

MINUTES
THE BOARD OF ZONING APPEALS
CITY COUNCIL CHAMBERS, 330 CITY HALL
ST PAUL, MINNESOTA, APRIL 22, 2019

PRESENT: Mmes. Maddox, Swift and Trout-Oertel; Messrs. Rangel Morales, 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: Gloria Bogen*, Robert Clarksen*

*Excused

The meeting was chaired by Thomas Saylor, Chair.

MCR Property Holdings LLC (#19-026900) 2150 Grand Avenue: The applicant is proposing to construct a multi-family development consisting of four, two-bedroom units. The zoning code requires a minimum lot size of 9,000-square feet for developments consisting of three or more dwelling units; the existing lot size is 6,388-square feet for a variance request of 2,612-square feet.

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

Four letters were received opposing the variance request from neighbors at 2122 Lincoln Avenue, 2126 Lincoln Avenue, 2128 Lincoln Avenue, and 2149 Lincoln Avenue. Staff also received one letter in support of the variance request from the neighbor at 2144 Fairmount Avenue.

One letter was received from District 14 supporting the variance request.

Ms. Trout-Oertel questioned staff about the front setback and the need for a front yard setback. Mr. Benner stated that this project as proposed meets the front yard setback requirement.

Ms. Maddox questioned staff about the second sentence of finding 4, that says "It is a unique circumstance to this property that a building cannot be developed that aligns with the nearby residential structures." is that actually in the code, like that? Or is it stated differently? Mr. Benner stated that it is staff's opinion, in this particular case, is unique in that there are two large scale apartment buildings on either side of the property and only a duplex can be built. Staff found it unique that another multi-family structure with more than three units could not be built next to the apartment buildings. It is unique in that there are properties on either side that can be built up but the property in the middle cannot be built up. What is unique is that the same type of structure with the same number of units, cannot be built on the site that it is surrounded by these large multi-family buildings. Ms. Maddox stated that her point is that something could be designed that would fit in and would be as tall. Mr. Benner stated in this case it does but if a duplex were built there it would look much like the other single-family homes left on the block, that would not be a good fit.

Mr. Diatta stated that the other side of finding 3 also talks about what is reasonable. A building at the same height as the surrounding buildings would be more reasonable than a single-family dwelling structure, although it could be built the same height and make it a single-family, but what they are proposing given the surrounding structures is reasonable.

Mr. Benner stated that this project meets all setback and lot coverage requirements. If the applicant had come to the City and said that they want to build this 4-unit apartment building but he needed side yard and rear yard setbacks, that is a different story. They would not be staying proportional to the site and

would be trying to get a little more wiggle room there. The applicant did a good job of designing this structure, they meet the lot area requirements with a building that only takes up 21% of the lot. The single-family house that is there now is only 888-square feet. The building foot-print increases 52%, which is 467-square feet, about the size of a large living room, adding a limited amount of square footage to gain an additional three units is smart.

Mr. Rangel Morales questioned Mr. Benner about whether this property was within a student overlay district and if that applies to this project? Mr. Benner stated that there is an overlay district in this area, however, that overlay district only applies to one- and two-family dwellings. This property right now is a registered student dwelling, but that definition will go away as it is only for single-family and duplexes. As this is proposed it would not require any additional student housing letters of approval or anything else from the city, regarding student housing. Mr. Rangel Morales stated that he does not recognize the title of the company, is this property under a new company, or is this property owned by the same company that owns the other properties that have come before the Board? Mr. Benner stated that the Board has seen this particular company on a variance earlier this year on Marshall Avenue, but there have been others like the one right next to this one, to the east, was done by a company called Graham Merry.

Mr. Diatta stated that this property is currently a registered student dwelling, by tearing it down and building this apartment building the student dwelling registration will go away for this property, but it will allow somebody else to potentially apply for a student dwelling registration, that may not be able to because of the separation requirement. Mr. Benner stated that he received a call this afternoon from a prospective student housing person who is looking to get his property designated, but has not been able to because this one is holding it up.

