adjustment for ADA (Americans with Disabilities Act) requirements, and an addition to the sidewalk there. Mr. Cardenas stated that his statement is in support of more accessible housing.

There was no opposition present at the hearing.

Ms. Bogen stated that she does not think that the applicant has explained findings 3 and 4 to her

satisfaction. The circumstances that are unique to the property were unique to the property when it was a two-bedroom, one and a half story bungalow. It seems to her that the property owner created the circumstances by building out and building up to potentially have a building that would make sense to transpose into a duplex, but she created that circumstance. She does not see where finding 3 or 4 are met or even 6. Mr. Rangel Morales stated that he struggled with this at the previous hearing. He could see himself coming up with a way of articulating finding 3, he does not think that this is impractical or unreasonable given where it is in the neighborhood. To use this property this way would be reasonable and he does not think it is going to change the essential character of that neighborhood. He certainly understands staff's comment that eventually that whole neighborhood will just be all rental property. His question was trying to get an explanation as to how this was not created by the land owner. That is where he is stuck, he asked if any other Boardmember has a thought on that.

Ms. Trout-Oertel stated that she agrees that the practical difficulties cited by the applicant were caused because the building was enlarged. It was a house that could have been rented reasonably, the reasonable use of the property would have been renting it as a single-family house. It was a beautiful bungalow and those are in demand. Now it is a huge house and it is hard to maximize its use as a single-family. But that circumstance was created by the applicant.

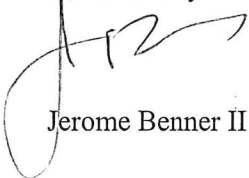
Hearing no further testimony, Ms. Bogen closed the public portion of the meeting.

Ms. Maddox moved to deny the variance and resolution based on findings 3 and 4.

Ms. Bogen asked about finding 6? Mr. Warner stated that he would just point out that his recommendation for staffs' analysis of finding 6 in terms of exasperating the mix of home owners versus non-home owners is not a valid basis that would normally be used and he would recommend it would be simple enough to say based on the testimony two weeks ago, there is a fair amount of rental property, having one more is not likely to necessarily alter the essential character of the neighborhood. He thinks it would be a little safer to say that this finding is met.


Ms. Trout-Oertel seconded the motion, stating that she agrees with finding 6 being met, the motion passed on a roll call vote of 6-0, denying the variance request, based on findings 3 and 4.

Submitted by:



Jerome Benner II

Approved by:



Diane Trout-Oertel, Secretary