



APPLICATION FOR APPEAL

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Department of Safety and Inspections MAR 12 2015
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Zoning office use only
File no: 15-021639
Fee: 410.00
Preliminary hearing date: 02/17/15

See additional applicants attached

APPLICANT

Name Cheryl Fogarty
Address 2166 Lincoln Ave
City St. Paul St. MN Zip 55105 Daytime phone 651-699-8597
Name of owner (if different)

PROPERTY LOCATION

Address 2146 Grand Ave
Legal description: Summit Wood Lot 37
(attach additional sheet if necessary)

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

- Board of Zoning Appeals
City Council

under the provisions of Chapter 61, Section 702, Paragraph A of the Zoning Code, to appeal a decision made by the Board of Zoning Appeals on March 2, 2015 File number: 15-000893
(date of decision)

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 Board of Zoning Appeals or the Planning Commission.

See attachments

(attach additional sheet if necessary)

Applicant's signature Cheryl Fogarty Date 3/12/15 City agent

March 7, 2015

Saint Paul City Council
Appeal of BZA Grant of Variance
BZA File # 15-000893

We are members of the Board of the West Summit Neighborhood Advisory Council (WSNAC), we are neighbors in the Student Housing Overlay District, we are members of Macalester Groveland Community Council (MGCC) and we are members of the Union Park District Council. A full list of supporters to this appeal is appended.

We are Appealing the Board of Zoning Appeals March 2nd decision to grant a Student Housing Overlay District variance to 2146 Grand Avenue. This is a major variance to the city ordinance restricting student rental houses in the Student Housing Overlay District. The variance provides for a complete disregard to the 150 foot minimum distance between the house in question and two other student houses, adjacent to the target and seeks to make "legal" an illegal and non-conforming property house from a single family dwelling.

The rationale for the ordinance is documented in the Ordinance itself, which states in pertinent part:

Whereas, The Council further notes that the Land Use Chapter states that stabilizing the City's established neighborhoods is achieved through the use of existing as well as new zoning standards which are intended to maintain the prevailing character of these neighborhoods variously described in the Comprehensive Plan as "residential areas of predominately single-family housing" or as being "characterized almost entirely by single-family homes and duplexes" (Land Use Strategy 1: Target Growth in Unique Neighborhoods); and

Whereas, as Minnesota's largest non-public institution of higher learning, UST presently provides on-campus housing for 44% of its undergraduate students: accordingly, the remaining 56% approximately 3,325 students - reside off-campus. It is further estimated that 50% - approximately 1684 students - reside in "off campus" housing in that general area surrounding the UST Campus bounded by St. Clair Avenue on the south, and Fairview Avenue on the east. The Mississippi River is the western border south of Marshall Avenue, and Creton Avenue is the western border north of Marshall Avenue. Interstate Highway 94 is the northern border east of Creton Avenue, and Marshall is the northern border west of Creton Avenue; and

Whereas, "permanent" residents from neighborhoods surrounding UST have expressed concern about problems associated with high concentrations of student occupied housing in established neighborhoods and, in particular, that concentrations of student occupied housing within an established neighborhood will, by the transient nature of student housing occupancies, operations, and use, disrupt the intent and purpose of the

zoning code's one- and two-family zoning classifications for these established neighborhoods by overcrowding, excessive vehicular traffic, demand for available parking, noise and other nuisance conditions, in contrast to other low density one-and two-family zoning districts which are not impacted by concentrations of student occupied rental housing; and

Whereas, whether neighborhood concerns associated with concentrations of student housing in the established neighborhoods surrounding UST are actual or perceived, the Council nevertheless finds that these concerns as expressed call into question ~~the~~ whether the City's present official controls adequately protect the public health, welfare, and safety in these neighborhoods as well as whether the City's official controls are consistent with and will facilitate the goals of the City's Comprehensive Plan; and

Whereas, the Council therefore desired to take various steps to protect the health, welfare and safety of the citizens within the area described above by implementing an interim ordinance pursuant to Minn. Stat. 462.355, Subd. 4, and directed the planning commission to undertake a study of the impact of student housing in the said area, and to establish during the period the interim ordinance is in effect certain regulations whose purpose is to preserve the status quo of housing in the study area by generally prohibiting the conversion of one-family homes into two-family homes, prohibiting the conversion of owner-occupied homes into student housing, and limiting the legal occupancy within the study area of any residential dwelling unit with an R1-RM2 zoning classification.

