



Legislation Text

File #: RES 21-43, **Version:** 1

Memorializing a Council decision granting an appeal by CommonBond Communities, from a decision of the Board of Zoning Appeals, for a zoning variance requested to construct a multi-unit senior residential housing building at 830 Cretin Avenue.

WHEREAS, on May 26, 2020, CommonBond Communities (hereinafter “Applicant”), duly applied to the Board of Zoning Appeals (“BZA”) under BZA file No.20-0388888 for three variances from the strict application of the Legislative Code pertaining to building-type lot coverage for open space, off-street parking setbacks, and the application of certain requisites for electric vehicle infrastructure contained in the Ford Site Public Realm Master Plan which are made applicable to developments at the Ford Site pursuant to Leg. Code § 66.945, for the purpose of constructing a five-story, 59,000 square foot multi-family residential building containing 60-units of affordable rental units for seniors, common space amenities, and 29 parking spaces of which 11 would be located inside the proposed building on property commonly known as 830 Cretin Ave and legally described as Lot 2, Block 3, Ford [PIN No. 172823110112] as follows:

A. Legislative Code § 66.931. Building Type Standards (Multi-Family):

(1). 25% minimum lot coverage for open space required; 16% proposed, for a variance of 9%.

B. Legislative Code § 63.312. Parking Facility Standards:

(1). Off-street parking space property line setback: 4-feet from any property line required; 2-feet proposed from the north property line, for a variance of 2-feet.

C. Legislative Code § 66.945. Electric Vehicle Infrastructure (Ford Site Public Realm Master Plan):

(1). 1 parking space or 2% of total parking spaces provided, whichever is greater, required to be prepared for electric vehicle (EV) use; 29 parking spaces provided, 0 EV prepared spaces proposed for a variance of 1 EV prepared parking space. However, in a written communication to BZA staff dated June 22, 2020, the Applicant withdrew its EV parking space variance request. Accordingly, the BZA did not consider any further the EV parking variance request as a part of the Applicant’s original application or this appeal before the City Council; AND

WHEREAS, on June 29, 2020, the BZA conducted a public hearing on the Applicant’s variance applications pursuant to Leg. Code § 61.601, the said hearing being conducted remotely pursuant to the Executive and Emergency Orders in effect at the time as it had been deemed, due to the Covid-19 pandemic, neither practical nor prudent to conduct “in-person” hearings and, accordingly, members of the BZA and BZA staff in attendance, together with the Applicant, were able to participate in the hearing remotely while members of the public were afforded the opportunity to submit, no later than noon of the said hearing date, written testimony for the BZA’s consideration and inclusion in the hearing record and were also afforded the opportunity to audibly monitor the hearing proceedings and provide oral testimony which was duly recorded and retained by the BZA’s

secretary as required by law; and

WHEREAS, prior to the June 29, 2020 public hearing, the BZA was provided with a staff report and recommendation dated June 5, 2020 in which the BZA's staff recommended that all the Applicant's variance requests be approved for the reasons stated therein; and

WHEREAS, following the close of the public hearing, the BZA discussed and deliberated the Applicant's variance requests and, following its discussions and deliberations, the BZA, based upon the Applicant's records, the testimony received and the report and recommendation of BZA staff, acted upon the applications as follows:

- (1). As to the Applicant's requested variance from the lot coverage open space requirement applicable to multi-family buildings under Leg. Code § 66.931, the BZA, on a 5-1 vote, duly moved to deny the variance request.
- (2). As to the Applicant's requested variance from the parking setback requirement applicable under Leg. Code § 63.312, the BZA, on a 6-0 vote, duly moved to approve the variance request.

AND, WHEREAS, the BZA findings in support of each variance decision were set forth in BZA Resolution No.20-0388888 - incorporated herein by reference - which was ultimately approved by the BZA on July 13, 2020 to reflect and memorialize the BZA's June 29, 2020 decision and thus bearing the date of June 29, 2020 as the date the BZA rendered its decision upon the following findings as set forth therein and reading as follows:

"1. The variance is in harmony with the general purposes and intent of the zoning code. The applicant is proposing to construct a five-story, 60-unit senior housing building at 830 Cretin Ave. as part of the Ford Redevelopment Site. The following variances are requested: 1.) A minimum of 25% of lot coverage for open space is required; 16% is proposed, for a variance of 9%. 2.) Off-street parking spaces are required to be setback 4' from any property line; 2' is proposed from the north property line, for a variance of 2'. 3.) A minimum of 1 parking space or 2% of the total parking spaces, whichever is greater, shall be prepared for electric vehicles (EV); A total of 29 parking spaces are provided, which requires 1 parking space designated for EV, 0 is proposed, for a variance of 1 EV parking space.

In an email from Ryan Companies dated June 22, 2020, the applicant stated their intent to eliminate the EV parking space variance request. They will provide the transformer and conduit on their site plan submittal to satisfy the EV parking space requirement. Accordingly, staff is not considering the EV parking space variance as part of this BZA case.

The open space variance request is driven by the applicant's will to comply with providing the required amount of parking spaces for the development and to meet housing needs for seniors by constructing a larger building. This variance requests aligns with Sec. 60.103 of the zoning code to provide housing choice and housing affordability and off-street parking to lessen congestion in the public street.

