



APPLICATION FOR APPEAL
 Department of Planning and Economic Development
 Zoning Section
 1400 City Hall Annex
 25 West Fourth Street
 Saint Paul, MN 55102-1634
 (651) 266-6589



Zoning Office Use Only
 File #: 19-012422
 Fee: 462.00
 Tentative Hearing Date: 3-6-19

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APPELLANT

Name Kevin W. Anderson Email kwanderson1956@gmail.com
 Address 1035 Van Slyke Ave.
 City St. Paul St. MN Zip 55103 Daytime Phone 651-236-7623

PROPERTY LOCATION

Zoning File Name Twin Cities German Immersion School
 Address / Location 1031 Como Ave., St. Paul, MN 55103

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

☐ **Planning Commission**, under provision of Chapter 61, Section 701, Paragraph c of the Zoning Code, of a decision made by the Planning Administrator or Zoning Administrator

OR

☒ **City Council**, under provision of Chapter 61, Section 702, Paragraph a of the Zoning Code, of a decision made by the Planning Commission

Date of decision: February 8, 2019 File Number: 18-126-865

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 Planning Commission.

Error in Procedure: On Jan. 25th, the Planning Commission violated Robert's Rules of Order in announcing that these variances were approved. The approval of these variances was opined by the City Attorney to be an improper vote. On Feb. 8th, the Commission rejected a motion to reconsider this decision, allowing an improper vote and procedural error to stand.

Error in Decision: In rejecting the motion to reconsider the improper vote on Jan. 25th, the variances will be automatically approved by operation of law on Mar. 26th. Through their decision on Feb. 8th, the Planning Commission has facilitated the approval of three variances which violate Minnesota State Statute 462.357. See additional sheets.

Attach additional sheets if necessary

Appellant's Signature Kevin W. Anderson Date 02.15.2019 City Agent [Signature]

Digitally signed by Kevin W. Anderson
 DN: cn=Kevin W. Anderson, o=Friends of Warrendale - Slave Historic
 Saint Andrew's, ou, email=kwanderson1956@gmail.com, c=US
 Date: 2019.02.15 17:23:53 -0500

February 11th, 2019

APPLICATION FOR APPEAL

Zoning File Name: Twin Cities German Immersion School ("TCGIS") – Variance Requests

File Number: 18-126-865

Submitted by Kevin Anderson for Friends of Warrendale / Save Historic Saint Andrew's LLC.

Executive Summary:

- TCGIS seeks three variances for 1) parking; 2) lot coverage; and 3) height variance in order to dramatically expand its student population and lot usage for its school.
- Each of the variance requests fail five of the six findings required for approval. All six findings must be met for approval.
- The findings are not met because the requested variances would allow for an inappropriately large commuter school contained within a small residential site, which is contrary to the zoning code and comprehensive plan.
- The situation is a creation of TCGIS's own making. The variances proposed to accommodate the excessive size of the institution is entirely due to choices made by its leadership and is not attributable to any circumstances unique to the property itself. When considering growth opportunities, any institution must make decisions that consider the physical limitations of their site; the surrounding residents should not be forced to adapt to and accommodate problems caused by the wishes of the institution. This is a primary intent of our zoning code.
- TCGIS's variance requests should be denied.

Introduction:

As mandated by Minnesota Statute § 462.357 and clarified by the League of Minnesota Cities, there are legal criteria which must be satisfied in order for a variance request to be approved. "Neighborhood opinion alone is not a valid basis for granting or denying a variance request. While city officials may feel their decision should reflect the overall will of the residents, the task in considering a variance request is limited to evaluating how the variance application meets the statutory practical difficulties factors. ... unsubstantiated opinions and reaction to a request do not form a legitimate basis for the variance decision, the decision could be overturned by a court."

The League of Minnesota Cities adds that "A variance once issued is a property right that 'runs with the land' so it attaches to and benefits the land and is not limited to a particular landowner. A variance is typically filed with the county recorder. Even if the property is sold to another person, the variance applies." The permanence of variances and the longevity of potential impact on the surrounding community, warrants that exceptional caution be exercised in these matters.

Section 61.601 of the St. Paul City Code requires six findings be made in order for a variance to be granted. Those six of the following findings are:

- (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.

For the reasons set forth below, TCGIS's requested variances fail to meet all of the required findings.

