

From: [Basgen, Tom \(CI-StPaul\)](#)
To: [Moermond, Marcia \(CI-StPaul\)](#)
Subject: FW: Student Housing Overlay Variance Matter - 346 Cleveland Ave. N.
Date: Monday, February 14, 2022 12:29:31 PM
Attachments: [346 Cleveland Ave N - Staff Report 2.4.2022.pdf](#)
[Variance Application - submitted 1.14.22 \(00570046\).PDF](#)

Tom Basgen (he/him)

Executive Assistant to Councilmember Mitra Jalali

Saint Paul City Council – Ward 4

15 W Kellogg Blvd. Suite 310D

Office: 651-266-8643

Direct: 612-360-9506

From: Ted Wagor <tcwagor@ravichmeyer.com>
Sent: Thursday, February 10, 2022 10:05 AM
To: #CI-StPaul_Ward4 <Ward4@ci.stpaul.mn.us>
Subject: Student Housing Overlay Variance Matter - 346 Cleveland Ave. N.

Think Before You Click: This email originated **outside** our organization.

Dear Councilmember Mitra Jalali:

I represent the owner of the property located at 346 Cleveland Avenue N., St. Paul, MN, in your ward (Ward 4). My client recently had a variance request denied by the Board of Zoning Appeals (BZA). The requested variance was to allow the property located at 346 Cleveland Avenue N. to be registered as a “Student Dwelling” for purposes of the SH Overlay District, despite the fact that the property was located within 150 feet of a few other Student Dwellings. Attached are the Variance Application and Staff Report, which provide additional background information.

My client has until a week from today, February 17, 2022, to appeal the BZA variance denial to the City Council. My client has decided that it will only appeal the BZA denial if we have your support. The property is located on the edge of the Marshall-Cleveland Neighborhood Node identified in the City’s 2040 Comprehensive Plan, targeted for increased density to foster walkable 20-minute cities. The SH Overlay District, on the other hand, was designed for the stated purpose of, among other things, restricting increased density to preserve the low-density, single family characteristics of “established neighborhoods.” The SH Overlay District specifically included a variance provision, though, to ostensibly account for future changes. We believe our variance request is appropriate and will maintain the single-family characteristics sought by the SH Overlay District, while also allowing for increased density (however slight) via student housing without significantly altering the immediate makeup of the surrounding block/neighborhood. Similar arguments were made with regard to the 695 Grand Avenue Development (Dixie’s on Grand) that the City Council approved last year.

All that said, we were wondering if you would be willing to support—or at least be open to supporting—our position for allowing the requested variance, should my client decide to appeal the BZA denial? Given the short appeal deadline, we would greatly appreciate your consideration of this matter at your earliest convenience.

Please feel free to call me directly should you have any questions or concerns.

Sincerely,

TED C. WAGOR, ESQ.

O: 612.317.4742

M: 612.437.2215

RAVICH MEYER

RAVICH MEYER KIRKMAN MCGRATH NAUMAN & TANSEY, P.A.

150 SOUTH FIFTH STREET, SUITE 3450

MINNEAPOLIS, MN 55402

WWW.RAVICHMEYER.COM



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

Zoning Office Use Only	
File #	_____
Fee Paid \$	_____
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

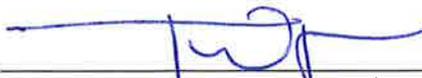
VARIANCE REQUEST: Application is hereby made to the Board of Zoning Appeals (or to the Planning Commission with another zoning application) for variance from the following section(s) of the Zoning Code Leg. Code Sect. 67.703(1)(2). State the requirement and variance requested. Applicant seeks to establish 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.

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  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.

