

# Opposition to TCGIS Variances and Site Plan

Presentation prepared for the Saint Paul City Council

June 5, 2019

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It is the responsibility of the Saint Paul City Council  
is to enforce the state statute governing the  
legitimate approval of zoning variances.

This presentation will show that the variances as  
proposed by Twin Cities German Immersion  
School clearly violate Minnesota Statute §  
462.357 and Saint Paul Zoning Code



## From the League of Minnesota Cities

### **Neighborhood Opinion:**

“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.”



# Introduction

- Any zoning variance must meet all six factors of Section 61.601 of the Saint Paul city code in order to be legitimately approved.
  - (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.

# Introduction

- Although the Lot Coverage and Height variances appear small, they carry with them a disproportionate impact because they facilitate an expansion with exorbitant impact upon the neighborhood.

- **Finding One is Not Met:** The variance is in harmony with the general purposes and intent of the zoning code.

# Sec. 60.103. - Intent and purpose.

## Chapter 60. - Zoning Code—General Provisions and Definitions; Zoning Districts and Maps Generally

### ARTICLE I. - 60.100. GENERAL PROVISIONS AND EXCEPTIONS

#### Sec. 60.103. - Intent and purpose.

This code is adopted by the City of Saint Paul for the following purposes:

- (a) To promote and to protect the public health, safety, morals, aesthetics, economic viability and general welfare of the community;
- (b) To implement the policies of the comprehensive plan;
- (c) To classify all property in such manner as to encourage the most appropriate use of land throughout the city;
- (d) To regulate the location, construction, reconstruction, alteration and use of buildings, structures and land;
- (e) To ensure adequate light, air, privacy and convenience of access to property;
- (f) To facilitate the adequate provision of transportation, water, sewage disposal, education, recreation and other public requirements;
- (g) To lessen congestion in the public streets by providing for off-street parking of motor vehicles and for off-street loading and unloading of commercial vehicles;
- (h) To provide for safe and efficient circulation of all modes of transportation, including transit, pedestrian and bicycle traffic;
- (i) 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;
- (j) To provide housing choice and housing affordability;
- (k) To promote the conservation of energy and the utilization of renewable energy resources;
- (l) To conserve and improve property values;
- (m) To protect all areas of the city from harmful encroachment by incompatible uses;
- (n) To prevent the overcrowding of land and undue congestion of population;
- (o) To fix reasonable standards to which buildings, structures and uses shall conform;
- (p) To protect water resources, improve water quality, and promote water conservation;
- (q) To provide for the adaptive reuse of nonconforming buildings and structures and for the elimination of nonconforming uses of land;
- (r) To define the powers and duties of the administrative officers and bodies;
- (s) To provide penalties for violations of the provisions of this code or any subsequent amendment thereto; and,
- (t) To provide for a board of zoning appeals and its powers and duties.

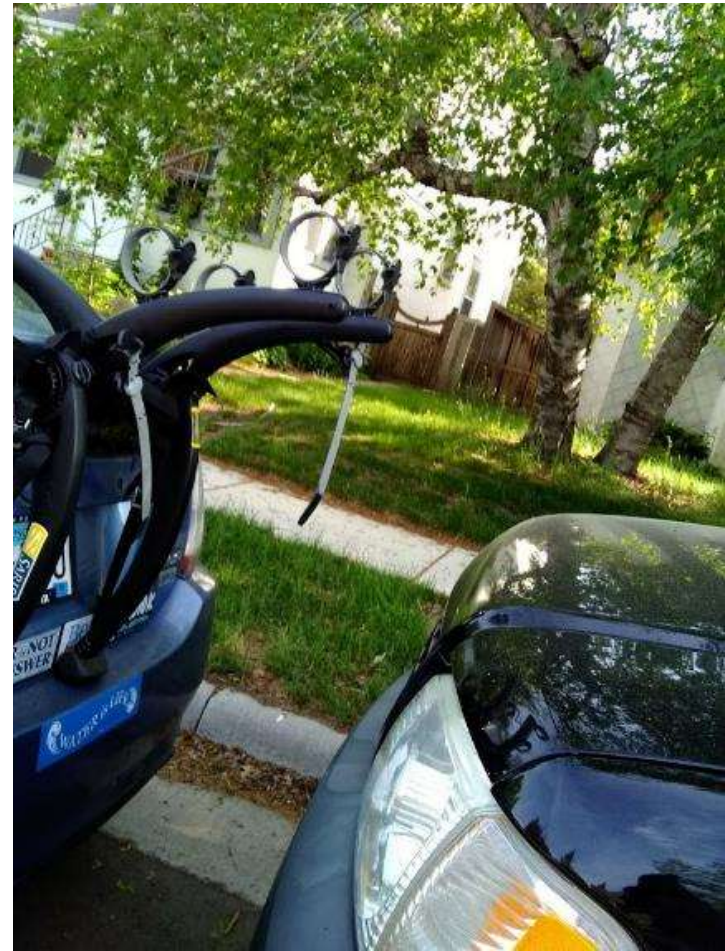
- The proposed variances are not in harmony with the provisions in red text.
- See Appendix A for comprehensive discussion of each relevant provision.

## Intent and Purpose of St. Paul Zoning Code

- 60.103 (g): “to lessen congestion in 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.
  - TCGIS has failed to put forth a practical plan to manage its requested variance.
  - Instead, TCGIS simply expects the neighborhood to accept the consequences of this extraordinary request.



