

MINUTES
BOARD OF ZONING APPEALS
15 W KELLOGG BLVD, ROOM 330
ST PAUL, MINNESOTA, APRIL 23, 2018

Continued from March 26, 2018

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

ABSENT: Luis Rangel Morales*
*Excused

The meeting was chaired by Gloria Bogen, Chair.

Hupp Holdings III LLC (#18-035099) 617 Laurel Avenue: The applicant is proposing to construct a 6-unit row house development on a vacant lot in the RM2, multi-family residential zoning district and is requesting four variances: 1) This zoning district requires 1,500 square feet of lot area per unit. Based on the number of proposed units, a minimum lot area of 9,000 square feet is required; a lot area of 7,180 square feet is available, resulting in a variance request of 1,820 square feet. 2) The zoning code states that no multi-family dwellings can be built to create three or more dwelling units on a lot that is less than 9,000 square feet in area; the applicant is requesting a variance from this requirement. 3) A side yard setback of 9' is required; a setback of 3' is proposed for a variance request of 6'. 4) A setback of 9' is required for the off-street parking area; the applicant is proposing a setback of 1' on both the east and west sides of the parking lot for a variance request of 8'.

Mr. Benner showed slides of the site and reviewed the staff report with a recommendation for approval.

Eleven letters were received opposing the variance request and one in support.

One letter was received from District 8 supporting the variance request.

Ms. Trout-Oertel asked where the garage is located? Mr. Benner stated that there is no garage on the site, this will be surface parking. Ms. Trout-Oertel stated that this garage is no longer part of the project. Mr. Benner instructed the Board to turn to page 27 of the packet. Ms. Trout-Oertel stated that there is a garage on page 29 of the packet. Mr. Benner stated that page 27 of the packet is the updated site plan, page 29 was part of the old site plans.

The applicant **ALAN HUPP - HUPP HOLDINGS III LLC**, 10431 Homeward Hills Road, was present. Mr. Hupp stated that they got approval to build a three-unit building about one year ago. They presented that to the District Council and they did not approve, they thought it was too big and too expensive. Mr. Hupp stated that they had redesigned the project over the last year, the rowhouses, are smaller and they added three one-bedrooms priced at an affordable rate of 60% of AMI (average median income). They represented the modified project to the District Council and it was approved unanimously. He stated that since the last hearing they reengineered the parking to provide 100% of the required parking for the project. This lot has been vacant for over 60 years. It actually had six dwelling units on this corner lot 60 years ago. They are proposing to put six dwelling units back on the lot. He thinks it is the highest and best use of the property.

There was opposition present at the hearing.

Joe Rittmann, 599 Laurel Avenue, stated that he completely opposes the variances for this project. He stated that the staff report has some misrepresentations of the realities. It does not bring up things that he believes that the Board should be thinking about. He asked how such large variances can be approved. He contended that usually from what he has seen of the Board, during the last two hearings, the variances are 10% or less. The smallest of the variances for this project is 20%, the next one is 100%, which means that they tossed out the zoning code.

The next one is 67% and the last one is 88%. Mr. Rittmann stated that it is not a variance any more, it is rewriting the zoning code. He cannot figure out why this has gone forward to the point of being objected to, why is it even being considered, when these are such big variances. The discussion on parking is interesting, but it does not take into account the dynamic aspects of entering and accessing a property. He stated that he has a garage on the alley, and one of the most obvious difficulties is from people going south on Dale Street trying to get into the alley. Now there are 2-3 cars going east on the alley regularly, when someone tries to do that cars are stopped going both directions on Dale Street. The increase of that will be six additional cars going every day, all hours of the day which will create a higher degree of congestion at that corner. What is happening with the approval of the variances is all the car shifting is being pushed from what would be the parking lot onto the alley. That particular intersection is extremely narrow because of the former garage that is still there. Mr. Rittmann argued that the community did not want anything built on that property as it has been vacant for 60 years. This plan for the rowhouses is more congested and is less friendly to the community. Although the setbacks requested for this project is less than those on the Marshall Avenue rowhouses were permitted. The basic tendency for the plan is over exploitation. He is trying to understand why the City of St. Paul and the District Council would want this to be over exploited. Mr. Rittmann stated that if this were for affordable low-income housing he could see that as being a reason for exploit. In this case just having six apartments that can be rented because they are more affordable, only means that there will be more gain and more profit. He asked why the Board and the Council are allowing this to be over exploited? Ms. Bogen stated that they have not voted yet. Mr. Rittmann replied he knows, but it is a question. When it was a three-apartment project it was not over exploited.