1. Finding One Is Not Met: The variance must be in harmony with the general purposes and intent of the zoning code.

TCGIS's requested variances are not in harmony with the general purposes and intent of the St. Paul Zoning Code as defined in Sections 60.103(a), (b), (g), (h), (i), (n), and (q).

The variances do not meet requirement (a) of section 60.103 "to promote and protect the public health, safety, morals, aesthetics, economic viability and general welfare of the community." The variances reinforce the unsafe traffic conditions caused by an inappropriate intensity of use within an R4 zoned residential neighborhood.

The variances do not meet requirement (b) of section 60.103 "to implement the policies of the comprehensive plan." This requirement is addressed below in Finding Two.

The variances do not meet requirement (g) of section 60.103 "to lessen congestion on the public streets by providing for off-street parking of motor vehicles and for off-street loading and unloading of commercial vehicles." A variance request of 34 cars is an extraordinary request within a residential neighborhood and TCGIS has failed to put forth a practical plan to accommodate its requested variance. For example, the entire capacity of the north side of Van Slyke Avenue is 23 cars. The closest parking space on Jessamine Avenue is approximately 800 ft. (267 yards – over 2 ½ football fields) away from the nearest school door. An opportunity to rent spaces at the existing parking area at the Como Pool lot is no longer being pursued by the school. Instead, TCGIS expects the city and neighborhood to accommodate the consequences of their extraordinary request. Apparently, this decision was made, whole or in part, for financial reasons.

The variances do not meet requirement (h) of section 60.103 "to provide for safe and efficient circulation of all modes of transportation, including transit, pedestrian and bicycle traffic." The Warrendale neighborhood has tolerated the negative impact of living with a commuter school in their midst for years (see map under Finding Four). Time after time, problems created by TCGIS's impact on transit, pedestrian, and bicycle safety have been brought to the attention of the District 10 Council. However, improvements to address neighborhood safety concerns have been negligible. Approval of these variances will, in effect, create a mandate for the school, leaving others with the belief that the safe and effective circulation of all modes of transportation is only a marginal concern among the leadership of the city of Saint Paul.

The variances do not meet requirement (i) of section 60.103 "to encourage a compatible mix of land uses, at densities that support transit, that reflect the scale, character and urban design of Saint Paul's existing traditional neighborhoods." TCGIS is an institution that has intentionally grown too big for its existing site. While some may applaud its success, the fact remains that the variances proposed to accommodate this intentional growth is inconsistent in scale and character with the historic and residential Warrendale neighborhood.

The variances do not meet requirement (n) of section 60.103 "to prevent the overcrowding of land and undue congestion of population." In comparison to other schools in the area, the

school supports significantly more students on a significantly smaller site (see figure under Finding Four). Once completed, the expanded school intends to support roughly four times the median number of students per unit area of any elementary or middle school located in any R1 through R4 zoned neighborhood in Saint Paul. Also significant is the fact that this site is directly adjacent to thirteen residences. These undeniable facts are the very definition of overcrowding and undue congestion.

The variances do not meet requirement (q) of section 60.103 “to provide for the adaptive reuse of nonconforming buildings and structures and for the elimination of nonconforming uses of land.” As addressed earlier in connection with 60.103(i), the variances proposed to accommodate TCGIS’s intentional growth will result in an institution that is inconsistent with the scale and character of the existing neighborhood. Rather than acting to control this nonconforming use, approval of these variances will make this inconsistency permanent.

2. Finding Two Is Not Met: The variance must be consistent with the Comprehensive Plan.

TCGIS’s requested variances are inconsistent with at least the following strategies set forth in the St. Paul Comprehensive Plan:

Most significantly, the proposed variances are inconsistent with Land Use Strategy 1, section 1.5 of the St. Paul Comprehensive Plan, which states “The City should maintain the character of Established Neighborhoods.” The Warrendale neighborhood is zoned R4 and defined by the Comprehensive Plan as an Established Neighborhood of medium density (page LU43). Warrendale is a residential and historic neighborhood. If granted, the variances would require roughly three dozen additional cars to seek out on-street parking in the residential area adjacent to the school, most likely concentrated nearest the entrances. Granting the variance requests will adversely impact the residential character of the Established Warrendale neighborhood, violating the Comprehensive Plan.

The proposed variances are inconsistent with Land Use Strategy 1, Policy 1.55: “Collaborate with public and private elementary and secondary schools in conjunction with construction or major remodeling.” Collaboration implies cooperative give and take. Allowing TCGIS to consider the temporary lease agreement with Mission Orthodox Presbyterian Church as equal to the spaces provided on their own site is example enough of significant collaboration by the city. The Comprehensive Plan, however, does not require the City’s collaboration to result in a variance for 34 automobiles and facilitating the demolition of a neighborhood landmark.