# Problematic Parking Congestion



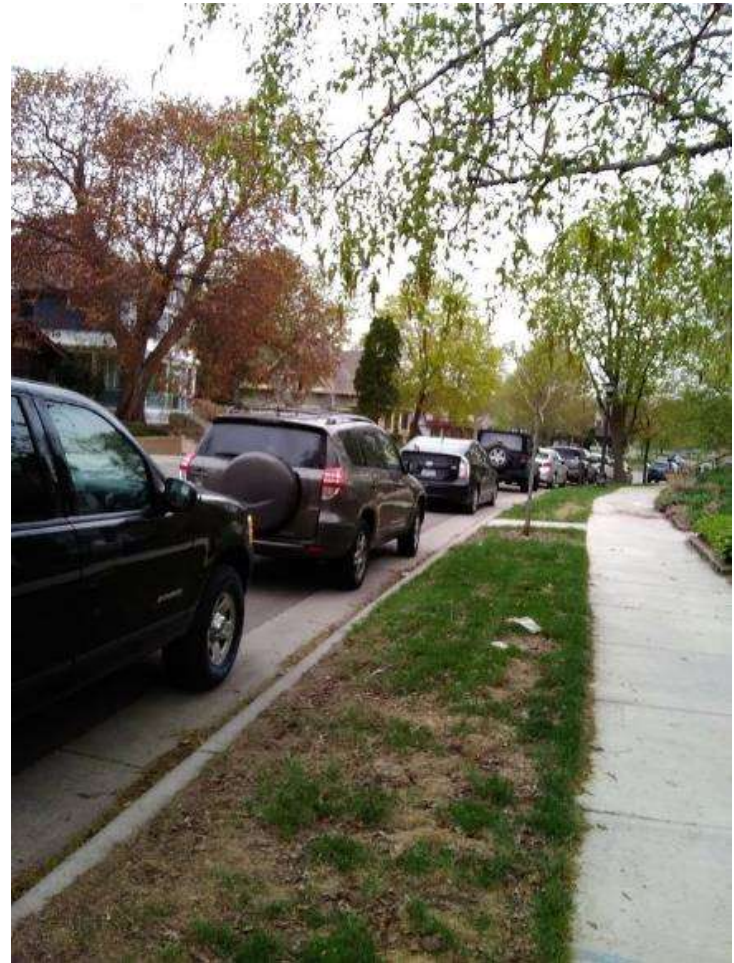
May 24<sup>th</sup>, 2018



## Parking Congestion Has Been a Problem



May 11<sup>th</sup>, 2018



## Parking Congestion Has Been a Problem



March 26<sup>th</sup>, 2018



January 20<sup>th</sup>, 2017

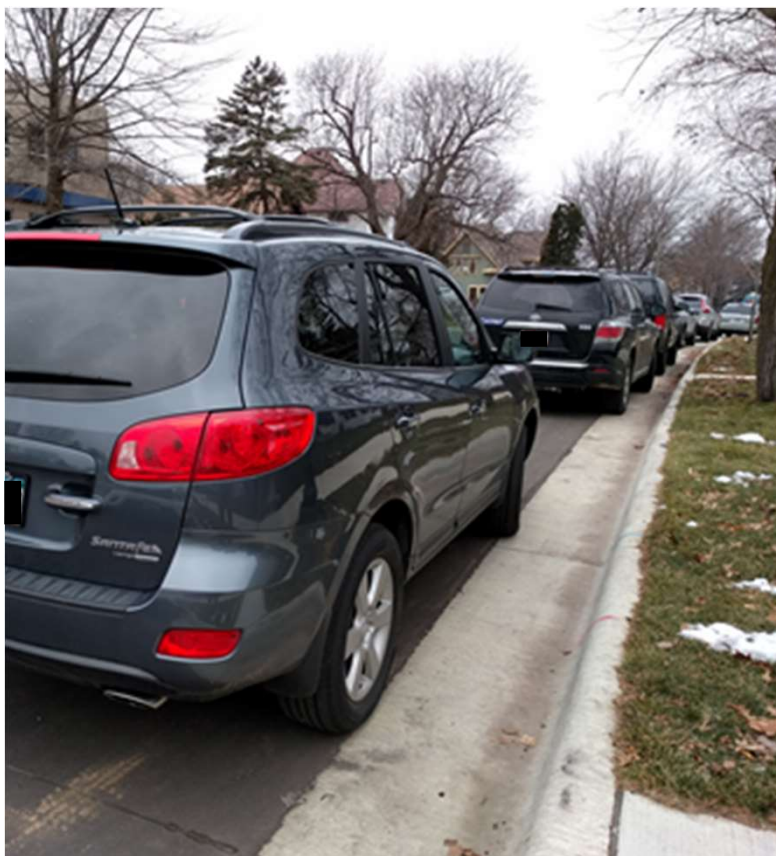


## Parking Congestion Has Been a Problem

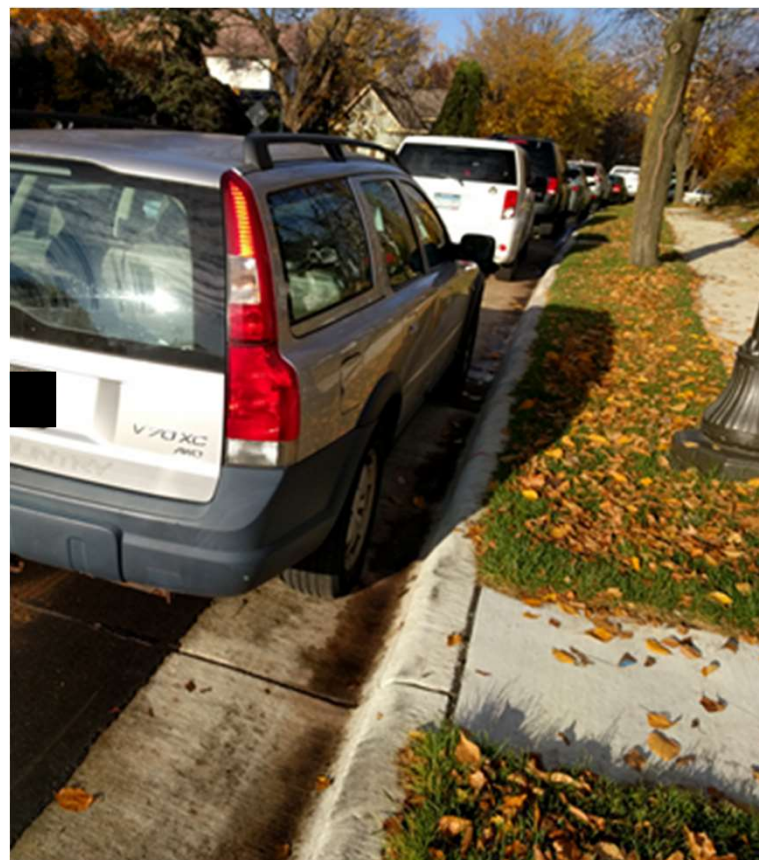


April 11<sup>th</sup>, 2017

## Parking Congestion Has Been a Problem



December 6<sup>th</sup>, 2017



November 3<sup>rd</sup>, 2016



## Parking Congestion Has Been a Problem



November 2<sup>nd</sup>, 2016



November 1<sup>st</sup>, 2013

## Parking Congestion Has Been a Problem



May 9th, 2014



## Parking Congestion Has Been a Problem



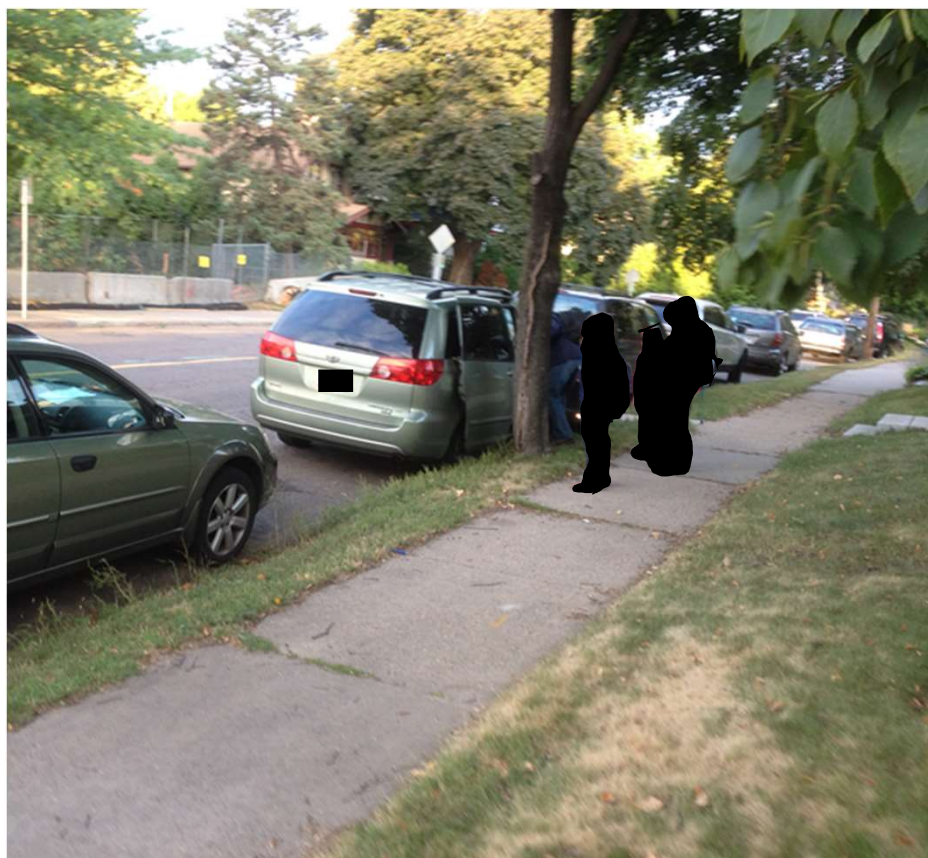
May 9th, 2014



March 2<sup>nd</sup>, 2018



## Parking Congestion Has Been a Problem



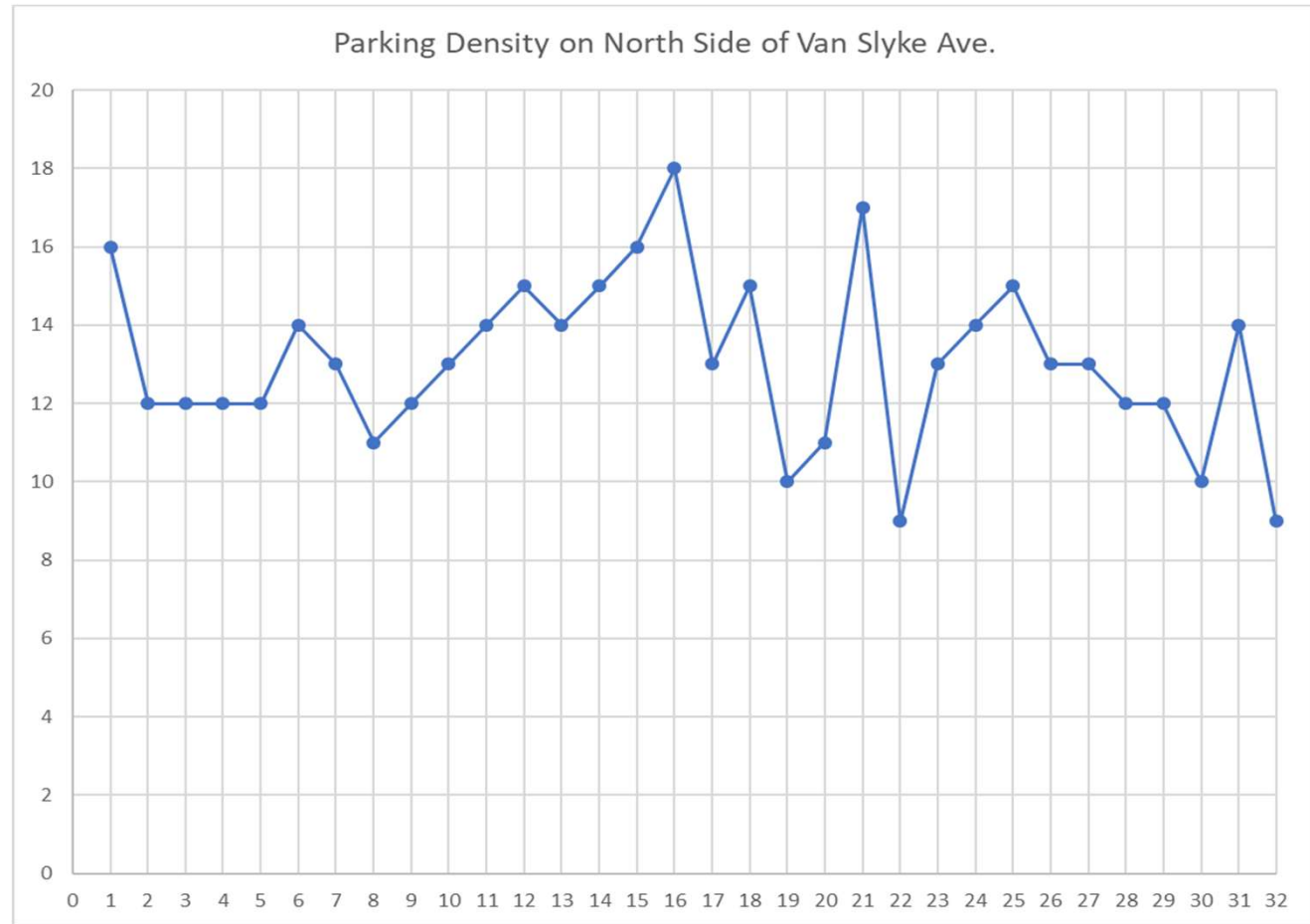
September 17<sup>th</sup>, 2013



December 11<sup>th</sup>, 2013

# The Need For Off-Street Parking

Date	Observation	Number of cars
4/20/2018	1	16
4/23/2018	2	12
4/24/2018	3	12
4/25/2018	4	12
4/26/2018	5	12
4/27/2018	6	14
4/30/2018	7	13
5/1/2018	8	11
5/2/2018	9	12
5/3/2018	10	13
5/4/2018	11	14
5/7/2018	12	15
5/8/2018	13	14
5/9/2018	14	15
5/10/2018	15	16
5/11/2018	16	18
5/18/2018	17	13
5/21/2018	18	15
5/22/2018	19	10
5/23/2018	20	11
5/24/2018	21	17
5/29/2018	22	9
5/30/2018	23	13
5/31/2018	24	14
6/1/2018	25	15
6/4/2018	26	13
6/5/2018	27	13
6/6/2018	28	12
6/7/2018	29	12
6/8/2018	30	10
6/11/2018	31	14
6/12/2018	32	9
<b>Ave.</b>		<b>13.1</b>
<b>Max.</b>		<b>18</b>
<b>Min.</b>		<b>9</b>



- **Finding Two is Not Met:** The variance must be consistent with the Comprehensive Plan.

The requested variances are inconsistent with at least the following Strategies from the Saint Paul Comprehensive Plan

## Inconsistent with the Comprehensive Plan

- **Land Use Strategy 1, section 1.5:** “The City shall maintain the character of Established Neighborhoods.”
  - 1031 Como is zoned R4 and the area is classified by the Comprehensive Plan as an Established Neighborhood of medium density.
  - The variances and site plan require roughly three dozen cars to seek out on-street parking in the neighborhood.
  - This will unquestionably adversely impact the residential character of the neighborhood.

## Inconsistent with the Comprehensive Plan

- **Land Use Strategy 1, section 1.55:** “Collaborate with public and private elementary and secondary school in conjunction with construction or major remodeling.”
  - By definition, collaboration requires that multiple entities work cooperatively together.
  - Allowing TCGIS to consider a temporary lease agreement as equal to spaces on their own site is an example of significant collaboration.
