



APPLICATION FOR APPEAL

Department of Safety and Inspections
375 Jackson Street, Suite 220
Saint Paul, MN 55101-1806
651-266-9008

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MAY 04 2016

Zoning office use only

File no.

Fee

Tentative hearing date:

16-036839
453.00
06-01-16

APPLICANT

Name Andrew Rorvig + Amanda Karls
Address 1171 Lincoln Ave
City Saint Paul St. MW Zip 55105 Daytime phone 612 716 9713
Name of owner (if different)

PROPERTY LOCATION

Address 1174 Grand Avenue
Legal description: Mason and Simontons Addition w/ 1/2 of Lot 3 and all of Lot 4 B/LK 3
(attach additional sheet if necessary)

TYPE OF APPEAL: Application is hereby made for an appeal to the:

☐ Board of Zoning Appeals

☒ City Council

under the provisions of Chapter 61, Section 61.702 Paragraph (a) of the Zoning Code, to appeal a decision made by the Board of Zoning Appeals

on April 25, 2016, 2000. File number: #16-012819
(date of decision)

GROUND FOR APPEAL: Explain why you feel there has been an error in any requirement, permit, decision or refusal made by an administrative official, or an error in fact, procedure or finding made by the Board of Zoning Appeals or the Planning Commission.

Please see attachments

(attach additional sheet if necessary)

Applicant's signature

Date

City agent

Yan/ta

May 4, 2016

ATTN: Saint Paul City Council
15 Kellogg Blvd. West, 310 City Hall
Saint Paul, MN 55102

**RE: Appeal of Variances Granted by Board of Zoning Appeals for Proposed Development at
1174 Grand Avenue, File #16-012819**

I, Andrew Rorvig, as a named Appellant, and the additional 23 undersigned neighbors bring this appeal because of the following clear errors in fact, finding and procedure. We are supported by the Summit Hill District 16 Planning Council who has also submitted a letter outlining grounds for the appeal.¹ We request that the appeal be granted and that the BleuAnt Design, LLC's requested variances be denied, with the exception of the requested front-yard setback.

EXECUTIVE SUMMARY

In support of our appeal, we have laid out:

- Errors in Fact (4)
- Errors in Finding (5)
- Errors in Procedure (2)

Because **the proposed development does not meet the elements of Section 61.601 of the Saint Paul City Code**, we request that you find in favor of us, the Appellants, and deny the requested variances sought by BleuAnt Design, LLC (herein after, "the Developer"), with the exception of the front yard setback.

VARIANCES GRANTED BY BZA

The proposal is for multi-family housing. At the request of the Developer, the Board of Zoning Appeals ("BZA") granted the following variances:

- a lot coverage variance to allow for 47.5% coverage or 4,528 square feet (35% or 3,339 square feet allowed)²
- a front yard setback of 22 feet (23.4 feet required) *—not contested*
- east and west side yard setbacks on of 7.5 feet on each side (9 feet required)
- a rear yard setback of 22 feet (25 feet required).

ERRORS IN FACT

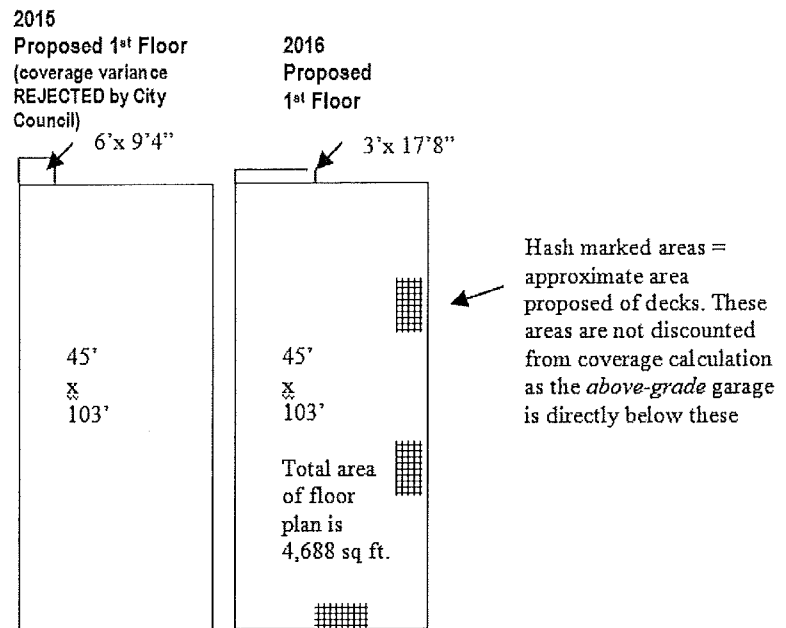
The Board of Zoning Appeals ("BZA") relied on the following inaccurate information:

1) **Inaccurate representations of support for the project.** The Developer submitted a list of signatures of business establishments supposedly in favor of their proposed plan. We have contacted just four of the businesses and, at the time of this writing, two of them have written back to advise us that the signatures were not from their business owners. A third wrote back to simply indicate that they do not have any position on project. Emails documenting this are attached.³ Other than one gentleman on Dunlap, the resident support of this project comes from people outside of the notice area. We believe most if not all of them are bankers, real estate agents or personal acquaintances of the Developer's principals. The Grand Avenue Business Association has not offered their support.

2) **Lot coverage will be more than the 4,528 sq ft cited by City staff.** According to *measurements provided in the Developer's own plans*, the proposed lot coverage is at least 4,688 square feet.⁴ **The proposed project coverage will therefore be 40% more than the 3,339 square feet allowed by code for this site.**

3) Lot coverage is more than the 47.5% as cited by City staff. Adjusted lot size with alley allowance is 9540 square feet. Thus 4,688 square feet represents 49.1% lot coverage. Only 35% coverage is allowed by code.

4) The City staff report inaccurately reflects the amount of change in lot coverage since the project was denied by the City Council in November 2015. Comparing the current and 2015 staff reports, it would seem that proposed lot coverage has decreased by about 377 square feet.⁵ However, there has been no material change in lot coverage/footprint since the previous proposal was rejected by the City Council in November 2015. In fact, the footprint has only decreased by three square feet since the project was rejected by the City Council in November 2016! (See diagram above.)



NOTE: Even with the Developer's claimed coverage calculations, the District 16 Planning Council found that the proposed project was still inappropriate for the parcel. We adopt the logic of the findings of the District 16 Planning Council, but note that because of these errors, not discovered prior to the District 16 Planning Council hearings, the scale of this project is even more egregious than noted in their findings.

ERRORS IN FINDING

Section 61.601 of the Saint Paul City Code sets forth that BZA "shall have the power to grant variances from the strict enforcement of the provisions of th[e] code upon a finding that:

- (a) The variance is in harmony with the general purposes and intent of the zoning code.
- (b) The variance is consistent with the comprehensive plan.
- (c) The applicant has established that there are practical difficulties in complying with the provision, that the property owner proposes to use the property in a reasonable manner not permitted by the provision. Economic considerations alone do not constitute practical difficulties.
- (d) The plight of the landowner is due to circumstances unique to the property not created by the landowner.
- (e) The variance will not permit any use that is not allowed in the zoning district where the affected land is located.
- (f) The variance will not alter the essential character of the surrounding area.
- (g) The application for a historic use variance ... shall be granted only to a property that is a locally designated heritage preservation site and the use variance is the minimum needed...

An applicant who seeks to avoid strict enforcement of the Code, must demonstrate that it can satisfy the conditions of this multifactor test. Here, as set forth below, **conditions (a), (b), (c), (d) and (f) are not satisfied.** (Condition (e) is satisfied and condition (g) is inapplicable). Thus, because the

Developer cannot satisfy all of the necessary elements, there is no legal basis for a variance from the code provisions.

1) **The BZA erroneously found that the variance is in harmony with the general purpose and intent of the zoning code**

In justifying this finding the Board of Zoning Appeals (“BZA”) found that “[t]he proposed building is generally consistent with the size, the form and the setbacks of the immediate multi-family buildings to the east and west.” (Source: April 25, 2106 BZA Appeals Resolution at p 2.)