The applicant **MAX SCHWARTZMAN - MCR Property Holdings LLC**, 2150 Grand Avenue, was present. Mr. Schwartzman stated they believe that they should be granted a lot size variance, first because St. Paul is still extremely undersupplied with new upscale housing. Second within the RM4 zoning district the required feet per unit is 1500-square feet and the lot is nearly 6400-square feet, they should be able to build four units without any variances. Because this is a stacked development, with one unit per story, they can easily meet the setbacks and parking requirements. The 9000-square foot lot size requirement likely exists so that there is enough space to meet required setbacks and parking requirements. Since they are able to do that with the 6400-square foot lot, the minimum is not pertinent in this development. Third this lot is not being optimized to its full potential, its highest and best use is multi-family housing not a single-family home. This stretch of Grand Avenue would be best used as a medium density multi-family, hence the RM2 zoning. Currently it looks very out of place wedged between two apartment buildings. They want to bring this building up to par with the buildings along this stretch of Grand Avenue. Fourth they attended two public meeting with the Macalester-Groveland District 14 Community Council, (MGCC), with their housing and land use committee to discuss the project. They voted in favor of this project and believed it would be a great addition to the neighborhood. Having MGCC support along with City Staff recommendation, they believe that this parcel is a perfect candidate for a lot size variance.

Ms. Swift asked with upscale housing, what makes it upscale? If the concern is for student housing, upscale sounds expensive, and with most students, affordability is a factor, what makes this upscale. Mr. Schwartzman replied that it would depend on the person, but for him it would be granite counter tops, nice vinyl flooring, fresh paint, something like that. These will be, in his opinion affordable. He thinks that the price point will be somewhere around \$850 per person. It is not to HUD (Housing & Urban Development) standards for affordable housing, but in his opinion. For students that he believes will be enquiring about this property, because of its proximity to campus, this is relatively affordable for new

development.

There was opposition present at the hearing.

David Gibson, 2153 Lincoln Avenue, stated he lives right behind this proposed development. He contended that this project is not in harmony with the general intent and purpose of the zoning code. Section 60.103 promotes housing affordability. This project offers more high-priced student housing. He understands that this existing house on the property rents for \$3200 a month for four residents, who are all St. Thomas students. The new structure has four-bedroom units. Contending that it is a little odd that there are two closets one in the setting area and one in the bedroom, both rooms are the same. At a prior meeting the developer stated that they would not be opposed to four people renting each unit, at \$850 per person. That increased the price quite a bit. The buildings next door are four-bedroom units as well and are \$3600 a month, which adds up when multiplying by 4. That is market rate for these upscale student apartments. Why would MCR charge any less, this will increase the cost of rents, it will not solve the City's affordability housing challenges. Mr. Gibson contended that this is contrary to the City's zoning code. The intent of the code is also to relieve congestion on the public streets, sixteen students means sixteen cars. All four of the current residents in the existing house drive a car. He stated that he has lived behind this house for six years and they have almost always had four cars. That is fine, but with sixteen students there will be sixteen cars. There are only six proposed parking spaces meaning that there will be ten additional cars on a very congested side street. This building will increase congestion which is directly contrary to the purpose of the code and Mr. Benner pointed out, in the staff report, that this would alleviate parking congestion, he disagrees with that point. The applicant is requesting a substantial increase in density above code. They could easily build a duplex or continue renting the home. Ultimately MCR wants to make more money which he understands, but this does not meet the requirements, the variance and should be denied.