Richard Pierce, 616 Laurel Avenue, stated that he lives across the street from this property. That intersection is so busy right now, with the bar on the corner. When his wife comes home from work she has to park half-way down the block to find parking. His understanding was that there would be six-two-bedroom units and that is potentially twelve cars added to the block. Even with six off-street parking spaces there will still be six cars that need to find parking. He stated that his wife is a nurse and she had to be a first responder to four accidents last year on that corner. There are twice as many intersections along Dale Street there because the streets are staggered, adding all these additional cars to that alley, especially without any setback or cars parked right there, if someone is walking there they cannot be seen by someone pulling out of the alley. Why is there a zoning code if it is thrown out to line somebody's pockets. He wants to put six-units on that property to line his pockets, not to help the livability of the neighborhood. Mr. Pierce stated that Laurel is all houses, he owns a house across the street, it's a four-plex on a lot twice the size of this lot.

Claudia Brewington, 593 Laurel Avenue Unit 3E, stated that she lives four doors down from this property and is concerned about this proposal. Looking at the properties on Google Maps, she does not see how Mr. Hupp will manage to get six cars in the proposed lot and still have maneuvering room. She stated that it is very difficult getting into the alley to plow it now. The ramp coming from the alley to the street is very steep and she bottoms out and has to slow down get in the alley. The site lines are limited because of the cars parked along the street there. The only way out of the Mississippi Market is on Hague. There are 45-50 parking spaces in the Market parking lot, there are cars in and out of the lot at all hours of the day and Selby and Dale is half a block away. It is extremely busy and even without something else in that location blocking the site lines it is very difficult to get in and out. That is her biggest concern, she does not know where they will put the snow or how they are going to plow. Safety is the biggest issue. She contended that she does not know how they will get six units in that space. There are two lots next to her that are about the same width as this lot that have single-family home on them with no yard and with sidewalks between them. This developer is asking for variances all the way around the property and she does not know why the City is allowing it. She understands that the City is desperate for additional housing in the City but there surly are other lots in the City that have adequate space to not pose additional hazards to getting in and out of the alley.

Peter Carlson, 482 Dayton Avenue, stated he is representing the Ramsey Hill Association, he is their Planning Director. He stated that their Board looked at this and felt it was too great a breach of the zoning ordinance. He stated that the Board has to come up with findings that are very difficult to reach. First the variance has to be in harmony with the general purpose and intent of the zoning code. Density is one of the things that the zoning

code controls. This lot is platted and zoned to have at most two units, until a property has more than 9,000 square feet there can only be two units on the property. Tripling the density on this site seems to be stretching the limits of what a variance can be granted for by too much. A lot of the that the neighborhood has comes from the fact that developers are trying to put too much on a small parcel of land. The applicant has to say that there are practical difficulties with this site to be allowed to do what he wants to do, other than for economic gain. The Board has to find that is true, that there is some reason other than more units gives more money to him and more money to the City. Neither one of those is a reason for granting a variance. The final thing his has a problem with it finding four that the plight of the land owner is due to circumstances unique to the property, not created by the land owner. Mr. Carlson asked what is unique about this property that is 40 feet wide and 170 feet deep. It is larger than his lot, and bigger than the lots he works with in the neighborhood. It does not have a particularly steep grade, it does not have ponding problems, it does not have trees on it, what is unique to this parcel of land that would make the Board say that six units should be put here that triples the density on this parcel of land. Because they feel that this is trying to push too far, if the City wants more, the City Planning Department can change the rules and regulations of the zoning ordinance and they should if they want this. But until they do we should continue to follow the rules that govern living in St. Paul. He urged the Board to deny the variances.

