



Working to protect the Mississippi River  
and its watershed in the Twin Cities area.

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May 4, 2015

Department of Planning and Economic Development  
Zoning Section  
1400 City Hall Annex  
25 Fourth Street West  
Saint Paul, MN 55102

Dear Saint Paul City Council Members:

Friends of the Mississippi River (FMR) is a non-profit community-based organization that works to protect, restore and enhance the Mississippi River and its watershed in the Twin Cities region. We have 2,300 active members and 3,000 active volunteers who care deeply about the river's unique public values.

We are writing today to appeal the Saint Paul Planning Commission's decision on April 24, 2015 to grant Johnson Brothers a variance of 33.5 additional feet for their Shepard Davern Mixed Use Development at 1465 Davern Street. Our appeal will address an inconsistency and a procedural error, and then dispute the Saint Paul Planning Commission's findings of fact within their variance test.

#### **INCONSISTENCY**

The Planning Commission Resolution references building heights of both 73 feet 4 inches and 73 feet 6 inches. For the purposes of this letter, we will use 73.5 feet as the height. This inconsistency needs to be addressed.

#### **PROCEDURAL ERROR**

Saint Paul's Mississippi River Corridor Plan, a chapter of the City's Comprehensive Plan, specifies the notification procedure to the Minnesota Department of Natural Resources (MNDNR) in Part 8.5 on page 56: *"The City shall notify DNR of all developments requiring discretionary action or a public hearing at least 30 days prior to taking action on the application. Capital improvements and public facilities programs sited within the Corridor shall be consistent with this plan."*

The City notified the MNDNR of the height variance on 4/1/15. This is 16 days before the public hearing at the Zoning Committee and 23 days before the Planning Commission's decision. The City did not meet their 30-day notification requirement to the MNDNR. Additionally, the MNDNR submitted a comment letter on 4/21/15, within their 30-day notification period, but because it was submitted after the 4/16/15 Zoning Committee

Public Hearing, their comments were not included in the Planning Commission packet and resolution. This is a significant omission from the record for a discretionary action within the Mississippi River Corridor Critical Area, a land-use planning and regulation framework that is under the DNR's authority.

**FINDINGS OF FACT**

*1) To approve any variance, the Planning Commission must find that it meets the following findings:*

*A) The variance is in harmony with the general purposes and intent of the zoning code.*

To be in conformance with the general purposes and intent of zoning code, the height variance must meet the general purposes and intent of both the River Corridor 3 (RC3) District and the Traditional Neighborhood 3 (T3) District. The general purposes and intent of the RC3 District are not met by this variance as explained below.

**Purpose**

General purposes of River Corridor Districts (Saint Paul Zoning Code Sec. 68.101 Item b) states:

*It is the purpose of this chapter:*

*(1) To protect and preserve the Mississippi River Corridor as a unique and valuable resource for the benefit of the health, safety and welfare of the citizens of the city and the state;*

The variance negatively impacts the unique and valuable Mississippi River Corridor by permitting a building that will block significant views from the opposite shoreline, Historic Fort Snelling and several other historic sites and overlooks in the valley.

*(2) To prevent and mitigate irreversible damage to the Mississippi River Corridor;* Allowing a 73.5-foot building not only produces irreversible damage at this site, it also sets a precedent for additional height variances, a threat to the scenic integrity of the entire corridor.

*(3) To protect and preserve the Mississippi River Corridor as an essential element in the federal, state, regional and local recreation, transportation, sewer and water systems;*

*(4) To maintain the river corridor's value and utility for residential, commercial, industrial and public purposes;*

The river corridor's value for residential, commercial and public purposes will be significantly impacted by development that does not fit with the surrounding topography. Objective 7.2 on page 46 of the City's Mississippi River Corridor Plan explains: "Built form and building envelopes are a function of height, density,

*and floor plate size. In the river corridor, building scale becomes very important as it relates to topography, views and the surrounding urban fabric. Recently, the City has become much more attentive to this, and now encourages buildings whose scale responds to the surrounding neighborhood context, topography and the public realm.”* The text goes on to say that exceptions can be made for “landmarks”. We argue that the confluence of the Mississippi River and Minnesota is not a place for a landmark building, but a prime place to maintain the corridor’s aesthetic and historical value.

*(5) To protect and preserve the Saint Paul Mississippi River Corridor's biological and ecological functions;*

*(6) To preserve and enhance the Saint Paul Mississippi River Corridor's aesthetic, cultural, scientific and historic functions;*

The variance will negatively impact the aesthetic, cultural, historic functions, and the character of the Saint Paul Mississippi River Corridor. The proposed development is located within one of the most historically and geographically significant places in Minnesota, the confluence of the Mississippi and Minnesota Rivers. This area was thought to be the center of the universe by the Dakota people and contains many sacred and historically important sites to the tribe. The area also contains Historic Fort Snelling, one of Minnesota’s most significant historic landmarks.

