STATE OF MINNESOTA
IN COURT OF APPEALS
A17-1480

State of Minnesota ex rel.,
Neighbors for East Bank Livability, et al.,
Appellants,

vs.

City of Minneapolis,
Respondent,

Alatus, LLC,
Respondent.

Filed May 7, 2018
Affirmed
Jesson, Judge

Hennepin County District Court
File No. 27-CV-16-17020

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Considered and decided by Schellhas, Presiding Judge; Halbrooks, Judge; and Jesson, Judge.

S Y L L A B U S

An adopted small area plan that is incorporated into a city's comprehensive plan is subject to the comprehensive plan's subsequent amendments, unless stated otherwise.

O P I N I O N

JESSON, Judge

To build the tallest building in Minneapolis outside of the downtown area, respondent Alatus needed to obtain both a conditional-use permit and a variance. Minneapolis granted both of these requirements, and appellant Neighbors for East Bank Livability challenged the decisions. Now on appeal, Neighbors for East Bank Livability contends that the city's granting of both the conditional-use permit and variance was improper because the proposed project was inconsistent with the city's comprehensive plan and because there were no unique circumstances regarding the property to justify a variance. We affirm.

FACTS

Local governments within Minnesota's metropolitan area are required to adopt comprehensive plans, which are documents to help guide land use and development.[1] And many of these comprehensive plans adopt, and look to, planning documents created by neighborhoods and smaller areas within their borders for guidance. It is the interaction

[1] The metropolitan area includes "the counties of Anoka; Carver; Dakota excluding the cities of Northfield and Cannon Falls; Hennepin excluding the cities of Hanover and Rockford; Ramsey; Scott excluding the city of New Prague; and Washington." Minn. Stat. § 473.121, subd. 2 (Supp. 2017).

between these city-wide comprehensive plans and the incorporated small area plans that is central to the legal dispute before us today.

In 2009, Minneapolis adopted its current comprehensive plan, the Minneapolis Plan for Sustainable Growth, to help guide its balancing act between twin desires: the desire to grow rapidly and the desire to maintain its identity. A key component of its plan was setting forth residential density classifications—low, medium, and high—and where each best belonged in the city. Residential high-density buildings were to go primarily in mixed-use areas. The comprehensive plan also mentioned a fourth category, very high density, which would belong in activity centers and growth centers throughout Minneapolis.[2] One of the stated goals of the comprehensive plan was to "[d]evelop small area plans for designated land use features . . . in consultation with neighborhood associations, residents, and other stakeholders." One such neighborhood is Marcy-Holmes.

Marcy-Holmes is the oldest neighborhood in Minneapolis and includes a mixture of structures that are historical and progressive, residential and commercial, old and new. It is eclectic. Like much of Minneapolis, the neighborhood has recently experienced dramatic growth. This brings the challenge of being open to expansion, but staying true to its identity. To address these concerns, Marcy-Holmes created the Marcy-Holmes Neighborhood Master Plan which, in city-planning vernacular, is referred to as a small area plan.[3] This small area plan provided direction on how Marcy-Holmes should evolve. Its

[2] Activity centers are described, in the comprehensive plan, as hubs of activity and places that shape the city's urban identity. Growth centers are described as "busy, interesting and attractive places characterized by a concentration of business and employment activity."
[3] Small area plans are also referred to as neighborhood plans.

most current form was adopted in 2014, after which it was incorporated into Minneapolis's comprehensive plan.

This small area plan listed the same density levels as the comprehensive plan with the same ranges: small, medium, and high. The small area plan did not mention the fourth category, very high density, but noted that its high category was for "the areas of most intense use and density." But the density limitations in Minneapolis's comprehensive plan did not remain static for long. In 2016, the city adopted a density-limitation amendment to its comprehensive plan which drastically raised the upper limit of densities allowed, especially in areas within activity and growth centers.