Alyssa Rebensdorf, 2096 Lincoln Avenue, stated she has lived in her home, which is one block to the southeast of this house since 1999, and behind other homes that have been developed for student housing, she asked that the site plan for the units be brought back to the screen. She opposed this variance for four reasons. First it does not satisfy zoning code requirements for area variances, specifically section 61.601(c) of the City's zoning code because there are unequivocally no practical difficulties to building on the site in compliance with the code. Second, she cited economic considerations alone are contrary to the existing zoning code requirements for a variance. Together with the City's policy preference for density are what underlie this variance application. Third she contended that the project does not meet the parking requirement because of the issue being heard here, is that this is four units with four-bedrooms each and there will be sixteen students living in here. She does not know of any factor that would preclude sixteen students from living here, she wants to draw everyone's attention to that practical reality. She contended that this would set a precedent if this application were to be granted. Fourth this would be a direct contravention of the West Grand Avenue Zoning Code, which was updated just six years ago, to take into consideration this type of development. Ms. Rebensdorf testified going into further detail about the four reasons. She contended that granting this variance here would set a precedent for Grand Avenue houses. Noting that five years ago when the first of the dorms was proposed for construction on Grand Avenue at Grand and Finn many of the neighbors were stunned to learn that the code at that time allowed for a five story twenty unit, 80-bed apartment building, which the neighbors call a private dorm because that is what it is, built on two lots on the corner of Grand and Finn. The zoning code did allow that, at that time. The neighbors felt that this was too much at that corner, she thought some on the City Council were sympathetic but at the end of the day they were told that it was allowed by the zoning code. Ms. Rebensdorf stated that they are now being told that the zoning code does not matter, that is difficult for the neighbors to accept. After the Grand and Finn apartment building went up Councilmember Stark

initiated a process to examine the zoning code all along the stretch of Grand Avenue, from Cretin to Fairview, this was in 2013. A lot of public testimony was taken and a lot of analysis was given to the stretch of Grand Avenue because everybody knew that more proposals like this for student housing were going to come forward. The neighbors all wanted to know what the rules would be for further development. The zoning code was updated to address this stretch of Grand Avenue. What is happening here right now is not compliance with the updated zoning code that was meant to take into account this type of property. The neighbors feel that this is stealth rezoning by variance. That is not appropriate. She contended that this project is setting a dangerous precedent for the 70 plus remaining single-family homes along Grand Avenue all the way to Fairview. What reason would the Board have to deny a similar variance if this developer or any other developers were to purchase any of the remaining single-family homes. She contended that there is no basis for granting the variance under the existing code. She requested that the variance request be denied.

Ms. Maddox asked Mr. Benner about the Fire restrictions on the number of unrelated people allowed to live in a dwelling unit? Mr. Benner replied that Fire is a little different than the zoning code, the zoning code says you can only have 4 unrelated adults living in a dwelling unit. For the Fire code, he stated he is quoting from memory and may be off, you need 100-square feet per bedroom and after that for each additional person in the unit, an additional 50-square feet is required. Mr. Rangel Morales asked if this were used as a four-bedroom would it be code compliant? Mr. Benner asked with Fire? Mr. Rangel Morales questioned with anything? It does not seem that it would meet the parking requirement, would it meet the floor area per person requirement? Mr. Benner replied for zoning purposes yes, for Fire that would be dealt with during the site plan review process. The applicant did say in writing today that there would be two tenants per unit, however, he could always change his mind. He stated that he went with the plan as it was submitted here. He sees two-bedroom units, each with a bedroom and a sitting/study area. It seems to be a matter of interpretation of how the plans are reviewed.

Mr. Benner stated that the parking requirement stated by Ms. Rebensdorf is incorrect and the parking requirement for this project is met, if the applicant were to propose four-bedroom units than the parking requirement would be different. Six spaces are required for the number of bedrooms here. Mr. Rangel Morales asked if the applicant were to use this as four-bedroom units without having the required parking what type of enforcement would the City have. Mr. Benner replied that it would depend on if they meet Fire code requirements. This building will require a Fire C of O (Certificate of Occupancy), the building would have to be sprinklered, meet all the Fire standards and the number of bedrooms would have to comply with the number of residents, that is dealt with by Fire Inspection. Mr. Rangel Morales stated that the applicant is saying that there will be two occupants per unit and based on that no parking variance is needed. Mr. Benner replied correct. Mr. Rangel Morales stated if the applicant were to switch the units to four people per unit, because he wants to, there is the market for it, then at that point he is no longer in compliance. He might be in compliance with Fire code, he might be in compliance with the area/space but in terms of what this Board approved, were two-bedroom units, not four-bedroom units. What would DSI (Department of Safety & Inspections), or the City have to use for compliance? Mr. Saylor questioned that Mr. Rangel Morales means to assure compliance? Mr. Rangel Morales replied correct. Mr. Benner stated that the number of units would be posted on the C of O, and all the bedrooms would have to meet the fire safety code. To answer Mr. Rangel Morales' question the City would have to right to revoke the C of O if it does not meet those requirements.