More recently, this area has been considered significant at the state, national and local levels. In 1976, Minnesota decided that this area, along with the entire riverfront throughout the Twin Cities, was something to be treasured and designated it the Mississippi River Corridor Critical Area (MRCCA), a corridor with special protections to help maintain and restore our river. The U.S. Congress reinforced that idea by designating the corridor a National Park—the Mississippi National River and Recreation Area (MNRRA) in 1988. Saint Paul has also invested significant resources into protecting its portion of this world-renowned river. The Great River Passage Plan and the River Corridor chapter of the Comprehensive Plan provide exceptional guidance, created with significant input from community members, to protect, restore and guide riverfront development. It is imperative that these documents are followed as demand for Saint Paul riverfront development increases.

*(7) To guide development of the floodplain so as to minimize loss of life, threats to health, and private and public economic loss caused by flooding; and*

*(8) To guide floodplain development in order to lessen the adverse effects of floods, but not to reduce or eliminate flooding.*

#### **Intent**

The intent of the RC3 District (Saint Paul Zoning Code Sec. 68.231) states:

*It is intended that lands and waters within this district shall be managed to conserve and protect the existing and potential recreational, scenic, natural and historic*

*resources. Open space provided in the open river corridor is for public use and the protection of unique natural and scenic resources. The existing transportation role of the river in this district will be protected.*

The applicant has not proven that the bountiful scenic, natural and historic resources within this portion of the corridor will not be degraded by the height variance for the proposed development.

Additionally, staff notes: "Updated DNR rules for the Mississippi River Corridor Critical Area (MRCCA) are expected to be published by June and adopted by the state by the end of 2015.... The most recent version of the draft DNR rules shared with City staff would allow heights of up to 65' on the project site, with the potential for greater heights...." This information is not relevant at this time and should not be considered in the variance request, as the DNR draft rules have not yet been formally reviewed by an the Administrative Law Judge, a key step in the rulemaking process. What will come of that process is unknown, and therefore the most recent draft version should not influence this variance decision. MNDNR staff also note that in spite of the proposed new language, the variances for both structure height and the site plan are inconsistent with existing MRCCA regulations and they recommended denying the Johnson Bros. request.

*B) The variance is consistent with the comprehensive plan.*

#### **Mississippi River Corridor Plan**

The staff analysis does not include reference to the Mississippi River Corridor Plan, an adopted chapter of the City's Comprehensive Plan and is therefore incomplete.

The Mississippi River Corridor Plan describes on page 48 that "7.2.4 ...The City supports maintaining building heights that maximize public views of the high bluff lines from the high water mark on the opposite side of the river. Planning for Terrace redevelopment sites should be careful to consider views of the Terrace from Fort Snelling...." To be consistent with this chapter of the Comprehensive Plan, the applicant must prove that the many public views in the valley will be maximized and not be diminished. The application does not include any visual impact studies showing the impact of the proposed development from Historic Fort Snelling, Pilot Knob Preservation Site, Pike Island, the Big Rivers Trail, the Mendota Bridge or any other surrounding landmarks or overlooks where the scenic character of the valley is part of the intrinsic values of these places.

#### **Shepard Davern Area Plan**

The Shepard Davern Area Plan is referenced in the staff report.

On January 28, 2015, just three months ago, the City Council approved the Shepard Davern Task Force's recommended new neighborhood zoning for this area. Neighborhood residents and stakeholders, including Johnson Brothers, invested

significant time throughout 2014 to create this new zoning. It is important that this, the first development proposal since these new zoning requirements were put in place, be consistent with the new zoning in the Comprehensive Plan.

The staff report correctly states that the Plan calls for a 3-5 story mixed use building at the site and then suggests that a 6-story, 73.5 foot building is consistent with the Plan. This is illogical and obviously incorrect.

Staff justifies a 6-story building by comparing the proposed structure to other buildings in the area. Buildings located outside of the RC3 District are not required to have a maximum height of 40 feet and should not be considered comparable buildings. Buildings within the RC3 District along Shepard Road do already exist as 6-story buildings but none measure higher than 60 feet tall and are all set back considerably further from Shepard Road than the proposed building. These setbacks greatly reduce their obstruction of public river views.

Even if the existing 6-story buildings were 73.5 feet tall, the City and area residents have invested heavily in plans for creating a vibrant river corridor since those buildings were built. The City must be prepared to defend the shared community vision presented in those plans as development interest and pressure increases in the corridor.

*C) The applicant has established that there are practical difficulties in complying with the provision and 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 [emphasis added].*

The staff report states that, "Due to shallow bedrock, structured parking cannot be buried underground and must be incorporated into the above-ground portions of the building. A taller building is needed to accommodate the residential potential of the site that is being displaced by the above-ground parking garage." The argument around "residential potential" is an economic argument and should not be considered a practical difficulty.