The referenced buildings are a set of four existing 1920s apartment buildings: two are immediately to the east at 1160 and 1168 Grand Avenue; the other two are to the west at 1180 and 1186 Grand Avenue. These are not the only other buildings on the block, which also contains several small houses that have been converted to businesses, but they are the largest so it makes some sense to use them for evaluating the scale of this building.

However—despite City staff claims—those properties are not similar in size, form or setback spacing to the proposed project. In fact, if built, the building will not only be larger than those buildings, but



will be **larger in scale, height, width and footprint than any building on the block.** It will also have substantially narrower side setbacks at 7.5 versus 9 to 12 feet for the four adjacent apartment buildings.

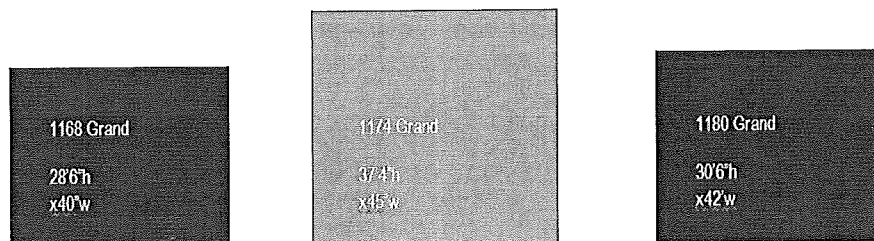
While the Developer has submitted renderings that imply otherwise, the building will be significantly larger than the adjacent buildings. In fact, the Developer provided the renderings while knowing full well that it could not verify the accuracy of their scale. When the neighbors asked the Developer for scale drawings so that we could better evaluate the project, the Developer’s

principal replied that while they “feel that the latest computerized rendering gives an accurate scale of comparison,” they ***“have no way at this time to verify heights.”***

However, documentation from the Developer’s own architect states the heights of the adjacent buildings as 28 feet, 6 inches (1160 and 1168 Grand Ave.) and 30 feet, 6 inches (1180 and 1186 Grand Ave.)⁷ As shown below, even just from the front façade, the building will be significantly larger in scale and massing.

1174 Grand Avenue Will Be Out of Scale with Adjacent Properties

Height of 1174 Grand will dwarf adjacent 1920s properties. Proposed project height is 37 feet, 4 inches and could go as high as 40 feet. Major variances for lot coverage and side and rear setbacks should not be granted to allow large footprint unless height is limited to ensure appropriate scale with adjacent properties.



Scale sizes of front elevations of proposed building at 1174 Grand Avenue and adjacent buildings to east and west based on notarized measurements provided by Developer’s architect.

Thus, the proposed building would be **22.5% taller than the two existing buildings to the west and 31.5% taller than the two existing buildings to the east.**

The Developer has claimed that height is not an issue here because RM2 zoning typically allows buildings to go as high as 40 feet. However, as set forth below, because this site is within the East Grand Avenue Overlay District, at 3.5 stories the height of this building clearing exceeds the spirit of the law, if not the actual letter of the law itself. Furthermore, granting the requested coverage and setback variances for a project this tall would yield a building that greatly exceeds the mass and scale of the adjacent properties.

Here applicant is requesting to build a 37'4" tall building with a supposed 4,528 square foot footprint. Based on those numbers and square footage estimates provided by the City and height information from the Developer's architect, the District 16 Planning Council has pointed out that the Developer's project would be 47% larger in mass than the adjacent building to east (28'6" ft tall x 4028 sq ft footprint) and 24% larger in mass than the adjacent building to the west (30'6' tall x 4,469 sq ft footprint).