The proposed variances are not in compliance with Land Use Strategy 1, Policy 1.57: “Encourage communication between educational institutions and residents of the community when those institutions seek to expand or make significant changes to their campuses.” Educational institutions are permitted uses in residential districts. However, it is in the best interests of the institution and the community if there is a dialogue between all parties to address potential conflict over a proposed expansion. TCGIS has not engaged in meaningful communication with the residents of the Warrendale neighborhood and city leaders not lived up to its responsibility to encourage that communication.

The proposed variances are not in agreement with Historic Preservation Strategy, Policy 1.12 of the Comprehensive Plan which states that the City should “Prioritize the retention of designated historic resources (or those determined eligible for historic designation) over demolition when evaluating planning and development projects that require or request City action, involvement, or funding.” On November 5th, the Heritage Preservation Commission determined that TCGIS’s building – the former church of Saint Andrew’s – is eligible for historic designation. Since the current site plan is the source of these variance requests and the proposed building cannot be

constructed without demolition of the former Church of Saint Andrew's, these variances would be in direct violation of this requirement from the Comprehensive Plan.

3. **Finding Three Is Not Met:** 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.

Minnesota Statutes sets forth a three-factor legal definition of "practical difficulties." (See Minn. Stat. § 462.357, Subd. 6.). The first factor determines if the property owner can use the property in a reasonable manner without the variance. The property is currently being used as a successful school, albeit with space and staff parking deficiencies created by its intentional and uncontrolled growth. The proposed variances fail this test.

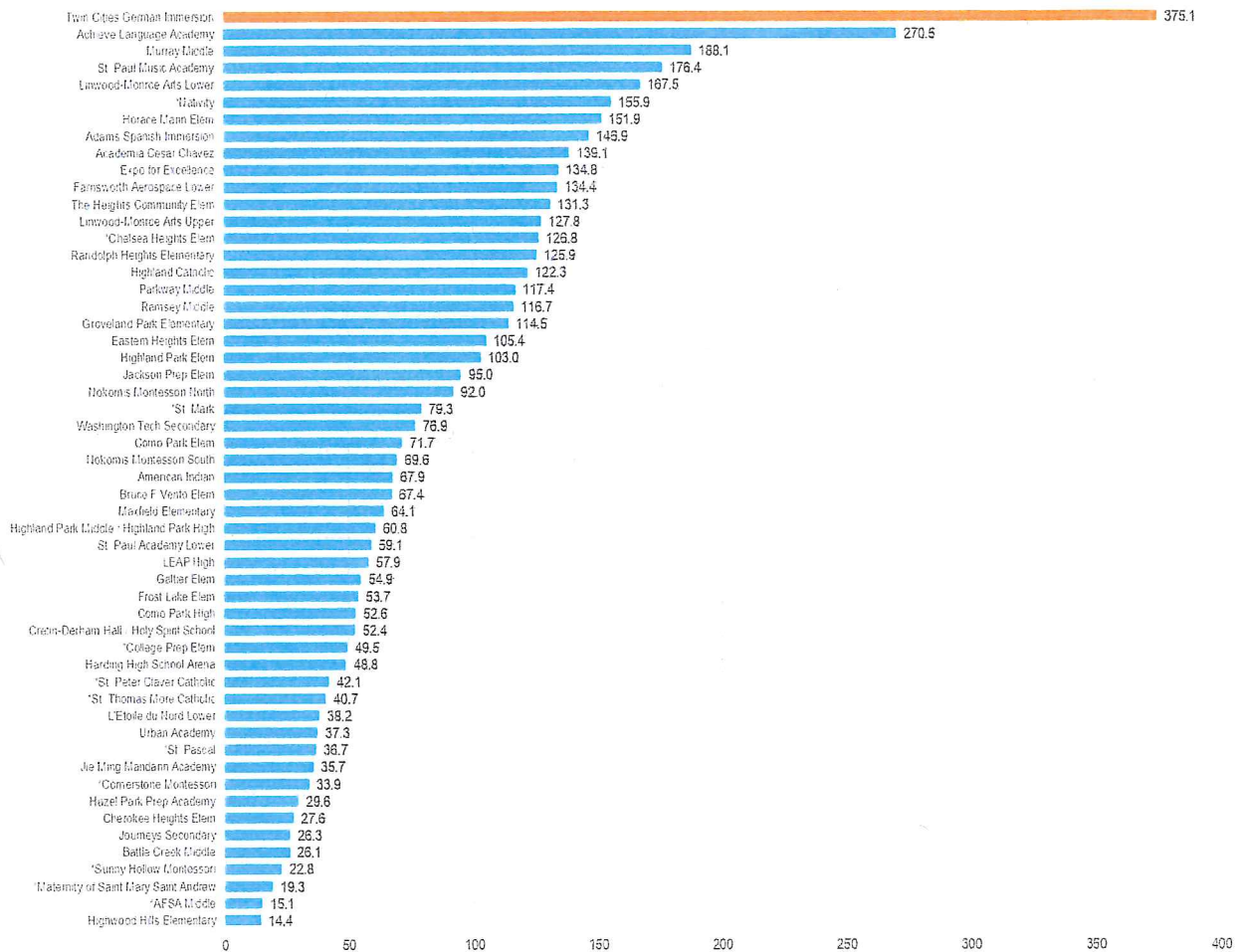
The second factor determines if the landowner's problem is due to physical characteristics unique to this particular property not caused by the landowner. As further explained in Finding Four below, the variances proposed to accommodate the excessive size of the institution is entirely due to choices made by TCGIS and is not attributable to any circumstances unique to the property itself.