This new density increase quickly became relevant, as respondent Alatus desired to construct a project far exceeding the un-amended density limits. Alatus proposed constructing a building at 200 Central Avenue Southeast and 113 Second Street Southeast in Minneapolis, situated in Marcy-Holmes. This location is also within the East Hennepin Activity Center, which is near the Downtown Growth Center. The area is a C2 zoning district, which is defined as a neighborhood corridor commercial district. Minneapolis, Minn., Code of Ordinances § 521.10(3) (2017). This exact area contains several high-rises, including the LaRive Condominiums, which are approximately 310 feet in height. The proposed Alatus project is a mixed-use 42-story building, standing at approximately 483 feet tall. The first four levels of the project would make up a podium, the fifth floor would be an amenity level, and the next 37 levels would encompass a tower. While the footprint of the podium would encompass much of the building site, the footprint of the tower is less than half of the podium. Topping the tower would be a mechanical penthouse level. The

building would include 214 residential dwelling units, and 6,500 square feet of ground-floor commercial space. The residential density of the proposed projected would be approximately 268 residential dwelling units per acre (du/acre).[4] The project would include nearly 400 parking spaces, located in the first four levels of the building and in three levels below grade.

Due to the large scale and breadth of the project, it did not fully comply with Minneapolis's zoning ordinances. Alatus needed to obtain both a conditional-use permit and a variance to construct the building.[5] Alatus needed the conditional-use permit because of the height of the proposed project.[6] The maximum height for buildings in the C2 zoning district is 56 feet, but the proposed height of this project exceeded 483 feet. Alatus also needed a variance for the floor-area ratio of the proposed project.[7] Floor-area ratio refers to the total amount of floor area in a building, divided by the area of the lot.[8] The maximum

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[4] Residential dwellings per acre, or du/acre, refers to the number of residential dwellings per acre.

[5] Alatus also needed to obtain a certificate of appropriateness because the building project is in a historic district. Alatus successfully obtained this certificate, and its issuance is not before us on appeal.

[6] Conditional-use permits are authorized under Minnesota Statutes section 462.3595 (2016), which allows governing bodies, by ordinance, to designate certain types of developments as conditional uses. A conditional-use permit "allows the city to review uses, which because of their unique characteristics, cannot be permitted as of right in a particular zoning district, but which may be allowed upon showing that such use in a specified location will comply with all of the conditions and standards of this zoning ordinance." Minneapolis, Minn., Code of Ordinances § 525.300 (2017).

[7] Variances are granted to allow parties to not conform to a zoning ordinance. Minn. Stat. § 462.357, subd. 6(2) (2016); *see also Arcadia Dev. Corp. v. City of Bloomington*, 267 Minn. 221, 125 N.W.2d 846 (1964).

[8] For example, if the entirety of a lot were covered by one floor level, the floor-area ratio would be one, but if one floor level only covered half a lot, the floor-area ratio would be 0.5.

floor-area ratio in the C2 zoning district is 1.7, while the project has a proposed floor-area ratio of 14.42.

The process for obtaining a conditional-use permit and variance starts with seeking approval from the Minneapolis city planning commission. Before the commission makes a decision, the department of community planning and economic development (CPED) generally reviews the application and makes a recommendation.[9] From there, review is available by appealing the decision to the zoning and planning committee, which recommends its decision to the ultimate decision maker—the Minneapolis City Council.

Alatus completed its application for a conditional-use permit and variance in July 2016.[10] CPED prepared an assessment report of the application in August 2016. This report made detailed findings suggesting that the proposed project was appropriate to be built in Marcy-Holmes because, among other reasons, it was compatible with the surrounding area and it was consistent with the policy and goals of Minneapolis's comprehensive plan and Marcy-Holmes's small area plan. CPED recommended that the city grant the conditional-use permit and variance. At the end of August 2016, the city planning commission voted to approve both the conditional-use permit and variance applications. The commission also adopted CPED's findings.

Appellant Neighbors for East Bank Livability appealed this decision to the zoning and planning committee. This committee conducted a hearing regarding the appeal in

[9] CPED is authorized to review and make recommendations regarding land use applications. Minneapolis, Minn., Code of Ordinances § 525.120(b)(1) (2017).

[10] Alatus also sought a variance to allow the first floor of the building to be located more than eight feet from the front property lines, but this is not at issue on appeal.

September 2016 and subsequently issued recommended findings of fact. These findings incorporated the CPED findings and made several additional findings favorable to granting the conditional-use permit and variance. The committee also noted that Marcy-Holmes's official neighborhood organization supported the project. The zoning and planning committee then recommended that the Minneapolis City Council deny the appeal and approve the applications for the conditional-use permit and variance. In October 2016, the Minneapolis City Council unanimously adopted the zoning and planning committee report.

