

MINUTES
THE BOARD OF ZONING APPEALS
CITY COUNCIL CHAMBERS, 330 CITY HALL
ST PAUL, MINNESOTA, MAY 6, 2019

Continued from April 22, 2019

PRESENT: Mmes. Bogen, Swift and Trout-Oertel; Messrs. Clarksen, 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: None

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.

The public Portion of the hearing had been closed at the previous hearing.

Mr. Benner II reviewed the case history from the previous hearing, with a recommendation for approval. Based on the varying interpretations on the number of bedrooms in each unit and how that impacts the off-street parking requirement staff is proposing two options for the BZA to consider:

1. Staff has provided a recommendation of approval. The BZA can make a motion to agree with staff's recommendation or deny the variance, and state which findings are not met.
2. The BZA could decide that staff erred in determining that the four units were designed with two bedrooms and the proposed floor plans should be interpreted as four units consisting of four bedrooms which would require eight off-street parking spaces. This option would require a new notification to the public.

Mr. Benner stated that if the Board selects the second option it will be the first time we have looked at a site plan this way. There is a development just up the street at 2044 Grand Avenue, with a very similar layout to this where staff has called them three-bedroom units where one of the bedrooms could potentially be called two bedrooms. The applicant submitted a three-bedroom site plan, this is a fairly common layout for student oriented housing. This would be a deviation from what staff has interpreted previously.

Ms. Bogen commented that there is a closet and an egress window in each of these four spaces, since there is one door going into each of the double spaces, is this two-bedrooms or four-bedrooms? Are these two sleeping rooms or four sleeping rooms on the site plan?

Mr. Benner stated that he and Mr. Diatta are of the opinion that these are two-bedroom units per floor. There is one door leading into the double room with no door dividing the two rooms into separate spaces. One room is the bedroom and the other room appears to him to be a lounge area. It could be said that these are four-bedrooms, but to him a bedroom has a separate door into each bedroom.

Ms. Bogen questioned if these rooms are that size and there happened to be two closets one on each end what is making people think it is two rooms is the wall with the closets between the two rooms. She stated that she was not here was that the previous discussion? If it was a room that size with two closets

one on each wall and showed a picture of a bed and a picture of a couch that would have clearly been a one-bedroom. This site plan may be unclear to the neighbors and some of the Board because it could be interpreted as two-bedrooms instead of divided one-bedrooms. Mr. Benner stated that it could be interpreted as four sleeping quarters. Ms. Bogen commented because there could be two beds in each one. Mr. Benner stated that the way staff has looked at these configurations, if there had been a door separating the two rooms the two sleeping quarters, that would be clear that these are four-bedroom units. Ms. Bogen asked what staff would have thought if site plan of the rooms showed one closet on one wall and the other on another wall with two twin beds side by side? Would that be a one-bedroom? Mr. Benner replied yes.

Mr. Clarksen stated that he is more interested in the likely uses of the spaces regardless of what is being depicted on the site plans. Many times, what is seen on the plans is inconsistent with the actual use of the property upon leasing or completion of the project. He is more concerned whether there are four spaces that meet the building code minimum size standards for a sleeping room and in that case, they are bedrooms whether there is a door or not. Mr. Benner asked what the question was? Mr. Clarksen questioned whether staff has the dimensions of the floor space for the rooms that would suggest whether those individual spaces qualify as rooms on their own, then there are four of them rather than two. Mr. Benner stated based on what would be considered a bedroom, what is appropriate for a bedroom according to Fire and life safety standards, each of these spaces could be considered a bedroom. Mr. Saylor asked if that is based on square footage or what? Mr. Benner replied it is based on the square footage. Mr. Saylor asked Mr. Benner to elaborate. Mr. Benner stated that generally it is 70-square feet for a sleeping room to be occupied. If there is more than one person per room it is 100-square feet and an additional 50-square feet for each person after that. This he believes is how Fire looks at it from a safety perspective. These rooms at 194-square feet could be enough for four people. Mr. Saylor stated that the rooms being 97-square feet they surpass the minimum square footage hurdle for a bedroom. Mr. Benner replied that the zoning code allows up to four unrelated adults in each dwelling. However, the parking is driven by the number of bedrooms, not the number of people in each unit. This was proposed to the City as four two-bedroom units which requires off-street parking for six cars. Four four-bedroom units would require eight parking spaces.