As a consequence of these findings, the Saint Paul City Council adopted the "Student Housing Neighborhood Impact Overlay District" as Chapter 67 of the City of Saint Paul Zoning Code.

The stated intent of the ordinance is to... "ameliorate the impact of dedicated student housing within [the neighborhood in the Overlay District] and preserve the character of predominantly one- and two-family dwelling neighborhood." (Saint Paul Legislative Code 67.701)

The owner(s) of an existing building possessing either a valid fire certificate of occupancy or provisional fire certificate of occupancy and which, at any time within the eighteen(18) month period immediately preceding the effective date of this ordinance, met the definition of a student dwelling under this ordinance shall submit a written application to register the building within one hundred-twenty (120) days of the effective date of this ordinance to the Department of Safety and Inspections ("DSI"). (Saint Paul Legislative Code 67.704) (emphasis added).

In order to establish a student dwelling in the Student Housing Overlay District, applications for variance are "subject to the standards and conditions specified in Legislative Code 67.703" (Saint Paul Legislative Code 67.706) These Standards and conditions state, "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 lots on which the student dwellings are located" (Saint Paul Legislative Code 67.703a). They "may apply for a variance under Legislative Code 61.601"

By Board of Zoning Appeals (BZA) staff determination, the property owner(s) fail to demonstrate five of the six requirements for a variance under the Legislative code. Because the variance request fails to meet the 6 required factors, the City Council must overturn the BZA's approval of the variance in order to comply with both the stated language of the SH Student Housing Neighborhood Impact Overlay District and with the City of Saint Paul zoning code variance requirements.

Specifically, Findings of the staff report prepared for the Board of Zoning Appeals staff were that:

1. Consequently, the applicant's request would result in a concentration of student dwellings in this area and could negatively affect the quality of life in the neighborhood; it is not in keeping with the above stated intent of the student housing ordinance. This Finding is not met. (emphasis added).
2. Allowing an additional student dwelling in the neighborhood is not in keeping with Policy H 2.1 of the Comprehensive Plan which states that the City must "Maintain the vitality and high quality of life in existing stable neighborhoods." This Finding is not met. (emphasis added).
3. The building on this property is a single family dwelling and can be rented to anyone, not just students. Although this request is not unreasonable, the rental of the property to students is a choice, not a result of any difficulty. This Finding is not met.
4. [The property owner] contends that his plight is due to the fact that he did not receive any notification in 2012 about needing to register his student dwelling. That claim does support this finding. There is nothing unique to this property that would prevent the owner from renting to anyone other than students. The rental niche targeted by the applicant is a choice, a circumstance he created. Therefore, there is no undue hardship making compliance with the code impractical or unreasonable. This Finding is not met.
5. This request would increase the concentration of allowed student dwellings in this area contrary to the intent of the student housing ordinance. This Finding is not met.

The burden is squarely on the applicant seeking the variance to prove that all six Findings are met. They have utterly failed to make this proof. Before the ordinance went in to effect, Saint Paul sent notice to every landowner with a certificate of occupancy. The University of Saint Thomas also sent notice to all the landlords in their records. Correspondence with Dennis Gudim at the time of the ordinance suggests

notice would have been given to these particular property owners from multiple sources. It is critical to note, however, that "notification" through extraordinary means such as a letter was a courtesy, not a requirement of the law. It is not the burden of the City of Saint Paul or the University of Saint Thomas to notify residents of changes in the law by personal service of written correspondence. (In this case both did.) But it is the burden of the property owners to be aware of issues affecting their property. This was a very public issue at the time, and was a feature in local and regional news.

Not only is granting this variance contrary to State Statute and City ordinance, it sets a dangerous precedent ~~to~~ dilute the value of the Student Overlay Ordinance. It also sets precedent for objecting to City code and this Student Housing Overlay Ordinance in particular on the basis of ignorance. It provides an illegal route to granting variance to the Ordinance. It's an exception that weakens the the Student Housing Overlay, and opens up opportunity for more exceptions to a law that provides protection to many Saint Paul homeowners, protection of both their property values and of their quality of life.

