

# Overview of Project: Augustus Corner

## Lot Subdivision Variance Application

This is an application to subdivide lots to provide more housing options in St Paul neighborhoods, the goal of the recent 1-6 Unit Infill housing Study: “Zoning amendments supporting a greater variety of 1-6-unit housing types in Saint Paul’s lower density residential districts went into effect on November 26, 2023.” ([StPaul.gov](http://StPaul.gov))

Our proposal is to plat five new legally separate lots for five new independent houses. As part of this application, we have included the design for three (of the five) houses. The design of those houses will be subject to separate “development variance,” which will then be subject to a separate review process, as per City Policy. The subject of this letter is the variances for the subdivision itself; however, it must be understood that the two cannot be separated entirely. The purpose of creating new parcels is to allow development, and the regulatory rules that will govern that development are inextricably linked with the manner of subdividing the land itself. The development regulations largely and necessarily determined the shape and size of the lots.

### Overview

Our design concept is simple: single family homes on smaller lots. We want to provide the amenities, independence, and privacy of owning your own roof and plot of land with a (gentle) increase in density, as supported by 2040 Comp Plan goals and the 1-6 Unit Housing Study, which resulted in zoning changes that went into effect in November of 2023. This type of project would not have been possible before the November 2023 zoning changes, which resulted in reclassifying this property as H2 District. Under the former residential zoning, we would likely have been limited to three lots, but with the Zoning changes, we will have doubled that to six. We hope to create a new model to increase homeownership opportunities in St Paul.

### Background & Brief Description

Where is the sixth lot? The site was created by saving and relocating a historic house designed by Augustus F. Gauger, an important 19<sup>th</sup> century architect working in St Paul. We have sought to honor that history by naming the proposed subdivision after him, Augustus Corner. The historic Gauger House was moved to the East and placed on a new foundation, and updated to have modern amenities and energy efficiency. After saving the Gauger House, we turned our attention to designing a community for in-fill houses on the remaining 130 x 150 lot corner lot. The houses are designed to have traditional features—front porches and yards— while still effectively doubling the density. We have been in discussion with neighbors throughout the design process, and have incorporated traditional architectural elements including steep gabled roofs and front porches in order to complement the historic character of the immediate neighborhood. The lots are designed to follow north-south orientation, which in addition to maximizing access to sunlight, follows the dominant development patterns of Merriam Park, aligning with existing development patterns and thereby enhancing and supporting neighborhood character. And, as

new construction, inside these houses will have contemporary floor plans and 2024 energy efficiency. By design, each house will have its own independent plot of land, avoiding the need for (and expense of) an HOA (Home Owner Association). The city needs a variety of housing types, among those are homeownership models for stand-alone housing. Our goal is to utilize the 1-6 Unit Infill zoning changes to provide this popular form of housing, while promoting increased density by building houses on smaller plots of land.

## Comprehensive Plan: Increase Density & Support Homeownership

The policies of the 2040 Comprehensive Plan overwhelmingly support increased housing density. Housing policies H-8, H-16 and H-47 and H-48 are especially applicable to this project.

- Policy LU-1, encourage transit-supportive density and direct the majority of growth to areas with the highest existing or planned transit capacity;
- Policy LU-5, encourage flexible building design to ensure ongoing functionality and viability, and to respond to new market opportunities;
- Policy LU-7, use land use and zoning flexibility to respond to social, economic, technological, market and environmental changes, conditions and opportunities;
- Policy LU-29, ensure that building massing, height, scale and design transition to those permitted in adjoining districts;
- Policy H-46, support the development of new housing, particularly in areas identified as Mixed Use, Urban Neighborhoods, and/or in areas with the highest existing or planned transit service, to meet market demand for living in walkable, transit-accessible, urban neighborhoods.
- Policy H-8. Encourage creativity in building design and site layout.
- Policy H-15. Accommodate a wide variety of culturally-appropriate housing types throughout the city to support residents at all stages of life and levels of ability.
- Policy H-16. Increase housing choice across the city to support economically diverse neighborhoods by pursuing policies and practices that maximize housing and locational choices for residents of all income levels.
- Goal 7: Strong neighborhoods that support lifelong housing needs.
- Policy H-46. Support the development of new housing, particularly in areas identified as Mixed Use, Urban Neighborhoods, and/or in areas with the highest existing or planned transit service, to meet market demand for living in walkable, transit-accessible, urban neighborhoods.
- Policy H-47. Encourage high-quality urban design for residential development that is **sensitive to context**, but also allows **for innovation and consideration of market needs**.
- Policy H-48. Expand permitted housing types in Urban Neighborhoods (as defined in the Land Use Chapter) to include duplexes, triplexes, town homes, small-scale multi-family and accessory dwelling units **to allow for neighborhood-scale density increases, broadened housing choices and intergenerational living**.
- Policy H-49. Consider amendments to the zoning code to permit smaller single-family houses and duplexes to facilitate the creation of small-home development types, such as pocket neighborhoods and cottage communities.

