

MINUTES  
BOARD OF ZONING APPEALS  
CITY COUNCIL CHAMBERS, 330 CITY HALL  
ST PAUL, MINNESOTA, JUNE 3, 2019

*Continued from April 22, 2019 & May 6*

PRESENT: Mmes. Bogen, Maddox, Swift and Trout-Oertel; Messrs. Clarksen, 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 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, four-bedroom units. The following variances are being requested. 1) 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. 2) Off-street parking must be a minimum of 4' from any lot line. A setback of 0' is proposed in rear yard along the alley and 2' from the west property line for a variance request of 4' and 2' respectively.

Mr. Benner II presented slides of the site and reviewed the case history with a recommendation for approval. He noted that the focus today should be just on the parking. Any other testimony regarding the density or the number of units, or this being student housing is irrelevant to what is before the Board today. Ms. Bogen stated that the lot size was never voted on. Mr. Benner replied that is correct, that part of the public hearing was closed. Ms. Bogen asked if there are minutes from that meeting? Mr. Benner stated that there should be minutes in the packet.

Three letters were received opposing the variance request from neighbors at 2128 Lincoln Avenue two people live at this address and both send in letters, and from the neighbor at 2126 Lincoln Avenue. Mr. Benner stated he also received one more letter prior to leaving for the meeting today. From Flannery Delaney and did not provide the address, the neighbor was in attendance and will speak about the content of the letter.

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

Ms. Bogen asked Mr. Benner if he had the letter from the District Council and whether it was approval prior to the changes or after the changes? Mr. Benner replied it was before the changes. Ms. Bogen asked if staff has a copy of the District Council letter? She is wondering if they approve the new parking with the setbacks. Mr. Benner stated he would search his e-mail for the letter.

Mr. Miller questioned the neighboring garages, it looks like they are at a zero setback, was there a variance for that? Mr. Benner stated he does not think there was a variance for that. It may have been built prior to the 3-foot setback requirement.

Mr. Benner stated to address Ms. Bogen's question, he has a letter from Alexa Golemo, Executive Director of the Macalester-Groveland Community Council. Saying that the Housing and Land Use committee recommends approval of the lot size request for the property at 2150 Grand Avenue, Referenced No. 19-0256900. There is nothing about the parking in this letter, he will continue to look.

The applicant **JOHN SCHWARTZMAN - MCR PROPERTY HOLDINGS LLC**, 700 Raymond Avenue, was present. Mr. Schwartzman stated that this is the third time they have been before the Board on this project. They think this is a very good project and fits within the neighborhood. It is zoned RM4 which is conducive to multi-family development. The discussions during the two-previous meeting this became more of a parking issue and he thinks that has now been addressed. They did not want to get into the political issues of student housing, that was brought up by the speakers at previous hearings. They are not in attendance to discuss that but the variances necessary to build a nice building. He stated he would like the Board to focus on the project and the variance requests, if they want to talk about student housing he would be happy to do that anytime but not today. Mr. Saylor stated that this is not the forum for that, today the Board is here to talk about the parking. Mr. Schwartzman stated that the Mac-Groveland District Council approved this project twice now. They approved the original plan and the lot size variance, then they have approved the variance for the setbacks. He contends that the majority of the neighbors think that this is a good project. There are people that do not think so. City staff has also approved this project three times.

Mr. Schwartzman stated that he is concerned that there is a Boardmember here who he thinks should recuse himself from this discussion as well as voting. Because of a bias from a previous development project of the Schwartzman's. He continued that Robert Clarksen was part of a neighborhood opposition group to try and block their development on Marshall More, he was very vocal and very active and he was part of a law suit brought on by the neighbors against the City not the Schwartzman's, to block their project. He respects his opinion but he thinks that the attorney and himself do not think that Mr. Clarksen should be involved with this particular decision. That is his opinion and he thinks it needs to be considered as well.