Ms. Swift stated that if this layout was any different there would still be enough space to fit two people into those bedrooms. There is enough space in these units to fit four people comfortably and the only thing that the Board would change would be the layout of this floor plan there could still be the same number of people living there. She does not know what would be changed by changing the layout, the applicant said that he could move the closets from the middle of the rooms then it would be two bedrooms. But they could legally still have four people in a two-bedroom apartment. She stated that she does not understand what the issue is here, whether it is a four-bedroom or a two-bedroom. If it is a two-bedroom four people could still live in it legally.

Mr. Warner stated that the issue is parking, because parking is based on the number of rooms. If these are four-bedroom units then the applicants are two parking spaces short and they would need a parking variance which they have not applied for. Ms. Swift stated that the only thing making this a four-bedroom is our interpretation of the site plan. Mr. Warner replied that is right. An alternative interpretation of this plan is that they are four-bedroom units which requires more parking spaces.

Mr. Benner stated that the Board has two options here. 1. Staff has provided a recommendation of approval. The BZA can make a motion to agree with staff's recommendation or deny the variance, and state which findings are not met. 2. The BZA could decide that staff erred in determining that the four units were designed with two bedrooms and the proposed floor plans should be interpreted as four units

consisting of four bedrooms which would require eight off-street parking spaces. This option would require a new notification to the public.

Ms. Swift stated that she does not think that parking is really the issue, from the testimony here, legally that is the issue. But what it sounds like to her is a density issue, they do not want so many people in the area. Because it will sound like something or look like something. She contended that this discussion would not be taking place if this were in a different area of the City.

Ms. Bogen questioned if the Board decides that this is four four-bedroom units, then staff just has to renotify? The applicants would have to have a variance of the 9,000-square feet and a parking variance? Or a plan that gets eight parking spaces on the lot? Mr. Benner replied that staff will have to renotify for a parking variance and also the 9,000-square foot variance. They could apply for the parking variance or rehash their parking layout to include two more spaces. He thinks that might be a problem, as the applicants met all the setbacks for the six parking spaces and did not need any variances for parking; however, if they were to add it would be difficult and they would probably have to come back for a parking variance.

Mr. Benner continued that at the last hearing he mentioned that a duplex could be built on the site without any variances, by right. He was incorrect with that statement. A duplex would require a variance at this site for the lot width. The only thing that could be constructed at this site without any variances is a single-family dwelling. A duplex would require a lot width variance, because a lot width minimum of 50-feet is required, this lot is only 40-feet wide.

Mr. Miller stated that this same structure could be built as a duplex with the same dimensions but with the change of the front and back entrances. Floor 1 and 2 could be one unit and floor 3 and 4 could be the other unit. They are choosing to not do that intentionally and he is wondering why? Mr. Benner replied based on what Mr. Miller suggested, only eight residents could be in a duplex because only four unrelated adults can occupy a unit. Also, a variance would be required for a duplex. The applicants cannot achieve the same number of residents in a duplex.

Mr. Rangel Morales stated if they were to build a duplex as described by Mr. Miller, it would almost guarantee that aside from a family who has more than four members, there would only be four unrelated people per unit with a maximum of eight people for the whole building. Whereas with the current proposal there could be sixteen people living in this building. He agrees with Ms. Swift's comments, but what he disagrees with is that the Board does not know how this property is intended to be used. The whole point of having this public process is so that the community is aware of what is going to occur. We have the applicant saying that they are going to use this as two-bedroom units but they are open to the idea of using it as four-bedroom units. The applicants partner came in and said that the Board could place a condition that says they will look into parking if feasible. If it is not feasible then they do not have to do parking. Mr. Rangel Morales continued that Mr. Benner has stated and the applicants probably know about whether they could fit the parking spaces in there or not. He thinks that they would have made staff aware if they were able to fit more spaces in there. His concern is what exactly is the Board approving? Is the Board approving a four-plex with four-bedrooms each or a four-plex with two-bedrooms each? He thinks that this information is important for people that live in the area to know. When talking about density and parking in trying to be more covert about it. The applicants have said that is the way they intend to use it, but there is no way of enforcing that if they decided tomorrow to make these units four-bedrooms each. It would be really hard for the City to know.

