



APPLICATION FOR APPEAL

Saint Paul City Council – Legislative Hearings

RECEIVED

JAN 14 2022

CITY CLERK

310 City Hall, 15 W. Kellogg Blvd.

Saint Paul, Minnesota 55102

Telephone: (651) 266-8585

We need the following to process your appeal:

- \$25 filing fee (non-refundable) (payable to the City of Saint Paul) (if cash: receipt number _____)
- Copy of the City-issued orders/letter being appealed
- Attachments you may wish to include
- This appeal form completed
- Walk-In OR Mail-In
for abatement orders only: Email OR Fax

HEARING DATE & TIME
(provided by Legislative Hearing Office)
Tuesday, **February 1, 2022**

Time: you will be called between
1:30 p.m. & 3:30 p.m.


Location of Hearing:
Teleconference due to Covid-19 Pandemic

Address Being Appealed:

Number & Street: 346 Cleveland Ave. N. City: St. Paul State: MN Zip: 55104

Appellant/Applicant: 346 Cleveland Avenue N, LLC Email tcwagor@ravichmeyer.com

Phone Numbers: Business 612-317-4742 Residence _____ Cell _____

Signature:  Date: January 14, 2022
TED WAGOR, Attorney for Applicant

Name of Owner (if other than Appellant): _____

Mailing Address if Not Appellant's: 150 South Fifth Street, Suite 3450, Minneapolis, MN 55402

Phone Numbers: Business 612-317-4742 Residence _____ Cell _____

What Is Being Appealed and Why?

Attachments Are Acceptable

- Vacate Order/Condemnation/Revocation of Fire C of O See Attached
- Summary/Vehicle Abatement _____
- Fire C of O Deficiency List/Correction _____
- Code Enforcement Correction Notice _____
- Vacant Building Registration _____
- Other (Fence Variance, Code Compliance, etc.) _____

Attachment to Application for Appeal & Legislative Hearing

346 Cleveland Avenue North

PID: 332923330068

Appeal of Revocation of Fire Certificate of Occupancy

And Order to Vacate

Ref. # 126073

This application arises from Leg. Code § 40.06(c) for an appeal to a legislative hearing officer from the Revocation of Fire Certificate of Occupancy and Order to Vacate issued to the property and occupants at 346 Cleveland Avenue N., St. Paul, MN 55401 (the "Property"), on January 6, 2022. The revocation letter dated January 10, 2022 (the "Revocation Letter") is also attached to this application.

Pursuant to the Revocation Letter, the listed reason for the revocation of the certificate of occupancy was because the Property was occupied by five (5) undergraduate students without being registered as a student dwelling in violation of the SH Student Housing Neighborhood Impact Overlay District ("SH Overlay District"), Leg. Code §§ 67.701 *et seq.*, and the Applicant's recent application for student housing registration was denied. That application was denied because the Property was located within 150 feet of four other student dwellings. See Leg. Code § 67.703(1). The Applicant, however, is in the process of seeking a variance from the SH Overlay District standards, including the 150-foot standard, in accordance with Leg. Code §§ 67.706 and 61.601 (the "Variance Application"). A draft copy of the Variance Application (excluding the referenced exhibits) is attached hereto as Exhibit A for your review. The Applicant will be finalizing and submitting the Variance Application to the Board of Zoning Appeals contemporaneously with this letter.

In light of the Applicant's pending Variance Application, the Applicant respectfully requests a stay of the enforcement proceedings on the above-referenced revocation of the fire certificate of occupancy and order to vacate pursuant to Leg. Code § 46.06(c). We ask that a stay be in place until the Board of Zoning Appeals has issued a decision on the Variance Application. If the variance is granted, the Applicant will become a registered student dwelling in compliance with the SH Overlay District, removing the grounds upon which the revocation and order to vacate are based. If the variance is denied, the Applicant will consider whether further appeals are warranted and, at that time, may request to extend the stay to accommodate any such further appeals.



CITY OF SAINT PAUL

375 Jackson Street, Suite 220
St Paul, Minnesota 55101-1806

Telephone: 651-266-8989
Facsimile: 651-266-9124
Web: www.stpaul.gov/dsi

January 10, 2022

Kara Silva
708 5TH ST SE
MINNEAPOLIS MN 55414USA

Revocation of Fire Certificate of Occupancy and Order to Vacate

RE: 346 CLEVELAND AVE N
Ref. # 126073

Dear Property Representative:

Your building was reinspected on January 6, 2022, in response to a complaint. Since you have failed to comply with the applicable requirements, it has become necessary to revoke the Certificate of Occupancy in accordance with Section 40.06 of the Saint Paul Legislative Code. **A reinspection will be made on February 10, 2022 at 10:00 am or the property vacated.**

The Saint Paul Legislative Code further provides that no building shall be occupied without a Certificate of Occupancy. Failure to immediately complete the following deficiency list or the building vacated may result in a criminal citation.