In November 2016, Neighbors for East Bank Livability filed a complaint against the City of Minneapolis and Alatus, both of whom are respondents on appeal. Among other counts, the complaint sought declaratory judgment against Minneapolis, seeking a determination that granting the conditional-use permit and variance was improper.[11] The district court granted summary judgment against Neighbors for East Bank Livability and determined that the city did not err in granting the conditional-use permit or variance. The district court explained that the project was consistent with both the comprehensive plan and small area plan, and furthered the goals of both plans.

Neighbors for East Bank Livability appeals.

[11] The complaint also sought injunctive relief against Alatus to prevent the demolition of the existing building located on the projected site. The district court granted summary judgment against Neighbors for East Bank Livability regarding the demolition of the existing building. Neighbors for East Bank Livability appealed, but because the building was demolished in the midst of appeal, this court issued an order opinion determining that the appeal was moot.

ISSUES

I. Was the city's issuance of the conditional-use permit and variance unreasonable, arbitrary, or capricious because the proposed project was inconsistent with the comprehensive plan?

II. Was the city's issuance of the variance unreasonable, arbitrary, or capricious because the practical difficulties in complying with the ordinance was not due to circumstances unique to the property?

ANALYSIS

Neighbors for East Bank Livability challenges the district court's grant of summary judgment to the city regarding its issuance of a conditional-use permit and variance for Alatus's proposed project. This court's review of the city's decision to grant or deny a conditional-use permit or variance is limited to whether the decision was unreasonable, arbitrary, or capricious. *Roselawn Cemetery v. City of Roseville*, 689 N.W.2d 254, 258 (Minn. App. 2004) (stating this court reviews a conditional-use permit decision for whether it was "unreasonable, arbitrary, or capricious"); *see also VanLandschoot v. City of Mendota Heights*, 336 N.W.2d 503, 508 (Minn. 1983) (applying the arbitrary, capricious, or unreasonable standard to variance decisions). And our focus is not on the district court's findings, but rather on the Minneapolis City Council. *Carl Bolander & Sons Co. v. City of Minneapolis*, 502 N.W.2d 203, 207 (Minn. 1993).

Before granting conditional-use permits or variances, cities are required by statute and city ordinance to make numerous findings on specific factors, one of which requires

that conditional-use permits[12] and variances[13] be consistent with the city's comprehensive plan. On appeal, the parties direct our attention primarily to this factor as Neighbors for East Bank Livability contends that the issuance of both the conditional-use permit and variance is improper because granting either is inconsistent with the comprehensive plan. Neighbors for East Bank Livability also argues a separate factor—the necessity of the variance is due to circumstances unique to the property—is similarly not satisfied. We address each argument in turn.

I. The city's granting of the conditional-use permit and variance is consistent with the comprehensive plan.

Neighbors for East Bank Livability's primary contention on appeal is that granting either the conditional-use permit or variance is improper because it is inconsistent with the comprehensive plan. *See* Minneapolis, Minn., Code of Ordinances § 525.340(5) (2017) (stating that conditional-use permits must be consistent with the applicable policies of the comprehensive plan); Minn. Stat. § 462.357, subd. 6(2) (stating variances should only be permitted when they are consistent with the comprehensive plan and the general purposes and intent of the ordinance). It reasons that the project is inconsistent with the

[12] Before granting a conditional-use permit, the city must make specific findings on six factors pursuant to Minneapolis, Minn., Code of Ordinances § 525.340 (2017). In addition to these six standard factors, the city must consider four additional factors when examining an application that increases the maximum height, pursuant to Minneapolis, Minn., Code of Ordinances § 548.110 (2017). Findings were made on all ten of these factors, each supported by the record, and whether the project is consistent with the comprehensive plan is the only finding disputed on appeal.

[13] Variances must be consistent with the comprehensive plan and the general purposes and intent of the ordinance. Minn. Stat. § 462.357, subd. 6(2). Additionally, the application must establish there are practical difficulties in complying with the zoning ordinance. *Id.*

comprehensive plan because the project's 268 du/acre exceeds the applicable density limitation set forth in the small area plan. The small area plan, adopted before the density amendment, has a density limitation of 120 du/acre, while the amendment to the comprehensive plan raised the density limitation to 800 du/acre.[14] The issue is which limitation controls: the comprehensive plan's 800 du/acre, or the small area plan's 120 du/acre.[15]

We determine that the comprehensive plan's 800 du/acre limitation applies, and Alatus's proposed project falls within that limit, because (1) comprehensive plans control over small area plans in general; (2) Marcy-Holmes's small area plan was adopted into Minneapolis's comprehensive plan, and both plans refer to the comprehensive plan as controlling; and (3) an examination of the density-limitation amendment shows the city intended the heightened density level to apply to Marcy-Holmes.