Ms. Bogen asked Mr. Carlson, the Ramsey Hill Association, is that a sub district of the Summit-University Planning Commission? Mr. Carlson stated that the Ramsey Hill Organization is the organization that founded and formed the Heritage Preservation Commission. Ms. Bogen stated that she just wanted to know if they were a district council. Mr. Carlson replied no they are not a district council, they are just a neighborhood organization. Ms. Bogen questioned that they did not advise the Summit-University Planning Council. Mr. Carlson stated that they have a member of their council that sits on the Summit-University Planning Council Board. Where the Summit-University area is split by highway 94, we are located in the southeast quadrant of the SUPC (Summit-University Planning Council).

Caleb Pulver, 613 Laurel Avenue, stated that they moved to the Selby-Dale area, that they could have moved anywhere in the City, specifically because of the neighborhood. The area is growing at a rapid pace. He agrees with the Mayor and thinks that it is important to find additional housing in the City. There are very few opportunities when an area is growing like that, a destination neighborhood, that St. Paul is in need of. To get it right the first time and not become another uptown, or some other area where it has gone wrong. He contended that the Board has to find that the applicants' economic considerations do not constitute a practical difficulty. He does not think that the Board can find that. The number of units is based on the economic reality of using the space. He believes that there are other ways to do that being creative in other ways to find some type of housing use for the property. Mr. Pulver stated that looking at the traffic incidents, this is one of the highest traffic incidents area in the City. Especially in a neighborhood, we live it where we hear accidents routinely. This area is going to get more congested and why would this be allowed if it causes additional traffic issues. Mr. Pulver stated that it is the Board's charge to find a good deal for the City and he thinks that the Board can find a better deal for the City. There are a lot of variances here 25% is a lot compared to what others have been asking for here, where it is a couple of hundred feet. The applicant is asking for 2,000 feet which is almost the size of his lot, and larger than his house. He does not have a problem with additional housing on the lot, he just thinks that the Board has an opportunity to get this right and benefit the City. This is a growing space, the applicant has gotten this in early, he would not like this first opportunity to be the only opportunity. Ms. Bogen stated that the Board's charge is not to find good deals for the City. Mr. Carlson stated that the Board represents the City. Ms. Bogen stated no the Board does not represent the City. They represent the neighborhoods and the citizens.

Mr. Hupp stated that there is a lot of discussion about the parking. The parking meets 100% of the requirements of the project, it has been designed with the Code in mind, all the parking spaces are correctly sized, it has parking for handicapped, it has the right sized turn lanes or the project and it has been reviewed by Public Works. There might be some concerns about the perception of the parking lot, but it has been properly designed. There are three two-bedroom rowhouses facing Dale Street and one one-bedroom unit is located on top of each of the three two-bedroom units for a total of six units. It is exactly the same footprint, the same volume, the same envelope as the project that was approved one year ago by this Board. It is the same number of bedrooms

and occupants as the project one year ago. The only difference is the number of units. He stated that the units were downsized to make them more affordable.

Ms. Maddox asked what the District Council vote was, it did not say how many voted for or against this. Mr. Benner stated that he did not have that information. Mr. Carlson stated that he attended the meeting and they voted unanimously in favor of this project.

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

Ms. Trout-Oertel stated that this is tough, a multi-family housing looks like an appropriate use for this property. But there are a lot of variances here and when they are stacked up she has trouble approving this.

Mr. Saylor stated that the staff findings do recommend approval, he moved to approve the variance and resolution based on findings 1 through 6.

Ms. Bogen stated that the variance from a year ago had a condition that the parking lot approval be subject to the HPS (Heritage Preservation Committee) approval. Mr. Benner stated that is correct, when he first drafted the staff report he was under the impression that it had to say that, but Mr. Diatta explained that Ms. Lane had stated that he did not have to include that since it is already going to have to go through HPC approval, it is implied.

The motion dies as there is no second.

Ms. Maddox moved to deny the variance and resolution based on findings 3 and 4. The variance is too large, there are no practical difficulties and nothing unique about the property.