DEFICIENCY LIST

1. Interior - Throughout - Sec. 67.702. - Student dwellings. Within the SH student housing neighborhood impact overlay district, a student dwelling is a one- or two-family dwelling requiring a fire certificate of occupancy in which at least one (1) unit is occupied by three (3) or more students. For the purposes of this article, a student is an individual who is enrolled in or has been accepted to an undergraduate degree program at a university, college, community college, technical college, trade school or similar and is enrolled during the upcoming or current session, or was enrolled in the previous term, or is on a scheduled term break or summer break from the institution. -Your application for this property to be a student dwelling has been denied. Therefore, you must reduce the number of undergraduate students living at the property from 5 to 2.

Saint Paul Legislative Code authorizes this inspection and collection of inspection fees. For forms, fee schedule, inspection handouts, or information on some of the violations contained in this report, please visit our web page at: <http://www.stpaul.gov/cofo>

You have the right to appeal these orders to the Legislative Hearing Officer. Applications for appeals may be obtained at the Office of the City Clerk, 310 City Hall, City/County Courthouse.

15 W Kellogg Blvd, Saint Paul MN 55102 Phone: (651-266-8585) and must be filed within 10 days of the date of this order.

If you have any questions, email me at: Jack.Toeller@ci.stpaul.mn.us or call me at 651-266-8950 between 7:30 - 9:00 a.m. Please help to make Saint Paul a safer place in which to live and work.

Sincerely,

Jack Toeller
Fire Inspector

Ref. # 126073



ZONING VARIANCE APPLICATION

To Board of Zoning Appeals
Dept. of Safety & Inspections
Zoning Section
375 Jackson St., Suite 220
Saint Paul, MN 55101-1806
(651) 266-9008

To Planning Commission
Dept. of Planning & Econ. Devt.
Zoning Section
1400 City Hall Annex, 25 W 4th St.
Saint Paul, MN 55102-1634
(651) 266-6583

EXHIBIT A
5 Pages
Use Only
Received By / Date
Tentative Hearing Date

APPLICANT

Name 346 Cleveland Avenue N, LLC
(must have ownership or leasehold interest in the property, contingent included)
Address 150 S. Fifth Street, Suite 3450 City Minneapolis State MN Zip 55402
Email tcwagor@ravichmeyer.com Phone (612) 317-4742
Name of Owner (if different) Email
Contact Person (if different) Ted Wagor, atty. for Applicant Email
Address City State Zip

PROPERTY INFO

Address / Location 346 Cleveland Avenue N., St. Paul, MN 55104
PIN(s) & Legal Description 332923330068
(attach additional sheet if necessary)
Lot 6, Block 17, Merriam Park, Ramsey County, MN Lot Area 0.19 Acres Current Zoning RT1

VARIANCE REQUEST: Application is hereby made to the Board of Zoning Appeals (or to the Planning Commission with another zoning application) for variance from the following section(s) of the Zoning Code Leg. Code Sect. 67.703(1)(2)
State the requirement and variance requested. Applicant seeks to establish a new "Student Dwelling" under Leg. Code Sect. 67.706, but is within 150 feet from another Student Dwelling and needs a variance from this condition. See Attached for more information.

SUPPORTING INFORMATION: Explain or demonstrate the following. Attach additional sheets if necessary.
1. Practical difficulties in complying with the provision of the code from which a variance is requested, and that the property would be used in a reasonable manner not permitted by the provision.
See Attached.
2. The plight of the landowner is due to circumstances unique to the property not created by the landowner.
See Attached.
3. The variance will not permit any use that is not allowed in the zoning district in which the property is located.
See Attached.
4. The variance will not alter the essential character of the surrounding area.
See Attached.
[X] Required site plan is attached
[] If you are a religious institution you may have certain rights under RLUIPA. Please check this box if you identify as a religious institution.