The residential potential of the site is what is allowed under currently adopted plans and ordinances. No residential potential is being displaced; the applicant simply desires more than is currently allowed. Numerous other buildings have been built at heights of 55 feet or lower on the same shallow bedrock. Highland Pointe, located directly behind the proposed development, is an example of a building built on bedrock with parking on the first level instead of underground and a height of 55 feet.

*D) The plight of the landowner is due to circumstances unique to the property, not created by the landowner.*

The landowner did create the plight. Johnson Brothers purchased property on a bluff with full knowledge of the low surface to bedrock issues that exist on the parcel. This is especially true since they are using the same architecture and engineering firm, BKV, as the neighboring Highland Pointe development with similar depth to bedrock conditions. After they participated in rezoning of the property to T3 and the area plan update, they developed plans for a building that is not consistent with the new zoning and plan they helped to create.

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

This finding is met and we do not dispute it.

*F) The variance will not alter the essential character of the surrounding area.*

The staff report does not take into consideration the character of the surrounding area, and only references previous land uses on the site. The report should take into account the proximity to the Mississippi and Minnesota River confluence, the surrounding river valley viewshed, and the historic sites located directly across the river. This building will significantly protrude above the treeline unlike other area developments and impact the surrounding views. The building may also block important views of the secondary bluffline behind the development and the far bluffline across the valley from Fort Snelling (see picture below). A robust view study should be conducted to determine the full extent of the impact the additional structure height would create. Additionally, this building is the first of many planned for the site. Allowing this much additional height will set a dangerous precedent that would likely lead to further degradation of the area's outstanding scenic character.

For the applicant to prove that there will be no adverse impacts on the natural environment, a view study must be conducted from Historic Fort Snelling showing the proposed building, with accurate representation of the height and scale, on the site. The Saint Paul Mississippi River Corridor Plan supports the concept of ensuring views from Fort Snelling to the upper bluff terrace are unobstructed on page 48: *"7.2.4 On the West Seventh Street and Concord Street Terraces, the City supports designing buildings with equal consideration given to their visibility from the river and to their visibility from the Uplands. The City supports maintaining building heights that maximize public views of the high bluff lines from the high water mark on the opposite side of the river. Planning for Terrace redevelopment sites should be careful to consider views of the Terrace from Fort Snelling as referenced in the Design Criteria for the Shepard-Davern zoning overlay [emphasis added]."*



Pictured above is a view of the proposed site and river valley from the Historic Fort Snelling Tower. The 44-foot parking garage is visible underneath the powerline structure. The proposed 73.5 foot building will be nearly double the height of the parking garage and be located riverward or to the right of the parking garage. The building will stand out of the natural landscape considerably and block views of the far bluffline from Historic Fort Snelling.

The staff report states, "Allowing additional height will not substantially alter how the site appears as viewed from the area north of Norfolk Avenue." This statement is not supported with visual evidence. The variance application does not include a visual assessment from the secondary bluff (pictured below just beyond the parking garage and the Highland Pointe Development) or a shadow study for the surrounding area including public parkland.



Pictured is a view of the property (located in front of the 44-foot parking garage and 55-foot Highland Pointe Development) from the Mendota Bridge. The secondary bluffline is visible behind the development.

*2. To approve a variance to permit a building height of 73'4" in the RC3 (Urban Open District District), the Planning Commission must find the variance request meets the following test, spelled out in §68.601:*

*The burden of proof shall rest with the applicant to demonstrate conclusively that such variance will not result in a hazard to life or property and will not adversely affect the safety, use or stability of a public way, slope or drainage channel, or the natural environment; such proof may include soils, geology and hydrology reports which shall be signed by registered professional engineers. Variances shall be consistent with the general purposes of the standards contained in this chapter and state law and the intent of applicable state and national laws and programs.*

The height variance is not consistent with the general purposes of the standards contained in this chapter and state law as explained in Findings of Fact - Part 1.

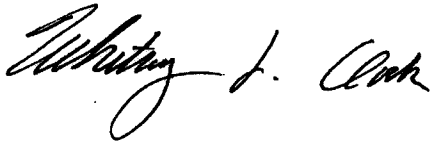
Based upon the foregoing evidence, we believe that in addition to failing to follow notification procedures prescribed in its Comprehensive Plan, the City has also failed to



meet the findings of fact required for the requested variance. The variance should therefore be denied.

Thank you for your consideration of our appeal and your continued stewardship of our national treasure, the Mississippi River, as it passes through Saint Paul.

Sincerely,

A handwritten signature in black ink, reading "Whitney L. Clark". The signature is written in a cursive style with a large, looping initial 'W'.

Whitney L. Clark  
Executive Director