Mr. Warner stated that the Board would have to impose a condition that limits the occupancy to two people per unit. Mr. Benner commented that would be an appropriate condition that would be fine in this case. Mr. Warner stated not only would it be fine, but it would seem to be in sync with what the applicant has indicated to staff, but as far as the BZA and the City is concerned, in order to meet the parking

requirement there can only be two people per unit. That can be easily enforced, once people are in the building it is pretty difficult for the City to kick them out. It is a real inconvenience on innocent tenants who probably do not know or are not concerned about parking requirements. Clearly the neighborhood is concerned and according to what the applicant says there will only be two people per unit, despite the interesting floor plan.

Mr. Diatta stated he is not quite understanding this. The parking is based on the number of rooms in the unit, now if it is looked at as a two-bedroom unit or a four-bedroom unit that would have an implication on the amount of parking required. Based on understanding of the plans, the code reads 1.5 for 3-4 room units, that times four is six, that is where staff got the six-off-street parking space requirement. If it is looked at differently than the parking could be different. Mr. Rangel Morales stated that is based on there being two-bedrooms per unit not four-bedrooms per unit. Mr. Benner stated if this was being made into four-bedroom units than more parking would be required. Since the applicant has said in writing that there will only be two tenants per unit, he appreciated that Mr. Warner agrees that this could be conditioned, he was not sure if that was possible.

Mr. Miller asked how many rooms are there in each unit here? Mr. Benner stated three, two bedrooms and a living room, the kitchen and bathroom facilities are excluded from that count. Mr. Saylor stated just so he understands Mr. Miller's question, it is the doorway, off the hall, into these bedroom spaces means it is a single room even though the room is subdivided. Mr. Benner replied correct. Looking at the entry the reason he believes this is one room is because there is no door separating the two rooms, the room is open once inside the sliding door. There is no division between what the neighbors are considering two bedrooms, there is no extra door there to separate the two rooms, he would not call the extra room a bedroom. He sees a bedroom with a bed and a night stand and then the seating/study area. Mr. Rangel Morales stated if there was some sort of separation, like a pocket door, it just does not seem that it would be that hard to change it to two bedrooms. Mr. Miller stated especially with the two closets. Mr. Benner stated that he agrees, but that is not what is being proposed to the Board. If the applicant were to change their minds and decide it was a good idea to divide the room into two bedrooms, it would not be permitted because it would not be part of the approved site plan. Mr. Rangel Morales asked if these were four-bedroom units what would be required for off-street parking? Mr. Benner replied that it would require eight off-street parking spaces, they could also apply for reduction of the required parking.

Kirk Wythers, 2096 Lincoln Avenue, submitted a couple of photos to the Board. He stated that the photos show a recent rain event on Cleveland Avenue and Cretin Avenue, he is concerned about the increased pressure that is being put on the infrastructure particularly the storm water sewer system. Even a small decrease in permeable surfaces on all of these lots translates to thousands of gallons of extra run-off for any moderate rain event which we are getting more and more of. One of his primary concerns deals with climate change but from a City livability perspective land use change is just as important a piece of that equation as what may be going on with climate or weather patterns. He requested that the Board take into account as more and more of these developments move up and down Grand Avenue we are drastically increasing the amount of rain water and pressure that we are putting on the storm sewer system. He contended that even building within the box puts extra pressure on the storm sewer system but the variances makes a bad situation even worse. He asked that the Board deny the variance.

Rachel Westmeyer, 1935 Summit Avenue, stated that she is a duplex owner and has been in this neighborhood for a very long time. She requested that the Board deny the variance request for 2150 Grand Avenue for the following reasons. The variance is not in harmony with the general purpose and intent of the zoning code, as it overwhelms the existing homes to the south and the green space. It is not affordable at the current price per bed. It will not decrease street parking. She contended that the parking