  - Facilitating the demolition of a neighborhood landmark and allowing TCGIS to avoid providing parking for 34 cars exceeds any reasonable definition of collaboration.

## Inconsistent with the Comprehensive Plan

- **Land Use Strategy 1, Policy 1.57:** “Encourage communication between educational institutions and residents of the community when these institutions seek to expand or make significant changes to their campuses.”
  - There have been no substantive changes to the proposed expansion plan since it was revealed almost one year ago.
  - Additionally, City leadership has not met this requirement to encourage communication.

## Inconsistent with the Comprehensive Plan

- **Historic Preservation Strategy, Policy 1.12:** “Prioritize the retention of designated historic resources (or those determined to be eligible for historic designation) over demolition when evaluating planning and development projects that require or request City action, involvement, or funding.”
  - On November 5<sup>th</sup>, 2018, the Heritage Preservation Commission determined that TCGIS’s building – the former church of Saint Andrew’s – is eligible for historic designation.
  - The site plan and variances before the committee require the demolition of this historic neighborhood landmark.
  - Approval of the site plan or variances would be inconsistent with the Comprehensive Plan.

- **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.”



# Practical Difficulties

- **Minn. Stat. § 462.357, subd. 6 sets forth a three-factor legal definition of “practical difficulties”.**
- The first factor determines if the property owner can use the property in a reasonable manner without the variance.
  - The property is already being used as a successful school, albeit with space and staff parking deficiencies created entirely by the landowner. The proposed variances fail this test.
- The second factor determines if the landowner’s problem is due to physical characteristics unique to the property not created by the landowner.
  - The excessive size of the institution is due entirely to choices made by TCGIS. The proposed variances fail this test.
- The final factor determines whether the variance, if granted, will alter the essential character of the locality. As will be discussed within Finding Six, the proposed variances fail this test.

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



## From the League of Minnesota Cities

### **Your Quasi-judicial Responsibility**

#### **Application of the Standard:**

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



## Plight of the Landowner

- Absent TCGIS's own decision to expand on a site too small to accommodate this growth – a preference of the landowner – there would be no need for any of these variances.