- Policy H-50. Balance the market demand for larger homes in strong market areas with the need to maintain a mix of single-family housing types that is sensitive to the surrounding neighborhood context

Goal 4 of the Housing Chapter is to create a supportive environment for homeownership. We are committed to a traditional home ownership model, in which neighbors will own house, roof, and private yard, and we want to do so at a denser scale, in support of Comp Plan density goals, which in this Project aims to provide family-sized<sup>1</sup> houses on smaller lots.

Additionally, the following policies in Union Park’s Community Plan (2016) are supportive of this development.

- LU2. Preserve the well-kept, traditional feel and scale of the neighborhood.
- LU2.1 Maintain and establish zoning that preserves lower- density, single-family homes and duplexes outside of mixed- use corridors
- LU2.2 Encourage the continued use and rehabilitation of existing structures, districts, and landscapes to preserve the historic character of residential and commercial districts.
- LU2.3 Ensure that new development fits within the character and scale of adjacent neighborhoods.
- H1. Preserve Union Park’s pedestrian-scale neighborhoods, while promoting a range of housing types and affordability to meet the needs of people at different life stages with different housing needs
- H1.1 Support multi-unit mixed-use development in mixed- use corridors that can accommodate higher density levels, while minimizing impacts on adjacent lower density areas, and discourage multi-unit housing and retail uses that are incompatible with single-family residential areas
- H1.5 Encourage owner occupation of single-family and multi-family homes.
- H2.2 Encourage rehabilitation of existing housing stock.

## VariANCES Required

The two plat-related variances are as follows (quoted from “Preliminary Plat Conditional Approval Letter” dated Oct. 4, 2024):

- (1) A variance from Zoning Code Sec. 69.508(b) is required before the final plat can be approved, unless the plat is revised to meet the requirements. “All interior lots designated for residential use must adjoin an alley when available.” Based on the preliminary plat submitted, Lot 5 is an interior lot that would not adjoin an alley following the subdivision, so a variance based on the required findings in Zoning Code Sec. 69.703 would be needed.

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<sup>1</sup> The term ‘family-sized’ is used in the 2040 Comp (Policy H-9, H-36), which we are interpreting as dwelling units with three or more bedrooms.

- (2) A variance from [Zoning Code Sec. 69.508\(j\)\(1\)](#) is required before the final plat can be approved, unless the plat is revised to meet the requirements. This regulation states, “For back lots, an easement that is a minimum of twenty (20) feet wide across a single adjoining lot must be provided for pedestrian, water, sanitary sewer, and gas line connections to the nearest public street and for house numbers that can be clearly seen and read from the public street

### **Unusual Hardship: overly prescriptive standards**

While the goal of building houses on smaller lots sounds simple and straightforward, it, unfortunately, has been anything but an easy or straightforward process. There are many layers of sometimes contradictory regulations, and we have worked diligently to meet all the requirements of the myriad regulating departments related to building code, sewer and water plumbing codes, emergency access and fire codes, etc. (Please refer to the list of Departments and their respective internal reviews, which starts on the bottom of page two and runs to bottom of page three. Nine Departments separately reviewed and commented on the proposed plats, generally granting conditional approval subject to technical requirements and proper filing.) We have not been able to meet the various Department requirements and still meet all the exact prescriptions of the zoning code. While the aim of the 1-6 Unit Housing was to liberalize zoning standards, the result was the creation of several new, prescriptive requirements, including the “alley adjoinment” standard and the prescriptive location for access easements to back lots; it is the precise definitions of these provisions from which we are requesting a variance.