Moreover, as set forth above (see "Errors of Fact"), further inquiry demonstrates the footprint of the proposed building is at least 4,688 square feet. This means the building would actually:

- be **52% larger in mass than the pair of buildings to the east and 28% larger in mass than the pair of buildings to the west.**
- **occupy 40% more lot coverage than the 3,339 square foot lot coverage allowed by code.**
- have a **footprint that is 7% larger than the average footprint of the adjacent pairs of buildings.**⁸

Additionally, the proposed property will be **9.75% wider than the adjacent buildings.**⁹ It will also have spacing between and its closest neighboring buildings that is **19% narrower than current east-west spacing.**¹⁰

In summary, it is clear that, contrary to the BZA findings, the overall massing is inconsistent with the adjacent properties and other smaller buildings on the block and thus will alter the essential character of the surrounding area. The fact that it is not fitting with the general purpose of the zoning code is further demonstrated by the code itself, which states the following goals: "[t]o promote and to protect ... aesthetics," "to conserve and improve property values," and "to prevent the overcrowding of land."¹¹ Here, the proposed project would be an oversized building on a small 60x150 foot lot that would loom over the backyards of turn-of-the-century single family homes in a historic established neighborhood. This would not be good for aesthetics or the property values of affected homes and would clearly represent an overcrowding of land that is significantly above and beyond what is allowed for this parcel

This requirement is not met.

2) The BZA erroneously found that the variance will not alter the essential character of the surrounding area.

The BZA justified this finding based on the rational that "[t]he proposed building would be similar in scale and massing to buildings immediately to the east and west."¹² As demonstrated above, **the proposed building is not similar in scale or massing to the adjacent properties.** In fact, when compared to the adjacent apartment buildings (which are the largest building on the block):

- **It will be the widest building**
- **It will be the tallest building**
- **It will occupy the largest footprint**
- **It will be the largest in overall massing**
- **It will create inadequate spacing between buildings**

Moreover, **allowing this building will create a domino effect which may lead to five very oversized buildings.** The four adjacent properties were built in the 1920s. As noted above, this building is considerably larger in mass than those buildings. When the owners of the adjacent properties determine that it is no longer economically practical to continue repairing 1920s electrical and plumbing problems, the precedent set by 1174 Grand would make it incredibly difficult to prevent those property owners from replacing their buildings (which incidentally are too large by St. Paul's current planning standards) with even larger buildings like the one proposed here.

Finally, it must be noted that the current proposal for 1174 Grand Avenue is not only incompatible with the context of the block and the surrounding neighborhoods, but it also is incompatible with the design parameters of the East Grand Avenue Overlay District¹³ in which it is located. The overlay district was established in 2006 specifically to prevent development which would disrupt the historical, multiuse fabric of that part of Grand Avenue. Among other things, the Code provisions regarding the Overlay District express a clear intent to limit buildings in the District to no more than three stories. This project, with its above grade parking lot will read as 3.5 stories. Additional points regarding the specific protections of the East Grand Avenue are summarized in the White Paper submitted to the BZA by District 16 Planning Council Board Member, Lori Brostrom.¹⁴

Thus, the requirement that the variance will not alter the essential character of the surrounding area is not met.

3) The BZA erroneously found that the applicant has established that there are practical difficulties in complying with the zoning provision. Economic considerations do not constitute practical difficulties.

In reaching this conclusion, the BZA found that “[c]onstructing a building that meet current zoning code requirements would require a building footprint of 3,339 square feet, which would be significantly less than the average size of the adjacent apartment buildings, thereby affecting the pattern of the block.” This rational ignores the actual pattern of the block. While in this memo we have used the adjacent 1920s apartment buildings for purposes of comparison, we have done so only because those are the largest existing buildings on the block. The block is actually composed mainly of smaller buildings—some of which were constructed as modest single family homes that have now been converted to businesses, as is common along Grand Avenue. Likewise the building that was in this spot was a small multi-generational home for an aging mother, her adult son and his companion.

While the Developer requested to have the property (which it purchased for \$245,000) rezoned from BC to RM2, there is no requirement that they build anything along the scale of what they are proposing. There are certainly a whole host of other projects that could be constructed (e.g., a six-unit condo building, a law office, an art gallery...). In fact, even the City Planning office has illustrated that a multi-family building with a footprint of 3,150 square feet and 10 above-ground parking spaces could be built without any required variances.¹⁵

The Developer of the proposed project however, seeks to push beyond code limits in almost all dimensional respects to increase its own profit. However, **the City may not consider the Developer's or the City's own economic motivations when evaluating a practical difficulty.** The Applicant has not demonstrated that a smaller building is not practical. This requirement is not met.