The final factor determines whether the variance, if granted, will alter the essential character of the locality. As further explained in Finding Six below, the proposed variances fail this test.

4. **Finding Four Is Not Met:** The plight of the landowner is due to circumstances unique to the property not created by the landowner.

There is no basis to support agreement with this finding. Year after year, the TCGIS affirmatively decided to raise its enrollment, necessitating the hiring of more staff, requiring more parking spaces under code, and creating their own space problems. TCGIS's affirmative decision to raise its enrollment is what created the need for building expansion and the requested variances. The size of this particular school relative to the site is an anomaly. Intensity of use on the site is four times the median of any other elementary or middle school in any R1 through R4 zoned district within Saint Paul. See the illustration on the following page:

Students per Acre at All Saint Paul Elementary & Middle Schools
in R1 to R4 Zoning, if TCGIS Proposal Approved



The League of Minnesota Cities provides guidance, describing appropriate application of this standard:

“The uniqueness generally relates to the physical characteristics of the particular piece of property, that is to the land, and not personal characteristics or preference of the landowner.”

The landowner’s problem here is due to its desire to expand staff and student populations while maintaining lot size, class size, and playground size. TCGIS also plans to increase the number of classes and amount of green space in addition to constructing a new gymnasium. These are preferences of the landowner, not physical characteristics unique to this particular piece of property.

Moreover, TCGIS intentionally eliminated many parking spaces during the school’s 2013 building expansion. The 2013 site plan indicates that the off-street parking was reduced to 33 parking spots to provide for 32 staff. Now, roughly five years later, the school currently has 80.5 full time equivalent staff with a projection to 86.5 full time equivalent staff required upon completion of the proposed expansion. Roughly 79% of the staff use on-street or shared parking. TCGIS’s refusal to control this unmitigated growth is entirely unrelated to the physical characteristics of this property.

