



## Legislation Text

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**File #:** RES 20-1454, **Version:** 1

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Memorializing the Council's decision to grant the appeal of Lucas Wiborg, d/b/a Good Timing LLC from a decision of the Board of Zoning Appeals, approving zoning variances with conditions and adding an additional condition on the variances granted in order to construct a five-story, 12-unit apartment building at 1769 Grand Avenue.

WHEREAS, Lucas Wiborg, d/b/a Good Timing LLC ("Applicant") on March 30, 2020, duly applied to the Board of Zoning Appeals ("BZA") for zoning variances from the strict application of the Saint Paul Legislative Code for the purpose of constructing a five-story, 12-unit apartment building on property commonly known as 1769 Grand Ave [PIN No. 042823420024] and known legally as Elmer & Morrison's, Rearrangement Lot 6 Blk 3; and

WHEREAS, Applicant requested variances from the following Legislative Code sections: Leg. Code § 63.207 (pertaining to parking requirements): 19 off-street parking spaces required; 12 spaces proposed for a variance of 7 spaces and Leg. Code § 66.231 (pertaining to RM2 dimensional standards): (1) Lot size. 1,500 square feet per unit required; 866 square feet per unit proposed for a variance of 634 square feet per unit. (2) Side yard setback. 9 feet per side required; 6 feet per side proposed for a variance of 3 feet per side.

WHEREAS, on April 27, 2020 the BZA, in accordance with Leg. Code § 61.601, duly conducted a public hearing on the Applicant's variance applications with the said hearing being conducted remotely pursuant to the various 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: accordingly, as provided by law, members of the BZA and BZA staff in attendance participated remotely as did the Applicant while members of the public were afforded the opportunity to submit, no later than noon of the said hearing date, written testimony for the Committee's consideration and inclusion in the hearing record and, further, were also afforded the opportunity to audibly monitor the hearing proceedings as well as provide verbal testimony which was duly recorded and has been retained as required by law by the BZA's secretary; and

WHEREAS, at the April 27, 2020 public hearing the BZA was provided with a report and recommendation dated April 17, 2020 prepared by BZA staff in which it was recommended that all the Applicant's variance requests be approved for the reasons stated therein; and,

WHEREAS, immediately after the close of the public hearing, the BZA took up the matter of Applicant's variance requests and following its discussions and deliberations on all the testimony presented including the report and recommendation of staff, the BZA rejected the staff recommendation and duly moved to deny the Applicant's requested variances based upon the following reasons with respect to findings No. 4 as set forth below and in BZA Resolution No. 20-024086 which is incorporated herein by reference:

*"1. The variance is in harmony with the general purposes and intent of the zoning code.*

The applicant is proposing to demolish an existing duplex to construct a five-story, 12-unit multi-family building consisting of five 3-bedroom apartments and seven 4-bedroom apartments. The zoning code requires of 1,500 square feet of lot area per unit and the applicant is proposing 866 square feet per unit, for a

variance request of 634 square feet per unit. A side yard setback of 9' is required per side, 6' is proposed per side, for a variance request of 3' per side. Based on the proposed number of rooms in each unit, 21 off-street parking spaces are required. However, according to Sec. 63.210 in the zoning code, bicycle parking may be substituted for up to ten (10) percent of minimum off-street parking requirements. For the purpose of calculating a substitution, four (4) spaces in a secure bicycle rack are the equivalent of one (1) parking space. Since 21 parking spaces are required, the applicant is proposing to install bicycle racks that can accommodate up to 12 bicycles, which allows them to deduct 10% of the total parking requirement (two (2) spaces), resulting in the reduction of the amount of required off-street parking spaces to 19. The applicant is proposing 12 parking spaces, for a variance request of 7 parking spaces.

There is public transit available in the immediate area as two bus stops are located at the end of block to the west at the corner of Fairview Ave. S. & Grand Ave. Two more bus stops are located at the other end of the block to the east at the corner of Wheeler St. S. & Grand Ave. This property is also located one block away from a dedicated bike path on Summit Ave.