[14] Neighbors for East Bank Livability contends that the city lacks authority to grant a conditional-use permit that exceeds the 120 du/acre, as Minnesota law prohibits a city from adopting zoning ordinances inconsistent with the small area plan. However, we do not reach this argument as we determine the amendment raised the small area plan's maximum residential density limitation to 800 du/acre.

[15] The city argues that the density limitations are not exact caps. With respect to the upper limit, we disagree. While the comprehensive plan states the densities "are not meant to be precise, but rather to provide guidance to the appropriate range for each category," the upper limit does not appear flexible. This is especially true in light of the density amendment that specifically set forth an explicit, uniform upper-limit. Therefore, to be consistent with the comprehensive plan, the project should fall within the density limitation.

Comprehensive plans control over small area plans.

We determine that comprehensive plans control over small area plans because of the statutory framework of city planning, the history of cities and neighborhoods in city planning, and caselaw guidance detailing a city's role in comprehensive plans.

The Minnesota legislature provides cities the power to plan the use of land within their boundaries. *Mendota Golf, LLP v. City of Mendota Heights*, 708 N.W.2d 162, 174 (Minn. 2006). The municipal planning act grants cities the authority to create and execute comprehensive plans: "[a] municipality may carry on comprehensive municipal planning activities for guiding the future development and improvement of the municipality and may prepare, adopt and amend a comprehensive municipal plan and implement such plan." Minn. Stat. § 462.353, subd. 1 (2016). And the Minnesota legislature found that it is *municipalities* that are faced with "mounting problems in providing means of guiding future development of land," and that comprehensive plans are an effective way to combat these difficulties. Minn. Stat. §§ 462.351, .3535 (2016).

This power given to cities is further reflected by the breadth of authority when it comes to what cities may regulate: "a municipality may by ordinance regulate on the earth's surface, in the air space above the surface, and in subsurface areas, the location, height, width, bulk, type of foundation, number of stories, size of buildings and other structures . . . the density and distribution of population." Minn. Stat. § 462.357, subd. 1 (2016). While cities have been delegated a wide latitude of power in regulating land use within their borders, in addition to the ability to create and amend comprehensive plans, neighborhoods and small areas lack such statutory authority. This statutory framework of

city planning guides our determination that a city's comprehensive plan, not a small area plan, controls when in conflict with one another. And we note the controlling nature of *comprehensive* plans is inherent in the title of the plan. *See Oxford English Dictionary* 632 (2d ed. 2004) (defining comprehensive as "inclusive of").

The current statutory focus on cities, not neighborhoods, in land use planning evolved over the past century. During early statehood, there was little authority empowering Minnesota cities to regulate land use. Karen E. Marty, *Minnesota Land Use Law*, 55-62 (2d ed. 2017). In the early part of the twentieth century, the neighborhoods themselves, and their citizens, had a statutory voice in a municipality's land-use decisions. The first zoning laws required a petition from a majority of the affected property owners in order to start the zoning process. *Id.* at 76. And the first zoning statutes required a referendum of affected citizens to authorize the city to zone. *See Minneapolis-Honeywell Regulator Co. v. Nadasdy*, 247 Minn. 159, 164, 76 N.W.2d 670, 675 (1956). But with the advent of metropolitan planning, this power shifted. Marty, *Minnesota Land Use Law*, at 78-85. Neighborhoods no longer possess this decisive role in city planning and instead play an advisory part. *See Nw. Coll. v. City of Arden Hills*, 281 N.W.2d 865, 869 (Minn. 1979) ("Although neighborhood sentiment may be taken into consideration in any zoning decision, it may not constitute the sole basis for granting or denying a given permit."); *Yang v. County. of Carver*, 660 N.W.2d 828, 833 (Minn. App. 2003) ("A city may consider neighborhood opposition only if based on concrete information."). This advisory role neighborhoods play in city planning is consistent with the current statutory framework delegating power to cities, not neighborhoods. The evolution of Minnesota's land-use

planning laws further supports our determination that comprehensive plans, not small area plans, control.