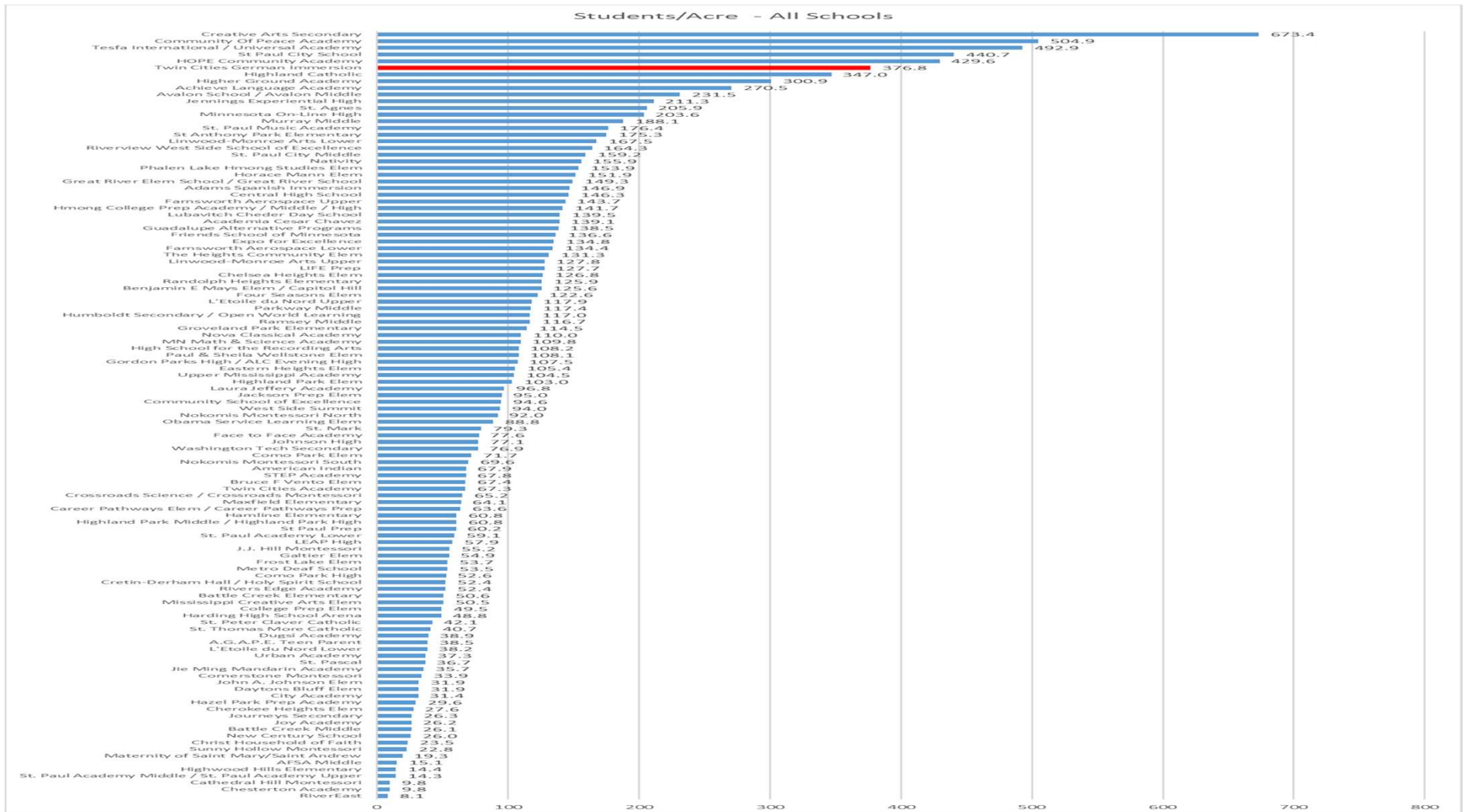
## Plight of the Landowner

- The landowner's problem is due entirely to its desire to expand staff and student populations while maintaining lot size, class size, and playground size.
- Moreover, TCGIS intentionally eliminated many parking spaces during the school's 2013 building expansion
- At that time, the school was asked to provide off-street parking spaces for 32 staff.
- Now, approximately five years later, 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 the property.

## Plight of the Landowner

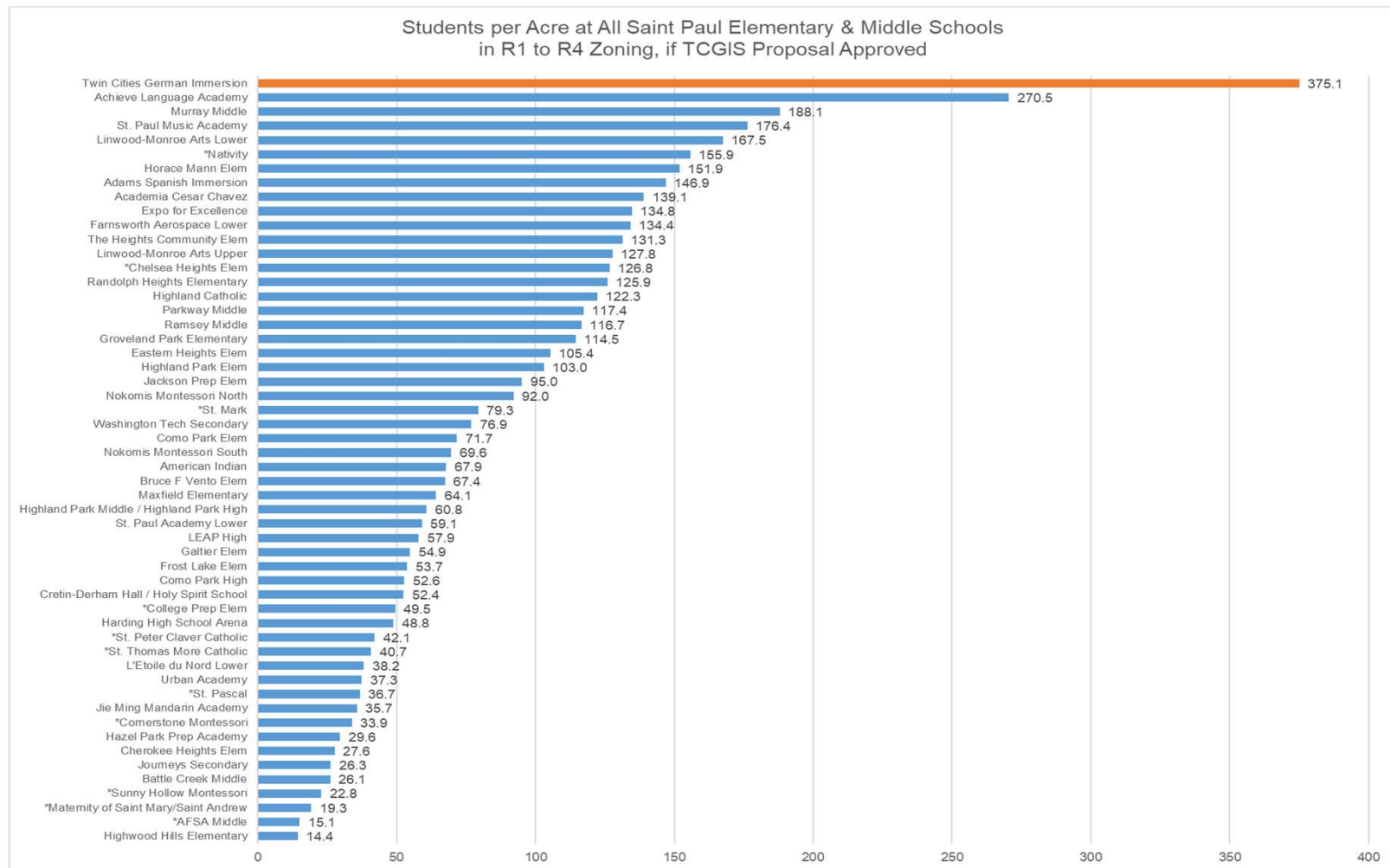
- There is absolutely no reasonable basis to support agreement with this finding.
- TCGIS chose to raise its enrollment, year upon year, necessitating the hiring of more staff, requiring more off-street parking spaces, and creating their own space problems.
- The size of TCGIS relative to all other schools in any R1 through R4 zoned district tells the story.

# TCGIS—5<sup>th</sup> out of all 115 Saint Paul Schools for Student Density



# Students per Acre: TCGIS– 1st out of all 54 Elementary and Middle Schools in R1-R4 Zoning

## Four Times the Median Density





## Plight of the Landowner

- The decision not to expand lot size is a preference of the landowner.
- Property owners on both sides of the property have expressed an interest in renewing discussions that could lead to the purchase of their properties.
- The author of this presentation has personally communicated this to members of the TCGIS school board during two separate public meetings.
- A purchase agreement was signed with the owners of 1040 Van Slyke Ave., but TCGIS chose to let this agreement lapse and pursue a variance instead.
- The next slide in this presentation was taken from the TCGIS Facilities Committee presentation on March 22, 2018. The emphasis is mine.

# Points for Discussion

- Are we in agreement that the School should not pay more in rent above the 90% reimbursement level?
- Are we comfortable with a peak ADM of 630 going forward?
  - If not, then the \$20,000 question becomes a bigger, different question.
- Do we still need 1042 Van Slyke?
  - In one sense, we would be better off without it: no space even available to increase parking for the City, and save \$330,000.
- Can we build the facilities we want for \$4.0 to \$4.4 million?
  - If it will cost more then we need to revisit the first question, or develop a robust capital fundraising campaign.