on the streets is already maxed out on Grand, Lincoln and Goodrich Avenues, and probably Fairmount Avenue. She contended that there is no practical difficulty, he has owned this house for three years and before he purchased the house he knew what he was getting into. He saw the buildings on either side, the buildings on either side of the block and today he comes and says he needs a bigger foot-print. According to the DSI Staff Report a duplex could be built without a variance. She supports the owner building a duplex on this site. Which is within the allowable foot-print and would be compatible with one other duplex to the east and in-line with two or three buildings to the west. This property owner has no plight as he has successfully owned and managed this building since 2016. He also owned and operated a single-family home a student rental at 2197 Marshall Avenue. He recently applied for and received a variance to remodel that house into a duplex. Interesting to her is that on that property he did not need a variance for a larger unit, on that property as he had 9,000-square feet and parking was available. Now he is coming back saying he needs a variance of the 9,000-square foot lot area requirement. She asked that the Board deny the variance request. But she does support this property owner building a duplex on this property without any variances, parking would be available on site and there would be green space to absorb some of the water run-off. It would be in scale to the other houses, duplexes and apartment buildings in the area.

Mr. Benner stated that it is obvious from the opposition that they would prefer a duplex on this site, however, if the proposed structure was conditioned to only allow two people per unit that would be eight people in a duplex there could be four people in each unit and that would be eight people. The question is does the Board want to cram eight students into a duplex or have two people live comfortably in four two-bedroom units.

Mr. Schwartzman stated that they had a lot of support for this project, a lot of support does not show up. They did receive a letter of support from MGCC the Housing and Land Use committee. He contended that this should not be singled out just because of its proximity to the St. Thomas Campus. There might be interest from students and there might be a group of four that wants to live here, we are not saying it will not happen. Legally four unrelated people are allowed to live in one unit. He claimed that their intent is to allow two students in each to give each student a bedroom and a study space of their own. He contended that what defines a bedroom is one entrance. If the closet is moved to the corner of the room and the divider is removed making it one large bedroom, he does not think that the same argument could be made.

Mr. Miller stated that the applicants and staff keep saying if they are going to have eight people there, why not just make it a duplex, it could be the same size and shape there are no restrictions on height or volume of building there. If they are going to put eight people in there, why not just make it two four-unit duplexes. Mr. Schwartzman explained some of the history of this property. Graham Merry wanted to purchase this property they wanted to build a second building there. The property owner did not sell to Graham Merry because they had plans to build a duplex. He is not sure what happened but their plans fell through, they were not able to achieve a duplex there. It became a mess and they decided to just sell the property. MCR Property Holdings LLC picked up the property as a single-family home. Yes, we knew what we were getting into, they do not need to tear this down and build a four-plex. A lot of the neighborhood is in support of this project. They think that this will match the character of the surrounding neighborhood and would add value to the neighborhood. To tear down a \$400,000 house to just add one more unit is not cost effective. He believes that if they do not get the variance and they decide to sell this property, he believes that nobody will build a duplex here because it is not cost effective. It is not an economic consideration alone, there are a lot of other factors here. To have \$700,000-\$800,000 in a duplex it does not make any sense, nobody will build that. They could build a duplex there without any variance but they could not figure out a way to make it work, nor could the

previous owner.

Mr. Rangel Morales stated it just goes to that point that Mr. Benner was making, it ends up being eight people in there one way or another. Mr. Schwartzman replied correct. Mr. Rangel Morales continued that they could charge whatever the market rate is. Mr. Schwartzman stated just because of its proximity to the campus he does not want everybody to just fill in the blank that they are strictly targeting students, it is not their intent to cram students into this structure like a dorm, that is not the intent of the design. Mr. Rangel Morales stated that does not answer the question. The question is, if they can get eight people in a duplex and they can get eight people in this proposed structure. Mr. Schwartzman stated that he thinks it comes down to a comfortability thing. They could cram eight people into a duplex four on each side or comfortably fit two people per floor in four units. He thinks that the proposed building would look a lot better, building a duplex here would not be the correct aesthetic feel here. A lot of the neighbors agree as well as MGCC.

Ms. Maddox asked Mr. Schwartzman whether he had discussed there being eight people in a unit, during the meeting with the Community Council? Mr. Schwartzman stated that there was no discussion about eight people being in a unit. Ms. Maddox apologized, she meant to say, four people in a unit? Mr. Schwartzman stated yes, there was some discussion about that and he told them the same thing he has said today. That is not the intent of this design, but it was brought up. The intent is to give each of the two tenants in each unit a comfortable living environment and private space.

