



## Legislation Text

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**File #:** RES 21-272, **Version:** 1

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Memorializing the City Council's decision denying an appeal from a decision of the Board of Zoning Appeals to approve zoning variances requested to construct a new triplex on a lot that with an existing triplex on property commonly known as 542 Portland Avenue.

WHEREAS, On August 31, 2020, Sullivan Property Investments II, LLC (hereinafter, "Applicant"), duly applied to the Saint Paul Board of Zoning Appeals (hereinafter, "BZA") under BZA File No. 20-069819 for variances from the strict application of provisions of the Saint Paul Legislative Code pertaining to lot size, lot width, lot coverage density, off-street parking, and building design requirements in order to construct a triplex as a second principal building on a lot that with an existing triplex on property located in the RT2 zoning district and commonly known as 542 Portland Ave and legally described as Auditor's Subdivision No. 11 The N 32 Ft Of Lot 13 & Ex E 4 Ft; Lot 8 Blk 22 [PIN No. 012823230226]; and

WHEREAS, The Applicant requested the following variances:

- (1) Leg. Code § 63.110. A primary entrance of principal structures shall be located within the front third of the structure. The Applicant proposed to locate the primary entrance in the rear of the building.
- (2) Leg. Code § 63.207. 10 off-street parking spaces required, 8 spaces including one bicycle rack were proposed for a variance of 2 parking spaces.
- (3) Leg. Code § 66.231]. Minimum rear-yard setback of 25' required, 15' was proposed for a variance of 10'.
- (4) Leg. Code § 66.231. Applicant's property is zoned RT2 which requires 2,500 square feet of lot size per unit. Applicant proposed 6 units which requires a lot with 15,000 square feet. Applicant's lot is 12,493 square feet for a lot size variance of 2,507 square feet.
- (5) Leg. Code § 66.231. RT2 zones require a minimum lot width of 20' per unit. Applicant's lot is nonconforming at 46.08' wide. Applicant's proposed triplex requires 60' of additional lot width, for a variance of 60' feet.
- (6) Leg. Code § 66.232. Principal buildings in residential districts shall not cover more than 35% of a zoning lot. Applicant's proposal would cover 38.39% for a lot coverage variance of 3.39%.

WHEREAS, on October 5, 2020, the BZA conducted a public hearing on the said variance applications pursuant to Leg. Code § 61.601, the hearing being conducted remotely pursuant to 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 by no later than 2:00 p.m. on October 2, 2020, 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; and

WHEREAS, prior to the October 5, 2020 public hearing, the BZA was provided with the Applicant's written submissions, a BZA staff report dated October 1, 2020 in which staff recommended approval of the Applicant's variance requests for the reasons stated therein and the written testimony of the public submitted by the October 2, 2020 deadline; and

WHEREAS, upon closing the said public hearing, the BZA discussed and deliberated upon the Applicant's variance requests and, following its discussion and deliberations the BZA, based upon all the records, testimony received and the BZA staff report and recommendation, duly moved to approve on a 6-0 vote, the Applicant's variance applications upon the following findings as set forth BZA Resolution No. 20-069819 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 construct a triplex as a second principal building on a lot that has an existing triplex. The following variances are required:

1.) A primary entrance of principal structures shall be located within the front third of the structure. The applicant is proposing the main entrance to be in the rear of the building, for a variance of this requirement.

2.) 10 off-street parking spaces are required, 8 spaces are proposed including one bicycle rack, for a variance of 2 parking spaces.

3.) In residential districts, principal buildings shall not cover more than 35% of any zoning lot, 38.39% is proposed, for a lot coverage variance of 3.39%.

4.) This property is located in the RT2 zoning district and requires 2,500 square feet of lot size per unit. A lot size of 15,000 square feet is required for 6 units, 12,493 square feet is available, for a lot size variance of 2,507 square feet.

5.) A minimum lot width of 20' per unit is required in this zoning district. The existing lot width is nonconforming at 46.08' wide, the new triplex requires an additional 60' of lot width, for a variance of 60' of lot width.

6.) A minimum rear yard setback of 25' is required, 15' is proposed, for a variance of 10'.

The requested variances, if approved, will allow a second triplex to be constructed, thereby creating additional housing in the city. The applicant is working with the Historic Preservation Commission (HPC) to ensure the aesthetics and design of the proposed triplex will meet their design standards to ensure the proposed house blends in with the surrounding properties on Summit Ave.

A triplex could be constructed without a covered front porch to meet the allowed maximum lot coverage of 35%. However, the porch is a requirement of the HPC design standards and must be incorporated, which causes the lot coverage to be exceeded.

Provided HPC approves the applicant's proposal and the hydraulic lifts are installed as indicated on the plans submitted with this variance application, the requested variances align with Sec. 60.103 of the Zoning Code to promote and to protect the public health, safety, morals, aesthetics, economic viability and general welfare of the community, to provide housing choice, and to conserve and improve property values. This finding is met for all variance requests.

2. *The variance is consistent with the comprehensive plan.* The requested variances will allow the applicant to construct additional housing on a lot that is similar in size compared to several of the adjacent lots that have an equal amount of density. These requests are consistent with the intent of policy 1.40, which aims to "promote the development of housing that provides choices for people of all ages, including singles and young couples, families, empty-nesters, and seniors." It is also consistent with the Comprehensive Plan Policy 3.4 which supports infill housing that fit within the context of existing neighborhoods and compatible with the prevailing pattern of development. 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 lot cannot be expanded in size or width to create the additional 2,507 square feet of lot size or 60' of lot width required under the current zoning code to accommodate the proposed triplex. This is a practical difficulty in complying with the provisions of the Zoning Code.

