



ZONING APPEAL APPLICATION

To/From Board of Zoning Appeals

Dept. of Safety & Inspections
Zoning Section
375 Jackson Street, Suite 220
Saint Paul, MN 55101-1806
(651) 266-9008

To / From Planning Commission

Dept. of Planning & Econ. Devt.
Zoning Section
1400 City Hall Annex, 25 W 4th St.
Saint Paul, MN 55102-1634
(651) 266-6583

Zoning Office Use Only

File # 23-051684
Fee Paid \$ 462.00
Received By / Date D. Eide - 6/9/2023
Tentative Hearing Date 6/28/2023

APPELLANT

Name(s) 2285 Hampden LLC (c/o Thomas Nelson, Exeter Management LLC)
Address 2303 Wycliff St., Ste 2300 City Saint Paul State MN Zip 55114
Email thomasmnelson@mac.com Phone 612.805.9369

PROPERTY LOCATION

Project Name Hampden Avenue Affordable Housing
Address / Location 2285 Hampden Avenue, Saint Paul MN 55114

TYPE OF APPEAL: Application is hereby made for an appeal to the:

- ☐ **Board of Zoning Appeals**, under provisions of Zoning Code § 61.701(c), of a decision made by the Zoning Administrator.
- ☐ **Planning Commission**, under provisions of Zoning Code § 61.701(c), of a decision made by the Planning Administrator or Zoning Administrator.
- ☒ **City Council**, under provisions of Zoning Code § 61.702(a), of a decision made by the Board of Zoning Appeals or the Planning Commission.

Date of decision May 30th, 20 23 File Number 23-035038

GROUND FORS APPEAL: Explain why you feel there has been an error in any requirement, permit, decision or refusal made by an administrative official, or an error in fact, procedure or finding made by the Planning Commission or Board of Zoning Appeals. Attach additional sheets if necessary. (SUPPORTING MATERIALS ATTACHED)

☐ If you are a religious institution you may have certain rights under RLUIPA. Please check this box if you identify as a religious institution.

Appellant's Signature Thomas M Nelson Date June 9, 2023

June 9, 2023

City of Saint Paul
Department of Safety & Inspections
Board of Zoning and Appeals
VIA EMAIL: DSI-ZoningReview@stpaul.gov

RE: 2285 Hampden LLC (the "Owner")
2285 Hampden Ave Affordable Housing Project

Statement of Appeal

As the owner of the property located at 2285 Hampden Avenue and the applicant for variances to allow for redevelopment of that site with a mixed-use, 150-unit affordable housing project, we are appealing the decision of the Board of Zoning Appeals (the "BZA") to deny the requested variances. The requested variances are: 1) to allow residential dwelling units on the first floor; 2) to reduce the required percentage of non-residential uses on the first floor from 80% to 6.5%; 3) to reduce the required front yard from 25' to 9' for portions of the building; and 4) to allow a portion of a surface parking lot to extend into the required front yard.

Error occurred while the BZA was deliberating the applications following the public hearing when the Assistant City Attorney informed the BZA that they did not have authority to grant a variance to allow residential units on the first floor of a building in the I1 light industrial district because it would be a "use" variance. Although the members of the BZA had not reached conclusions on whether any of the requested variances met or did not meet the required findings for each variance criterion, they voted to deny all the variances based on the statement of the Assistant City Attorney. Subsequent to the BZA hearing, the City's Zoning Administrator has confirmed that the requested variance to allow residential uses on the first floor is not a "use" variance, that the BZA and City Council do have authority to grant such a variance and that the attorney's statement was erroneous.

State statute provides that a zoning board or a city council "may not permit as a variance any use that is not allowed under the zoning ordinance for property in the zone where the affected person's land is located." Minn. Stat. Sec. 462.357, Subd. 6(2). Similarly, the fifth variance criterion in the City's zoning code requires a finding that the "variance will not permit any use that is not allowed in the zoning district where the affected land is located." Table 66-251 specifically allows "mixed residential and commercial use" as a permitted use in the I1 zoning district. Thus, residential uses are permitted in the I1 district. The request here is not a variance to allow a "use" that is not permitted in the I1 zoning district; it is a request to vary a location standard found in Sec. 65.143(b) of the zoning code that states that "residential uses shall not be located in the basement or first floor and at least eighty (80) percent of the first floor shall be devoted to principal uses permitted in the district, other than residential uses." Variance of this location standard is no different in nature than variances of other types of location standards that do not permit structures, parking or other obstructions in required yards.

Erroneously believing they had no authority to grant one of the requested variances, the BZA voted to deny all the variances and adopted the findings in the staff report, which recommended denial. We respectively disagree with the staff recommended findings and believe that all the criteria for approval of the requested variances have been met.

1) The variances are in harmony with the general purposes and intent of the zoning code.

Section 60.103, Intent and purpose, identifies several purposes of the regulations established in the zoning code, including the following which are relevant to the requested variances:

- (b) To implement the policies of the comprehensive plan
- (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
- (o) To fix reasonable standards to which buildings, structures and uses shall conform

As discussed further below, the variances are consistent with the Comprehensive Plan. A mixed-use building with both commercial use and residential units on the ground floor and reduced front setbacks is compatible with the surrounding mix of commercial, industrial and residential use. Specifically, allowing residential units and majority residential use on the ground floor will not create conflict with the commercial use of the neighboring building to the west, the residential and parking uses across Hampden or, because they are to the rear, the industrial uses to the north. Allowing more area in the building to be residential increases the number of affordable units and housing density to support the nearby Green Line. The proposed setbacks are compatible with the placement of the adjacent building and, because the project will not include industrial uses, greater setbacks are not needed in order to buffer the residential uses across Hampden from industrial uses. Notably, the staff report concludes that the proposed variances will not significantly alter the essential character of the area, which supports the conclusion that the variances are compatible with the mix of land uses in the area and that the setbacks are reasonable.