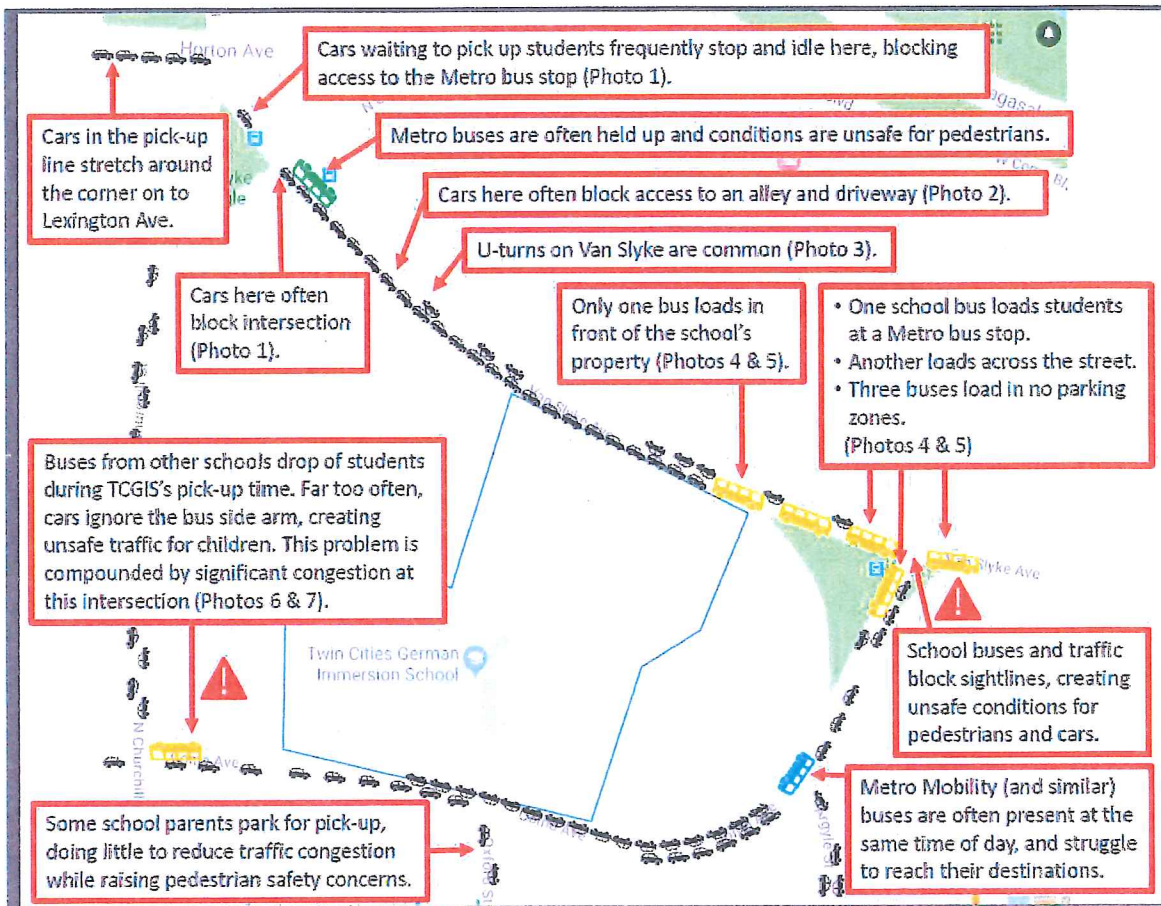
In this situation, none of the variances requested – parking, lot coverage, or height – has any relation to circumstances that are unique to the property. Rather, the variances are sought solely because of TCGIS's own preferences.

Absent the TCGIS's own decision to expand – **the preference of the landowner** - there would be no need for these variances.

5. Finding Six Is Not Met: The variance will not alter the essential character of the surrounding area.

Established in 1885, the Warrendale neighborhood is a residential and historic neighborhood. For years now, the neighborhood has attempted to address issues relating to the school's impact on the neighborhood through our District Council, with little success. The relationship between the school and the neighborhood has suffered because of the current size of the school. If granted, these variances would enable expansion of the school to a level of overcrowding exceeding anything reasonable within the residential and historic Warrendale neighborhood. Additionally, one variance would require roughly three dozen cars to seek out on-street parking adjacent to the school, most likely concentrated nearest the entrances. The streets in this neighborhood were designed by pioneering landscape architect Horace W. S. Cleveland in tandem with his design of Como Park. As such, many of them are narrow, curvilinear streets, insufficient for containing this excessive influx of parking and traffic. Granting these variances would surely erode the essential character of the surrounding area.

TCGIS is a commuter school, not a neighborhood school. There is no neighborhood preference or even a preference for Saint Paul city residents. Instead, the school is required to use a lottery system to select students for enrollment from throughout the state. Only 9% of the students attending TCGIS are from the neighborhood. 36% of the students are from within Saint Paul but outside District 10. 55% of the students are from outside Saint Paul altogether. Only a small number (about 25%) of these students ride a school bus. TCGIS relies on hundreds of individual cars for pick-up and drop-off. It is a commuter school creating unusual, pressing, and real systemic traffic and safety issues throughout the neighborhood. See the illustration on the following page:



TCGIS submitted a lengthy traffic study. At least one Commissioner expressed concern that the study did not meet the standards that the city has set for approval of the site plan. The study does not provide enough guidance to address the many traffic and safety issues created by TCGIS. While the city may wish to increase density in various ways, this project represents an inappropriate and unreasonable density increase.