Mr. Warner reminded the Board that because the staff recommendation is to approve the Board will have to articulate the reason for the denial on the record when voting. Each person who votes in favor of that will also have to articulate their reason. That can be as simple as saying that they join in the reasons made by the maker of the motion or add your own. It would be a good idea to articulate those reasons before voting. Ms. Maddox stated for practical difficulties this is a blank sheet, an open piece of land. She was in favor of the three-units and did not have a problem with the three-units. She does have a problem with six units, it is too large of a variance. For unique circumstances the same thing there she does not think that there are unique circumstances here. Yes, the City needs housing, but trying to put it all in one place, it does not fit the neighborhood.

Mr. Saylor stated that it is the same number of bedrooms and the same footprint. Ms. Bogen stated but it is six units. Mr. Saylor stated it is the same number of bedrooms, that was the rationale, while the number of units has increased the number of bedrooms has remained the same. Ms. Bogen stated that three three-bedroom units would potentially be less adults with cars. Than three two-bedroom and three one-bedroom units there will be double the number of adults potentially. She was thinking of the three-bedroom units potentially being a family with a couple of kids. Just because it is the same number of bedrooms it is still a different conglomeration. Ms. Maddox stated that while a lot more people are riding bikes, what are they going to say to the sixth person who is renting, where is your bike we have five cars here already. She knows it is the law but she does not think that in reality that it always works.

Mr. Saylor stated that if he agreed with Ms. Maddox it would be based on the plan identifying three of the parking spaces as compact cars. He is not sure that can be written into a rental lease agreement, that they have compact cars. He asked Mr. Benner if the parking meets the law? Mr. Benner replied yes that is correct, six spaces are required and the applicant is providing six spaces. The setbacks are not met, hence the need for the variances. Ms. Bogen stated that is 8-foot on each side of the parking lot. Mr. Saylor stated that staff has decided to approve this request. Mr. Benner stated that they went through the site plans extensively with the site plan coordinator, he was also working with the traffic engineer in Public Works. Their concern at first was if they were exiting the parking from the lot onto Dale street those would-be issues, however, they felt that the parking coming off of the alley on the northeast corner would be adequate. Mr. Saylor stated that he frequents

that area a lot particularly the Mississippi Market or Sweeny's, he was a bit surprised that this was recommended for approval, however, it meets the letter of the law.

Ms. Bogen stated that there are no practical difficulties in complying with the provision, if the applicant uses the property to build three three-bedroom units with parking that was originally approved a year ago. There are no circumstances unique to the property that would not allow him to build three three-bedroom units with parking as he has been approved to do. The property does not become unique because he all of a sudden wants to add three more units for rental. It is not a practical difficulty for someone who wants to expand three more units, but now they have to ask for all these variances. The only variances that they asked for is a variance of one parking space, a side yard setback on Dale Street and then the lot size of 7,180 and a lot size of 9,000 square feet required and now they have a secondary lot size of 9,000 square feet because it is larger than three units. Plus, the parking will be one foot away from the property lines instead of 9-feet. Ms. Bogen stated that her reasons are that there is no practical difficulty to build a three-unit townhouse with three-bedrooms each and there are no unique circumstances that do not allow that to happen.

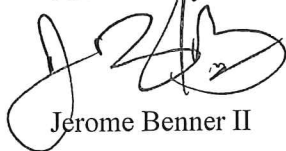
Ms. Trout-Oertel seconded the motion, Maddox – yes findings 3&4, Saylor - no, Trout-Oertel – yes findings 3&4, Miller – no, Bogen – yes 3&4, which failed on a roll call vote of 3-2(Saylor, Miller).

Ms. Bogen asked about the timeline for this case. Mr. Benner stated that staff can extend this case, as he has not done so yet.

Ms. Maddox moved to continue the matter for two weeks when more Boardmembers will be in attendance.


seconded the motion, which passed on a roll call vote of 5-0.

Submitted by:



Jerome Benner II

Approved by:



Diane Trout-Oertel, Secretary