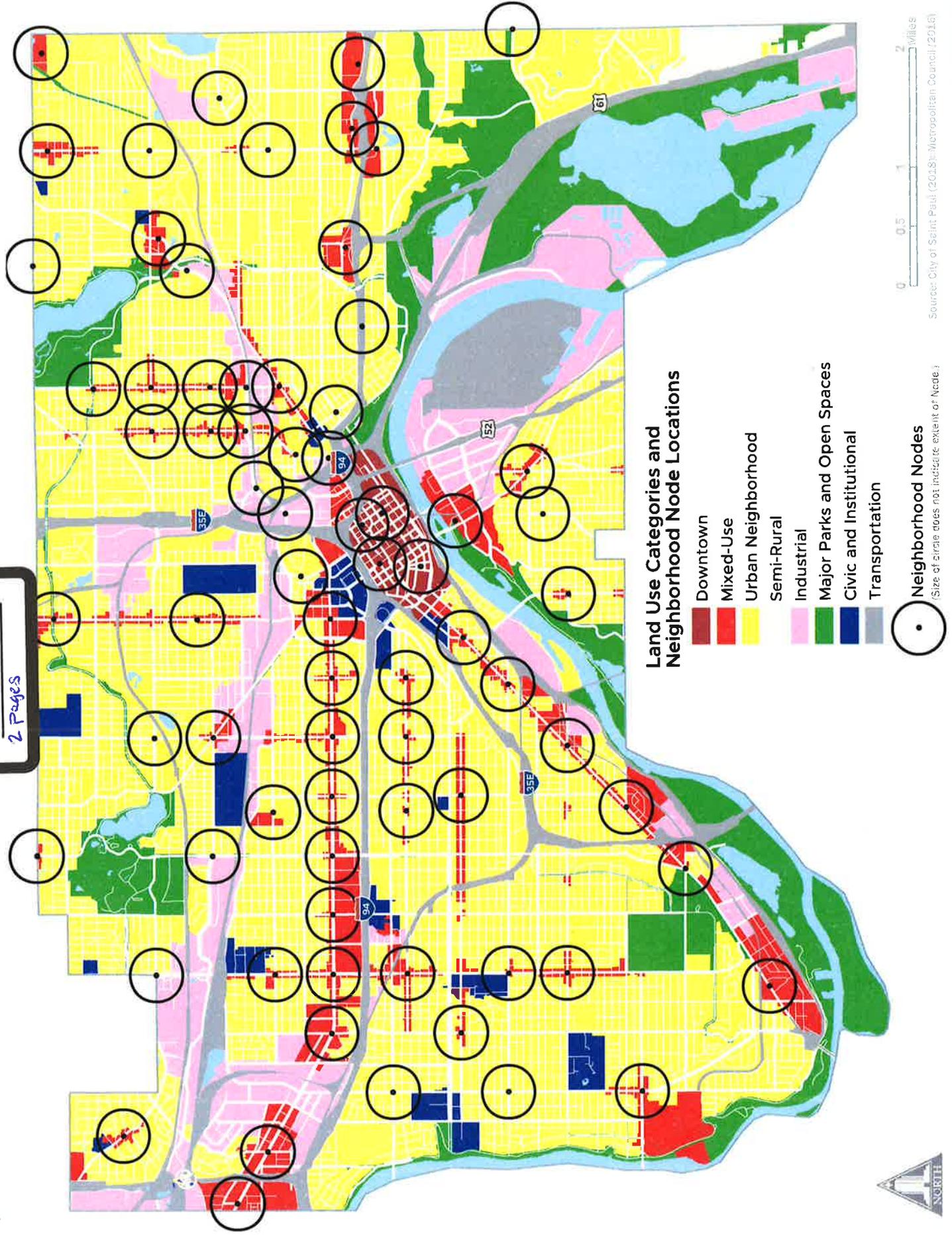
f. The variance will not alter the essential character of the surrounding area.

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.

Map LU-2: 2040 Land Use



Source: City of Saint Paul (2018); Metropolitan Council (2016)