Ms. Maddox asked how Mr. Schwartzman would be addressing the snow removal problem. It will be right up to the alley and the garage next door will be really close as well, what happens to all the snow. She asked if Mr. Schwartzman has thought about that. Mr. Schwartzman stated if it needs to be taken away they have a service that they use to address that. They hire outsiders to handle the snow removal.

Mr. Warner stated with respect to the request by the applicant that Commissioner Clarksen recuse himself here, Mr. Clarksen to the best of his knowledge, unless he is going to tell us something different now, does not have any financial interest in this outcome, which is the typical standard the City uses to advise appointed members of the Boards and Committees about potential conflicts of interest. There is another conflict of interest which is the appearance of conflict, Mr. Clarksen might have been involved in another matter that was contrary to the interests of this applicant, but that was a separate matter. In zoning applications, we always handle those on a case by case basis. Because properties are different, as a way of analogy people will say that someone down the street has exactly what they are asking for therefore, they are entitled to it as well. But the difference is in the law, that it is a different property, a different address and at a different time. Mr. Warner continued unless Mr. Clarksen has a reason, that might want to recuse himself for, he does not see any legal reason why Mr. Clarksen would have to recuse himself from this particular matter.

Mr. Clarksen stated he would like to correct the record so that there is not any confusion. His name was not in any title associated with the law suit. He was a neighbor who was interested in the outcome of that project but it was quite different from this case and he has no financial stake in this matter.

Mr. Saylor reminded the audience that the testimony should focus on the parking only.

Cathy Plessner, 2038 Summit Avenue, stated that she has served on the Mac-Groveland District Council

for over six years, as well as multiple boards and committees and the West Summit Advisory Committee. She also organizes the alley snow plowing for her block and is a student housing landlord, so she understands the issues. She stated that St. Thomas University is adding 570 student housing beds as we speak, that will change the rental market in Mac-Groveland and she hopes it will open the neighborhood up to more people. She has listened to Russ Stark about all the changes residents of the City will have to make regarding parking. She thinks that sometimes cars are used as tools to prevent things. Cars are a challenge in our neighborhood, but we will all have to get a little comfortable with being uncomfortable. The Housing and Land Use Committee did approve the parking variances at their meeting, she asked for a permeable surface on the parking lot, not just a class 5 but something that can support the parking and drain.

There was opposition present at the hearing.

David Gibson, 2153 Lincoln Avenue, he lives directly behind 2150 Grand Avenue. As the Board decides these multiple variances he wants the Board to consider that there is a point to the zoning code, it places limits on the acceptable use of a property and the primary purpose is not only to protect the home or land owners' property and interests but also the interests of the people who live nearby. There has to be a balance between all of those affected. He contended when there are multiple variances they are wondering if this is really honoring the intent and the purpose of the code? Is it in harmony, is the first finding. He asked if this is really the intent to pile on variance on top of variance. The applicant is asking to encroach into the required setback designed to protect property owners and those who use the alley. He contends it is too much for one lot, all of these variances all of this parking, the only way to achieve the developers' goals is to ignore all of these provisions in the code, by granting all these variances. The plan is to pave all of the back yard for parking and this is a typical single-family lot. He contended that granting the variances to create the parking lot will squeeze in seven cars with no room for snow, trash and recycling receptacles. He asked Mr. Benner to pull up some photos. Mr. Gibson stated he has lived in his home for six years and there have always been at least four cars parked in the alley sometimes there are actually five cars. They park in the garage and the alley as well. There is no room in the winter for the snow as it sits now. The snow ends up pushed into the alley itself and the garbage bins end up on the sides. Snow piles up and there are already five large apartment buildings that have large parking lots and there is no room for snow on those lots either. It becomes the neighbors on the other side of the alley's problem. They pile the snow into his space. He pointed out the photos of his property where the snow is habitually piled from up and down the alley, destroying their garden. The pile of snow becomes so high his snow-blower cannot blow the snow over the pile. The snow ends up in front of his garage stall so he cannot use the garage stall in the winter. Right now, the residents of 2150 Grand park in the alley and with no setbacks this will continue to happen. He contended that this is not compatible with the Comprehensive Plan. It does not create a compatible mix of uses. He asked that the Board deny the variances.

