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ZONING APPEAL APPLICATION NOV 06 2024

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

To / From 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 # 24-092718
Fee Paid $ 462.00
Received By / Date D. Eide - 11/6/2024
Tentative Hearing Date 12/11/2024

APPELLANT

Name(s) BENEGAS PROPERTIES, LLC
Address 1928 ASHLAND AVE City ST PAUL State MN Zip 55104
Email RBENEGAS@HOTMAIL.COM Phone 6128755531

PROPERTY LOCATION

Project Name GRAND RAW
Address / Location 1953 GRAND AVE ST PAUL MN 55105

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

- ☐ **Board of Zoning Appeals,** under provisions of Zoning Code § 61.701(c), of a decision made by the Zoning Administrator.
- ☐ **Planning Commission**, under provisions of Zoning Code § 61.701(c), of a decision made by the Planning Administrator or Zoning Administrator.
- ☑ **City Council,** under provisions of Zoning Code § 61.702(a), of a decision made by the Board of Zoning Appeals or the Planning Commission.

Date of decision 10/28/24, 20 24 File Number 24-086457

GROUNDS 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 or Board of Zoning Appeals. Attach additional sheets if necessary.

PLEASE SEE ATTACHMENT.

☐ If you are a religious institution you may have certain rights under RLUIPA. Please check this box if you identify as a religious institution.

Appellant's Signature _____ **Date** 11/6/24

Rev 7.4.2019

Larkin Hoffman

8300 Norman Center Drive
Suite 1000
Minneapolis, MN 55437-1060
General: 952-835-3800
Fax: 952-896-3333
www.larkinhoffman.com

November 6, 2024

City Council Members
c/o Department of Safety and Inspections
Zoning Section
375 Jackson Street, Suite #220
Saint Paul, MN 55101-1806

Re: Letter in Support of Appeal to City Council from Board of Zoning Appeals on behalf of Benegas Properties, LLC; File No. 24-086457

Dear Council Members:

This letter is written on behalf of Ruben A. Benegas and Benegas Properties, LLC, the applicant for two variances related to a multifamily development in the RM2 zoning district (the "Application"). The applicant has acquired three lots with low-density residential buildings and proposes to replace them with 72 units of multifamily housing and 64 underground parking stalls (the "Project"). Strong demand for affordable housing in the immediate area will provide for 75 percent of the tenants in the Project. The applicant has requested a variance to the 40-foot height limitation to add a fifth story to the Project and a variance to increase the floor area ratio ("FAR") from 2.25 to 2.27.

This letter addresses the Application's consistency with the two findings on which the Board of Zoning Appeals ("BZA") based its denial of the Application. These findings require that the applicant establish practical difficulties in complying with the strict application of the zoning ordinance; and that the use proposed for the property is reasonable in light of the specific circumstances applicable to the request.

Discussion

Under Minnesota law, "practical difficulties" supporting the approval of a variance are defined by several factors. According to Minn. Stat. § 394.27, subd. 7, practical difficulties exist when the property owner proposes to use the property in a reasonable manner not permitted by the official control, the plight of the landowner is due to circumstances unique to the property not created by the landowner, and the variance, if granted, will not alter the essential character of the locality. Economic considerations alone do not constitute practical difficulties (M.S.A. § 394.27), (Behrends v. Jackson County, Not Reported in N.W. Rptr. (2022)).

The Project as proposed is a reasonable use that is consistent with purpose and intent of the RM2 district to foster pedestrian and transit oriented residential development and provide for infill housing. It is also consistent with the City's housing policies which support medium density housing (Policy LU-34) in mixed-use urban neighborhoods (Policy H-6), accommodating a wide variety of housing types for residents at all stages of life (Policy H-15).

The Supreme Court of Minnesota in In re Stadsvold further elaborated on the factors for determining practical difficulties, which include: (1) how substantial the variation is in relation to the requirement;

(2) the effect the variance would have on government services; (3) whether the variance will effect a substantial change in the character of the neighborhood or will be a substantial detriment to neighboring properties; (4) whether the practical difficulty can be alleviated by a feasible method other than a variance; (5) how the practical difficulty occurred, including whether the landowner created the need for the variance; and (6) whether, in light of all of the above factors, allowing the variance will serve the interests of justice (In re Stadsvold, 754 N.W.2d 323 (2008)).

Let me address these factors in light of the proposed Project. First, each variance is a minimal variance designed to make the Project feasible. Reducing a floor in the building not only reduces the number of units serving a clear demand for housing in the area, but also cuts in half the number of parking spaces provided in underground parking. One of the key objections to the Project at the BZA hearing was potential parking impacts. A fully compliant building would provide less underground parking resulting in increased parking on the street.

The addition of one floor of housing provides 14 additional units and creates little or no demand for government services nor does it change the character of the neighborhood. Medium density housing is available throughout the neighborhood in three, four, and five story buildings. The staff report to the BZA acknowledges this fact stating that multiple-family dwellings are located to the east, west, and south of the Property.

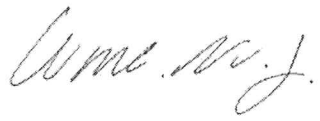
The applicant is combining three existing parcels and removing the existing single family units to help meet the demand for housing in the area. In combining the parcels, the applicant did not set the outer boundaries of the original parcels nor did the applicant create the other constraints that come with developing infill parcels in a fully developed neighborhood. There is little practical rationale for a 40-foot height limitation when buildings one or two blocks away are 50-feet or higher. Strict application of the rule simply eliminates much needed affordable housing with underground parking that helps to minimize the effects of the Project on neighbors.

In short, practical difficulties under Minnesota law involve a combination of factors related to the reasonableness of the proposed use, unique circumstances of the property, and the impact on the locality. As set out here, the Application is not driven solely by economic considerations, but a desire to provide affordable housing in a walkable urban neighborhood of mixed uses and housing types in a manner that does not create negative impacts on the surrounding uses, particularly with regard to parking.

Conclusion

It is clear that Minnesota law gives the City sufficient authority to provide the flexibility sought by the applicant based upon the above findings. The applicant is proposing a reasonable use for the neighborhood which is supported by the housing policies contained in the Comprehensive Plan and the purpose and intent of the RM2 district. The Application is also supported by the Macalester-Groveland Community Council which voted to recommend the requested variances. Accordingly, we request that the City Council grant the applicant's appeal.

Sincerely,



William C. Griffith, for
Larkin Hoffman
Direct Dial: 952-896-3290
Direct Fax: 952-842-1729
Email: wgriffith@larkinhoffman.com

cc: Ruben A. Benegas
Steve Oliver, Mohagen Hansen Architecture
Scott Hayes, Mohagen Hansen Architecture