Ms. Swift questioned Mr. Schwartzman that earlier he was quoting a price of \$850 per person who lives in the house. She asked if he is projecting that rents for the units will be \$1700 a month for a two-bedroom unit? Mr. Schwartzman stated roughly, there is a small increase in cost for them taking on another tenant. If a group of three wanted to rent a two-bedroom unit, it would probably be \$850 for each bedroom and then an additional \$150 for the additional person. It would not be \$850 times 3 or 4, it would be \$850 times 2 plus a small sur charge, but it would not be \$3600 a month as the opposition stated.

Ms. Swift asked Mr. Benner if this were a two-bedroom unit and she were to move into this structure with someone who shares a bedroom, does that change because of square footage? Mr. Benner stated if the Board were to consider the condition of only allowing two tenants per each unit, that proposal as well as the one Mr. Schwartzman referred to of sharing the price point, that would not be allowed. That is something to keep in mind here, if Mr. Schwartzman wants to say that these are two-bedroom units and only one person allowed in each bedroom, then any other scenario of having a tiered pricing approach, and Ms. Swifts suggestion, would not be aligned with the proposed plans here. Mr. Rangel Morales stated that to Ms. Swifts question she could do that, regardless of what Mr. Schwartzman is saying. He continued that Mr. Schwartzman is a business person and his business plan could change tomorrow, or in a month, it can change. If two people moved in with their significant others, these would still be two-bedroom units. Ms. Swift stated then all the conversation the Board is having here about how many people are allowed in the two-bedroom units, it is another way of thinking about it. If this was designed to be two-bedrooms because of the limited space for parking, that would be a way to wiggle around the code, that is the only thing that she sees here, except she also thinks that the water run-off should also be looked at it could be an issue here. She is not sure if they would all have cars if they are students.

Mr. Schwartzman stated that they manage a sixty-one bed exclusively student rental on Marshall, there are thirty underground parking spaces available, all sixty-one beds are rented out and they have sold less than one-third of the parking for that building. They find that a lot of students do not have cars.

Mr. Miller asked Mr. Schwartzman if the Board were to limit this as suggested by Mr. Warner, would you continue with this plan? Mr. Schwartzman replied yes. However, he does not feel that this project should be singled out versus any other project in the area. He suggested rewording the zoning code so that the number of tenants that can be in a unit is directly correlated to the number of bedrooms in the unit and it applies as a blanket to the entire area, he thinks that would be fair. Singling out this one project is unfair. However, he would agree if that is what it takes to get the project approved.

Mr. Rangel Morales stated it is not singling out, what is concerning is the layout leads to more than one interpretation. If the layout of the project were very clear that this was going to be a two-bedroom apartment. It is a beautiful design and he thinks that the project would blend in great in the area. The problem is not so much that it is being singled out, the proposal that has been brought forward gives two interpretations. They need to take into context the specific area that this is being built in. It is not specific to the applicants, that is the way the questions are, what is left for zoning to be able to do, in the event that plans were to change.

Mr. John Schwartzman, 700 Raymond Avenue, stated he is Max's business partner. He thinks that the Board's concerns are very well taken, but he thinks that the big hang-up here is the parking. If they were to put an additional two people in each unit they would have to add an additional two parking spaces. They would agree if they were to decide to move to a larger density per unit they would have to meet the parking requirements for that. He does not know if that could be done on this site or not. They will be restricted either way, either to come up with eight parking spaces or stay with the six that are there then they are limited to what they have proposed. Mr. John Schwartzman stated that there is a long way between this variance hearing and the final process, they still have to go through the planning, designs and everything else, but it cannot go anywhere without a variance. If the variance is approved with six parking spaces, but if through the planning process and the architects work together and can come up with a way to get eight parking spaces on the site, then they are free to put four people in each unit, if they cannot they are limited to what they have presented. They just want to know that they can do the project either way by getting the variance approved. They do not want to get hung up on the parking right now, because they want to do this project either way. But if they can figure out how to get a couple of more parking spaces on the site with the Planning Staff, then it allows them to put more people in.