Flannery Delaney, 2126 Lincoln Avenue, stated that she is the least invested person to talk about parking. She rides her bike and takes the bus to work every day. She is a huge advocate for green commuting, bike lanes, public transportation, the City's climate plan. She does have a garage that fits one car that is used for six bikes, that she parks in every evening. She is in attendance for her elderly neighbors, neighbors with small children and family members that do not have this luxury. The reality is that St. Thomas students come with cars, St. Thomas has tried to incentivize students not to bring cars to campus, it does not work. They have talked to the transportation people, they have nice ride bikes, hour cars, all kinds of alternatives and they give discounted bus passes, these students come with cars, especially the ones that live off campus. Limiting onsite parking will not get them to consider alternative transportation, that is part of the City Climate Plan but it is not going to work for students. As the new development

along Grand Avenue, cars in the surrounding neighborhoods have increased by huge numbers. We have a neighbor that goes around and counts cars on the streets and the numbers spike by 30-40% in the fall. This is not a personal issue for her, however, it impacts her neighbors, her teen-age daughter who often has to walk 1 or 2 blocks home from a parking space a night. Her husband who works in the emergency room until 2:00 am four nights a week, would love to ride his bike back and forth to St. John's Hospital in Maplewood, it is not feasible. He comes home late and sometimes has to park 2 blocks away. There is an OBGYN who lives across the street that gets called in the middle of the night to deliver babies. There are many other non-traditional workers living in our neighborhood on the two blocks of Lincoln Avenue between Cretin and Cleveland Avenues. She does not think that is how we want to treat people who work in the emergency medical and other emergency services. She pointed out the permits shown in the photos she submitted with her e-mail to the Board, those visitor permits are just from one winter morning. Those are sold and traded amount the students, their block was full of cars with those permits in the winter using all the street parking for the neighborhood. She pointed out the final photo on the bottom was about an hour after a snow emergency was declared, those are all student cars with the parking permits on them, they do not get up early enough to move them, they do not have the shovels to shovel their cars out. Their street was not safe this winter, there was an unusual amount of snow, they could not have gotten an emergency vehicle down the street if there was one needed the day of the photo. Ms. Delaney stated that the students do have these permits and she is not sure how they get so many of them, she knows that these parking permits are different issue with parking permitting in area 22. If the Board allows this variance she would like to see the parking permits be removed from area 22 permit parking, although she hopes the Board denies the variance. She stated that the issue with this property of having one less parking space is minor in the grand scheme of the parking problem. Ms. Delaney stated that there was a variance with this other large building and parking permits were distributed in a way that they had agreed not to do. This has become the Lincoln-Goodrich overflow for student parking and it is a huge problem. There is no good reason to grant these variances, this building is too big with too many people. If we want to diversify and want affordable housing in our neighborhood most of the neighbors she talked to are for that.