Caselaw examining the role of comprehensive plans is also instructive. In *Nordmarken v. City of Richfield*, the City of Richfield amended its comprehensive plan to accommodate a large proposed development. 641 N.W.2d 343, 346 (Minn. App. 2002), *review denied* (Minn. June 18, 2002). Richfield is a home-rule charter city, whose charter provides that residents have the right to petition for referenda to approve or disapprove city council ordinance decisions. *Id.* Residents filed a declaratory judgment, seeking to have their right under the charter enforced. *Id.* This court determined that state law preempted the local charter provision in regard to the process for approving local land-use laws. *Id.* at 350. We reasoned that "[l]ocal regulation by referendum of the process for land use planning and zoning is sufficiently antithetical to the avowed purposes of creating that single body of law and uniform procedure." *Id.* at 349. We stated that holding otherwise would encourage "sporadic and fragmented land development and use." *Id.* Similarly here, allowing small area plans and neighborhoods the ability to overrule a comprehensive plan would be contrary to the framework of city planning. This interpretation is also consistent with other jurisdictions that have a similar statutory framework. *See Hoffman Family, L.L.C. v. City of Alexandria*, 634 S.E.2d 722, 724 (Va. 2006) (noting that a small area plan is "a part of" the city's comprehensive plan).

While our determination rests on our analysis of the statutory framework, we observe that failing to determine that comprehensive plans control over small area plans would lead to impractical results. Neighborhoods cannot effectively carve themselves out

of a city through a small area plan. Rather, a small area plan has the important purpose of providing detailed guidance within its borders, not erecting insurmountable barricades to city planning.

In light of a city's broad power in city planning, comprehensive plans control over small area plans unless stated otherwise.[16]

Minneapolis's comprehensive plan and Marcy Holmes's small area plan both state that the comprehensive plan controls.

Our interpretation that comprehensive plans generally control over small area plans is bolstered by the specific plans before us. Further, Marcy-Holmes's small area plan was incorporated into the comprehensive plan and was amended simultaneously with the comprehensive plan.

The statutory power delegated to cities is evident in Minneapolis's comprehensive plan, as it states, "*Minneapolis* will develop and maintain a land use pattern that strengthens the vitality, quality and urban character of its downtown core, commercial corridors, industrial areas, and neighborhoods while protecting natural systems and developing a sustainable pattern for future growth." (Emphasis added.) The comprehensive plan also states it "incorporates by reference land use recommendations from a number of small area plans that cover various sub-sectors of the city [and these] plans should be consulted for

[16] We note that not all differences between a comprehensive plan and small area plan are to be resolved by determining that the comprehensive plan is controlling and the small area plan language is contradictory or inconsistent. Many differences are intentional, as small area plans provide specific guidance and detail in small areas, where the comprehensive plan may only provide general—and potentially different—information for that respective area. These differences are meant to provide additional guidance to comprehensive plans and do not give rise to the question of which plan is controlling.

applicable areas when making development decisions, as they provide more detailed guidance." This language reflects that small area plans are *consulted* to provide "more detailed guidance," not deferred to.

The language in Marcy-Holmes's small area plan similarly recognizes this hierarchy. It states the comprehensive plan "is a policy document that guides the physical development of the entire city. It is the policy basis for this Plan, and *defers to it for specific development guidance*." (Emphasis added.) The parties argue over the last quotation, specifically the second sentence, and disagree on which plan "it" refers to. In light of the first sentence referring to the comprehensive plan as the guiding policy document, the most reasonable reading of the second sentence is the "[comprehensive plan] is the policy basis for this [small area] plan, and [the small area plan] defers to [the comprehensive plan] for specific development guidance."[17] This interpretation is consistent with the understanding that the comprehensive plan is the "policy document that guides the physical development of the entire city."