### **Unusual Hardship: CIC model**

Of particular note, Zoning had indicated that we could avoid the two zoning variances by shifting our project from a traditional home ownership model to that of a CIC (common interest community). The City’s letter essentially directs that we should form a CIC rather than applying for variances (quoted from “Preliminary Plat Conditional Approval Letter” dated Oct. 4, 2024):

One or more of the required findings appears not to be able to be met; CIC arrangement is permitted in the zoning code and might be something that you consider.

We feel it is important to be able to provide traditional single family homeownership opportunities without having to form a CIC (common interest community). While CIC’s can be a useful tool for creating new housing types and increasing housing diversity, in this project a CIC would increase the complexity and cost of homeownership for the proposed five houses, requiring more costly and more complicated types of insurance and financing including a larger down payment, as well as the perpetual burden on future owners of having an HOA board of directors and commensurate required paperwork including annual tax filings and beneficial

ownership reporting. This regulatory burden will last forever; and is entirely unnecessary for the lots and houses as designed. We also feel that the zoning code should not impose or endorse one type of homeownership model over another. While the Zoning code has broad authority to “To fix reasonable standards to which buildings, structures and uses shall conform”( Sec 60.203(o)), the model of ownership is neither a building standard, a structural standard, nor a land use. Home ownership has long been the “American Dream,” and one of the most powerful tools for households to achieve stability and build intergenerational wealth<sup>2</sup>. Yet, single family ownership has in recent years also been villainized as fueling suburban sprawl<sup>3</sup>. With this project we are forging a pathway to combine increased urban density and urban growth with America’s most popular housing choice<sup>4</sup> and most common tool for wealth-building.

## Unusual Hardship: incongruities between Comp Plan, Building Codes and Zoning

Finally, an unusual hardship is created by the incongruities between the City’s Land Use Policies (which support the increased density of this project), State building and plumbing codes (which have driven the site planning and lot sizes for this project), and the over-prescriptiveness of the City’s zoning ordinances for lot divisions (which fail to create enough flexibility to respond to unique site conditions without a variance).

Many of the Lot Division standards were created based on the typical parcel size (5,000 -6,000 SF) and typical depth (120 feet deep) of parcels and, at 19,500 SF and 150 deep, the Project site is substantially larger and deeper than a typical lot; the most common form for platted parcels in the city are 40 x 120 (4,800 SF). The zoning and building standards do not account for different lot widths; meanwhile, the easement requirements for back lots and interior lots —contrarywise to the typical lot shape—heavily favor wider lots with less depth, a condition that is highly atypical in St Paul. When those restrictions are imposed on a very large lot that also happens to be deeper than it is wide, the relative development capacity of the large lot is significantly impaired. Instead of allowing an increase in density as supported by the Comp Plan, the layers of regulations included in the zoning code are pushing this project toward larger and larger lots—and therefore lower density. The minimum lot size per unit for H2 is 1,000 square feet, a size not remotely achievable when layered with building code and zoning code requirements.

The site presented several challenges to our model to increase density that directly impacted the lots we could draw, which then changed the way the zoning rules were applied. The proposed lots—despite being similar to each other and matching the north-south orientation of the

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<sup>2</sup> “Homeownership promotes wealth building by acting as a forced savings mechanism and through home value appreciation. Wealth building hinges on the homeowners’ ability to build home equity.” Habitat for Humanity. <https://www.habitat.org/our-work/impact/research-series-how-does-homeownership-contribute-to-wealth-building>