The 2' parking setback variance request will allow additional room for senior residents to safely maneuver their vehicles in and out of the proposed parking lot. This variance request is consistent

with a purpose and intent of Sec. 60.103 of the zoning code to promote and protect the public health and safety and the general welfare of the community. This finding is met for all the requested variances.

2. *The variance is consistent with the comprehensive plan.* According to the applicant, the proposed project provides a balance of maximizing the building frontage along the public roadways, minimizing the amount of parking seen from the public roadways and providing housing with an efficient use of resources. Strategy 2.3 of the 2030 Comprehensive Plan aims to promote creative in-fill housing near transit corridors to increase transit-supportive density and housing choices. The requested variances from the open space coverage, the parking setback requirements all harmoniously combine to allow the creation of an affordable senior housing building. This finding is met for all the requested variances.

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 has not established any practical difficulties associated with landscaping requirements and open space requirements. This finding is not met for the open space lot coverage variance request.

The requested 2' variance from the 4' parking setback requirement would allow additional room for senior residents of this property to navigate the parking lot in a safer manner. The applicant proposes to use the parking lot in a reasonable manner that would benefit the residents of this senior housing development. This finding is met for the parking setback variance request.

4. *The plight of the landowner is due to circumstances unique to the property not created by the landowner.* If the applicant were to provide the required 25% coverage for open space, this would reduce the amount of space available on the lot to provide the required amount of parking spaces and it could reduce the amount of housing that could be provided. If the required number of parking spaces cannot be provided, then a variance would be required. Additionally, due to the location of the bedrock underneath this lot, this prevents the applicant from providing the required parking in a parking garage underground, which pushes the required parking to the surface lot. This is a unique circumstance to the property not created by the landowner. This finding is met for all the requested variances.

5. *The variance will not permit any use that is not allowed in the zoning district where the affected land is located.* The requested variances from the open space and parking setback requirements will not allow a use not permitted in this zoning district. wider maneuvering lane without a parking space dedicated to EV parking only. This finding is met for all the requested variances.

6. *The variance will not alter the essential character of the surrounding area.* Although not considered as open space based on the definition in the Master Plan, the parking does visually create the appearance of an open space, therefore, the requested variance from the open space coverage will not alter the character of the surrounding area. The requested variance to provide only a 2' setback instead of a 4' setback as required will not alter the appearance of the area or character of the parking lot. This finding is met for all the requested variances.”

AND, WHEREAS, on July 10, 2020, the Applicant, pursuant to Leg. Code § 61.702(a), duly filed an appeal from the BZA's June 29, 2020 decision alleging specifically that the BZA erred in denying the Applicant's lot coverage variance requests as set forth under Finding No. 3 in BZA Resolution No. 20-038888 and requested a public hearing before the City Council to consider the BZA's decision; and

WHEREAS, the said appeal was assigned Council File No. ABZA 20-04 and set on for a public hearing before the Council on August 5, 2020; and

WHEREAS, on August 5, 2020, the City Council, pursuant to Leg. Code § 61.702(b), duly conducted a public hearing on the Applicant's appeal which, again pursuant to the Executive and Emergency Orders in effect at the time due to the Covid-19 pandemic, was conducted remotely as it had also been deemed neither practical nor prudent to conduct "in-person" city council hearings: accordingly, as provided by law, Council members and City staff attending the hearing did so remotely with BZA staff presenting the matter to the Council and the Appellant and all members of the public desiring to do so being afforded the opportunity to submit, no later than noon the day before the said hearing date, written testimony for the hearing record and for the Council's consideration, in addition to also being afforded the opportunity to audibly monitor the Council's hearing proceedings which was duly recorded and retained as required by law by the City Clerk; and

WHEREAS, following the conclusion of the said public hearing the Council, based upon all the files, records, staff recommendation and written testimony submitted DOES HEREBY

RESOLVE, that the Council of the City of Saint Paul, for the following reasons, finds that the Applicant has met its burden to demonstrate that the BZA had erred in its denial of the Applicant's variance requests based upon its reasoning set forth in finding No. 3 in BZA Resolution No. 20-038888:

The BZA's denial of the Applicant's minimum lot coverage open space area variance request, as set forth in finding No. 3 of the BZA's resolution, is in error and that the recommendation to approve the variance, as set forth in finding no. 3 of the June 18, 2020 BZA staff report demonstrates that the Applicant had met its burden for granting the requested variance. The size of the Applicant's lot is not large enough to accommodate the proposed building, provide parking and provide the amount of open lot space. Providing affordable senior housing is a reasonable utilization of this lot. The alternative to the Applicant's proposal would be to provide less affordable senior housing and provide less off-street parking and seek a variance for the shortfall of required parking spaces.

AND, BE IT FURTHER RESOLVED, for the reasons set forth above, the Council hereby grants the Applicant's appeal in this matter, approves the Applicant's requested lot coverage variance that was denied by the BZA on June 29, 2020, adopts and incorporates by reference the BZA's Staff Report dated June 18, 2020 supporting Finding No. 3 for the reasons stated therein and as above to support this decision and, finally, hereby directs the BZA to amend BZA Resolution No. No. 20-038888 so that it reads accordingly; AND,

BE IT FURTHER RESOLVED, Consistent with this Resolution, all the variances requested by the Applicant on May 26, 2020, are hereby approved; AND

BE IT FINALLY RESOLVED, that upon adoption and approval, a copy of this Memorialization Resolution shall be immediately provided to the Applicant, to the BZA, and to the Zoning and Planning