- **Finding Six is Not Met**: “The variance will not alter the essential character of the surrounding area.”

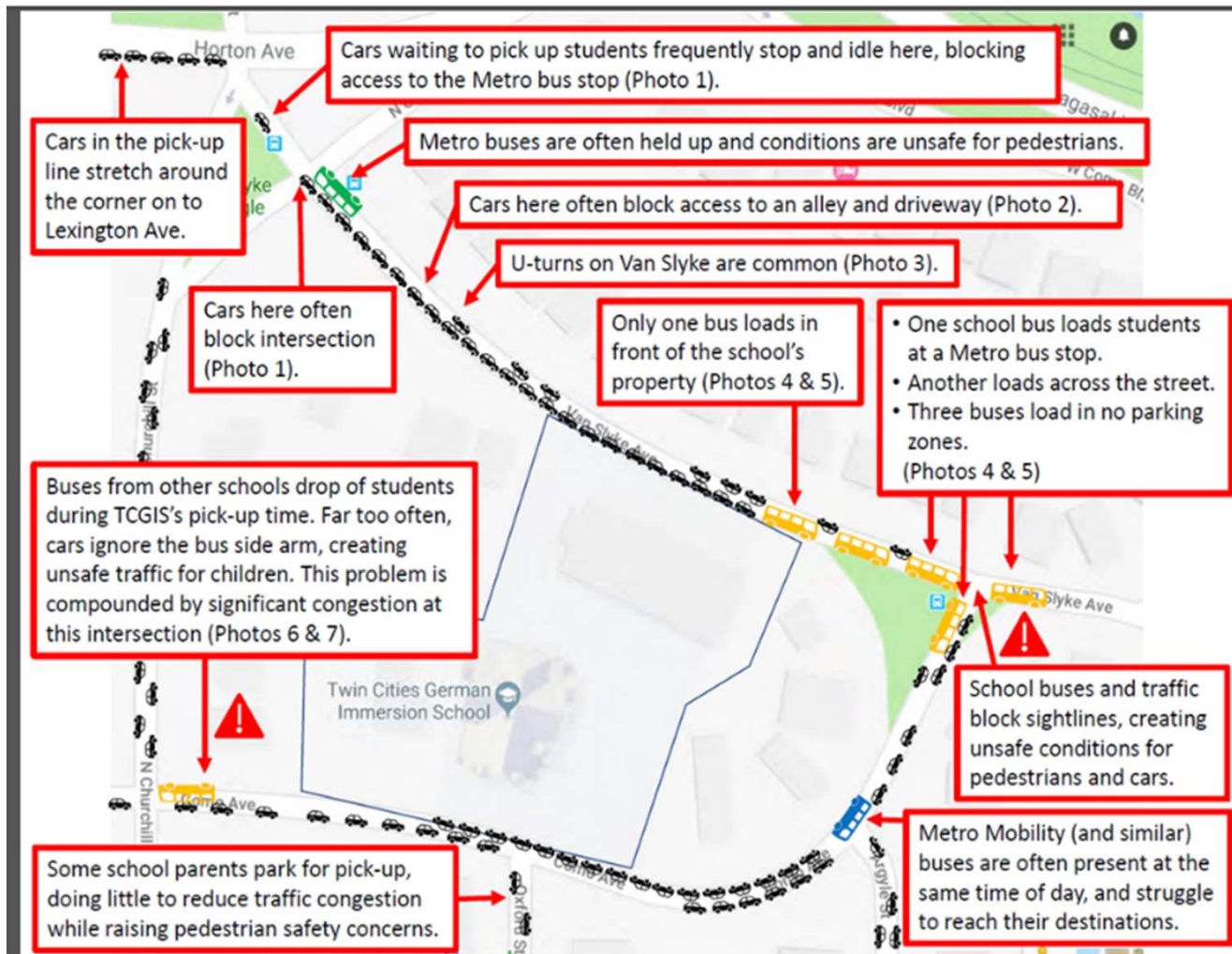
## Essential Character of the Area

- The current size of the school is a problem. If granted, these variances would enable an expansion creating overcrowding beyond anything reasonable for a residential neighborhood.
- The Warrendale neighborhood was established in 1885.
- The streets in this neighborhood were designed by Horace W. S. Cleveland in tandem with his design for Como Regional Park. They were never meant to support this level of traffic congestion.
- TCGIS is a commuter school, not a neighborhood school.

## Essential Character of the Area

- Only 9% of the students attending TCGIS are from the neighborhood.
- 36% of the students are from within Saint Paul, but outside of District 10.
- 55% of the students are from outside Saint Paul all together.
- Only about 25% of these students ride a school bus.
- TCGIS relies on hundreds of individual cars for pick- and drop-off.
- TCGIS is a commuter school creating unusual, pressing, and real systemic traffic and safety issues throughout the neighborhood.

# Essential Character of the Area



# Essential Character of the Area

Photo 1: Van Slyke and Churchill intersection

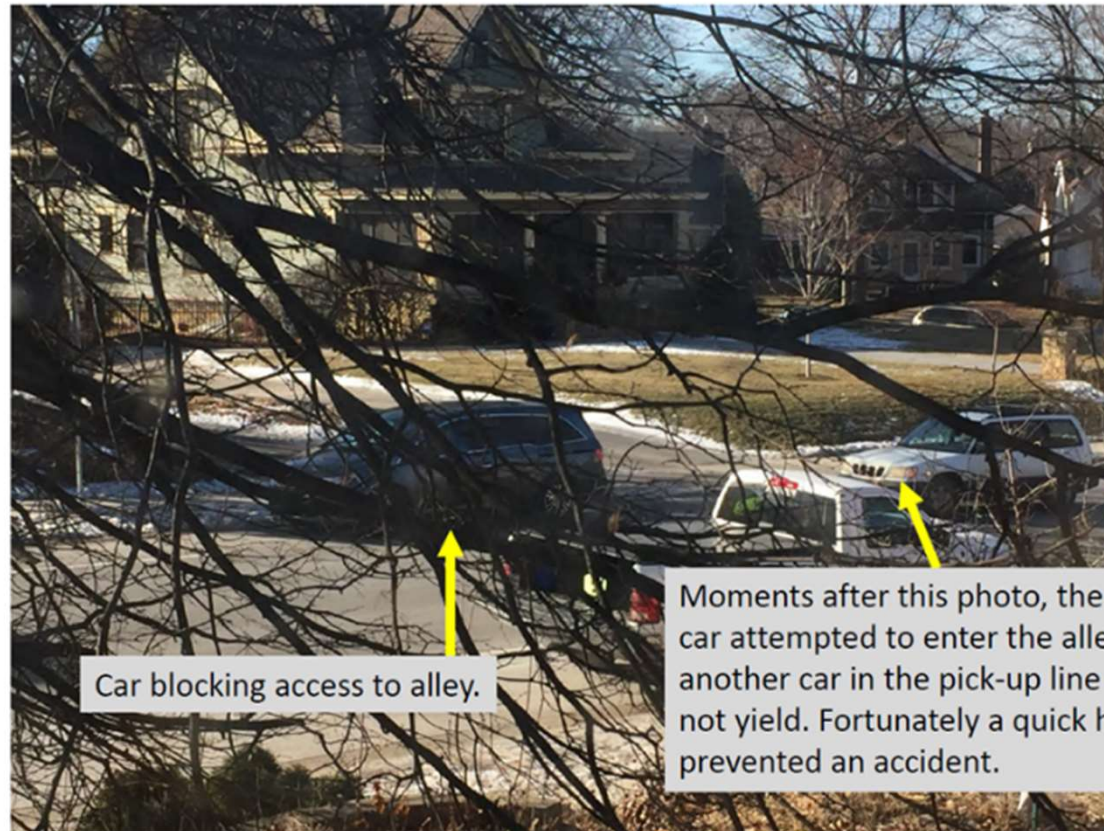


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# Essential Character of the Area

Photo 2: Van Slyke Ave alley and driveway



Car blocking access to alley.