The applicant can place the required primary entrance in the front third of the building and construct the proposed triplex with 34.92% lot coverage without the covered porch on the rear of the building facing Summit Ave. This would then alleviate the need for the rear yard setback variance request, because the proposed triplex would meet the minimum 25' setback requirement from the rear property line. However, since this property is located in the local historic preservation district, it is subject to HPC's design requirements. These requirements are necessary for the HPC to approve any project within its purview. This is a practical difficulty in meeting the Zoning Code requirements for the primary entrance location, lot coverage, and rear yard setback requirement.

The two triplexes require 10 off-street parking spaces. The applicant is providing 8 spaces for the future tenants to park, with 4 spaces in the surface parking lot between both triplexes and 3 parking spaces in the new triplex. Additionally, the applicant is providing a bicycle rack that can accommodate up to five bicycles, which can substitute for 1 off-street parking space.

Each unit will have its own garage stall with one parking space that will have its own hydraulic lift. The lift allows for two cars to be parked in one parking space, thereby creating 3 additional parking spaces, which cannot be counted towards the parking requirement due to the Zoning Code's definition of a parking space. This definition does not account for garages that have hydraulic lifts. This is a practical difficulty in meeting the zoning code requirements for off-street parking and the applicant's proposal is a reasonable solution to the parking shortfall.

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.* The lot size, which directly correlates to housing density, and legally nonconforming lot width are unique circumstances to the property not created by the landowner.

The applicant must include HPC's design requirements such as the primary entrance location facing Summit Ave. and the covered porch on the rear of the building, which results in the property exceeding the 35% maximum lot coverage permitted and brings the house further within the required rear yard setback. This is due to the property being located within the local historic preservation district. The location of the property in the local historic preservation district is a unique circumstance to the property not created by the landowner.

In order for the applicant to provide the required number of off-street parking spaces, an additional variance for either parking in the front yard or parking within 4' of the west property line in the rear yard adjacent to the proposed triplex would be required. There is no room left on the lot to provide the two- parking space shortfall without a variance. This is a unique circumstance to the property not created by the landowner.

This finding is 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.* The requested variances will allow another triplex to be constructed on a lot with an existing triplex. This property is located in the RT2 zoning district, which allows two principal buildings. No unpermitted uses will be allowed with the requested variances. This finding is met for all variance requests.

6. *The variance will not alter the essential character of the surrounding area.* If this property was not located in a local historic district and not held to HPC design requirements, the applicant would be able to meet the primary entrance location, minimum rear yard setback, and lot coverage requirements. The requested variances will allow the applicant to meet the design standards for properties located in the local historic district that HPC requires. This will make the proposed triplex blend in with the character of the surrounding area.

The off-street parking variance request will not alter the character of the surrounding area by adding to the already congested levels of on-street parking since the applicant is proposing to install hydraulic lifts in each garage, which will allow each tenant in the new triplex to park two cars in one parking space in the provided tuck-under garage. This will reduce the potential of any additional cars from parking on the street.

The requested variances from the required lot area and lot width will not alter the essential character of the area since the proposed triplex will have a functional front entrance facing Summit Ave. and it will be comparable in size to 545 Summit Ave. and 533 Summit Ave., which are the adjacent properties that face Summit Ave. These requested will also not affect the character of the area for the properties along Portland Ave. as the proposed triplex will be setback into the existing lot approximately 161' from Portland Ave.

This finding is met for all variance requests.

AND, WHEREAS, on October 15, 2020, William Hargans and Mary Thompson (hereinafter, "Appellants"), pursuant to Leg. Code § 61.702(a), duly filed an appeal from the BZA's October 5, 2020 decision alleging:

- (1) the BZA failed to satisfy the six required findings for a variance under Code Section 61.601 and Minn. Stat. § 462.357, subdivision 6; and
- (2) the BZA violated open meeting laws by preventing the public from participating in the Public Hearing.
- (3) the Applicant seeks to construct the Project, including demolishing the driveway, without the consent of the fee owners of the eastern 4 feet of the shared driveway.

AND, WHEREAS, Appellants' appeal was assigned Council File No. ABZA 20-7 and set on for a public hearing before the Council of the City of Saint Paul ("City Council") on November 18, 2020; and

WHEREAS, on November 18, 2020, the City Council moved to continue the public hearing on the BZA matter to December 2, 2020 to allow additional time to review the project; and

WHEREAS, on December 2, 2020 the City Council moved to lay the public hearing on this matter over to December 16, 2020 as the Council had duly moved, with respect to a separate appeal filed by the same Appellants from a decision of the Heritage Preservation Commission (hereinafter, "HPC") regarding the subject property, to send the HPC matter back to the HPC for the HPC to take additional testimony at the HPC's December 14, 2020 meeting relative to those matters within the HPC's purview regarding the Appellant's project; and

WHEREAS, on December 16, 2020, the City Council, pursuant to Leg. Code § 61.702(b), finally conducted the public hearing on the Applicant's appeal from the BZA's decision which, pursuant to 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 original November 18, 2020 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 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, finds that the Appellants have failed to show

regarding its allegations that there was any error by the BZA in its approval of the Applicant's variance requests as set forth in the facts and findings contained in BZA Resolution No. 20-069819 which the Council hereby adopts as its own statement of findings in support of this decision and, further, the Council finds that the BZA's procedures did not preventing the public from participating in the BZA's October 5, 2020 public hearing; AND, BE IT

FURTHER RESOLVED, for the above stated reasons, the Appellants' appeal is hereby denied; AND, BE IT

FINALLY RESOLVED, that upon adoption and approval, a copy of this Memorialization Resolution shall be provided to Appellants Hargans and Thompson, the Applicant, the BZA, and to the Zoning and Planning Administrators.