Mr. Benner replied he supposes so, he is siding with Commissioner Swift on this one because as Ms.

Bogen pointed out there are two closets, if a closet is taken away and if the room were reconfigured a little differently he believes that there would not have been as many questions. He believes that there are certain elements of this design that lead some of us to believe these are four-bedroom units, then again, he believes that these are two-bedroom units which could have four-bedrooms. He also believes that the same interpretation can be made for a lot of floor plans, of a lot of developments that he has looked at. This will be the first time that the Board has had this type of interpretation happen because usually it is pretty clear when walking into a room that a bedroom has a separate entrance. You could look at a master bedroom has different living areas and call them two bedrooms. But because this is student oriented housing near the St. Thomas campus and the neighborhood that this is in there is this extra scrutiny that is happening.

Ms. Swift stated that it is just her and her two kids and when she was looking for a place if she saw a two-bedroom plus a den she would say in her head that she could fit three people in the unit. She stated that she has a hard time believing that this is about parking. She contended that people are saying that they want adequate parking, but they have the lite-rail. If this is for students attending St. Thomas, which is right there, parking may not be an issue. Ms. Swift stated that she thinks that the Board is making this harder when what the City needs is more density and more housing because we are at such a low vacancy rate. This is sounding like Nimbyism yes, we need more density but not on my block, not in my neighborhood, not where I'm at because I don't want to see more people or for anything to change. But the City is changing overall, the City passed an ordinance about accessory dwelling units and other things saying that we need more density, we need more housing. She feels that the Board is punishing this developer for some reason. Ms. Swift stated that she thinks that having people being able to live comfortably and being able to split the rent adds to the affordability factor. Not adding the parking spaces will promote public transit, biking and walking like we are trying to do. If the Board is saying the applicant is being covert about it, or they are somehow lying to the Board, she does not know who we think we are. She contended that these are two-bedroom units.

Ms. Swift moved to approve the variance and resolution based on findings 1 through 6. The motion died for lack of a second.

Mr. Rangel Morales stated that he respects all the comments that Commissioner Swift made and he agrees with what she said to the point of who do we think we are. There is a reason why notices are sent out and there is a reason why, even if it is only a couple of inches, Mr. Warner says that the Board has to renotify. To him that is what this all boils down to. Whether they are doing this to try and circumvent the parking requirement is one thing, the lack of transparency is the part that he is having a hard time getting over.

Mr. Clarksen moved to deny the variance and resolution he does not believe that the findings have been met. The third paragraph of finding three describes how a duplex could be constructed on the lot without a variance, Mr. Benner's testimony today has indicated pretty clearly that is not the case. He is not sure how it has been concluded that the finding has been met if that is a true statement. Mr. Clarksen stated that staff may have erred in determining that constructing this building as proposed would not require additional variances.

Mr. Warner stated he sees what Mr. Clarksen is driving at, he thinks a little more discussion by the Board and comments by staff. Ms. Bogen stated that there isn't a second yet. Mr. Saylor stated he wanted to know if this motion can be made. Mr. Benner stated that Mr. Clarksen has identified an error in the staff report, however, that error was not the basis of his recommendation. By correcting his statement, he is making it stronger because if a duplex cannot even be built without a variance on this lot he thinks that adds more practical difficulty. If you have a site is zoned RM2, that calls for multi-family housing and

the only thing that can be built on the site without any variances is a single-family dwelling, he thinks that is a practical difficulty its self, we have a property that is zoned for a much higher density. Mr. Benner continued that he wanted to make the point that in the RM2 zoning district 1500-square feet per unit is required and there are four units here and a lot size of 6,000-square feet would be required and this lot including half the distance of the alley is over 6,200-square feet. He felt that this is where the practical difficulty lies, in the fact that the lot size meets the RM2 zoning standard of 1500-square feet per unit, however, there is the additional 9,000-square foot rule that requires the variance. That he erred in that particular fact of the staff report would not necessarily be an error on the recommendation.

Mr. Warner stated he is not sure how to maneuver through this as there is no second yet, but whatever the Board ends up doing somebody will need to move to strike that third paragraph of finding three, because is it clearly incorrect. That brings the Board back to the fact that the lot meets the 1500-square feet per unit requirement but not the overall lot size requirement.