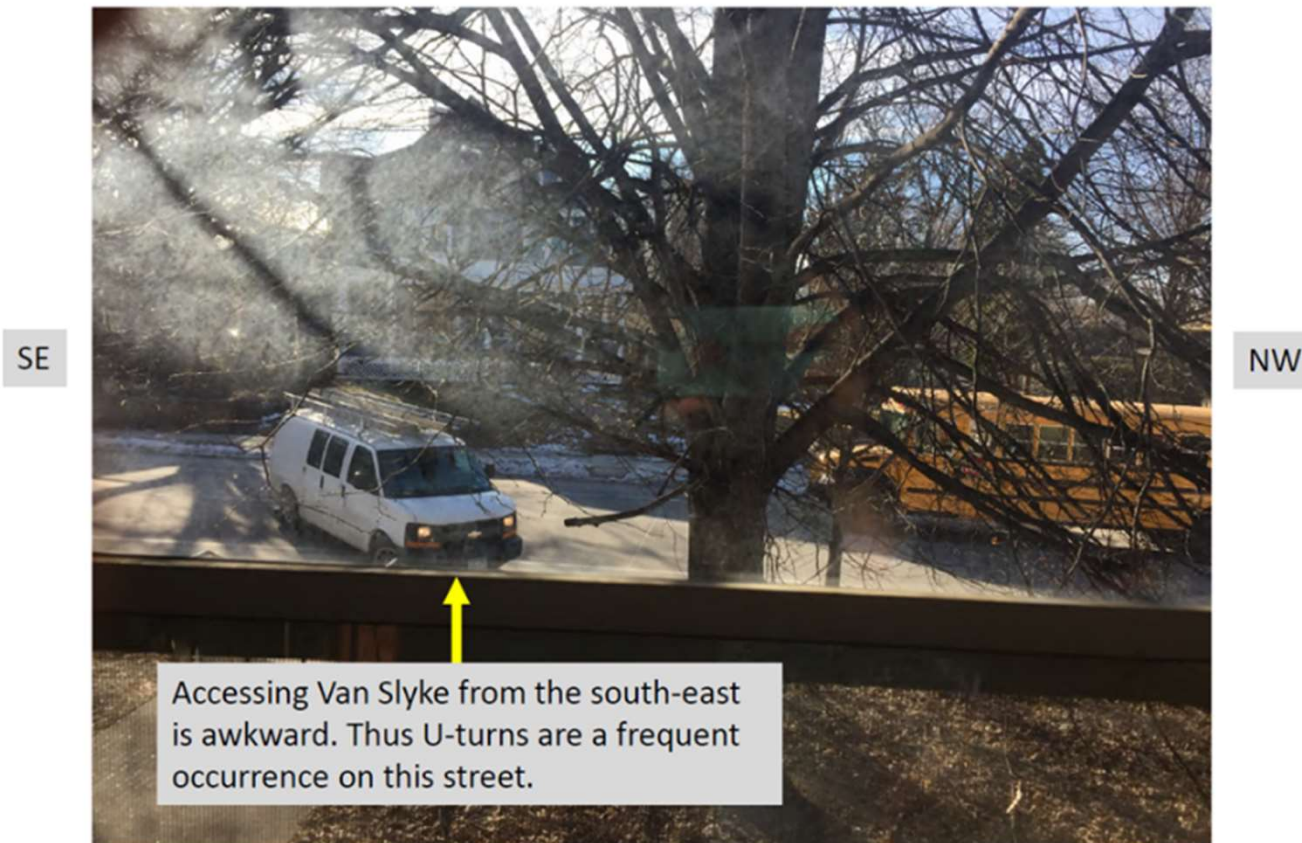
Moments after this photo, the white car attempted to enter the alley, but another car in the pick-up line did not yield. Fortunately a quick honk prevented an accident.

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# Essential Character of the Area

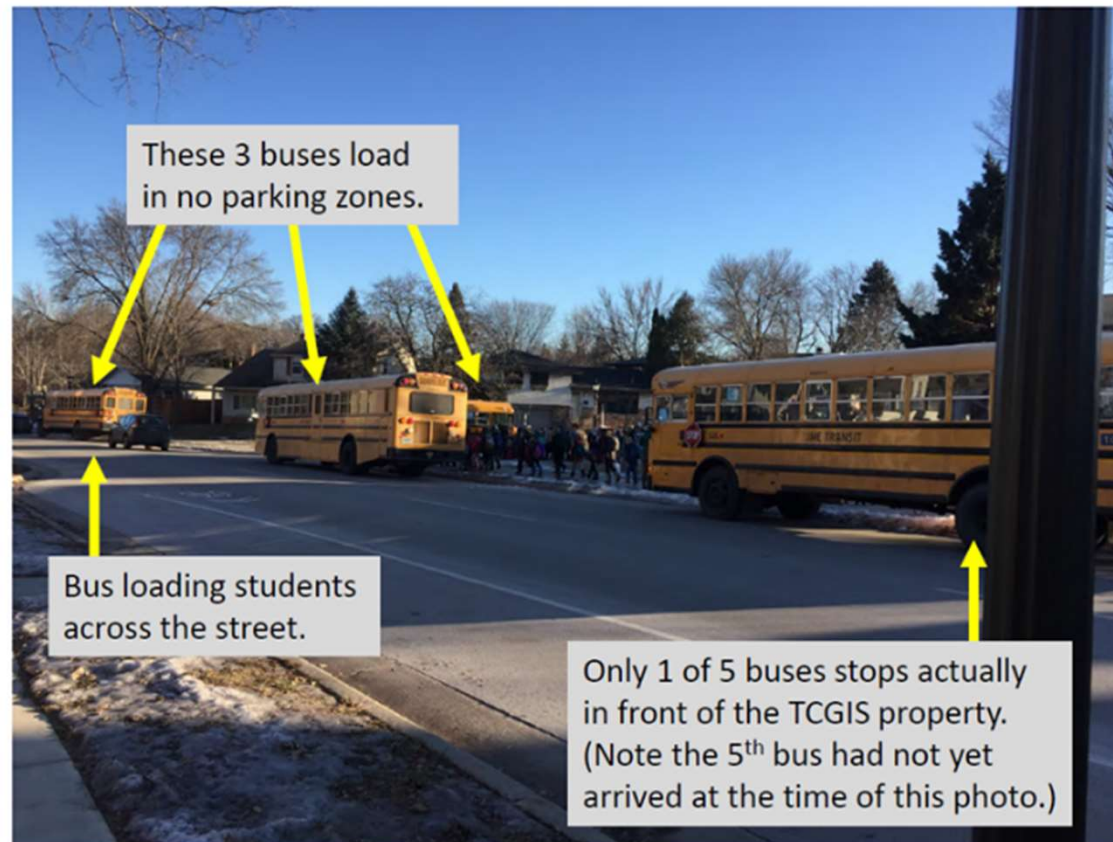
Photo 3: Van Slyke Ave U-turns



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# Essential Character of the Area