Appended with:

- 2: List of supporters of this appeal
- 3: Staff Report
- 4: Housing Overlay District Ordinance
- 5: WSNAC letter of support
- 6: Macalester Groveland Community Council letter of support
- 7: Union Park District Council letter of support
- 8: Impact Statement
- 9: Louis Smith Report

March 12, 2015 / NEIGHBORHOOD APPEAL / 2146 Grand Avenue variance

The following Neighbors United members and other neighborhood applicants are appealing the City of Saint Paul's Board of Zoning decision to grant a variance from the Student Housing Overlay District ordinance to Dennis Gudim, a part owner of 2146 Grand Avenue:

Juergen Baum	2143 Lincoln Avenue, 55105
Bruce Berrens	2112 Lincoln Avenue, 55105
Sue & Ned Berube	1821 Dayton Avenue, 55104
Shelly & Grant Boulanger	1832 Selby Avenue, 55104
Laura Capistrant	220 Fairview Avenue North, 55104
Clarence Chaplin	1921 Lincoln Avenue, 55105
Linda Chapman	2161 Lincoln Avenue, 55105
Ian Charpentier	2095 Lincoln Avenue, 55105
Joel Clemmer	2154 Fairmount Avenue, 55105
Flannery Delaney & Paul McCormick	2126 Lincoln Avenue, 55105
Carolyn Edwards	2084 Grand Avenue, 55105
Virgina & Jean Christoff Ferlet	1926 Laurel Avenue, 55104
Mike Finley	1841 Dayton Avenue, 55104
Brian Fogarty	2166 Lincoln Avenue, 55105
Michael Furey	1845 Dayton Avenue, 55104
David Gibson & Ryan Coon	2153 Lincoln Avenue, 55105
Brian Hartert & Lindsey Weyenberg	2129 Lincoln Avenue, 55105

Joe Haub	105 S. Finn Street, 55105
Becky Heist & Tom O'Connell	2152 Lincoln Avenue, 55105
Riley Kane	2149 Fairmount Avenue, 55105
Richard Kyle	2194 Goodrich Avenue, 55105
Noelle Jacquet-Morrison & John Morrison	1840 Selby Avenue, 55104
Kelly MacGruder & Justin Revenaugh	2128 Lincoln Avenue, 55105
Marc Manderschied	2136 Goodrich Avenue, 55105
Jeanne Matross	486 Frontenac Place, 55104
Jim and Martha McCartney	1852 Dayton Avenue, 55104
Melissa Meinke	2137 Lincoln Avenue, 55105
Jim and Loretta Nuessle	2081 Lincoln Avenue, 55105
Alyssa Rebensdorf & Kirk Wythers	2096 Lincoln Avenue, 55105
Erika Sanders	2005 Lincoln Avenue, 55105
David Studer	1851 Selby Avenue, 55104
LeAnn Taylor & Mike Hepp	2122 Lincoln Avenue, 55105
Mike & Tammy Thomas	2135 Lincoln Avenue, 55105
Jon & Kathleen Walsh	1829 Dayton Avenue, 55104
Benita Warns	Union Park District Council business representative
Joe Westermeyer	1935 Summit Avenue, 55105
Carol & David Wilkie	1795 Dayton Avenue, 55104

The West Summit Neighborhood Advisory Committee (WSNAC) board passed a motion on March 6, 2015, to appeal the 2146 Grand Avenue variance:

Scott Banas	1926 Ashland Avenue 55104
Josh Capistrant	220 Fairview Avenue North 55104
Cheryl Fogarty	2166 Lincoln Avenue 55105
Amy Gage, <i>co-chair</i> (UST)	1851 Selby Avenue 55104
Doug Hennes (UST)	2115 Summit Avenue 55105
Ed Martell	2149 Goodrich Avenue 55105
Cathy Plessner	2038 Summit Avenue 55105
Leo Viktora	2129 James Avenue 55105
Rachel Westermeyer, <i>co-chair</i>	1935 Summit Avenue 55105

In addition, Merriam-Park Community Council and Union Park District Council both submitted letters in support of the appeal to the variance.