

January 14, 2021

The Department of Safety and Inspections Zoning Section
375 Jackson St, Suite 220
Saint Paul, MN, 55101

Re: Response to Sullivan Property Investment LLC
Appeal of HPC decision regarding 540 Portland Avenue

To the City Council:

Please accept this letter on behalf of Gar Hargens and Missy Thompson, supporting the December 14, 2020 decision of the Heritage Preservation Commission to deny the application of Sullivan Property Investments II, LLC (the "Applicant") for approval of a three-unit townhouse development as a second principal structure (the "Application") and opposing the appeal of that decision by the Applicant. The subject property, with a proposed address of 540 Portland Avenue, is the rear yard of property already improved with an existing three-unit townhouse with an address of 542 Portland Avenue.

The City Council should not allow the Applicant to proceed without addressing the legitimate concerns of Heritage Hill Historic Preservation District residents as directed by the HPC. At the December 14, 2020 HPC hearing, after denying the Application, the HPC advised the Applicant to meet with neighborhood residents to discuss how the project might be designed to fit in and be acceptable. Shortly after the December 14 meeting, the Ramsey Hill Association and Summit Avenue Residential Preservation Association contacted the Applicant and offered to schedule a meeting. The Applicant declined, and instead filed its appeal to the City Council, essentially asking the City Council to rescind its decision to send the project back to the HPC.

The Applicant fails to state grounds for the current appeal. The only grounds the Applicant states for its appeal of the December 14, 2020 HPC decision is that the Applicant likes the October 5, 2020 decision approving the Application better. Everything else in the Applicant's December 28, 2020 Notice of Appeal is an attempted rebuttal of assertions that the HPC and City Council failed to provide the public a fair hearing of the original Application. If the Applicant is challenging the City Council's decision to send the Application back to the HPC for further hearing, that decision can only be appealed to the state courts. The City Council does not have authority to reconsider that decision on its own initiative.

The City Council appropriately addressed previous procedural objections and allowed the HPC to address substantive objections. Thompson and Hargens appealed the October 5 HPC approval on procedural and substantive grounds. When the City Council considered that appeal on November 18, 2020, rather than address the substantive grounds of the appeal,

50 South Sixth Street, Suite 2600, Minneapolis, MN 55402

the City Council sent the Application back to the HPC to hear and consider the substantive objections. Thompson and Hargens appreciate the City Council's decision to address their objections to the inadequate opportunity for public hearing on October 5 by sending the Application back to the HPC to apply its expertise to the substantive objections.

Given an opportunity to hold an open and fair hearing, the HPC made the right decision. The HPC addressed the substantive objections by reversing its October 5 decision after hearing public comment, which included expert testimony from architects, architectural historians, and former members of the HPC. That decision demonstrates the importance of such hearings and gives us all cause for confidence in the process. Thompson and Hargens are satisfied that the HPC gave the Applicant and the public a fair hearing on December 14, and applaud the HPC for coming to the conclusion that the Application does not comply with the HPC Guidelines.

The Applicant cannot state substantive grounds for the current appeal. If the Applicant is appealing the substantive decision of the HPC, the Applicant has failed to state any basis for that appeal, and cannot. We support the HPC's December 14, 2020 decision for the same substantive reasons we presented in writing at the first HPC hearing and our appeal to the City Council. Chief among those objections are:

The Application violates fundamental principles of the district guidelines and national guidelines by presenting a fake front door to Summit Avenue, a street with a national reputation for historic authenticity, with no actual access to Summit Avenue.

The Application violates objective setback requirements, without request for or grant of a variance from those requirements.

The Application is out of scale and out of character with the surrounding development in every way possible, especially in orientation: As a building set midway between Portland Avenue and Summit Avenue, the only way the project could possibly fit with a Summit Avenue orientation, would be as a carriage house, with a low profile, not as a full-size home with a front porch facing Summit Avenue with no access to Summit Avenue.