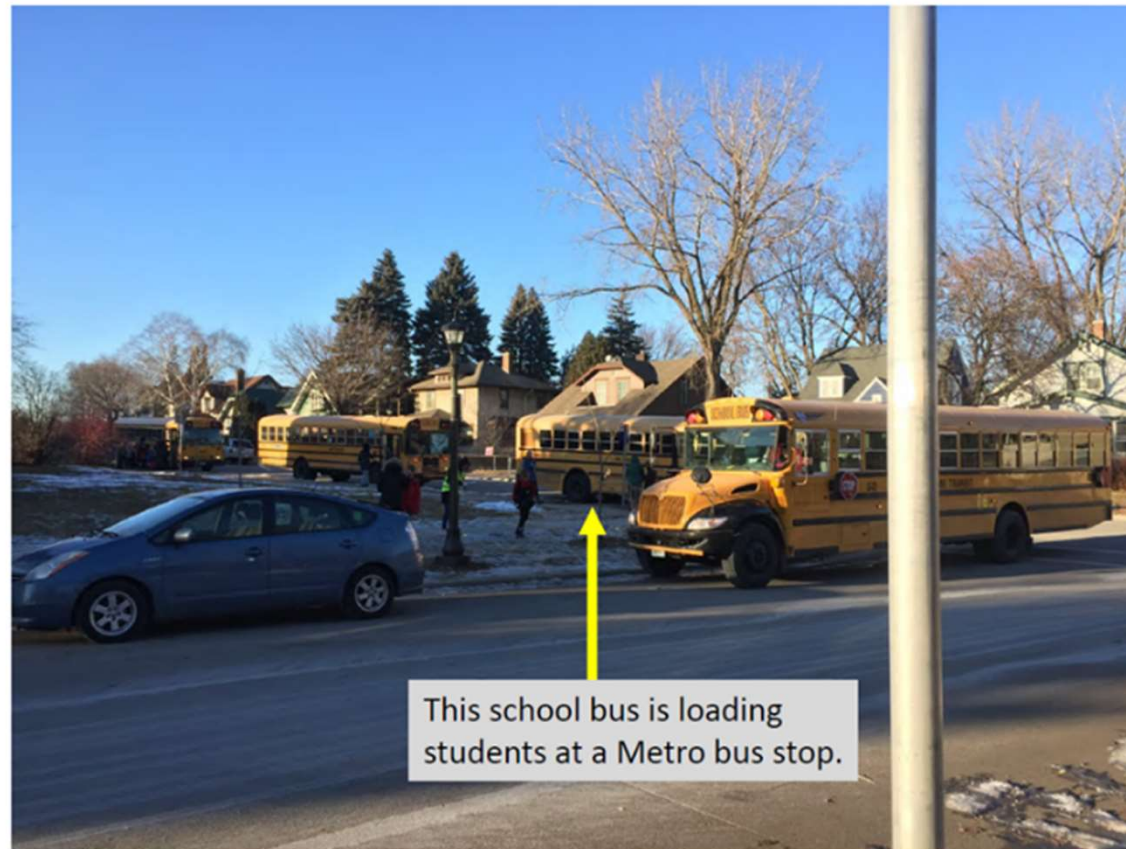
**Photo 4: Van Slyke Ave bus pick-up at TCGIS**



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# Essential Character of the Area

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



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# Essential Character of the Area

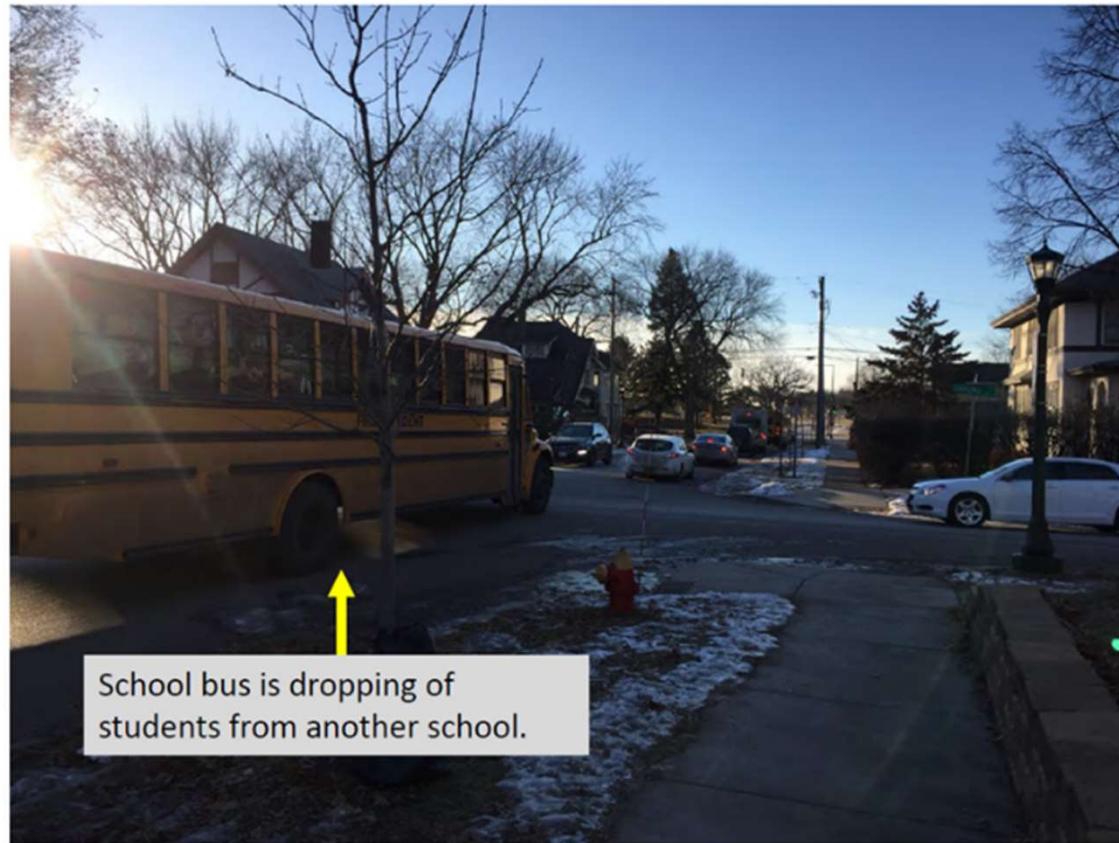
**Photo 6: Como and Churchill traffic congestion**



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# Essential Character of the Area

**Photo 7: Como and Churchill traffic congestion**

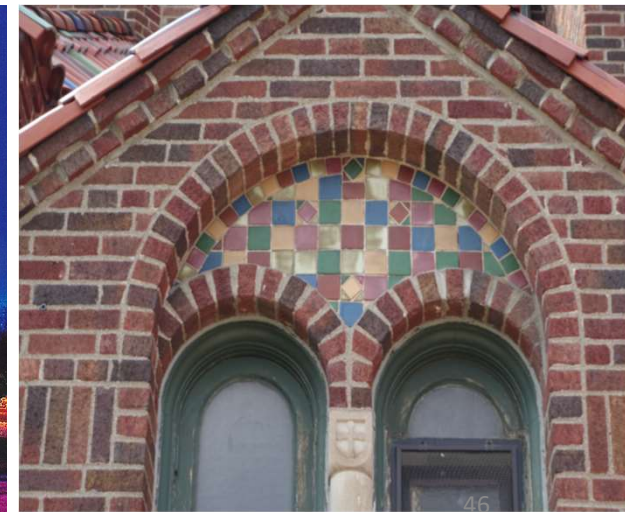
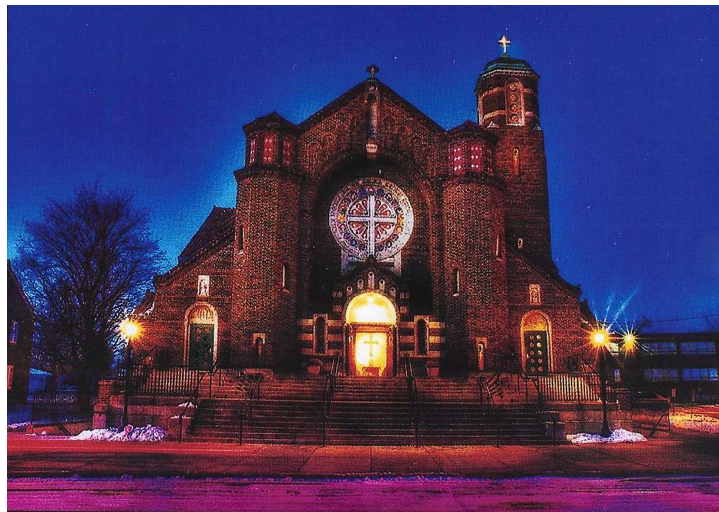
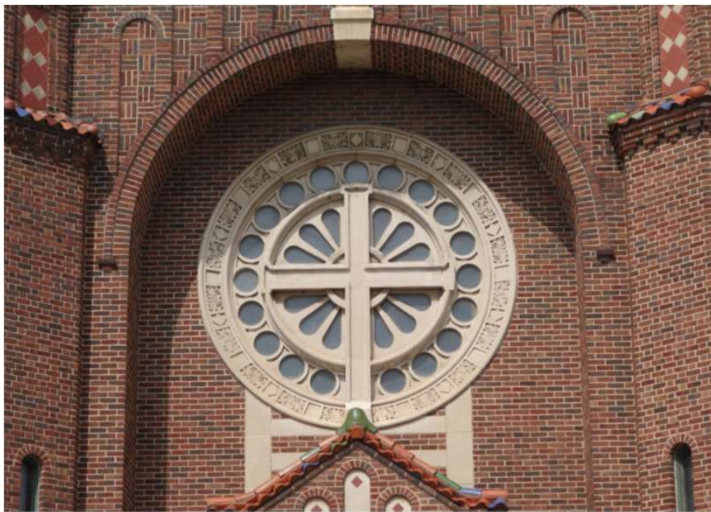


