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Title: Memorializing the City Council's decision of June 1, 2016 denying an appeal by Andrew Rorvig and Amanda Karls of the decision of the BZA which granted variances for the construction of an 8-unit apartment building at 1174 Grand Avenue.

Sponsors: Rebecca Noecker

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Date	Ver.	Action By	Action	Result
7/8/2016	1	Mayor's Office	Signed	
7/6/2016	1	City Council	Adopted	Pass

Memorializing the City Council's decision of June 1, 2016 denying an appeal by Andrew Rorvig and Amanda Karls of the decision of the BZA which granted variances for the construction of an 8-unit apartment building at 1174 Grand Avenue.

WHEREAS, on February 22, 2016, Ryan Burke, d/b/a "BleuAnt Designs, LLC" ("Applicant"), in DSI Zoning File No. 16-012819, duly applied to the Board of Zoning Appeals ("BZA") for several variances from from the strict application of the provisions of Legislative Code §§ 66.231 and 66.232, pertaining to required yard setbacks and maximum allowable lot coverages, in order to construct an eight-unit apartment building on land commonly known as 1174 Grand Avenue, [PIN No. 032823410039] and legally described as Manson and Simontons addition W ½ Of Lot 3 And All Of Lot 4 Blk 3; and

WHEREAS, the subject property is located in an RM2 zoning district and Appellant's application sought the following four variances from the RM2 district's standards:

- (1) Front yard setback: 23.4 feet required/22 feet proposed for a variance of 1.4 feet;
- (2) Rear yard setback: 25 feet required/22 feet proposed at the southeast corner to accommodate a stair tower and a trash enclosure for a variance of 3 feet;
- (3) Side yard setback: 9 feet required/7.5 feet proposed from both the east and west property lines for a variance of 1.5 feet along each side yard;
- (4) Lot coverage maximum: 35% building footprint allowed [or 3,339 square feet of the subject lot]/ 47.5 % building footprint proposed [or 4,528 square feet of the subject lot] for a variance of 12.5 % [1,189 square feet]; and

WHEREAS, on March 14, 2016, the BZA, pursuant to Leg. Code § 61.601, duly conducted a public hearing on the said variance requests where all persons interested were afforded an opportunity to be heard and, upon the close of the public portion of the hearing and upon further discussion, the BZA moved to continue their deliberations to March 28, 2016 so that staff could provide the BZA with the hearing minutes of the Saint Paul

City Council dated November 18, 2015 (File No. ABZA 15-5) wherein the City Council considered and granted an appeal by the Summit Association from a decision of the BZA granting similar variances for the subject property, also for the purpose of building an eight unit apartment building; and

WHEREAS, on March 28, 2016, the BZA reopened its deliberations on the matter having received the requested information from staff and, upon closing the deliberations, failed to approve a duly made motion to approve the variances on a 2-2 vote and, likewise, failed to approve a motion to deny the variances on a procedural basis due to the lack of a "second" for the motion whereupon the BZA duly moved to lay over its consideration of the matter to April 11, 2016; and

WHEREAS, on April 11, 2016, the BZA again discussed the matter during which the BZA was advised by the City Attorney's Office that new information regarding the merits of the matter had been received by staff from individuals opposed to the matter who had not previously appeared before the BZA but because the public portion of the hearing had been closed, this information was not distributed to the BZA members and further, if the BZA desired to consider the said information, then the public hearing should be reopened upon proper notice to consider such information that the Board had not received and only then from someone who had not previously testified whereupon, following further discussion of its options, the BZA, on a 4-1 vote, moved to reopen the public hearing on April 25, 2016 upon proper notice; and

WHEREAS, on April 25, 2016, the BZA in accordance with Leg. Code § 61.601, duly conducted a public hearing where all persons eligible to testify were afforded an opportunity to do so and, upon the close of this second public hearing on the matter and based upon all the evidence and records presented at the public hearings, as substantially reflected in the minutes, the BZA duly moved to approve the Applicant's variance application based upon the following findings as set forth in BZA Resolution No. 16-012819 which is incorporated herein as follows:

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

The duplex and three-car detached garage previously located on the site, have been removed and the lot is currently vacant. The applicant is proposing to develop the parcel into a new, three-story eight-unit building (the first and second floors have 2 two-bedroom units and a one-bedroom unit each and the third floor has 2 three-bedroom units) with underground parking for eight vehicles and three surface parking spaces, meeting the off-street parking requirement.