4) The BZA erroneously found that the plight of the landowner is due to circumstances unique to the property not created by the landowner.

There is no plight here except the one the developer has created itself. When the developer bought the property for \$245,000, it never had any reasonable expectation that it could build a project of nearly the scale it is now proposing.

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At the time of purchase, the property was an old dairy farm house that had been zoned as BC. When the Developer was fortunate enough to get it rezoned to RM2, the code in place at the time required side setbacks to be at least half of building height, so that a 40 foot wide building on a 60 foot parcel with 10 foot setbacks on each side could only be 20 feet tall. Now that the 50% setback to height ratio has been eliminated, the Developer is not content to work within the very generous new RM2 standards and is instead asking to push the envelope of the building in virtually every aspect.

This is not the only option for a multi-family or other building-type on this site. The requirement that the plight of the landowner must be due to circumstances unique to the property and not created by the landowner is not met.

5) The BZA erroneously found that the variances are consistent with the comprehensive plan.

As justification for concluding that the variances are consistent with the comprehensive plan, the BZA cited two portions of the Housing and Land Use Chapters of the City Comprehensive Plan pertaining to encouraged development of “neighborhood-sensitive multifamily infill” and infill housing that “fits within the context of existing neighborhoods and is compatible with the prevailing pattern of development.” Ironically, as noted above, the proposed project is neither sensitive to the size or aesthetics of the block, nor does it fit the context or the neighborhood or its prevailing patterns of development. Instead, it is clear the requested variances would make the proposed building out of scale, especially in terms of overall mass.

Furthermore, the Land Use Chapter also explains:

- “higher density development is not an objective to be sought solely for itself.”¹⁶

The Housing Chapter also goes on to state as strategy objectives, the need to:

- “Maintain the vitality and high quality of life in existing stable neighborhoods bycontinu[ing] to enforce City codes.”¹⁷
- “Encourage homeowners and property managers to make passive green improvements to their properties. These improvements include: **building with a smaller building footprint.**” (Housing Chapter Strategy 2.10)¹⁸

Here the proposed building would dramatically decrease the green space protected by City Code by building beyond the permitted footprint and setback allowances. It would also encroach on privacy of those in nearby properties whose backyards will be directly behind the property. Likewise, it would detract from the natural sunlight and privacy that tenants in the directly adjacent apartment buildings have enjoyed. It would also detract from the vitality of life in the existing neighborhood into which it will be placed. Grand Avenue is an asset for all of Saint Paul. Its vibrancy and character not only helps to justify the high property taxes of other nearby properties, but it also serves as a source of tourism and sales tax revenue. It is important for all of Saint Paul that we continue to value, protect and improve the atmosphere and quality of life on and around Grand Avenue.

The requirement that the variances are consistent with the comprehensive plan is not met.

ERRORS IN PROCEDURE

1) At least one BZA board member may have deliberately disregarded the testimony of plan opponents

We have sent multiple requests for the audio recording of the April 25, 2016 hearing in hopes of quoting the exact language used, but we have not been provided with a copy. Without that recording, we are only able to say that, in our opinion, one of the comments of one of the board members seemed to indicate a complete unwillingness to consider any testimony brought by the opposing neighbors. Where, as here, opposing neighbors have brought forth considerable factual and legal information for consideration, there is no basis to disregard it.

2) **The BZA should not have considered this proposal given the lack of material change since a nearly identically plan was rejected by the City Council in 2016.**

Reviewing essentially the same project twice has been a waste of City resources and the City Council's time. It has also been an unfair burden on the District 16 Planning Council and us, the Appellants who have spent enormous amounts of time on this project going back to early 2015 and who have been put in the position of twice having to come up with the \$440 appeal fee. We have also had to quickly pull together the resources to draft this letter within the very short 10 day appeal period.

Because the proposed development does not meet the elements of Section 61.601 of the Saint Paul City Code, we request that you find in favor of us, the Appellants, and deny the Developer's requested variances, with the exception of the front yard setback.