Furthermore, the former church of Saint Andrew's has an established role in defining the character of the Warrendale neighborhood. Both the Saint Paul Heritage Preservation Commission and the Minnesota State Preservation Office support the current application for historic designation, confirming through their expertise that this is a building of historic significance to the neighborhood and the city of Saint Paul. Saint Paul does not require the owner's consent when filing a nomination for historic designation, as noted in Chapter 73 of the ordinance. This is also consistent with the National Historic Preservation Act where the "owner, a preservation organization, or a member of the community who values the resources usually initiates the application for historic designation". The very fact that the nomination came from the neighborhood rather than the land owner, speaks volumes about the importance of the "sense of place" manifest by this structure.

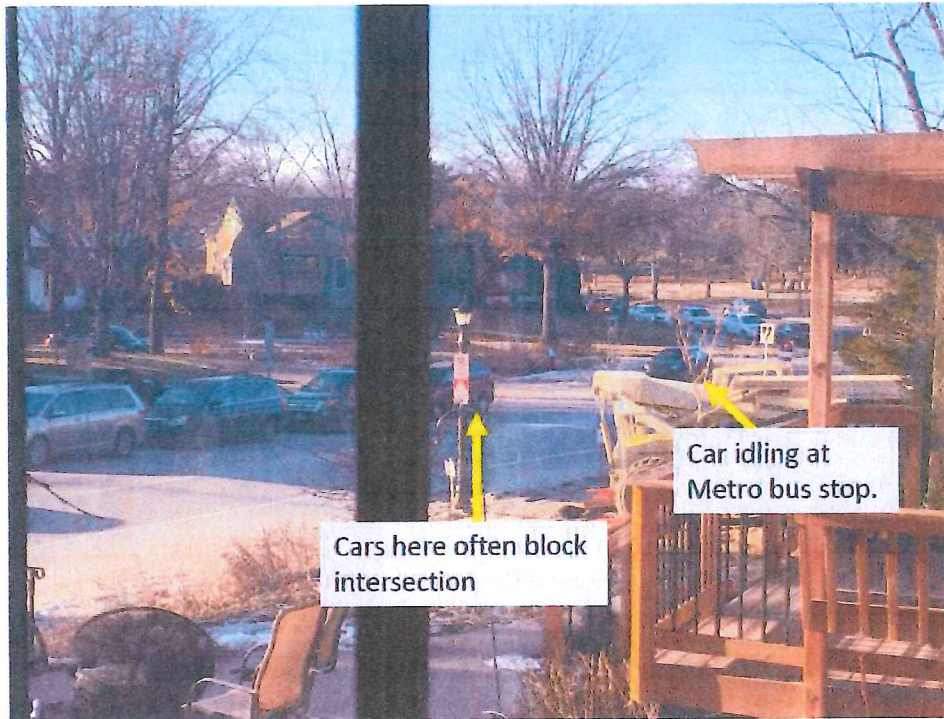
The proposed variances alone alters the essential character of the surrounding community and ultimately enable the demolition of this magnificent building. Such a move would undoubtedly alter the historic character of the surrounding Warrendale neighborhood.

Conclusion

For the reasons set forth above, Friends of Warrendale / Save Historic Saint Andrew's LLC respectfully requests that TCGIS's requested variances be denied.