According to the applicant, this development aims to attract residents who are drawn to the walkability of the neighborhood, thereby lessening the dependence on a privately-owned vehicle for transportation. This supports the applicant's request for the parking variance.

The existing lot size with half of the alley is 10,394 square feet; it does not have sufficient lot area to meet the requirements for density, side yard setbacks and off-street parking to allow the proposed building to be constructed.

The RM2 medium-density multiple-family residential district is intended to provide for more extensive areas of multiple-family residential development as well as uses that serve the needs of the multiple-family residential districts. It is intended to provide for comprehensive development of multi-family uses and a balance of population concentration near major thoroughfares, transit, and related facilities.

The proposed multi-family building will provide housing along a preferred transit network, which encourages residents to utilize multiple modes of travel such as walking, biking, or public transit. Provided the applicant does the following: 1) Bike racks that can support 12 bicycles are installed and maintained so that they are accessible especially in winter months. 2.) A snow removal plan is developed that will not adversely affect the adjoining properties or impede the flow of traffic in the alley. 3.) The parking lot be striped according to the site plan submitted with this variance application, this project aligns with the general purposes and intent of the zoning code to:

- Provide for safe and efficient circulation of all modes of transportation, including transit, pedestrian and bicycle traffic.
- Promote and to protect the public health, safety, morals, aesthetics, economic viability and general welfare of the community.

This finding is met for all variance requests

*2. The variance is consistent with the comprehensive plan.*

According to the applicant, this development is intended for people of all ages and provides an option for affordable living for those who are willing to share a flat, and/or desire to live adjacent to neighborhood amenities and service providers. As described, this project and requested variances align with Policy H.2 of

the Macalester-Groveland's Community Plan to, "Preserve Macalester-Groveland's peaceful community, while promoting a range of housing types and affordability to meet the needs of all people throughout their life and changing lifestyle needs."

Additionally, the project is supported by Policy LU-1.42 of the land use chapter of the Comprehensive Plan to promote the development of housing in mixed-use neighborhoods that supports walking and the use of public transportation.

Furthermore, the applicant's request is consistent with Policy LU-1.21 of Land Use Plan to balance the following objectives for Mixed-Use Corridors through the density and scale of development: accommodating growth, supporting transit use and walking, providing a range of housing types, and providing housing at densities that support transit.

Finally, Policy H-1.3 of the Housing Chapter supports revitalizing the city by developing land-efficient housing. This is the last low-density home on this block and that the entirety of the residential uses on the block have developed multi-unit housing and that redeveloping the site as proposed supports the development of land-efficient housing. This finding is met for all variance requests.

*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 established a practical difficulty in complying with the density, setback, and off-street parking requirements as follows:

- The lot is narrow with only 50' of lot width. This makes it difficult to construct a functional multi-family building with the minimum width of 32' in order to meet the required 9' side yard setbacks because it would result in a narrow looking structure which could detract from the character of Grand Ave. and affect the functionality of the building interior.
- A higher density building could be constructed on this lot without the density variance if the applicant gets the density bonus allowed in the code under Sec.66.231 (c) by providing an underground garage. However, in this case, underground parking cannot be provided due to the narrowness of the lot and the required dimensional standards for parking spaces and maneuvering lanes.

This leaves the applicant the only option of providing parking spaces in the rear yard. This finding is met for all variance requests.

*4. The plight of the landowner is due to circumstances unique to the property not created by the landowner.*

There is no unique circumstance to the property. The plight of the landowner is self-created. This finding is not met for all variance requests.

*5. The variance will not permit any use that is not allowed in the zoning district where the affected land is located.*

Multi-family buildings and off-street parking are permitted in this zoning district. This finding is met for all

variance requests.

6. *The variance will not alter the essential character of the surrounding area.*

The proposed building is similar to the character and density of the surrounding structures as there are several other multi-family buildings on this block, and in this area, with a similar number of units, that have nonconforming side yard setbacks, and do not provide the required amount of parking spaces because they are all legally nonconforming since they were all built prior to October 25, 1975.

