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To: Duluth City Council:

With this letter and attached materials, I appeal the decision of the Planning Commission on 14 April, 2020 to approve a Minor Subdivision and Variance request by Jayson Sundvall for a property at 518 and 526 North 6th Ave East(PL20-21 and PL20-21).

Mr. Sundvall's property is a single parcel containing two (2) houses. He sought leave to divide this parcel into separate parcels, which resulted in two (2) illegally non-conforming parcels. He then requested a variance from these newly created non-conformities.

Since these applications were submitted and considered concurrently, one must first determine the logical order in which they were approved. Since the existing parcel was legally non-conforming in a MU-N zoning district, the minor subdivision application had to be approved first in order to establish the need for a variance from the zoning requirements. Therefore, this application will be considered first:

1. APPLICATION FOR MINOR SUBDIVISION (PL20-21)

Mr. Sundvall's application for a minor subdivision (see attached) was very brief. The reason for the application appears to be to simply divide the existing parcel into two (2) parcels with a house on each. No other reason was provided.

The Planning staff report notes that the "subdivision is consistent with promoting reinvestment in neighborhoods by allowing a large lot with two single-family dwellings to be subdivided creating a second lot" AND "The new lot has an existing dwelling unit on the property, which will provide additional housing and generate tax dollars for the City of Duluth".

But this is false. There were two (2) houses on the existing parcel and this did not change. No additional housing will be created, and no additional taxes will be generated as a result of the subdivision.

More importantly, the application did meet the requirements of the UDC section for the approval of minor subdivisions. Specifically, one of the conditions that absolutely must be met for the approval of a minor subdivision, at 50-37.5, D.1.(b) is:

(b) Each proposed lot meets the minimum zoning requirements of the district that it is in;

As noted in the staff report, "The applicant is requesting a Minor Subdivision to divide the 7,000 square foot parcel into two parcels. Parcel A will be 50.12' x 73.52' and will be approximately 3,684 square feet Parcel B will be 50.12' x 66.50' and contains approximately 3,333 square feet

The applicant's parcel is in the MU-N zoning district. The minimum lot area for a subdivided lot or parcel in a MU-N district is 4000 sq.ft. The application is clearly contrary to the provisions of this zoning district. **The application for a minor subdivision should have been DENIED on its face based upon these facts alone.**

2. APPLICATION FOR VARIANCE(S)- (PL20-21)

As the Minor Subdivision was approved by the Planning Commission, despite being contrary to the UDC, the Planning Commission then considered the application for a variance from the MU-N zoning requirements for the subdivided parcels. They were:

- Lot area variance for 518 and 526 North 6th Avenue East less than 4,000 square feet;
- Front yard setback variance for 518 and 526 North 6th Avenue East less than 25 feet;
- Rear yard setback variance 518 and 526 North 6th Avenue East less than 25 feet; and
- Side yard setback variance for 518 North 6th Avenue East.

As stated in the staff report, in order to receive a variance under the UDC, ALL the following conditions must be met:

“Sec. 50-37.9.C – General Variance Criteria (paraphrased): **Granting of variances of any kind is limited to situations where, due to characteristics of the applicant’s property, enforcement of the ordinance would cause the landowner *exceptional practical difficulties or undue hardship*.** The Planning Commission must find ALL of the following for a variance to be granted: **a)** That the landowner is proposing to use the property in a reasonable manner, **b) that the need for relief for from the normal regulations is due to circumstances unique to the property and not caused by the landowner,** **c)** that granting the variance will not alter the essential character of the area, **d)** that granting the variance is consistent with the intent of the UDC and the Comprehensive Plan”.

Planning staff also noted in their report that the “variances are consistent with promoting reinvestment in neighborhoods by allowing existing single-family dwellings to continue, and through a subdivision allow for the creation of a second lot. The new lot has an existing dwelling unit on the property, which will provide additional housing for the City of Duluth”. Like the Minor Subdivision application, although a second lot or parcel would be created, no additional housing would be. **This is a false statement.** As the applicant explained, the two houses would remain, the granting of the minor subdivision and variances would not change the use of these homes and no adjustments or additional actions would occur on the parcels. They would continue as affordable single-family homes.

Therefore, the need for relief from UDC regulations, for which these variances would provide, **was clearly caused by the landowner.** Unless the existing parcel is not divided into two (2) separate parcels, the existing parcel would not have needed any variances. It could have remained a legally non-conforming parcel into perpetuity just as it is WITHOUT requiring a variance of any kind.

SUMMARY

The decision by the Planning Commission, based upon the recommendations of Planning Department staff, to approve these two (2) applications was clearly arbitrary and capricious.

Due process and equal protection demand that similar applicants be treated uniformly by the city. When a city establishes land use and zoning standards, such as the UDC, any relief under the code should be granted only if those standards are met. Conversely, an application should be denied if it fails to meet those standards. A decision predicated on insufficient evidence or arising from a failure to apply relevant provisions of the code is arbitrary and capricious.

As indicated previously, both applications fail to meet the standards established in the UDC. The staff recommendations and Planning Commission action create an environment in which abuse of land use regulations can become institutionalized and corrupt. It gives the impression of favoritism and cronyism, as the Planning staff can promote and the Commission can approve applications that do not meet the code’s own standards, which would be unavailable “by right”, because they promote a policy objective. This type of “pay to play” system allows the Commission to provide relief to only certain individuals or companies without doing the hard work of amending the code itself, so that all could receive relief.

In addition, and just as egregious, is concern over equity. In this instant case, city application fees amounted to over \$1200.00. The applicant no doubt incurred additional costs above this. Depending on requirements of each application, this could amount to many thousands. Unfortunately, only those who can raise significant funds could take advantage of this arbitrary and capricious process.

I therefore urge the Council to vote to REVERSE the approval of these applications. I also recommend that the applicant be rebated the application fees and that the matter be remanded back to the Planning Commission for consideration of policy actions that would allow him to achieve his goal of separate parcels with a house on each without circumventing the regulations of the UDC.

Thank you.

With best regards,

A handwritten signature in blue ink, appearing to read 'Mark A. Baker', written in a cursive style.

Mark A. Baker