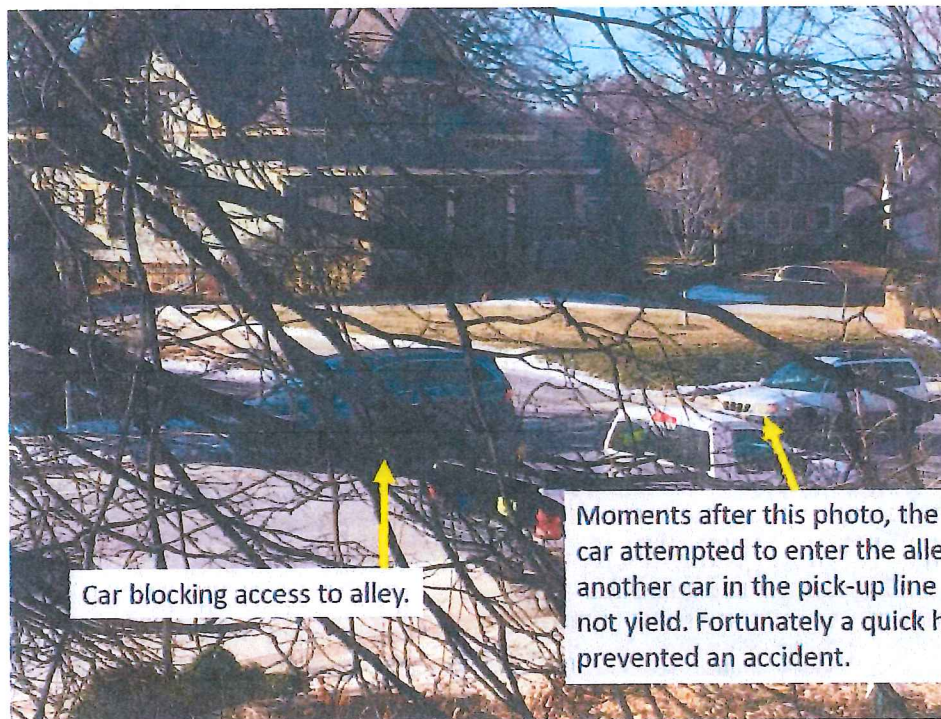
Appendix A

Photo 1: Van Slyke and Churchill intersection



Wednesday, January 9, 2019 3:05 PM

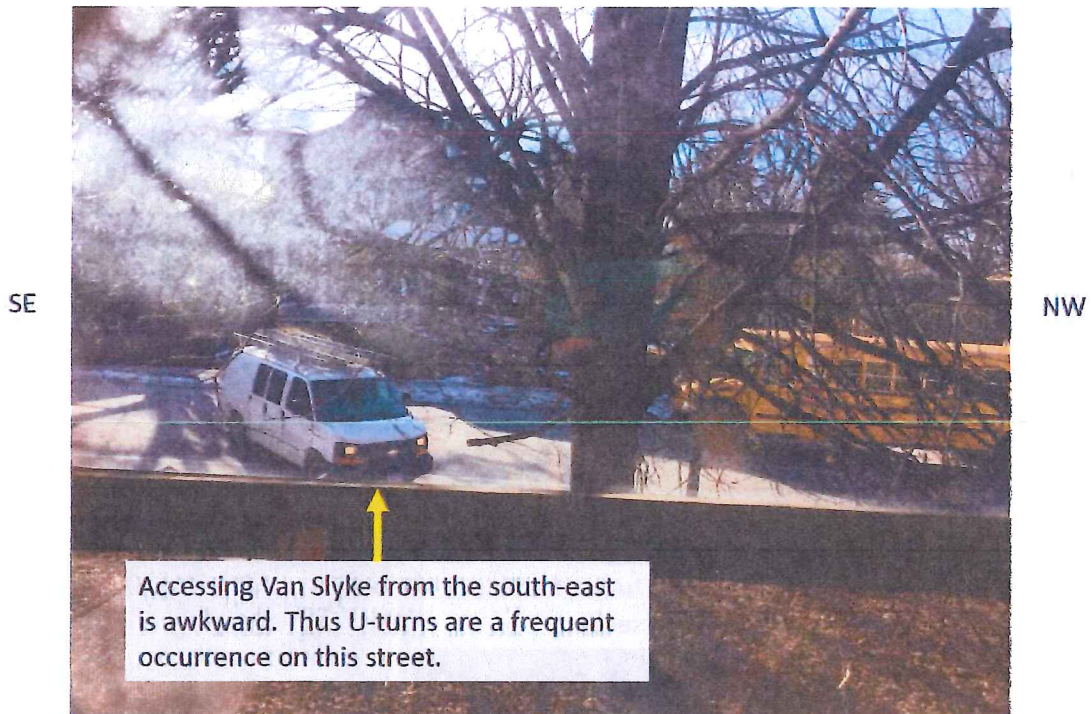
Photo 2: Van Slyke Ave alley and driveway



Moments after this photo, the white car attempted to enter the alley, but another car in the pick-up line did not yield. Fortunately a quick honk prevented an accident.