This project and the requested variances will allow a duplex that is out of scale with the rest of the properties on the block to be demolished and a new multi-family dwelling constructed that will have a similar density level, setbacks, and off-street parking as the other multi-family dwellings on this block. It will not alter the character of the area. This finding is met for all variance requests.”

WHEREAS, on May 7, 2020, the Applicant, pursuant to Leg. Code § 61.702(a), duly filed an appeal from the BZA’s April 27, 2020 decision alleging errors on the part of the BZA’s denial of the Applicant’s variance requests based on Finding No. 4 in BZA Resolution No. 20-024086 and requested a public hearing before the City Council; and

WHEREAS, the said appeal was assigned Council File No. ABZA 20-2 and set on for a public hearing before the Council on May 27, 2020; and

WHEREAS, on May 27, 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 various 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 City 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; and

WHEREAS, following the conclusion of the May 27, 2020 public hearing, the Council duly moved to continue its deliberations on the matter to June 3, 2020 in order to further review all the files, recommendations and the testimony that had been submitted in this matter; and

WHEREAS, on June 3, 2020, the Council took up its consideration of the Applicant’s appeals in this matter and following its discussion and deliberations on the matter, the Council of the City of Saint Paul DOES HEREBY

RESOLVE, that the Council of the City of Saint Paul finds that the Applicant has met its burden of demonstrating that the BZA had erred in its denial of the Applicant’s variance requests based upon finding No. 4 in BZA Resolution No. 20-024086 that there were no circumstances unique to the property such that the Applicant’s plight was self-created. As set forth in the BZA staff report dated April 17, 2020 which recommended that Finding No. 4 had been met because of the narrowness of the lot - 39 feet - The analysis contained throughout the BZA’s staff report is consistent with its recommendation that Finding no. 4 is met. The lot’s narrow width [39 feet] including half the abutting alley results in a 10,394 square foot lot which does not provide much “lot area” on which to build a multi-family dwelling which is a permitted use in the RM2

zoning district and still meet the density, side-yard setbacks and off-street parking requirements applicable to RM2 districts. The Applicant here did not create the size of the lot which is a circumstance unique to this property that was not created by the Appellant. It was therefore an error on the part of the BZA to find that there were no unique circumstances with respect to this lot for each of the requested variances. For these reasons, the BZA erred in its finding No. 4; and

BE IT FURTHER RESOLVED, that the Council, in granting the Applicant's appeal, further adopts and incorporates by reference the reasoning in the BZA's Staff Report dated April 17, 2020 supporting Finding No. 4 as well all the other reasons stated therein under Findings 1, 2,3,5 and 6 to support this decision granting the Applicant's appeal and thereby approving all the variances requested by the Applicant which shall also be subject to the conditions recommended in the said Staff Report; and

BE IT FURTHER RESOLVED, in granting the appeal and approving the variances subject to the conditions recommended in the Staff Report, the Council also hereby exercises its authority to modify the BZA's decision pursuant to Leg. Code § 61.704 by placing additional conditions on the variances for the purpose of protecting adjacent properties. From the record the Council notes that some neighbors were opposed to the height of the proposed building. However, the record shows that the height of the building is within the height limit for buildings in the RM2 zoning district. But the Council also notes that the side yard and lot coverage variances that were recommended in the Staff report and granted pursuant to this appeal also allow the Applicant's proposed building to be built closer to the lot lines which results in the new building being bigger than the previous building the Applicant had torn down. The Council therefore finds, based upon the density and scale of the proposed building, that it is necessary and reasonable to impose the following additional condition on this application: for the reasons noted above, the variances are granted subject to an additional condition that there be no exterior balconies on the building's side-yard elevations and that the roof of the building cannot at any time be used for "deck amenities;" 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 Zoning and Planning Administrators and to the BZA.