



May 26, 2016

Saint Paul City Council  
C/O City of Saint Paul  
Department of Safety and Inspections  
Board of Zoning Appeals  
375 Jackson Street  
Saint Paul, MN 55101-1806

Attention: Yaya Diatta

**Re: File #16-012819  
Response to Appeal of BZA Approval of Variances for 1174 Grand Avenue**

Dear City Councilmembers:

I am writing to respond to the May 4, 2016 appeal filed by Andrew Rorvig and Amanda Karls to the Board of Zoning Appeals' ("BZA") April 25, 2016 approval of our variance application for setback and lot coverage requirements at 1174 Grand Avenue. Mr. Rorvig and Ms. Karls are members of the board of the Summit Hill Association/District 16 Council ("SHA") and live on 1171 Lincoln Avenue, which is located right behind our property. For the reasons explained below, the appeal identifies no basis for reversing the BZA's April 25 decision, which was well supported by the record and satisfies all elements under Section 61.601 of the City Code for granting these variances.

### **Background Information**

Our planning process for this project began over 15 months ago and represents a project that has received significant review and input from city planners, neighbors and others involved in local groups, including the SHA's Zoning and Land Use ("ZLU") committee. As we have explained in our application, we listened carefully to that input and made significant changes to our plan in order to address all remaining concerns that have been raised by Mr. Rorvig, Ms. Karls and other residents living on Lincoln Avenue.

As you may be aware, Mr. Rorvig and Ms. Karls are board members of the SHA and were involved in an October 2015 appeal filed in the name of the SHA regarding our former variance application. The City Council granted that appeal by a vote of 4 to 3. Since that time, we changed our proposed variances by shrinking the rear setback and reducing lot coverage. We proposed other plan changes, such as reducing building height, even though the building already complied with all height restrictions in the City Code. Now, our proposed lot coverage is virtually identical to the existing four apartment buildings immediately adjacent to our property on Grand Avenue. During the process of modifying our plans, we gathered input from all

concerned and presented the new plan to the SHA's ZLU committee on March 8, 2016. The SHA's ZLU committee voted 3 to 1 in favor of recommending approval our new plan to the SHA board. In spite of that, the SHA board did not vote to support our requested variances for lot coverage, side setbacks and rear setback variance by a vote of 6 in favor, 7 opposed and 4 abstaining. Even though Mr. Rorvig and Ms. Karls abstained from participating in the SHA board vote due to their conflict of interests, they remained in their board member chairs during the board's discussion regarding our variances and spoke extensively against our plan as board members. We believe their actions unfairly influenced other SHA board members during that vote.

Mr. Rorvig and Ms. Karls remained very active during the BZA's consideration of our variance application. As the minutes reflect, our application was considered by the BZA in meetings on March 14, March 28, April 11, and April 25. During public hearings, Ms. Karls and other residents living on Lincoln Avenue were granted extensive time to present their facts and opinions. As the minutes reflect, their main criticism was the height of our proposed building, even though it is not part of our requested variances since the proposed height of 37 feet is under the 40 foot height limit in the City Code. Ultimately, the BZA voted to approve our variances finding that they satisfied the requirements of Section 61.601 of the City Code.

After the BZA's April 25 approval, we were informed by a member of the SHA's board and ZLU committee that the SHA had decided not to appeal the BZA's decision. We believe this is because the SHA's ZLU committee supported our revised plan, which explains why Mr. Rorvig and Ms. Karls filed this appeal in their individual capacities. Included in their appeal is a May 2, 2016 letter from SHA president Mark Peschel, who states that the SHA "supports" this appeal. However, our attorney has confirmed with Mr. Peschel that his letter that purports to speak on behalf of the SHA was not approved by the SHA board, which is required under SHA's own bylaws in order for a board member to speak on behalf of the SHA. As a result, we do not believe Mr. Peschel's letter accurately represents the views of the SHA or its board with respect to Mr. Rorvig and Ms. Karls' appeal.