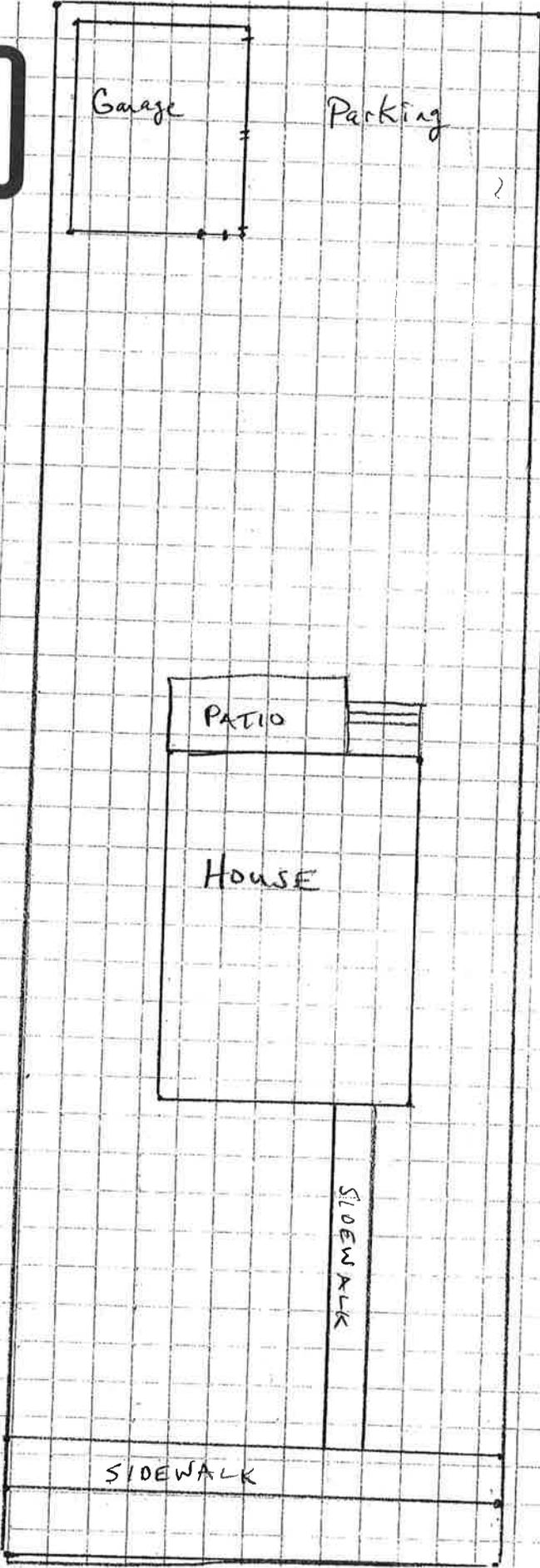


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EXHIBIT

2

2 pages



346 Cleveland Ave N.
St Paul

Scale
1/4" = 4'

Legal Description:
Lot 6, Block 17, Merriam Park, Ramsey
County, Minnesota

North



Overview



Legend

- Tax Parcel
- Ramsey County
- Waterbody
- Parcel Info

Parcel ID<	332923330068	Alternate ID	n/a	Owner	
Sec/Twp/Rng	33/029/023	Tax	4BB1-Residential Non-Homestead	Address	346 CLEVELAND AVENUE
Property	346 CLEVELAND	Classification	single unit		N LLC
Address	AVEN ST PAUL	Parcel Area	0.19		346 CLEVELAND AVE N SAINT PAUL MN 55104- 5102

Tax Authority Group (TAG) ST PAUL 625 C
Brief Tax Description Lot 6 Block 17 of MERRIAM PARK,,RAMSEY CO., MINN
 LOT 6 BLK 17
 (Note: Not to be used on legal documents)

Date created: 1/14/2022
 Last Data Uploaded: 1/14/2022 5:33:19 AM

RAVICH, MEYER, KIRKMAN, MCGRATH, NAUMAN & TANSEY, P.A.

19421

DATE	DESCRIPTION	INVOICE #	CHECK		NET AMOUNT
			AMOUNT	DEDUCTION	
01/14/2022	CITY OF ST. PAUL 01/14/2022 – FILING FEE 42295-28		547.00		547.00

CHECK DATE	CONTROL NUMBER	TOTALS ▶	Gross:	Ded:	Net:
01/14/2022	19421		547.00	0.00	547.00

**RAVICH, MEYER, KIRKMAN,
MCGRATH, NAUMAN & TANSEY, P.A.**
150 SOUTH FIFTH STREET, SUITE 3450
MINNEAPOLIS, MN 55402

BMO HARRIS BANK, NA
2-28/710

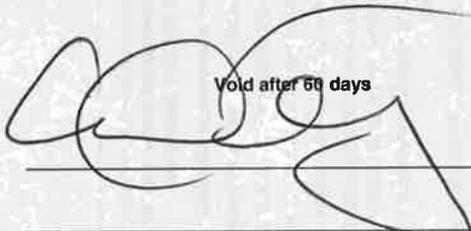
19421

DATE	AMOUNT
01/14/2022	***\$547.00

PAY ***FIVE HUNDRED FORTY-SEVEN & 00/100 DOLLARS

TO THE ORDER OF:
CITY OF ST. PAUL
Dept. of Safety & Inspections
375 Jackson Street, Suite 220
St. Paul, MN 55101

Void after 60 days



AUTHORIZED SIGNATURE

MEMO: 42295-28



Security features included. Details on back.



CITY OF SAINT PAUL

DEPARTMENT OF SAFETY AND INSPECTIONS
375 JACKSON STREET, SUITE 220
ST. PAUL, MINNESOTA 55101-1806
Phone: 651-266-8989 Fax: 651-266-9124
Visit our Web Site at www.stpaul.gov/dsi

Board of Zoning Appeals Staff Report

TYPE OF APPLICATION: Major Variance **FILE #:** 22-023159

APPLICANT: 346 Cleveland Avenue N LLC

HEARING DATE: February 7, 2022

LOCATION: 346 Cleveland Avenue North

LEGAL DESCRIPTION: MERRIAM PARK, RAMSEY CO., MINN LOT 6 BLK 17

PLANNING DISTRICT: 13

PRESENT ZONING: RT1, SH Student Housing Overlay

ZONING CODE REFERENCE: § 67.706

DATE RECEIVED: January 14, 2022

REPORT DATE: February 3, 2022

DEADLINE FOR ACTION: March 14, 2022 **BY:** David Eide

A. **PURPOSE:** A variance of the minimum distance requirement between student dwellings in order to establish a new student dwelling. The zoning code requires a student dwelling to be located at least 150 feet from another student dwelling. The applicant is proposing a 33 foot setback from the existing student dwelling to the northeast at 353 Wilder Street North for a variance request of 117 feet.