Kirk Wyhers, 2096 Lincoln Avenue, stated that he wants to address the parking and the environmental impact. The broad ideas of increased density, transit, bicycles, reducing our cities carbon footprint are good and he supports them. He has been a climate change researcher for thirty years, the last twenty have been at the University of Minnesota. The job is not to just figure out how to reduce the Cities carbon footprint, but to figure out how to adapt to a warmer weather climate, this is what we are facing. Increased density without considering the other pieces of the climate resilience and climate adaptation puzzle are likely to lead in the opposite direction of what a lot of us would like to see, which is reducing climate change. Mr. Saylor asked that Mr. Wyhers keep his testimony strictly to the parking issues. Mr. Wyhers continued what he would like to say is how the environmental impacts are related to parking, is that this kind of zoning change, he contended that stacking variance on variance undercuts the code and makes the desire to achieve some measure of climate resilience harder to achieve. He explained how the parking permits work. He contended that all these students have cars and the neighborhood is expected to exorb the overflow. Mr. Saylor stated that the permit parking and how it works is an important issue, but it is not one that the Board is allowed to consider. What is under consideration today is the parking variance request for 2150 Grand Avenue. Mr. Wyhers stated when stacking one land use change on top of another it becomes unattainable at some point and he fears that if they do not get this right they are creating the worst of all worlds. There is storm water runoff that is not under control, a hotter heat island effect in the urban core from all the cement that is being poured as structures are being built. We still end up with even more cars on the street. He asked that the Board deny the variance requests, contending that there are too many other pieces that need to be considered in conjunction with this kind of proposal.

Mr. Clarksen asked Mr. Wythers about his comment about variances being granted on top of variances on

the same block, he asked if there were variances on the two surrounding buildings or if they were developed without any variances. He does not remember if they were developed with variances or if they were able to demonstrate compliance with parking variances and setbacks. Mr. Wythers stated he would defer to Mr. Benner about that. Mr. Benner stated as far as the parking goes he does not believe that there were any parking variances required for the development of the neighboring properties. There was one on Marshall and More, is that the one Mr. Clarksen is referring to? Mr. Clarksen replied yes. Mr. Wythers stated he is referring to Grand and Finn. Mr. Benner replied no, he does not believe there were any variances for those. Mr. Wythers stated when he was talking about variances being requested on top of variances he was speaking about this property.

Rachel Westmeyer, 1935 Summit Avenue, stated that she is here to address the parking and her big concern is the parking and the variances of this building setting a precedence to have more buildings like it on Grand Avenue. There is no room left on this block, if this is built. Unless someone takes down a duplex and builds this. The whole block is apartments, the entire block from Cretin to Finn. The next block is also taken up there are only three houses left on that block, that is because they have covenants on them, they belong to the University of St. Thomas. When the CUP (Conditional Use Permit) went in they had to sell those houses with covenants on them. Supposedly they cannot be sold, there have been students in them but they are supposed to be owner occupied. There is no room left on that block to build except for one house on the corner. In a two-block area there is no more room for other projects like this and we have another project in the next block on the one available lot on that block. If the person who owns the duplex on that block sells it, he has been in attendance here to see what could be done with his duplex, it could become really a stalled parking lot dense area. That is her concern. It marched down the ally and if these continue to march down, Grahm-Merry is now on their fifth project, the line we will not have room for anybody to move. Ms. Westmeyer stated that she has all the numbers of houses and duplexes and apartments in that area. The number of houses that are available to have this between Cretin and Fairview is close to 51. Fifty-one more like this is a lot. She is in attendance to address parking and what would happen if even some of those houses were taken down and this building built, that is her concern for the neighborhood. She thinks there needs to be a balance, she does not call a whole street of apartments a balance. She asked that the Board deny the variances.

Mr. Benner stated as he looks through the file for 2140 Grand Avenue he does not see any variances on it. Ms. Westmeyer stated that Grahm-Merry does not have any variances, he stays within the boundaries.

Mr. Schwartzman stated that they do not set the zoning code or the requirements to do development in the city. This is an RM2 zoning district which is multi-family zoning, it does allow this type of building to be built. There are strict parking requirements that are necessary. They worked with Mr. Benner and City staff to make sure that they meet those requirements. Whether they build this or not permits can be purchased by anybody, not just homeowners but people that want to park on the street. There are parking issues all over the City, not just here. He believes that they have met all the requirements to be allowed to build this structure. They got approvals twice on this project. He asked that the Board approve the variances.