Applicant's Signature [Signature] Date 1-14-22
TED WAGOR, Attorney for Applicant

Attachment to Variance Application

346 Cleveland Avenue North
PID: 332923330068
Variance from SH Student Housing
Neighborhood Impact Overlay Dist.

I. Introduction.

This application arises from Leg. Code § 67.706 for a variance seeking to establish a new “student dwelling” at the property located at 346 Cleveland Avenue North, St. Paul, MN 55401, PID 332923330068 (the “Property”), within the SH Student Housing Neighborhood Impact Overlay District (the “SH Overlay District”). The Property is a five-bedroom, single-family dwelling with a principal zoning classification of RT1-two family residential. It is currently being used as a licensed rental property, providing living accommodations to five adults who are all upstanding and productive members of the community. When the Applicant rented the Property to its current tenants, the Applicant was unaware of whether or not at least three of them qualified as “students” within the meaning of Leg. Code § 67.702 (defining a “student” as an individual accepted to, enrolled in, or previously enrolled in an undergraduate program, as opposed to a graduate or other type of higher education learning program). As this information is not typically requested as part of a rental application.

Several months after the tenants moved into the Property, however, the Applicant was informed for the first time that at least three of the tenants were enrolled in the undergraduate program at the University of St. Thomas. As a result, the Applicant submitted a Student Housing Registration application with the City of St. Paul, Department of Safety and Inspections (“DSI”), on November 5, 2021, seeking to register the Property for student housing in accordance with the zoning requirements for the SH Overlay District. Within an hour after submitting the application, the Applicant received a cursory email from DSI denying its application to register the property for student housing. The email stated that the Property failed to meet the zoning requirements for student housing because it was within 150 feet of four other registered student dwellings. See Leg. Code § 67.703(1) (requiring a minimum of 150 feet between student dwellings). The Applicant was then advised to submit this variance application to the Board of Zoning Appeals (“BZA”) to have the Property registered as a student dwelling, in accordance with Leg. Code § 61.706 and § 61.601. Accordingly, the Applicant respectfully submits this variance application for consideration by the BZA.

II. Required Variance Findings.

Pursuant to Leg. Code § 61.601, variance applications are judged based on the following required findings:

- (1) The variance is in harmony with the general purposes and intent of the zoning code.
- (2) The variance is consistent with the comprehensive plan.
- (3) 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.
- (4) The plight of the landowner is due to circumstances unique to the property not created by the landowner.
- (5) The variance will not permit any use that is not allowed in the zoning district where

the affected land is located.

(6) The variance will not alter the essential character of the surrounding area.

The requested variance satisfies all of the above required findings.

- a. **The variance is in harmony with the general intent of the zoning code AND resolves an existing conflict between the SH Overlay District and the City's Comprehensive Plan.**

Harmony with the Principal Zoning Classification.

The principal zoning classification of the property is RT1-two family residential, which aligns with the Property's desired use as a five-bedroom, single unit residential Student Dwelling.

Harmony with the SH Overlay District and Comprehensive Plan.

Upon review of the legislative materials supporting the SH Overlay District, including its enacting ordinance, Ord. 12-34 (made effective August 8, 2012, the "Ordinance"), and the City's recently approved 2040 Comprehensive Plan, it is clear that the Applicant's requested variance is warranted here because it harmonizes an existing conflict between the Ordinance and the Comprehensive plan.

The Ordinance, as applied to the Property, is in conflict with the City's recently approved 2040 Comprehensive Plan. The Ordinance was premised on, among other things, restricting student dwellings in order maintain the "predominately low-density residential zoning" of "established neighborhoods," and specifically acknowledged that student housing leads to increased density and "overcrowding." The Comprehensive Plan, however, no longer references or identifies "established neighborhoods," or places a priority on preserving their low-density. Additionally, the Comprehensive Plan specifically identifies the location of the Property as being desirable for higher density residential uses, which student housing dwellings provide. Indeed, Map LU-2 of the Comprehensive Plan, (attached hereto as Exhibit 1), places the Property as being within the Marshall-Cleveland "Neighborhood Node," and therefore specifically planned for higher-density residential use, with the goal of being able to walk to established "public anchors such as schools" (e.g., the University of St. Thomas), "planned transit," and other amenities within 20 minutes. The aim of the SH Overlay District to restrict the density of "established neighborhoods," therefore, is in conflict with the Comprehensive Plan's stated goal of increasing density within neighborhood nodes to, among other things, advance the development of walkable communities within such nodes to public anchors such as schools and public transit.

Granting this variance application helps to harmonize the conflict between the Ordinance and the Comprehensive Plan, by fostering increased density within the Marshall-Cleveland Neighborhood Node and providing the tenant-students with housing that is within a walkable distance to school, public transit, and other nearby amenities. Moreover, because the requested variance maintains the single-family characteristic of the immediate neighborhood—as the variance is not seeking to implement a large-scale apartment complex, for example—the variance is in harmony with the overarching objectives of both the SH Overlay District and the Comprehensive Plan.¹ For these reasons, the requested variance satisfies the required harmony finding.