Ms. Bogen stated for the people that are concerned that there are four four-bedroom units in this building wouldn't it make more sense for the motion to be that staff erred in determining the number of bedrooms. If the variance is just denied then the applicant can just appeal to the City Council and then the issue of the number of bedrooms would not be a part of what the City Council will look at, because it has nothing to do with the variance. She thinks that is the second option on the memo from staff.

Mr. Benner questioned Mr. Warner, whatever the Board decides today, the applicants can take that to the City Council, within the ten days, even if the Board did decide that these are four-bedroom units, the applicant could appeal that saying that the BZA (Board of Zoning Appeals) erred in determining that these are four-bedroom units.

Mr. Rangel Morales asked Mr. Benner if during the two-week layover, did the applicant show any desire to just re-label these as four-bedroom units and apply for a parking variance? Mr. Benner replied not exactly, no. He did ask the applicant to give him some parking dimensions as shown on the new site plan, and also label the rooms. He did not think it was appropriate for the applicant to switch up the plans after being presented as two-bedroom units, he believes that would have made the lack of transparency worse. Mr. Saylor stated he agreed with that. Mr. Benner continued that he thought that the applicant should stick with what he has proposed and have the Board decide otherwise.

Mr. Clarksen stated he is going to come back on what he had proposed as a motion. In light of the fact that there may be changes to the staff report to strike the third paragraph of the third finding that is factually incorrect. He would amend his motion to reflect the comments made by Commissioner Bogen, staff erred in the decision regarding the number of bedrooms and that has impacts on other issues mainly parking, and the conclusion that would be drawn from that is that the applicant has not demonstrated compliance related to the important factor of how much parking is required on this site. The second paragraph of finding three reads "and can accommodate additional parking", he does not believe that the applicant has actually demonstrated that. If you assume that the number of bedrooms was calculated incorrectly.

Mr. Saylor asked if that was a motion? Mr. Clarksen stated it was intended to be a motion to deny based on an error by staff in determining that these are two-bedroom units rather than four-bedroom units and that the ability of the applicant to demonstrate that they have accommodated additional parking would no longer be available.

Ms. Bogen stated that she reads option two of the memo, as saying that the Board is not denying or

approving a variance here because there are four four-bedroom units is saying that the Board cannot approve or deny, this has to be redone, it has to have a new variance attached to it for the parking and then we will have a hearing for it on that. We are not denying or approving anything, there is nothing to appeal to the City Council. We are just sending this back to staff to prepare a staff report on the parking. Mr. Clarksen stated we have to act within 60 days.

Mr. Warner stated that Ms. Bogen is correct and in fact we do have enough time to continue it and meet the 60-day rule, we would go into the 120-days, but they have calculated the time so that if it goes back to staff to present a new staff report and to renotify for a parking variance, there is time to do that and time for anybody to appeal that decision to the City Council before the expiration of the 120-days.

Mr. Miller asked about the 40-foot width, does that still apply here? Ms. Bogen stated that is for a duplex. Ms. Bogen stated it is still just the 9,000-square feet and the parking variance.

Ms. Bogen stated she would like to make a motion if Mr. Clarksen does not mind, that staff did error and the site plan shows four four-bedroom units and because of that the neighborhood needs to be renotified and there has to be staff findings regarding the parking variance which is now required as well as the lot size variance which is still required.

Mr. Saylor asked if that was the motion Mr. Clarksen made? Mr. Clarksen stated he moved to deny the variance and he thinks that the Board could either deny the variance because the denial addresses what is currently before the Board and sends a message and we could also follow Commissioner Bogen's motion.

Mr. Saylor stated that Mr. Clarksen made a motion, he can either withdraw it or look for a second. Mr. Clarksen asked for a second. Nobody seconded the motion to deny. The motion died for lack of a second.

Ms. Bogen stated her motion is not to approve or deny, but to find that the BZA believes that staff erred in calculating the number of bedrooms in a unit and another variance is required for parking and the Board is sending this back to staff to renotify the neighbors and prepare new findings addressing both the variances that are being required for this building.

Mr. Rangel Morales seconded the motion, which passed on a roll call vote of 6-1(Swift).

Submitted by:

Approved by:

Jerome Benner II

Daniel Miller