Mr. Benner stated he found the District Council letter Ms. Bogen was asking about. He read the e-mail. *"Please see the attached letter from the Macalester-Groveland Community Council containing a **second** resolution from the Housing & Land Use Committee for the property located at 2150 Grand Avenue, Reference No.#19-026900. The committee passed the following resolution: The Housing and Land Use Committee of the Macalester-Groveland Community Council **recommends approval** of the variance requests for off-street parking setbacks from the rear and west property lines for the property at 2150 Grand Avenue, Reference No.#19-026900."* The vote was a 10-3 vote as Ms. Plessner pointed out.

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

Mr. Saylor asked for a motion from the Board, but first asked Mr. Benner to summarize his recommendations to the Board. Mr. Benner stated that the Board is tasked with voting on two variances. One variance is to allow three or more units to be built on a lot that is less than 9,000 square feet. The second variance is for the setbacks for the parking spaces, the minimum side yard setback if 4' from any lot line, a setback of 0' is proposed in rear yard along the alley and 2' from the west property line for a variance request of 4' and 2' respectively. Staff recommends approval of both variances.

Mr. Clarksen asked about the site plan on page 23, showing a trash enclosure in the side yard, part of the reason he brings this up is that it is not in the rear yard as there is no room in the rear yard. He is concerned that it is in a location that may not be permissible and could also require another variance he is not sure but wanted to bring it up. It seems to have a relationship to the nature of this issue which is about parking but if there is no place for that to be put there may be an additional issue that has not been addressed. He also wanted to add for purposes of discussion, is that the Cullen project, which is right next door 2138-2146 Grand Avenue did not get a variance for parking, but it did get one to build at 53% of the lot, which exceeded the 35% maximum lot coverage requirement. They did get a variance for that project, in a staff report from Tom Beach from 2014.

Mr. Benner stated that the trash enclosure is not required for this particular property based on the number of units. This is something that the applicant is providing without necessarily needing to provide it. Where it is located there would be not additional variances required for it.

Ms. Swift moved to approve the variance and resolution based on findings 1 through 6.

Mr. Miller stated it seems that the Board runs into these issues a lot, the City's Comprehensive Plan envisions and values density, the neighborhoods where the density is going tends to not value that density. The Board is tasked with what the City has given to them, if density and perhaps parking around campuses are issues then neighborhoods that have to deal with those problems, are legitimate and he would not enjoy them either. He thinks that the place to take up those issues are not here, but in a different place as the Comprehensive Plan is being drafted and potentially looking at parking in and around schools.

Ms. Trout-Oertel stated when the Board first heard this several weeks ago, the plan has half as many bedrooms, with the same plan as now. Mr. Saylor stated half as many bedrooms identified on the plan, correct, the plan has not changed. Ms. Trout-Oertel replied correct, now the applicant is owning up to the fact that there will be four people in each of these units. It looked like parking was ok with the original plan, now that we know how many bedrooms will be occupied in this structure there are not enough parking places except if the Board grants variances for parking and several people have pointed that out that fact that yes seven parking spaces can be squeezed on this lot but there is no buffer, no place for snow, she would have to vote against this project.

Mr. Benner stated that the number of rooms, whether that be perceived or whatever is on the plan has not changed and four unrelated adults have always been able to reside in one dwelling unit. Whether it is two-bedrooms as staff first interpreted, or four-bedrooms the number of unrelated adults allowed to live in a single unit has not changed. He wanted to make sure that is clear.

Ms. Bogen stated that she thinks that Ms. Trout-Oertel is saying that the variance for parking was not as

big when they were only two-bedroom units. They did not need eight off-street parking spaces. Mr. Benner replied correct, the parking requirement is met now. People have pointed out a variance of one parking space, that is not the case here. Seven spaces are required as they are allowed one space for parking reduction, for bicycle parking, which provides a reduction of one off-street parking space. Seven off-street parking spaces are required and seven are being provided. Snow removal will be considered as part of the Site Plan Review process. The applicants have stated that they will be plowing or handling whatever snow removal is necessary. Ms. Bogen stated that she just thought Mr. Benner misinterpreted Ms. Trout-Oertel's concerns and she wanted to straighten that out.