Mr. Rangel Morales stated that he thinks that not putting parking in encourages people not to drive, that is not his hand-up. He thinks this is a great location with a lot of transit available and the Board wants to encourage that kind of development. His concern is that he does not want neighbors to be proposed something at these meetings, believe that they are getting one thing in their neighborhood and then if flips around and comes back as something else. That is his entire concern. Mr. Rangel Morales stated if the Schwartzman's plan is to put eight people in there, the Board wants to know, it does not make the variance worse or better, it is just more forthcoming about what it is that the neighborhood can expect. Mr. John Schwartzman stated that they went with their architects and DSI staff about what was needed for the parking requirement. He contended that their preference is to leave it as two tenants per unit, give them a lot of space. What they have found in all their projects are that people that move in want a lot of space and they do not want dorms. They can get higher rents if they provide the space and make it nice. He does not think that this building will necessarily be a student building, it could be a market rate building as well. Fifteen hundred square feet is a lot of space for a two-bedroom unit.

Hearing no further testimony, Mr. Saylor closed the public portion of the meeting.

Mr. Warner stated that the Board may want to lay the matter over to allow staff and the applicants to formalize some kind of agreement about what the occupancy of this development will be. They say that

they are willing to limit the occupancy to only two tenants per unit, that is fine, but that is in response to a question from the City. He does not want the City to accidentally be placed in the position of someone coming forward and saying that the City is violating their opportunity to live with somebody, which people have the right to do. He thinks it would be advantageous to have the applicants tell the City what their limits are going to be. If their response is that they can have four people per unit, that is absolutely right, but it changes the equation of the variances that they are asking for and it makes it difficult for the City to enforce these. It is difficult to find out or not if there are more than four unrelated adults living in a unit. It puts the City in a real dilemma of how to deal with it, because there are people living someplace and the City is not in the business of dispossessing people from a place to live. If the applicant can tell the Board in writing, in their application how they intend to manage the building, he thinks that goes a long way in helping the Board as commissioners make a determination of whether the Board wants to allow a four-plex on this property. It is RM2 they can build a single-family home or up to four residential units. A duplex is just as permissible as a tri-plex. It is the occupancy that is problematic because it also impacts the parking. If the applicants were to come back after having a chance to explain to staff exactly what they are going to do, so that staff can make a recommendation with conditions, it makes the Boards job much easier. Mr. Warner stated in doing that then the neighbors also know what is going on. He stated he does not want to put the Board in the position that they were in a few years ago, where the Board approved variances for an apartment building on Grand Avenue that was designed by an architect and it was a good design, however, once they got on the ground and started to work they had to change things. They had to come back to the Board and he thinks it was very difficult for the neighbors to understand what was going on. He thinks that having a final plan with final assurances from the applicant just makes it better for everybody involved. Mr. Warner stated that his advice is as the Board considers this you might also want to consider laying this over for the applicant and staff to discuss exactly what they are going to do on the property.

Ms. Swift stated that she is a single mom and lives with her two kids and if there were a condition that said that only two people could live in the unit, she would be excluded from renting it. She stated she is not a student and does not go to St. Thomas but given the housing market where we are at, accessibility is a real thing and the Board would be excluding a lot of people by putting something like that as a condition. She has never heard that, she lives in a two-bedroom with her two kids and they have made it work, but if that was uniform across the City it would put someone like her, there are a lot of people in that scenario, where they would be denied access to housing. She likes the idea of high density and the ability to split rent in more ways and be comfortable adds to the level of affordability considering how expansive it is. That just comes back down to what would parking do, as much as we are putting into transit and investment in walkability in the City she does not think that is something to push back on.

Ms. Swift moved to approve the variance and resolution, which failed for lack of a second.

Ms. Maddox moved to continue the matter for two weeks to allow staff to meet with the applicant and clarify the site plans and bring back the agreement to the Board. The applicants stated that their intent is to put two people in each unit, then they said but, they could do four. She stated that she is concerned about that statement.