¹ Pursuant to the Comprehensive Plan, Larger scale apartment complexes are more appropriate near the center of the neighborhood node, see Policy LU-30 (goal of increasing density towards the center of the node), whereas, in this case, the Property is at the edge of the Marshall-Cleveland Node, see Exhibit 1 (red "X" marking property), where

b. The variance is consistent with the Comprehensive Plan.

As discussed above, because the Comprehensive Plan specifically identifies the location of the Property within the Marshall-Cleveland Neighborhood Node, see Exhibit 1, the variance is consistent with the stated goals and policy objectives of the Comprehensive Plan. The variance supports increased density that is appropriate for its location within the Node, see *supra* at foot note 1, and fosters the type of walkable communities desired under the Comprehensive Plan. The variance is therefore consistent with and advances the following policy objectives, among others: LU-30 (increased growth/density, vibrant critical mass, improved access to jobs, pedestrian friendly/safety focus); LU-31 (improves equitable access to services); and LU-33 (promotes amenities that support those who live in the neighborhood). The requested variance, therefore, satisfies this finding.

c. There are practical difficulties in complying with the SH Overlay District conditions, and the Applicant proposes to use the property in a reasonable manner not currently permitted by the SH Overlay District.

The conflict between the stated goals of the Comprehensive Plan and the outdated objectives of the SH Overlay District constitutes practical difficulties for complying with the standards of the SH Overlay District. The City of St. Paul has granted variances based on similar findings of practical difficulties in the past—i.e., when outdated overlay district standards conflicted with the policy and development goals of the Comprehensive Plan.² The same type of practical difficulties exist here, and the Applicant's stated purpose for the variance—to permit the registration of a new Student Dwelling—is a reasonable request that advances the goals of the Comprehensive Plan, but is not currently permitted by the SH Overlay District, as the Property is within 150 feet from four other Student Dwellings. Enforcing the SH Overlay District against Applicant in a manner that conflicts with the Comprehensive Plan would also be in violation of the Ordinance (12-34) (acknowledging at paragraph 1, that the City's zoning and use classifications must be "in conformance with the Comprehensive Plan"). The Applicant seeks to use the property in a reasonable manner that advances the goals of the Comprehensive Plan for the Marshall-Cleveland Neighborhood Node, but cannot, for all practical purposes, do so without a variance from the SH Overlay District conditions. This requested variance is therefore also supported by this finding.

d. The plight of the Applicant is due to circumstances unique to property not created by the Applicant.

The Applicant did not create the contradictions between the SH Overlay District and the Comprehensive Plan. Unlike many other properties within the SH Overlay District, the Property here has been identified as being within a Neighborhood Node under the Comprehensive Plan, and therefore targeted for density growth. Additionally, given its location within the Node, and its characteristics as a single-family dwelling, the Property is uniquely positioned to provide the desired density growth sought under the Comprehensive Plan, while also maintaining the single-/two-family characteristics that the SH Overlay District seeks to preserve. This finding, therefore, further supports granting the requested variance.

increased density is more appropriately achieved within the RT1-RT2 single-/two- family household confines, which single-family Student Dwellings such as the Property would undeniably provide.

² Indeed, both the Planning Commission and City Council of St. Paul made a similar finding of "practical difficulties" with respect to the development at 695 Grand Avenue, based on the conflict between the East Grand Avenue Zoning Overlay District and the 2040 Comprehensive Plan.

e. The variance will not permit any use not allowed in the zoning district.

The requested variance will not permit any use that is not allowed in the zoning district where the Property is located. As stated above, the variance is in harmony with the Property's principal zoning classification and will maintain its use for residential purposes.

f. The variance will not alter the essential character of the surrounding area.

As discussed above, the general character of the surrounding area is mostly RT1-RT2 single- and two-family households (with some scattered RM2 multi-family). The requested variance will not change the zoning classification of the Property, and will maintain the single-/two-family characteristics sought to be preserved by the SH Overlay District.

III. Site Plan.

A rudimentary Site Plan is attached hereto as Exhibit 2, which should satisfy the BZA's format requirements for Site Plans. The Applicant has also attached arial images of the Property for further reference. Given that the requested variance is not seeking to redevelop the Property, and the substantial cost for obtaining a surveyor to prepare a more detailed Site Plan, the Applicant respectfully requests that the BZA accept the attached Site Plan as sufficient for purposes of this Application.