Apart from the language of these two specific plans, the fact that Marcy-Holmes's small area plan was adopted and incorporated into Minneapolis's comprehensive plan in

[17] The parties also argue over language in appendix B of the comprehensive plan. This language states: "[t]hough every effort has been made to ensure consistency between the comprehensive plan and small area plans, there are occasionally discrepancies. Most are intentional, with the comprehensive plan reflecting updated direction that has been put into place since the small area plan was adopted. By statute, when there is a discrepancy, the comprehensive plan's guidance is considered legally to overrule the other." This language explicitly explains the hierarchy of the two plans, and it states that when the two plans are in conflict, the comprehensive plan controls.

2014 is significant.[18] At this point, the two plans became one unified plan. This is consistent with the process of cities modifying their comprehensive plans through amendments and modifications. Susan Haigh, *The Metropolitan Council*, 40 Wm. Mitchell L. Rev. 160, 170-72 (2013). At the time the small area plan was adopted, its three classifications of density levels—low, medium, and high—mirrored those of the comprehensive plan. The density levels of the small area plan were consistent with the comprehensive plan. While the small area plan did not contain the very-high level, it described its high classification as "the areas of most intense use and density."

And when the subsequent density-limitation amendment to the comprehensive plan was adopted, allowing densities up to 800 du/acre in activity centers near growth centers where consistent with the applicable small area plan, it applied to the entirety of the comprehensive plan—including the small area plan. The proposed Alatus project is located in the East Hennepin Activity Center, which is near a growth center, resulting in the amendment applying to the proposed site, unless it would be inconsistent with the small area plan. And as the city found, the proposed project with a high residential density is consistent with the small area plan's policy and guidance. Therefore, the maximum residential density limit for the location of the proposed project is 800 du/acre, and the proposed project is within its limitations.

[18] The parties do not dispute that the small area plan became a part of the comprehensive plan once it was adopted.

An examination of the density-limitation amendment shows the city intended the heightened density level to apply to Marcy-Holmes.

Neighbors for East Bank Livability contends that even if the comprehensive plan generally controls over the small area plan, that is not the case here as the density-limitation amendment states otherwise. To resolve this issue, we must look to the amendment's language. The amendment to the comprehensive plan states "[d]ensities up to 800 du/acre may be allowed in or near all designated Growth Centers and within Activity Centers adjacent to Growth Centers, *as consistent with adopted small area plans*." (Emphasis added.) The parties disagree on whether the amendment applied to Marcy-Holmes's small area plan, based on what "consistent with adopted small area plans" encompasses.

To ascertain what the city intended this language to mean, the rules of statutory interpretation guide us. *See Cannon v. Minneapolis Police Dep't*, 783 N.W.2d 182, 192-93 (Minn. App. 2010) (noting that the rules of statutory interpretation are applicable to contexts outside of statutes, including city ordinances). We interpret the amendment de novo and first look to whether the amendment is unambiguous. *Id.* Only if the language is reasonably subject to more than one interpretation should we find it ambiguous, and at that point, look beyond the plain language of the amendment to effectuate the city's intent. *Id.* at 193-94.

Neighbors for East Bank Livability contends that "consistent with adopted small area plans" means the amendment only applies where small area plans do not already have a du/acre limit, because imposing a different limit would result in a conflict or inconsistency. The city puts forth a different reasonable interpretation, that "consistent

with adopted small area plans" means that the heightened density limit applies in areas designated for high density by adopted small area plans. Looking at only the plain language of the amendment, we conclude that both are reasonable interpretations, and the amendment is therefore ambiguous. Because the amendment is ambiguous, we look beyond the plain language. *See Goodman v. Best Buy, Inc.*, 777 N.W.2d 755, 758 (Minn. 2010).

We determine that the city intended for the amendment's "consistent with adopted small area plan" language to give rise to the broader interpretation—of it being consistent with the goals and policy of the small area plans—in light of (1) reading the amendment in the context of the entire city-planning framework and (2) the history of the amendment.

We start by looking at the amendment's language in the context of the entire statutory framework of city planning. *See Allan v. R.D. Offutt Co.*, 869 N.W.2d 31, 33 (Minn. 2015) (stating the goal of statutory interpretation is to effectuate the intent of the legislature, in light of reading the statute as a whole). As discussed earlier, the Minnesota legislature delegated city-planning power to cities, not neighborhoods. *See Mendota Golf, LLP*, 708 N.W.2d at 174. Small area plans are incorporated into a city's comprehensive plan and are intended to provide additional guidance, not roadblocks. With this understanding of comprehensive and small area plans, the amendment's language, stating that it only applied where "consistent with adopted small area plans," means that the small area plans provide additional guidance to the comprehensive plan as to where raised density levels should occur, but does not trump the comprehensive plan. It would be unreasonable to construe the broad language of the amendment, "consistent with adopted small area

plans," to mean the narrow result of not exceeding the limits already in place in small area plans. This would transform the role small area plans have in city planning from what was meant to be an aid to the city into that of an unyielding obstacle.