Mr. Benner stated that he wanted to point out on thing, there is already a law in place that there can only be four unrelated adults in a unit. If staff were to go back and work with the applicant to figure something out, it would put the Board in a pretty tight position. The Board would be deliberately going against an overall rule for all dwelling units in the City. Where in this case we are recommending a condition for a very specific site based on a very specific design that has been presented to the Board today. He is not sure how productive a conversation would be with the applicant without considering the specificity of the

design to what the condition says.

Mr. Rangel Morales stated that for him it is not so much about the number of people in each unit, there is a definition for family and there is a definition for how many people can live in one unit or one residence. For him it is more about whether they intend to use those two rooms as separate rooms. It is not unforeseeable to have one bed in one area and another bed in the other area. Even though those people do not share the same bed that could still be considered one bedroom. It is not so much what the number ends up being, it is more about the transparency in the application. What is it exactly that will occur, is it going to be two-bedrooms or is it going to be four-bedrooms? Labeling it as four-bedrooms may add the parking and may complicate it a bit, but it would also give transparency to what is going to occur there. Mr. Rangel Morales stated he does not have a problem with the units being called four-bedroom units, but then call them four-bedroom units.

Mr. Diatta questioned Mr. Warner, if staff were to go back and work with the applicant, what are you looking for a different design for the building or are you looking for labels on the site plan so you know what is what? Mr. Warner stated that he would reiterate what Mr. Rangel Morales has said, it is not transparent right now. He looks at the plan and sees four-bedrooms per unit. There is an entryway into a room that is divided and has two sides. One side has a depiction of a bed, the other has a love seat and a desk, it could just as well be a bed. Pragmatically it looks like there could be four unrelated adults in each unit. That is a lot more people in this particular neighborhood and that has some impact on the neighborhood. The purpose of the zoning code is to be sensitive to the adjacent properties. It is not just the properties next to it but also the properties behind it.

Mr. Benner stated that based on the plans and to a number of people in this room, these units could be four-bedroom units, there are two interpretations here that are happening based on this design. To him that means that there would have to be a revision of the plans to satisfy the Board and everyone else's speculation that these could be used as four-bedroom units. He thinks that is the only way staff can have a productive conversation with the applicant, because if they do not have a revised plan how will the interpretations change. Mr. Rangel Morales stated this plan looks like a dorm layout, in fact it looks like the St. Thomas dorm layout. He went to school at St. Thomas and it looks a lot like his dorm, a different layout but almost the same thing. This is more about, is the applicant going to call this four-bedroom units and if they are not going to call them four-bedroom units, what type of language and or procedures are the applicant's comfortable with to assure that it is only used as two-bedroom units. He asked if the Board could condition that says this is a two-bedroom apartment and not supposed to be used as a four-bedroom unit. Otherwise the City has no way and the parking requirement has no meaning for this type of layout. Mr. Benner stated that there will be a Certificate of Occupancy (C of O), for this property. There are ways to enforce the number of people living in the space. Mr. Rangel Morales stated he is not talking about people living in the space, he is talking about how they live in the space. There can be four people, two couples living in those two areas and still have four people. There can be four students one in each of those spaces. Not that he agrees with the parking requirement, but the parking requirement can be circumvented what is the sense of having the parking requirement.

Ms. Trout-Oertel stated that she agrees, but just clarifying the language will not work. She believes that there will be four people living in each of these units. Sometimes it is not apparent how many students live in a unit. She contends that there are four bedrooms here and there will be four students living in each unit. She agrees with Mr. Rangel Morales and would also like transparency here. She does not think that language will fix this. A plan revision would be necessary.

Mr. Miller stated that he would also prefer to make a decision from that point as well. If the neighbors come in and say there will be sixteen people living in this building, he cannot say that is not true. He would prefer to say yes, there will be sixteen people living in this building and we are making this decision based on information. He believes that the Board has to come at this from an honest starting point.

Mr. Benner stated that he really thinks that based on this location is the reason that these additional conversations are taking place. If this were anywhere else in the City, the north end, or east side he is not sure that these same conversations would be taking place. Ms. Swift stated she agrees with that.

Mr. Rangel Morales seconded the motion, which passed on a voice vote of 5-1(Swift).

Submitted by:

Approved by:

Jerome Benner II

Daniel Miller