2) The variances are consistent with the Comprehensive Plan.

The first policy in the land use chapter of the 2040 Comprehensive Plan, emphasizes the importance of transit-oriented development:

Policy LU-1. *Encourage transit-supportive density and direct the majority of growth to areas with the highest existing or planned transit capacity.*

The project site is centrally located between Minneapolis and Saint Paul and within ½ mile of multiple transportation options including the Raymond Avenue LRT, multiple bus routes on University and Raymond Avenues and The Grand Round bicycle trail, making it an excellent location for addition of transit-supportive housing density. While both the Comprehensive Plan and the West Midway Industrial Area plan guide the site for industrial use, the following guidance from the West Midway plan specifically identifies circumstances where conversion of land from industrial to other use is appropriate:

PI-1 Retain and Protect Current Industrial Land from Conversions to Non-Industrial Uses: It is vital to protect the industrial economy in a way that balances competing land uses while preserving industrial business growth. There will be instances when the market dictates that conversion from industrial to another use is optimal. Such conversions should be considered carefully.

- a. The City should only convert industrially zoned lands to non- industrial uses only in circumstances where development will be high density (either jobs or residential) and proximate to regional transportation.

As described in our original submission, we have owned the site for several years and, despite best efforts, have been unable to obtain an industrial or commercial tenant for the existing building, which is vacant. The site is too small to be marketable for construction of a new industrial building. With no prospects for an industrial user, we believe conversion of the land to high density residential use is appropriate and consistent with the guidance of the West Midway plan. Staff note that the site is outside of the official Raymond Avenue Green Line Station Area, but it lies just across the street of that planning area boundary and remains, nevertheless, proximate to regional transportation.

It is important to note that the I1 zoning district allows residential units without variance on the entirety of any floors above the first floor. The requested variances will simply allow residential use on the majority of the first floor as well.

Allowing additional residential use on the first floor will increase the number of affordable units that can be created, which is also consistent with the following policies from the housing chapter of the comprehensive plan:

Goal 6: Improved access to affordable housing.

Policy H-31. *Support the development of new affordable housing units throughout the city.*

Policy H-37. *Encourage the development of affordable housing in areas well-served by transit and/or in proximity to employment centers.*

Staff suggest that the variances to reduce the depth of the front yard are not consistent with the West Midway plan because Hampden is identified as a “vulnerable land use edge” along which buffering measures are important for reducing residential /industrial conflicts. West Midway policy SD 1-20 specifically states that buffering along Hampden shall “[m]aintain and infill the landscaping on both sides of the edge.” Much of the existing building sits on the property line adjacent to the public sidewalk, leaving only a narrow boulevard between the sidewalk and street for landscape area. The 9-foot and greater setbacks of the proposed building will significantly increase the space for landscape buffer between the new building and Hampden. Moreover, the proposed residential building itself will buffer existing residential uses south of Hampden from the larger Midway Industrial area.

3) Practical difficulties beyond mere “economic considerations” exist in complying with the ordinance provisions.

When market conditions make a particular type of use – in this case, use of 80% of the ground floor of the building for non-residential uses – completely unviable, market factors become more than just “economic” considerations. They become legitimate land use and public safety considerations. Denial of the requested variance that will allow the majority of the first floor to contain residential uses will result in either no redevelopment and continued “use” of the land with a vacant and boarded building, or (if it was even possible to get financing to build) a new building with what would inevitably be vacant commercial space on the first floor. The lack of market demand for new commercial space in this area is a land use factor and a practical difficulty for complying with the standards of the I1 zoning district for mixed residential and commercial buildings.

Compliance with the ordinances related to area and location of residential use and yards also create practical difficulties in achieving the goals and policies of the Comprehensive Plan related to creation of high-density housing near transit and increasing availability of affordable housing throughout the city. Reduction of the floor plate area on all the floors to meet a 25-foot yard requirement and disallowing residential units on the first floor altogether would eliminate at least 30 units in the proposed layout and reduce the size of at least 12 more.

4) The circumstances are unique to the property and not created by the landowner.

The property is located at the edge of an historic, but struggling, industrial area and in close proximity to light rail and bus transit, as well as the Grand Rounds bicycle trail. It is also within walking and biking distance from the University and Raymond commercial area and city parks. These circumstances make it especially well-suited for development with high-density housing in conformance with the several city land use and housing policies discussed above. Also as discussed above, practical difficulties prevent development of a project in compliance with both those city policies and the ordinances from which variances are requested. These unique circumstances were not created by the landowner.

*5) The variances will not permit any use that is not allowed in the zoning district where the property is located, and
6) the variances will not alter the essential character of the surrounding area.*

The staff report concurs that these two findings are met.

Conclusion

We hope that the City Council will support our vision of repurposing a long-vacant, dilapidated property into a vibrant affordable housing community. We respectfully request that the Council grant the appeal and approve the requested variances.

Sincerely,

EXETER MANAGEMENT LLC