The zoning code requires a 23.4 foot setback from the front property line for this block, a 25 foot setback from the rear property line, a 9 foot setback from the side property lines and limits the footprint of the building to a maximum of 35% of the lot.

The proposed building would be set back 22 feet from the front property line, 22 feet from the rear property line, 7.5 feet from the side property lines and would occupy 47.5 % of the lot, which cannot be accomplished without the requested variances.

Among purposes of these dimensional standards and lot coverage requirements are to ensure that buildings are constructed in a manner that provides regularity in pattern and spacing, to not create overly dense sites, and to not overly burden adjacent properties with impacts created by the new development. 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. The spacing provided would allow adequate light and air access to the adjacent properties, meeting the purpose and intent of the zoning code. The proposed lot coverage is comparable to that of the immediate buildings to the east and to the west and allows underground parking to be provided. This finding is met.

2. The variance is consistent with the comprehensive plan.

The proposed site development would provide housing opportunities. It is consistent with Policy 1.2 of the Housing Chapter of the Comprehensive Plan, which states: “Encourage the development of attached single-family and neighborhood-sensitive multi-family infill housing at appropriate locations as identified in the Land Use Plan and small area plans to increase housing choice.” Strategy 3.4 states: [Infill housing should meet] “...design standards so that infill housing fits within the context of existing neighborhoods and is compatible with the prevailing pattern of development”. The infill house proposed would fit into the neighborhood character. Although this project is seeking variances from the RM2 requirements, the density conforms to the zoning standards. This finding is met.

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.

This parcel is similar in size to the adjacent lots immediately to the east and to the west that also have apartment buildings similar in bulk and spacing to the proposed building. Constructing a building that meets current zoning code requirements would require a building footprint of 3,339 square feet, which would be significantly less than the average size of the adjacent apartment buildings (4,515 square feet), thereby affecting the pattern of the block. The requested variances for the proposed 4,528 square foot building footprint are reasonable to allow a development consistent with existing spacing between buildings, the pattern of the block and the form of existing buildings on Grand Avenue. It would provide underground parking, which none of the adjacent apartment buildings have, and would have a greater rear yard setback than most of those buildings. This finding is met.

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

Due to the size of this parcel, developing any type of multifamily housing comparable in scale, spacing and bulk to the existing multiple-family buildings in the immediate area while meeting the current parking requirements would be rendered impractical by the strict application of the provisions of the zoning code. This finding is met.

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

A multiple-family dwelling is a use allowed in the RM2 multiple-family zoning district and with the proposed eight units, this building meets the lot area requirement per unit. This finding is met.

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

The proposed building would be similar in scale and massing to buildings immediately to the east and to the west and would have a greater rear yard setback than the immediate apartment buildings to the east and to the west; it will not change the character of the area. This finding is met.”

AND, WHEREAS, on May 4, 2016, Andrew Rorvig and Amanda Karls, pursuant to Leg. Code § 61.702(a), in BZA File No. 16-036839, duly filed an appeal from the BZA’s April 25, 2016 decision and requested a hearing before the City Council for the purpose of considering the actions taken by the BZA; and

WHEREAS, on June 1, 2016, pursuant to Leg. Code § 61.702(b) an upon notice to affected parties, the City Council duly conducted a public hearing on the said appeal where all interested parties were given an opportunity to be heard; and

WHEREAS, the City Council, having heard the statements made and having considered the variance application and all the reports, records, meeting minutes and resolution BZA No. 16-012819, does hereby

RESOLVE, that the City Council hereby upholds the decision of the BZA in this matter, based upon the following:

The Council finds that the BZA did not err in its facts, procedures or findings made in granting the variances in this matter and the Council hereby adopts the BZA's decision in this matter, based upon the reasons set forth in BZA Resolution No. 16-012819, as its own in support of this decision; and

BE IT FURTHER RESOLVED, based upon the above decision and the reasoning therein, that the appeal of Andrew Rorvig and Amanda Karls be and is hereby denied; and

BE IT FINALLY RESOLVED, that the City Clerk shall immediately mail a copy of this resolution to the Applicants, to the appellant's Andrew Rorvig and Amanda Karls, the BZA and to the Zoning Administrator and the Planning Commission.