Sincerely,

- | | |
|--|---|
| 1. Andrew Rorvig & Amanda Karls
(1171 Lincoln Avenue) | 8. Mark & Bonnie Genereux (1165
Lincoln Avenue) |
| 2. Lyndon & Christy Shirley (1187
Lincoln Avenue) | 9. Andy & Gina McCabe (1186
Lincoln Avenue) |
| 3. Winnie Moy (1185 Lincoln
Avenue) | 10. Karyn Wrenshall (1201 Lincoln
Avenue) |
| 4. Margaret Keefe (1195 Lincoln
Avenue) | 11. Carol & Joe Bell (1196 Lincoln
Avenue) |
| 5. Josh Peltier (1167 Lincoln
Avenue) | 12. Tom & Kristi Kuder (1176
Lincoln Avenue) |
| 6. Steve Hancock & Jill Stedman
(1200 Lincoln Avenue) | 13. Laura & Ryan Willemsen (1180
Lincoln Avenue) |
| 7. Mark King & Jonathan Lubin
(1177 Lincoln Avenue) | 14. Nisha Thuruthy & Eugene
Halpin (1181 Lincoln Avenue) |

¹ See Letter from District 16 Planning Council (attached at Ex. A)

² As set forth below, the amount of the required variance is understated, but even at 47.5%/ 4,528 sq feet, the requested coverage is significantly larger than permitted.

³ See emails from Amanda Ficek at Mama's Happy on Grand, Katie Roedler at Baby Grand and Robert Kowalski at Kowalski Markets (attached at Ex. B).

⁴ Source: Floor Plan of First Floor submitted in Developer's packet to BZA (attached at Ex. C).

⁵ Compare lot coverage amounts in 10/2/15 Staff Report with 3/2/16 Staff Report.

⁶ Source: March 10, 2016 email from Ryan Burke to Amanda Karls (attached at Ex. D).

⁷ Source: North Elevation of Block with Heights of Adjacent Properties from J.amb Architects at Ex. E)

⁸ The Developer's claim that the average footprint of the adjacent buildings is 4,515. However, information from the City Planning Office indicates the average footprint size is approximately 4,365 square feet. (Source: Schematic provided by Principal City Planner, Merritt Clapp-Smith (Attached at Ex. F).) Likewise the Developer's own diagrams indicated the average size is 4390 (Source: Developer's "Existing Neighborhood Conditions" diagram (attached at Ex. G).

As noted above, the Developers' own plans indicate the coverage is at least 4,688 sq. ft. At best (relying on 4,390 sq feet vs. 4,528)-the Developer's footprint represents a 3% increase over the average footprint size. However the proposed lot coverage appears to be at least a 7% increase (4,365 sq. ft. vs. 4,688 sq. ft.).

⁹ The adjacent properties are, on average, 41 feet wide. (1160 and 1168 Grand are 40 ft wide, feet wide 1180 and 1186 Grand are 42 feet.) Meanwhile, the proposed property will be 45 feet wide. (Source: Developer's "Existing Neighborhood Conditions" diagram (Attached at Ex. G).)

¹⁰ The average space between each existing pair of the four adjacent buildings (i.e. between 1160 Grand and 1168 Grand and between 1180 Grand and 1186 Grand) is 21.5 feet. The average distance between the proposed building and the adjacent properties to the east and west would be 17 feet.

¹¹ Saint Paul City Code at §60.103 subd. (a), (l), (n).

¹² Source: April 25, 2106 BZA Appeals Resolution at p 3.

¹³ Saint Paul City Code § 67.601.

¹⁴ See *Development at 1174 Grand Avenue: Design Context and Requirements vs. Current Proposal* (attached at Ex. H.)

¹⁵ Source: Schematic provided by Principal City Planner, Merritt Clapp-Smith (Attached at Ex. F).

¹⁶ See text accompanying Strategy 1 of Land Use Chapter of Saint Paul Comprehensive Plan.

¹⁷ Strategy 2.1 of Housing Chapter of Saint Paul Comprehensive Plan.

¹⁸ Strategy 2.10 of Housing Chapter of Saint Paul Comprehensive Plan.