A review of the history of the amendment further supports our interpretation. *See Binkley v. Allina Health Sys.*, 877 N.W.2d 547, 550-51 (Minn. 2016) (stating courts may resort to legislative history when interpreting ambiguous language). In May 2015, the amendment was proposed that would add the following language to the density range for activity centers and growth centers: "[d]ensities up to 800 du/acre may be allowed in or near all designated Growth Centers, and the following designated Activity Centers in or near the Growth Centers: Cedar Riverside, Dinkytown, East Hennepin, Mill District, Stadium Village, and Warehouse District."[19] In January 2016, CPED recommended the adoption of this amendment and noted that small area plans "provide more detail *as to where the highest densities are appropriate.*" (Emphasis added.) And later that month, when the city's principal planner addressed this amendment before the city planning commission, she explained it would increase the density limit for the downtown core, growth areas, and explicitly mentioned activity centers. This included the East Hennepin Activity Center, where the proposed projected is located. After this hearing, the city planning commission adopted the CPED findings and recommended that the city council approve the amendment.[20]

[19] The proposed project is located in the East Hennepin Activity Center, which is near, but not within, a growth center.

[20] The exact language of the amendment was altered, and the finalized language stated: "[d]ensities up to 800 du/acre may be allowed in or near all designated Growth Centers and

This history of the amendment shows the amendment was meant to apply to small area plans, that small area plans were meant to provide general guidance to where increased densities would be appropriate, and it specifically mentioned the East Hennepin Activity Center. Nowhere in any of the documented history of the amendment—staff reports, meeting minutes, or public comments—was there any indication that "as consistent with adopted small area plans" meant anything other than that small area plans would help direct where increased density would be appropriate. This amendment therefore resulted in the increased 800 du/acre applying to Marcy-Holmes, where appropriate, in light of the small area plan.

In sum, because comprehensive plans control over small area plans, and because Marcy-Holmes's small area plan was adopted and became a part of the comprehensive plan prior to the density amendment, we determine that the 800 du/acre density limitation from the comprehensive plan's amendment applies. Both the language and history of the amendment support this interpretation. Therefore, the city did not act in an unreasonable, arbitrary, or capricious manner when it determined that the conditional-use permit and variance is consistent with the comprehensive plan.[21]

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within Activity Centers adjacent to Growth Centers, as consistent with adopted small area plans." This finalized amendment retained activity centers as an area where the density would be increased, as long as it would be consistent with the applicable small area plan, but no longer identified specific activity centers.

[21] In a passing reference, Neighbors for East Bank Livability also states that the proposed project is inconsistent with the comprehensive plan because it is not compatible with the surrounding historic buildings, and that the area does not favor high density buildings. We disagree, as the city's findings explicitly state otherwise, are supported by the record, and are reasonable.

II. The city did not act in an unreasonable, arbitrary, or capricious manner when it granted the variance because there are unique circumstances preventing compliance with a city ordinance.

Neighbors for East Bank Livability challenges the granting of Alatus's variance application for floor-area ratio on an alternative ground. In addition to the requirement that variances should only be permitted when they are consistent with the comprehensive plan, variances may only be granted when the applicant establishes that there are practical difficulties in complying with the zoning ordinance. Minn. Stat. § 462.357, subd. 6(2). The term "practical difficulties" is broken down into three requirements by statute: (1) the applicant proposes to use the property in a reasonable manner; (2) the difficulties facing the applicant are due to circumstances unique to the property, not created by the applicant; and (3) the variance will not alter the essential character of the locality. *Id.*[22] Here, the city explicitly considered each of these three requirements, but Neighbors for East Bank Livability contends that the city erred when it determined that Alatus satisfied the requirement that the practical difficulties were due to circumstances unique to the property. We first discuss the findings on this requirement and then determine whether the city's conclusion that this requirement was met was unreasonable, arbitrary, or capricious.