### **Response to Appeal**

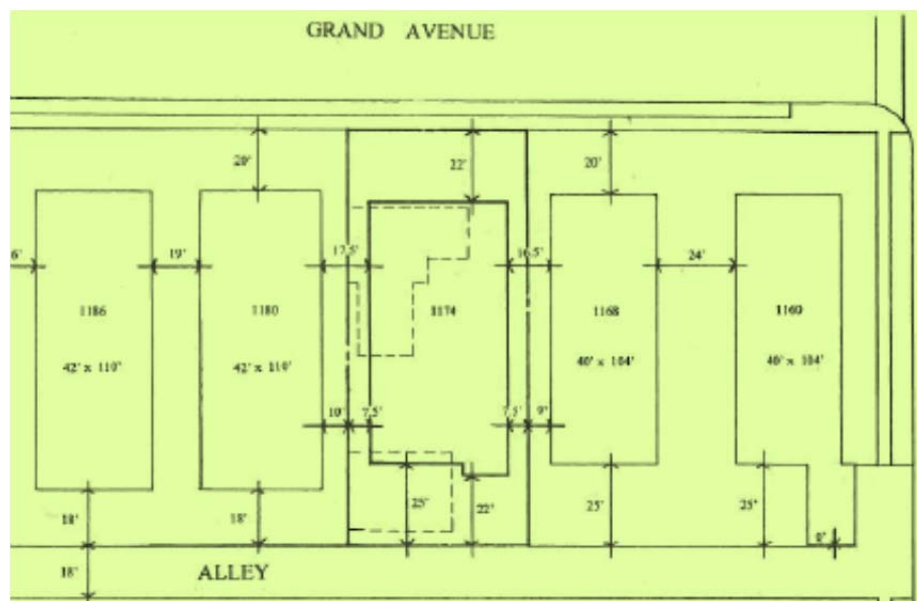
Mr. Rorvig and Ms. Karls' appeal argues that the BZA's April 25 decision should be reversed because there were errors in BZA's facts, findings and procedure. Each of these claims are addressed below.

### **Alleged Errors in Fact**

The appeal first claims two factual errors made by the BZA: (1) there were inaccurate representations of support for the project, and (2) City staff made errors in calculating lot coverage for our proposed condominium building.

The first claim simply attempts to discredit signatures we obtained from people working in businesses located on Grand Avenue who support our project. The list of signatures we submitted is on a form that says “[w]e support the proposed condo project.” To our knowledge, that is accurate for the individuals who signed the form. The same holds true for the emails and letters in support that are reflect on pages 63-72 of the record. And more importantly, none of this information reflects any “error in fact” made by the BZA. Nowhere in the findings did the BZA rely on any letters of support from either side.

The second claim contends that City staff incorrectly calculated our requested lot coverage to make it less than it really is. This claim is also without merit. Our plan has been reviewed by experienced City staff Yaya Diatta, Tom Beach, Jamie Radel, Allan Torstenson and Amy Spong. City staff’s lot coverage calculation (4,528 square feet) is based on the requested lot coverage stated in our application (4,528 square feet). There is no dispute that 4,528 square feet is 47.5% of the current lot size of 9,540 square feet, which is also correctly noted in our application and in the BZA’s findings. The appeal mistakenly relies on measurements from a prior version of our plan, which is not the basis of the current application. Similarly, the appeal incorrectly claims that City staff’s report dated March 2, 2016 inaccurately represents our changed lot coverage. Specifically, the appeal claims that “the footprint has only decreased by three square feet since the project was rejected by the City Council in November 2016! [sic]” However, a comparison of the lot coverages for both applications shows that we reduced our requested lot coverage variance by 377 square feet (4,905 square feet - 4,528 square feet). The square footage of the existing four adjacent apartment buildings is an average of 4,515 square feet – which is a total difference of 0.0029% from our new proposed lot coverage. As a result, the new proposed lot coverage is nearly identical to the existing four apartment buildings, as reflected in the drawing below:





Note that the dimensions of our proposed building are slightly different than the four apartment buildings in order to accommodate the city and neighborhood's desire for underground, off-street parking off Grand Avenue.

### **Alleged Errors in Findings**

The appeal also claims that the BZA made errors in its findings that our variances met Section 61.601 of the City Code. Specifically, the appeal argues subsection (a), (b), (c), (d) and (f) of Section 61.601 were not met. The appeal does not dispute that the variance will not permit any use that is not allowed in the zoning district where the affected land is located. These claims are also without merit because each finding by the BZA is supported by the record.

The BZA first found our requested variances are in harmony with the general purposes and intent of the zoning code. As noted in the findings and illustrated above, the proposed building is generally consistent with the size, the form and the setbacks of the immediate multi-family buildings to the east and to the west. Not only is the proposed lot coverage comparable to the immediate buildings, but it allows underground parking. These findings are supported by the facts set forth in our application. The appeal argues that the BZA did not consider smaller homes on the block, complains about our building's height, and once again refers to a prior plan that is not part of this application. None of these allegations are valid. Grand Avenue is designated as a mixed-use corridor. The fact our building will co-exist with a mix of other apartment buildings, homes, and commercial buildings enhances this diversity that is in fact encouraged by the St. Paul Comprehensive Plan. The appeal's concerns about our height are also unfounded since height is not part of our requested variances. Not only does our height meet the City Code (as well as the standards in the East Grand Avenue Overlay District), but a survey of the closest 25 apartment/condominium buildings supports that our proposed height is consistent with these other buildings. As I testified at the BZA's April 25 public hearing, of the 25 closest buildings, 15 are 3.5 stories or higher and 10 are 2.5 stories. Our proposed building will therefore be the same height as two thirds of the surrounding apartment/condominium buildings in our neighborhood. Below are photographs of some of these nearby 3.5 story and higher buildings that I handed out at the April 25 public hearing:



Second, the BZA found that our variances are consistent with the St. Paul Comprehensive Plan. As explained in the BZA findings, strategies and policies in the Housing Chapter of the Comprehensive Plan are fulfilled by our project because it will develop infill housing that will fit into the neighborhood character. In addition, our building satisfies several other portions of the Comprehensive Plan, including Policy 1.1 and Strategy 1 (including Strategies 1.2, 1.3, 1.16, 1.23, 1.25 and 1.26) of the Land Use Chapter because it will increase residential density in this mixed-use corridor. Providing condominium housing also supports the Comprehensive Plan's recognition in the Land Use Chapter that housing needs to be developed for the growing demographic of couples without children, singles, and empty nesters. And contrary to the appeal's claims, our project does promote and protect aesthetics, conserve and improve property values, and prevent the overcrowding of land in light of our goal to develop an attractive, 8-unit brick building that is generally consistent in appearance and lot coverage with the adjacent four apartment buildings. Our plan also fulfills the important goal of the Summit Hill/District 16 Neighborhood Plan of providing dedicated off-street or underground parking for building residents.

Third, the BZA found that we have established practice difficulties in complying with the existing zoning provisions and proposed to use the property in a reasonable manner. As stated above, our lot coverage and spacing will be similar to the adjacent apartment buildings. Constructing a building that meets code requirements would in fact be significantly less than the average size of the adjacent apartment building, create a dwarf building, and thereby affect the



pattern of the block. In addition, constructing a conforming building would allow a roof height of 40 feet, a parapet of 43 feet, plus HVAC and other utilities bringing the maximum height between 51-52 feet, none of which would be desired by concerned neighbors who have primarily complained about the proposed height of our current plan at 37 feet. The requested variances are also reasonable to allow development consistent with the existing spacing between the adjacent buildings and maintain the pattern of block and form of the existing four buildings on Grand Avenue, with the added quality of underground parking. The appeal's argument that the BZA ignored smaller homes and buildings on other portions of the block is meritless because, as previously stated, Grand Avenue is a mixed-use corridor and contemplates a diverse mix of buildings. And contrary to the appeal's suggestion, the BZA did not consider "economic considerations alone" to find that practical difficulties exist.

Fourth, the BZA found that the existing plight that prompted our variance application is unique to the property not created by our actions. As the BZA explains in its findings, we cannot develop similar multifamily housing while meeting current parking standards in place. The setbacks and lot coverage variances sought are driven by the need for off-street parking. The variances are also needed to complete the sightlines and follow the historical development pattern of the block and area. Development of a small single-family home or duplex would not fit within the 4 large apartment buildings, the pattern on this portion of the block, or be realistically desired by any prospective purchaser.

Last, the BZA also found that the variance will not alter the essential character of the surrounding area. As previously explained, our proposed condominium building will be similar in size to the four apartment buildings immediately to the east and west. Lot coverage is now virtually identical. The appeal's concern that our building will cause a chain reaction of other similar variance applications in the neighborhood is unfounded. This property sits in a unique location, sandwiched between four apartment buildings of similar size. And the appeal's repeated citation to our proposed height is irrelevant since we comply with City Code. Our proposed height is similar to not only the adjacent four apartment buildings, but also the majority of other apartment and condominium buildings in the nearby vicinity. This building will not alter the character of the area. It will only enhance it.

### **Alleged Errors in Procedure**

The appeal also claims procedural errors exist because one of the BZA members "disregarded the testimony of plan opponents" at the public hearing. The appeal also suggests that the BZA should have summarily denied our new application because the City Council denied our prior application. They also complain about paying an appeal fee and having to file it within 10 days.

There is no evidence that a BZA member disregarded any testimony and the appeal acknowledges that perception is simply their "opinion." The minutes indicate that a BZA member asked Ms. Karls questions regarding her aggressive positions, particularly regarding the proposed height, but that is permitted and contemplated as part of the BZA's public hearing



procedures. Furthermore, many of the arguments against our proposed variances amounted to general statements of opposition from certain residents of the neighborhood, which as a matter of Minnesota law may not serve as the basis for denying this application. *Minnetonka Congregation of Jehovah's Witnesses, Inc. v. Svee*, 226 N.W.2d 306 (Minn. 1975).

Mr. Rorvig and Ms. Karls's argument that the BZA should have summarily denied our recent application is also without merit. In fact, it would have been a procedural error for the BZA to take such an arbitrary and capricious action without considering the merits of our new application. Finally, the BZA rules and Section 61.702 of the City Code required that they had to pay a fee and file the appeal within 10 days if they chose to appeal the BZA's decision to City Council.

In summary, the appeal fails to raise any valid error in fact, procedure or finding under Section 61.702 of the City Code that warrants the City Council reversing the well-reasoned findings of the BZA that approved the requested variances. Thank you for your consideration. We look forward to addressing any further questions you may have at the upcoming public hearing.

Sincerely,

Ryan Burke and Kyle Lenzen  
BleuAnt Design, LLC

cc: Rebecca Noecker, Ward 2 Council Member