If the City Council is going to re-consider its November 18 remand of the project to the HPC the City Council must reconsider its decision regarding Thompson and Hargen's appeal of the BZA variances. The October 5, 2020 HPC decision was made at a hearing that occurred simultaneously with a Board of Zoning Appeals hearing regarding an application for an astounding six (6) variances for the same project. No one person could attend both hearings, and both hearings were conducted in a manner in which no one could make public comments at either hearing. The HPC and BZA approved the Applications and Hargens and Thompson appealed both decisions. The City Council did not take public comments for either appeal, but sent the Application back to the HPC as noted above. When the Application came back to the City Council on December 16 for a decision on the HPC and BZA appeals, the City Council essentially treated the appeals as moot because of the December 14 HPC denial of the Application. If the City Council rejects the current appeal,

and allows the December 14 denial of the Application to stand, those appeals remain moot, and it will not matter that the BZA and the City Council never took public testimony regarding the variances because the project cannot proceed without HPC approval. If the Applicant meets with the neighborhood and then gains HPC approval of a revised design, the Applicant will need a new set of variances, or no variances at all, for the revised design, so the BZA appeal is again moot. The only circumstance under which the BZA variances remain relevant would be City Council approval of the Applicant's current appeal. Granting that appeal would allow Applicant to proceed with the original design, without ever having a public hearing regarding the variances.

The City has still not addressed the objections of the owners of the east half of the 8-foot wide driveway that serves the existing triplex and would serve the new triplex. Gary R. Currie and Elizabeth A. Currie owners of 536 Portland Avenue, St. Paul, Minnesota, neighbors of 542 Portland Avenue, continue to object to the City granting the Applicant approval to improve and substantially increase the use of the Currie's property without the Curries' consent. The east 8 feet the development property, from Portland Avenue to the north boundary of Lots 8 and 7 (which is mid-block and does not include the landlocked parcel at the rear of 540 Portland) is a common driveway easement for the benefit of 536 and 540 Portland Avenue. The Curries own the east 4 feet of that driveway, and therefore the east 4 feet of the development property. The Curries have not consented to the Application to the HPC or the application to the BZA, but the St. Paul Legislative Code requires the Curries consent to both applications.

The HPC did not have authority to grant HPC approval, and the BZA did not have authority to grant the variances, without consent of the Curries. Section 73.03.1 of the St. Paul Legislative Code requires that the applicant have, "an ownership, leasehold, or contingent interest in the heritage preservation site . . ." Similarly, St. Paul Code of Ordinances Section 61.301(b) Application for variance, provides that, "An application for variance may be filed by any person having an ownership or leasehold interest in the subject land and/or building (contingent included)." The Applicant owns only an easement over the east 4 feet of the development property. The Curries raised their objection in writing before the October 5 HPC and BZA meetings, but the Curries did not have an opportunity to speak, staff did not present the objection, and neither the BZA nor the HPC discussed the objection at their separate October 5 meetings. We raised the Curries' objection on their behalf in writing before the November 18 City Council meeting at which the City Council first considered the Thompson and Hargens appeals, but we did not have an opportunity to speak, staff did not present the objection to the City Council, and the City Council did not address the objection on November 18 or December 2. We did present the objection at the December 14 HPC meeting, but the HPC dismissed the objection as outside the scope of their authority – which plainly contradicts Section 73.03.1, which requires the HPC to determine whether the Applicant owns the property. Staff did not present the objection to the City Council, and the City Council did not address the objection on December 16.

The Applicant owns only an easement over the east 4 feet of the development parcel and does not have consent from the Curries to redevelop, and burden, the Curries' property. This is more than a technical objection. The proposed second triplex on the Applicant's

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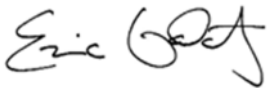
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property will double the traffic of residents, visitors, service and delivery people, garbage haulers and others using the 8-foot wide driveway, which occupies a space of only 12 feet between the Curries' home and the existing triplex at 540 Portland. If the City upholds the HPC denial of the Application, the Curries' objection to the City's lack of jurisdiction will in fact be moot, at least until the Applicant presents a new proposal. If the City grants the appeal, and reinstates the October 5, 2020 HPC approval, and therefore re-affirms the October 5, 2020 BZA variances, the City will be doing so without ever having addressed the Curries' objection to the City's lack of jurisdiction.

For all of the foregoing reasons, we ask the City to support the decision of the HPC and reject the Applicant's appeal.

Very truly yours,

Stinson LLP

A handwritten signature in black ink that reads "Eric Galatz". The signature is written in a cursive, slightly stylized font.

Eric Galatz