The city found that practical difficulties in complying with city ordinances existed because of circumstances unique to the property. It found that the property was located in

[22] The Minneapolis city ordinance restates these three requirements, in similar terms: (1) the applicant will use the property in a reasonable manner that is within the spirit and intent of the comprehensive plan; (2) practical difficulties exist in complying with the ordinance because of circumstances unique to the property; and (3) the proposed variance will not alter the essential character of the locality. Minneapolis, Minn., Code of Ordinances § 525.500 (2017).

an activity center adjacent to a growth center, which is an area encouraged to be high density. Furthermore, there were additional findings that the property was contextually unique because the block contained two other permanent structures: the Pillsbury Library and an adjacent parking ramp. And these two structures limit the ability of the proposed project to be built horizontally. As the district court explained in its thorough and careful order, these structures restricted the proposed project by limiting the lot size and this unique situation was not created by Alatus.

Neighbors for East Bank Livability argues that these findings are not sufficient, as the only reason a variance was necessary was because of the way the proposed project was designed, not because of anything unique to the property.[23] We disagree. Here the city found multiple factors that were unique about this property, including the fact that other buildings were located on the block, that constricted its ability to build. These findings are supported by the record, and Neighbors for East Bank Livability does not point to any legal authority that suggests other buildings on the block cannot satisfy this factor. Nor do we discern any.

[23] Neighbors for East Bank Livability also points out that the city has a possible economic motivation in granting the variance and that economic motivation cannot serve as the "unique" motivation. However, the ordinance states that "[t]he unique circumstances were not created by persons presently having an interest in the property and *are not based on economic considerations alone*." Minneapolis, Minn., Code of Ordinances § 525.500(1) (2017) (emphasis added). This means that economic motivations can be present; they just cannot serve as the sole motivation for the variance. And here there were several reasons independent of economic motivation, including other permanent structures on the block, that support the finding that there were unique circumstances warranting a variance.

Minnesota caselaw further supports this determination. The Minnesota Supreme Court has recognized that unique circumstances are not limited to the purely physical condition of the land and that such a limitation would make granting of a variance "practically impossible except where the topographic conditions of a specific parcel of land would render the tract of land in question otherwise valueless." *Merriam Park Cmty. Council, Inc. v. McDonough*, 297 Minn. 285, 291, 210 N.W.2d 416, 419-20 (1973), *overruled on other grounds by City of Arden Hills*, 281 N.W.2d at 868. In *Nolan v. City of Eden Prairie*, this court determined the city's conclusion that there were unique circumstances justifying a variance was supported when the property was located at the end of a cul-de-sac, there was a significant grade change, and there was a stand of trees. 610 N.W.2d 697, 702 (Minn. App. 2000), *review denied* (Minn. July 25, 2000). Similarly, here there were circumstances outside of the control of the property owner—other buildings on the block—that were unique to the property and that restricted how the proposed project could be built. This is unlike cases in which unique circumstances were not found, because the hardship was based solely on the property owner's decision-making. *See Graham v. Itasca Cty. Planning Comm'n*, 601 N.W.2d 461, 467-68 (Minn. App. 1999) (stating that neither mistaken knowledge of a zoning ordinance nor the decision to purchase adjacent lots, which imposed the hardship, constituted unique circumstances). Here, the other buildings on the block support the city's finding that there are unique circumstances present to justify a variance, and the city's decision is not unreasonable, arbitrary, or capricious.

D E C I S I O N

When Marcy-Holmes's small area plan was adopted, it became a part of Minneapolis's comprehensive plan, helping to serve as specific guidance for the Marcy-Holmes neighborhood. This did not change when the residential density limits were amended for the comprehensive plan. The small area plan still serves as guidance on where the increased residential density can occur within Marcy-Holmes. What the small area plan does not do, however, is prevent the amendment from applying within its borders merely because it already has a residential density limitation. To hold otherwise would render a city's chief planning tool a confederation of neighborhood plans, rather than the title the legislature bestowed upon it: a comprehensive plan. As a result, the city's determination that the proposed project is consistent with the comprehensive plan is not arbitrary, capricious, or unreasonable. Additionally, because there are unique circumstances—not attributable to the property owner—justifying the variance, the city's decision to grant it is not improper. Accordingly, the district court did not err when it granted summary judgment against Neighbors for East Bank Livability.

Affirmed.