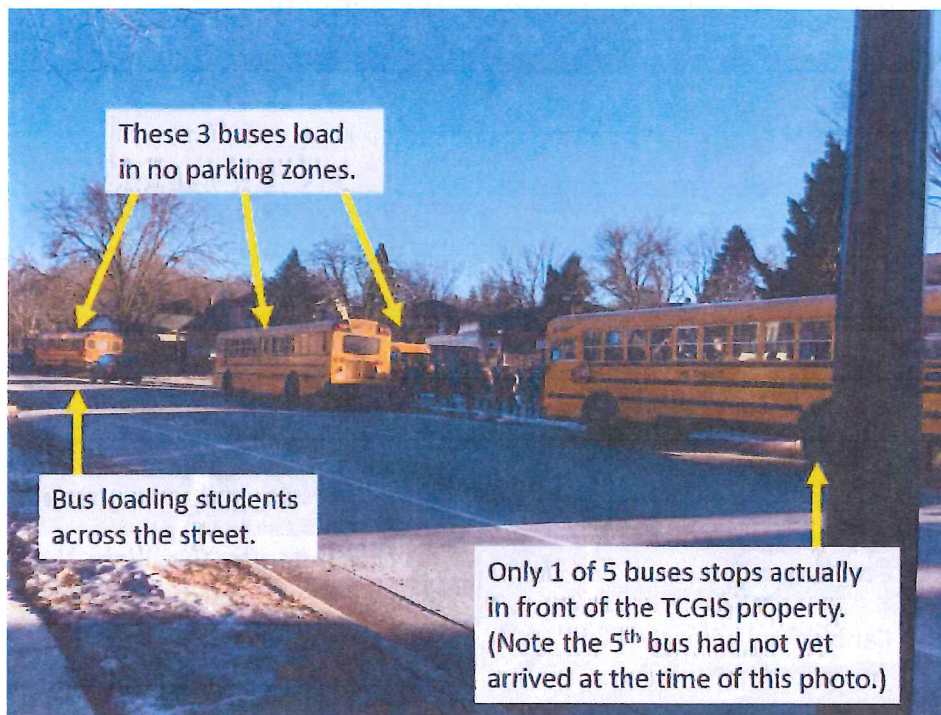
Wednesday, January 16, 2019 12:56 PM

Photo 3: Van Slyke Ave U-turns



Wednesday, January 16, 2019 12:59 PM

Photo 4: Van Slyke Ave bus pick-up at TCGIS



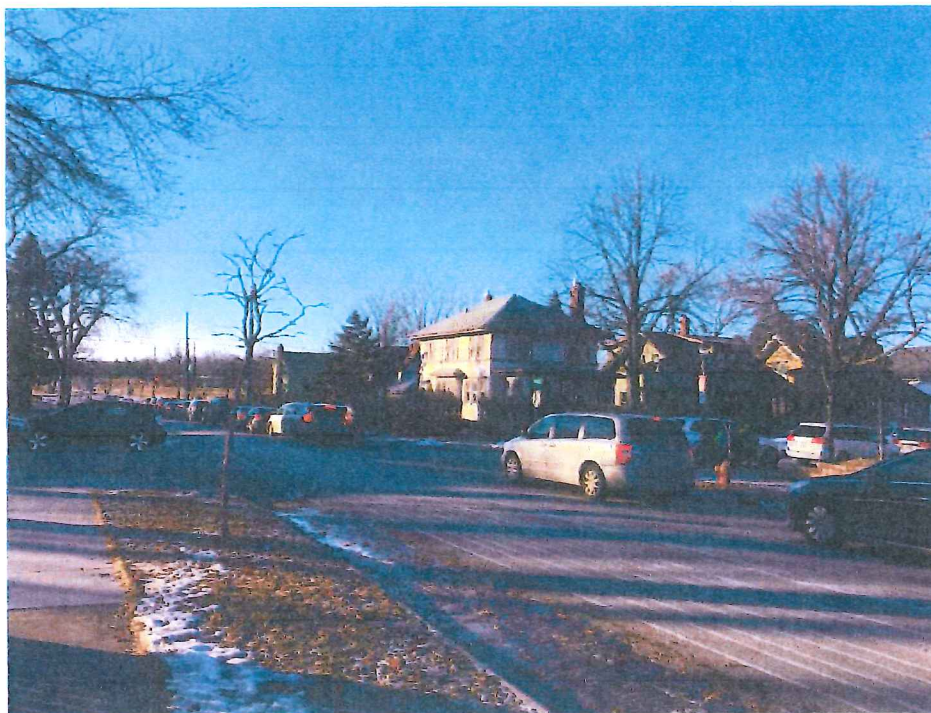
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Photo 5: Van Slyke Ave bus pick-up at TCGIS



Wednesday, January 9, 2019 3:23 PM

Photo 6: Como and Churchill traffic congestion



Wednesday, January 9, 2019 3:26 PM

Photo 7: Como and Churchill traffic congestion



Wednesday, January 9, 2019 3:29 PM