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# Essential Character of the Area

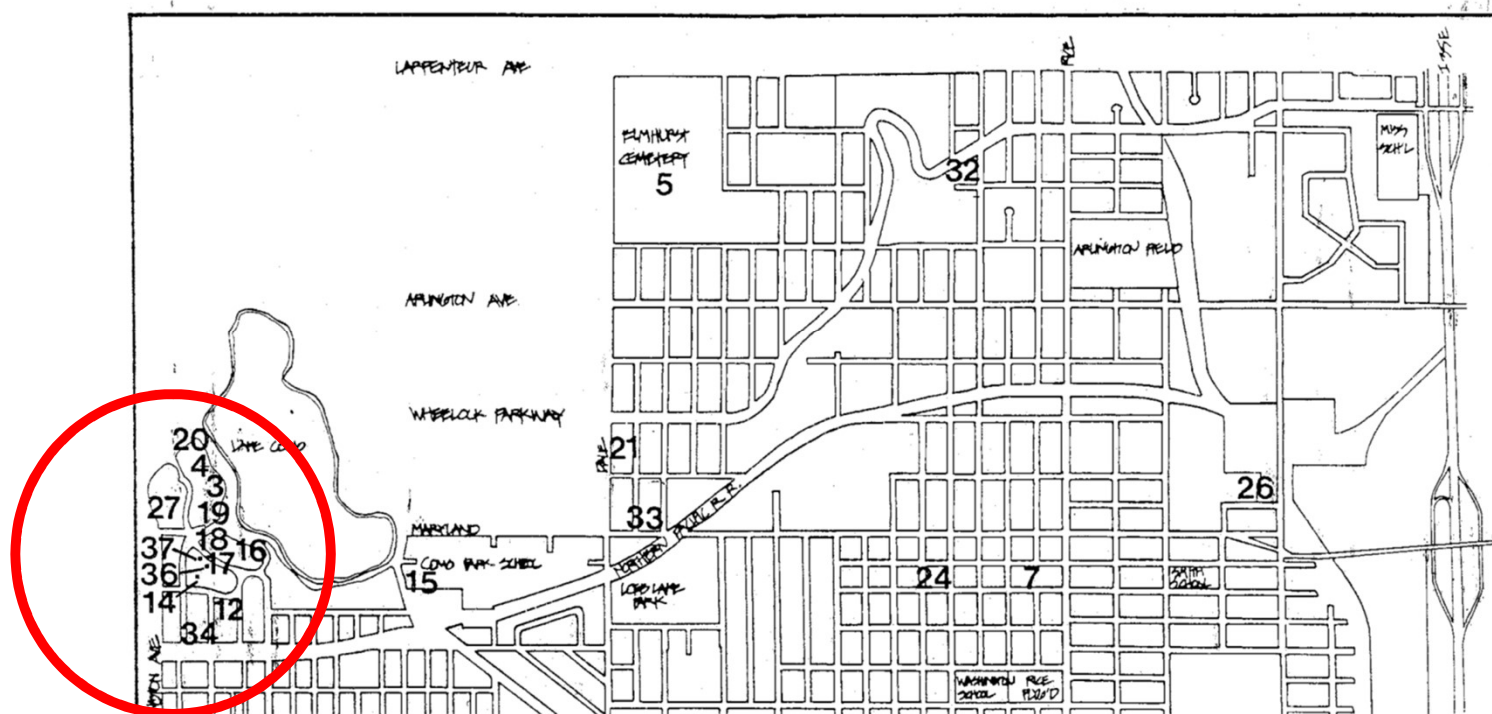
- Warrendale is a historic neighborhood.
- The Heritage Preservation Commission determined the former church of Saint Andrew's is eligible for historic designation.
- The fact that the nomination for historic designation came from the community rather than the landowner, testifies to the importance of this structure to the community.



# The Character of the Warrendale Neighborhood – 1983 Survey

- Note the density of buildings of significance in the Warrendale neighborhood.
- Authors of the 1983 Historic Sites Survey believed so strongly that the Warrendale neighborhood was eligible for designation as a Historic District that they prepared a nomination for the National Register.

DISTRICT 6



On January 17<sup>th</sup>, after extensive consideration of verbal and written testimony, the Zoning Committee of the Planning Commission conclusively recommended denial of these variances and this site plan on a 5-1 vote.



## Conclusion

The proposed variances and site plan do not satisfy the findings required by Saint Paul city code.

For the reasons set forth in this presentation and the applications for appeal, I respectfully request that TCGIS's requested variances and site plan be denied.

Thank you



# Appendix A



# Intent and Purpose of St. Paul Zoning Code

- 60.103 (a): “to promote and protect the public health, safety, morals, aesthetics, economic viability and general welfare of the community”
- These variances reinforce the unsafe traffic conditions caused by an inappropriate intensity of use within an R4 zoned residential neighborhood

# Intent and Purpose of St. Paul Zoning Code

- 60.103 (b): “to implement the policies of the comprehensive plan.”
- This requirement will be addressed separately within Finding Two.
- 60.103 (c): “classify all property in such a manner as to encourage the most appropriate use of land throughout the city.”
- The intensity of use proposed by this expansion is an inappropriate use of this property within an R4 zoned residential district.

## Intent and Purpose of St. Paul Zoning Code

- 60.103 (e): “to ensure adequate light, air, privacy and convenience of access to property.”
- The congestion on neighborhood streets created by TCGIS during pick-up and drop-off times may make it difficult for emergency vehicles to have timely access to neighboring residences.
- Neighbors have reported issues with being able to come and go from their residences during these times.

# Intent and Purpose of St. Paul Zoning Code

- 60.103 (h): “to provide for safe and efficient circulation of all modes of transportation, including transit, pedestrian and bicycle traffic.”
- The negative impact to traffic circulation has been repeated brought to our District Council, yet all improvements, if any, have been negligible.
- The impact on transportation within the neighborhood will be discussed in more detail later.
- Approval of these variances would essentially create a mandate for the school, at the expense of the safe circulation of all modes of transportation.

## Intent and Purpose of St. Paul Zoning Code

- 60.103 (i): “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.
- The variances proposed to accommodate this intentional growth are inconsistent in scale and character with the historic and residential Warrendale neighborhood.



# Intent and Purpose of St. Paul Zoning Code

- 60.103 (k): “to promote the conservation of energy and the utilization of renewable energy resources.”
- The proposed expansion requires demolition of the significant building already on site.
- It can take up to 80 years for a new energy efficient building to overcome the impact created by its construction. Most buildings will take 20-30 years just to compensate for the initial carbon impact from construction.
- According to MPCA, more than 80% of Minnesota’s 1.6 million tons of construction and demo waste ended up in a landfill in 2013.
- As the National Trust says, “the greenest building is the one that’s already built”.

# Intent and Purpose of St. Paul Zoning Code

- 60.103 (m): “to protect all areas of the city from harmful encroachment by incompatible uses.”
- The intensity of use proposed by this expansion would be harmful and incompatible within an R4 zoned residential district.
- TCGIS is a commuter school, not a neighborhood school. Since there is no neighborhood preference or even a preference for Saint Paul residents, it will remain a commuter school.

## Intent and Purpose of St. Paul Zoning Code

- 60.103 (n): “to prevent the overcrowding of land and undue congestion of population.”
- In comparison with other schools in Saint Paul, TCGIS supports significantly more students on a significantly smaller site.
- If the expansion is completed, TCGIS will 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.
- This expansion would embody the very definition of overcrowding and undue congestion.

# Intent and Purpose of St. Paul Zoning Code

- 60.103 (q): “to provide for the adaptive reuse of nonconforming buildings and structures and for the elimination of nonconforming uses of land.”
- As discussed earlier, the variances proposed to accommodate TCGIS’s intentional growth will result in an institution inconsistent with the scale and character of the neighborhood.
- Rather than controlling this nonconforming use, approval of these variances would make this inconsistency a permanent feature of the site and the neighborhood.