B. **SITE AND AREA CONDITIONS:** This is a .18-acre lot on the east side of Cleveland Avenue North between Carroll and Roblyn Avenues. A one-family dwelling is located on the lot along with a two-car garage off of the alley in the rear yard.

Surrounding Land Use: Residential uses, ranging in density from one-family to multifamily dwellings.

C. **ZONING CODE CITATION:**
Sec. 67.701. - Establishment; intent.
The SH student housing neighborhood impact overlay district is established

as shown on the official zoning map, generally the area bounded by Mississippi River Boulevard, Marshall Avenue, Cretin Avenue, and Interstate 94, Snelling Avenue, Summit Avenue, Fairview Avenue, and St. Clair Avenue, to ameliorate the impact of dedicated student housing within and preserve the character of predominantly one- and two-family dwelling neighborhoods.

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.

Sec. 67.703. - Standards and conditions.

Within the SH student housing neighborhood impact overlay district, the following standards and conditions shall apply for student dwellings:

(1) A student dwelling shall be located a minimum of one hundred fifty (150) feet from any other student dwelling located on a different lot, measured as the shortest distance between the two (2) lots on which the student dwellings are located. (2) Parking shall be provided in accordance with the requirements of article 63.200 for new structures.

Sec. 67.706. - Establishing new student dwellings.

Establishing new student dwellings. After sixty (60) days following the conclusion of the registration and establishment period under this article, additional properties may be registered and established as new student dwellings, subject to the standards and conditions specified in Legislative Code § 67.703(a) and (b). A process for reviewing proposed new student dwellings shall be established by the Department of Safety and Inspections. The owner of a building deemed ineligible for establishment as a student dwelling may apply for a variance under Legislative Code § 61.601, as applied.

D. FINDINGS:

1. *The variance is in harmony with the general purposes and intent of the zoning code.*

This property is located within the Student Housing Neighborhood Impact Overlay District. The student housing study from 2012 found that students are generally “a transient population with respect to the area they inhabit, and so they have less connection to the long-term well-being of that neighborhood than more permanent residents may. As a result, noise and inattention to property appearance and litter tends to be an issue.” There is

an existing student dwelling to the northeast within 150 feet. Allowing another student dwelling on this block would bring the total number of student dwellings on this block to six. This would result in a concentration of student dwellings, which could negatively affect the quality of life in the neighborhood. The overlay district is intended to prohibit the proliferation of new student rental housing in neighborhoods of high student concentration and this request is not in keeping with that intent. **This finding is not met.**

2. *The variance is consistent with the comprehensive plan.*

Comprehensive plan policy H-53 states that in order to create a strong neighborhood, the City must continue to work with neighbors, neighborhood organizations and colleges/universities to reduce conflicts between students and longer-term neighborhood residents. This Student Housing Neighborhood Impact Overlay District was created specifically to assist in reducing conflicts between students and longer-term neighborhood residents. Granting this variance would not be in keeping with the intent of the student dwelling overlay. **This finding is not met.**

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.*

The applicant states that they were not aware that at least three of the individuals that they leased the property to were students under § 67.702. However, it is on the onus of the landlord to properly examine applicants to ensure that they are in compliance with the Saint Paul Legislative Code. According to the applicant, there are currently five residents in this house. The applicant could lease the property to two students as laid out in § 67.702 and three non-student adults and remain in compliance with the code. The market niche targeted by the applicant is a choice, not the result of any difficulty. **This finding is not met.**

4. *The plight of the landowner is due to circumstances unique to the property not created by the landowner.*

The landowner has no plight that would prevent them from renting the house to non-students. **This finding is not met.**

5. *The variance will not permit any use that is not allowed in the zoning district where the affected land is located.*

The requested variance, if granted, would not change the zoning classification of the property. **This finding is met.**

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

This request would increase the concentration of allowed student dwellings

in this area contrary to the intent of the student dwelling overlay ordinance.
This finding is not met.

- E. **DISTRICT COUNCIL RECOMMENDATION:** As of the date of this report, staff have received a letter recommending denial of the requested variance from Union Park District Council.
- F. **CORRESPONDENCE:** Staff received seventeen correspondences requesting denial of the requested variance.
- G. **STAFF RECOMMENDATION:** Based on findings 1, 2, 3, 4, and 6, staff recommend denial of the requested variance.