<sup>3</sup> “Single-family zoning is increasingly under attack in both the popular press and scholarly journals.” Georgetown Law. <https://www.law.georgetown.edu/georgetown-law-journal/wp-content/uploads/sites/26/2023/06/GT-GGLJ230012.pdf>

<sup>4</sup> “Detached, single-family homes are the end goal for the majority of Americans. While 80 percent of the population would **prefer** to live in a single-family home, seven in ten Americans (70 percent) actually do.” Builder Magazine. [https://www.builderonline.com/money/economics/80-percent-of-americans-prefer-single-family-homeownership\\_o](https://www.builderonline.com/money/economics/80-percent-of-americans-prefer-single-family-homeownership_o)

neighborhood—actually have four distinct lot classifications: one corner lot; one interior lot with frontage from Iglehart; one interior lot from Howell, and two interior “Back Lots” — a brand new zoning classification. The result is that each of these lot types ends up with different zoning rules. For example, Lot 1 has greater setbacks requirements than Lots 2 and 3, even though they have the same solar orientation are very similar in size. Lot 1 has rotated standards, in terms of front /side/back, compared to Lots 4 and 5. This creates an unusual hardship and practical difficulty in site planning that follows the north-south orientation of the block.

North-south orientation not only matches the dominate pattern of the neighborhood, but creates equal solar access between houses, creating ideal conditions for solar energy systems. These houses will be solar-ready. “Inadequate access to direct sunlight for solar energy systems” is specifically cited as a “practical difficulty” for variance requests.

Additionally, site planning was complicated by infrastructure. There is no water and sewer service from Howell Street, creating an unusual hardship not caused by the applicant. Because water and sewer utilities are only available from Iglehart, we were required to provide all utility easements from Iglehart. Each of these three easements are 81 x 20 (1,620 SF); in other words, each unbuildable easement is larger than the minimum lot size for H2 (1,000 SF). In short, the access to water and sewer necessitated easements that limited the creation of lots with frontage to Iglehart. Due to the need for water and sewer service, we cannot have three separate lots that front Iglehart, but instead need to have three “in the back” and only two “in the front.” This is a condition caused by the placement of utilities, not by the applicant. Finally, the site is level, but raised on average around 4 feet above the public right-of-way (sidewalk and streets). There is an existing historic stone retaining wall that wraps much of the site. In order to protect this wall, we have proposed a slightly larger front setback (12 feet instead of 10 feet) for Lot 1. Taken together, the change in orientation of the rules results in the need for just one small variance<sup>5</sup>, a rear yard variance for Lot 1. The rear yard for Lot 1 is functionally a side yard to the north-south orientation of Lot 1, but we need a variance because the technical definitions label that setback as a rear yard. We have provided a “no build” agreements to ensure that houses have minimum 10 feet separation, which is the effective fire separation distance required between structures by Table R302.1(1). The variance will simply allow us to create equal yard for these houses, and to orient the houses to match the existing neighborhood pattern, north-south solar orientation, provide necessary water service, while still increasing density.

Minnesota courts have recognized that such an incongruity between city comprehensive plan goals and policies that seek increased density with generally applicable zoning restrictions that restrict building size as applied to a unique site is a practical difficulty that justifies the granting of a variance. *See, State of Minnesota ex. rel., Neighbors for East Bank Livability et al. v. City of Minneapolis*, 915 N.W.2d 505 (Minn. Ct. App. 2018) (upholding FAR variance for site guided in the comprehensive plan for high density).

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<sup>5</sup> Development variance, will be subject to separate application, per City Policy. It is included in this application because the development planning and the site planning are linked.

## **Unusual Hardship: Alley Access**

Related specifically to the first variance<sup>6</sup> and the City's interpretation that Parcel 5 requires alley access, we have several unique conditions created by the historic brownstone wall, the large (130 x 150) corner lot, and the lack of availability of public water and sewer from Howell Street. Water and sewer can only be accessed from Iglehart, creating the need for three separate twenty foot wide water and sewer easements from Iglehart. This is 60 feet of 130 of Iglehart frontage—nearly half the frontage—that is rendered unbuildable in order to provide necessary and basic services. Due to easement requirements for water and sewer, Parcel 5 is already the largest of the five proposed lots. Parcel 4, the corner lot, will have its services (trash, recycling, etc.) via a driveway from Iglehart Avenue.