Ms. Swift stated that based on the photos the parking is already at a zero setback. Mr. Saylor questioned if Ms. Swift is talking about the neighboring property? Ms. Swift replied no some of the photos show the garage already right up to the alley at zero, is that right Mr. Benner? Mr. Benner replied that is correct. Ms. Bogen asked if Ms. Swift is talking about across the alley from the subject property? Ms. Swift replied no, she is talking about the subject property 2150 Grand. She asked that the photo of the garage be brought back up. She asked if this garage is already right at the edge of the alley? Mr. Benner replied the apron is. Mr. Saylor and Ms. Bogen traded questions about which property, running over each other with comments. Ms. Swift stated no she was talking about this property, if the others are at zero. Looking at this adding these parking spaces will not make it snow any more, it is already an issue, she just feels that the Board is arguing over something that is really petty, this does not feel like it is about just the parking, she believes it is truly about the density issue and the students, listening to the testimony over and over again. Ms. Swift stated she feels strongly about providing housing she can understand the parking issue and thinks that the two go hand in hand. She also knows that there are a lot of people looking for housing and we should try to make it work and try to find a balance as much as possible. She thinks this is what the applicant here is doing.

Mr. Benner stated that the Garage is setback, he just checked the survey. Ms. Swift asked what is the setback? Mr. Benner replied it is setback 7'.3".

Ms. Trout-Oertel stated that the fact remains that this project needs a variance because the of the size of the lot, it is not 9,000 square feet. We see why the lot is too small, when parking is provided for this project. It is clearly cramming a lot, there is no buffer.

Mr. Miller seconded the motion, which failed on a roll call vote of 3-4(Bogen, Clarksen, Trout-Oertel, Maddox).

Mr. Warner stated because the staff recommendation was to approve, with the motion to deny Boardmembers will have to articulate reasons why each Boardmember is voting against the staff recommendation. Mr. Clarksen stated the motion was to approve. Mr. Warner stated yes, but the motion failed, the Board will have to take another vote, to deny the application, he just wants to give the heads up to the Boardmembers, that under Minnesota Law they will have to articulate the reasons why they are denying on the record, the Board will have to define why the staff findings are inadequate.

Ms. Bogen stated she does not know what kind of motion needs to be made, to reconsider, to re-vote on this, because she would be changing her vote. Stating that she was the first asked to vote. She asked what is the process, someone on the winning side of the vote can ask for a re-vote, correct? Mr. Warner replied yes. Ms. Bogen stated that is what she is doing. Mr. Warner stated that we need a motion to reconsider.

Ms. Bogen moved to reconsider the case. Mr. Saylor stated someone on the winning side has to second it.

Mr. Warner stated take a vote on the motion to reconsider, that is pending, then once that is done there is a next step. Depending on if the motion passes what does the Board want to do? Mr. Saylor stated we have a motion to reconsider and we have a second on the motion. Mr. Clarksen asked if they could clarify what is being put forth with a yes or no before voting? Mr. Saylor stated they are reconsidering the original outcome. Mr. Clarksen stated that a yes vote means the Board will reconsider it and a no vote means it stands? Mr. Saylor replied that is correct.

Ms. Maddox seconded the motion, which passed on a roll call vote of 4-3(Clarksen, Trout-Oertel, Swift).

Mr. Saylor stated the motion to reconsider passed. Mr. Warner stated the Board is back where they started. Ms. Bogen asked Ms. Swift to make her motion again.

Ms. Swift moved to approve the variance and resolution based on findings 1 through 6.

Mr. Miller seconded the motion, which passed on a roll call vote of 4-3(Clarksen, Trout-Oertel, Maddox).

Submitted by:

Approved by:

Jerome Benner II

Daniel Miller