We have provided an agreement for that access to be shared between Parcels 4 and Parcels 5. Limited curb cuts and shared driveways are specifically encouraged by 69.508(g)(1). Further, driveway access for Parcel 4 from Iglehart rather than Howell is supported by Engineering Design Standards as well as the existing lot conditions. Plumbing code encourages that water lines be installed under pavement “whenever possible” (Div. 2000, Engineering Standards); and by placing the shared driveway north-to-south with access from Iglehart, the driveway will avoid impacting the existing brownstone retaining wall. Finally, requiring Parcel 4 to have a duplicate service access via “flag” or easement to the alley is unnecessary and creates an unreasonable hardship that would impact Parcel 3 so significantly as to render it unbuildable and reduce the number of new lots from five to only four.

Most importantly, the purpose behind the zoning provision (69.508(b)) requiring interior residential lots to adjoin an alley “when available” is presumably to ensure access to alley-provided services, namely trash and recycling pick up, as well as vehicular access to parking areas/garages. As noted above, access to all these items can and will be provided, without needing to “adjoin” to the alley. A shared driveway has been proposed—functionally a private alley. This driveway would exist otherwise, but would only service one property (Parcel 4). Similarly, as easement has been prided for electrical service to extend from the alley to the lots with Iglehart frontage. It is redundant and unnecessary—and therefore an usual hardship for Parcel 3—to require Parcel 5 to make a surplus connection to the alley. Further, Sec. 69.500 allows the director of public works the ability to make modification of standards for “reasons of design or safety”; the reason of design is that it is more efficient and will reduce the amount of impervious surface required.

## **Unusual Hardship: Pedestrian Access**

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<sup>6</sup> Lot subdivision variance, subject of the application.

Related specifically to the second variance<sup>7</sup> and the City’s interpretation that pedestrian access must overlap with the utility easement and must only cross a single lot is arbitrary and overly prescriptive. A strict interpretation of this provision creates an unusual hardship.

Once again, the site planning for this subdivision has been shaped by the unique circumstances of the large and deep (130 x 150) corner lot, the dominant north-south development pattern of Merriam Park, and the lack of availability of public water and sewer from Howell Street. Most importantly, the two departments charged with reviewing the pedestrian easement (Department of Safety and Inspections, Fire and Department of Public Works) have approved the site plan with the shared walkway (pedestrian easement) from Howell.

**Department of Public Works – (Colleen Paavola 651-266-6104)**

Public Works approves the proposed plat with the following conditions:

- contingent on the proposed easements and covenants being signed and recorded properly.
- provided the back lots have visible addressing from an adjacent street and pedestrian access from this same street.

**Department of Safety and Inspections – Fire (Anne Blaser, 651-266-9140/651-226-3523)**

This is acceptable for fire, under the condition that there be pedestrian access from Howell Street to Lots 2 and 3, with a minimum of 3-foot width. Lots 2 and 3 are allowed to share access through another lot to the public right-of-way, provided there is a documented agreement between the three parties that also specifically addresses how maintenance and snow removal of the 3-foot easement will be handled. The 3-foot access must extend from a public right-of-way (not including the alley) to an entrance to any proposed buildings.

A “typical” singular interior lot would not have the ability to create pedestrian access from the side street, but the large size of this property makes an alternative—and more efficient—access possible. The large size of the lot is a unique circumstance.

## **Lot Subdivision Variance Process**

According to Sec. 69.703 of the zoning code, the City Council may grant a variance when compliance creates “an unusual hardship”:

- (a) Required findings. The city council may grant a variance to the subdivision regulations when compliance would create an unusual hardship to the development of the land,

Unusual hardship circumstances have been created, as described above. Further, Sec. 69.703 directs that the City Council must make the following findings related six (6) findings.

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<sup>7</sup> Lot subdivision variance, subject of the application



(1) The intent of this chapter is met;

Chapter 69 pertains to subdivision requirements. The intent and purpose Finding #1 for subdivision are described in nine subparts (69.102):

- (1) To protect and promote the public health, safety and general welfare;
- (2) To provide for the orderly, economic and safe development of land;
- (3) To promote affordable housing to persons and families of all income levels;
- (4) To provide adequate public services and facilities;
- (5) To provide for the protection and conservation of floodplains, steep slopes, soils and other geologic and ecologic features;
- (6) To provide for the protection and conservation of solar access;
- (7) To provide for the administration of this chapter including procedures and standards for subdivision plat approval;
- (8) To provide for variances from the strict interpretation of this chapter; and
- (9) To provide for penalties for violations of this chapter.

The first six subparts pertain to the development itself; and the latter three relate to the administration of the Chapter. All six of the described intents and purposes are met. The subdivision as proposed will create five individual legal parcels in an established neighborhood, with access to utilities, services, and transit. (Subp.1) The creation of buildable infill lots for housing protects and promotes the public welfare. (Subp.2) The creation of buildable infill lots for housing provides for the orderly, economic, and safe development of land. (Subp.3) The creation of buildable infill lots for housing will increase the supply of housing, promoting more options for affordable housing to persons and families at all income levels. (Subp.4) There are established public services for this property, that is located in an established Urban Neighborhood. (Subp.5) The property is not located on a steep slope or in a floodplain or any area requiring conservation measures; it is a level property located in an established Urban Neighborhood. (Subp.6) Site planning for these lots follows the dominate north-south pattern of Marriam Park, which provides for the protection and conservation of solar access. All 9 subparts are met; therefore required Finding (1) is met.

- (2) The granting of the variance will not be detrimental to the public safety, health or welfare or injurious to other property or improvements in the neighborhood in which the property is located;

Related to Finding 2, the granting of this variance will not be detrimental to the public safety, health, or welfare. It will not be injurious to other properties or improvements in the neighborhood. As noted above, several Departments have reviewed the proposed subdivision and have given their conditional approval for the plat, which includes all the described easement locations and specifications. The pedestrian easement is specifically called out as meeting the

requirements of DSI Fire. The proposed utility easements meet the requirements of Public Works. Required Finding (2) is met.

- (3) The conditions upon which the request for a variance is based are unique to the property for which the variance is sought and are generally not applicable to other property;

As described in more detail above, the conditions on which the variance request are based are unique to the property due to its large size (130 x 150), longer than typical depth (150 feet), existing historical brownstone retaining wall, as well as the location and availability of water and sewer infrastructure. Required Finding (3) is met.

- (4) The literal interpretation of the provisions of this chapter would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district;

The literal interpretation of the provisions would render less of the land buildable by duplicating easements and/or requiring unnecessary “adjoinments,” the net affect being a reduction in the number of buildable parcels from five to four, denying the Applicant the right to create functional, buildable lots well within the allowed limits of H2 District Dimensional Standards. Further, the strict compliance with these provisions would deprive the lots of usable outdoor space, a common amenity enjoyed by single family dwellings. Required Finding (4) is met

- (5) The special conditions and circumstances do not result from the actions of the applicant; and

As described in more detail above, the conditions on which the variance request are based are unique to the property and have not been created by the applicant. Those unique conditions include the property’s large size (130 x 150), its larger than typical depth (150 feet), the existing historical brownstone retaining wall, as well as the location and availability of water and sewer infrastructure for the property. Required Finding (5) is met.

- (6) Because of the particular natural surroundings, shape or topographical conditions of the specific property involved, unusual hardship to the owner would result, as distinguished from a mere inconvenience, if the strict letter of these regulations were carried out.

The reduction in buildable area and contingent reduction from five to only four parcels is an unusual hardship and not a mere inconvenience. Required Finding (6) is met.

**ADDENDUM: Images**



1899 Iglehart, The A.F. Gauger House, 'Before' and 'After' renovation



Proposed Trio of Houses, Howell lots (South Elevations)



Proposed Model Houses, Howell lots (West Elevations)