



# 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 4<sup>th</sup> St.  
Saint Paul, MN 55102-1634  
(651) 266-6583

Zoning Office Use Only  
File # 21-237-456  
Fee Paid \$ \$462  
Received By / Date Feb 12, 2021  
Tentative Hearing Date March TBD

## APPELLANT

Name(s) Alatus Development LLC  
Address 80 S 8<sup>th</sup> Street, Suite 4155 City Minneapolis State MN Zip 55402  
Email cbosmundson@alatusllc.com Phone (612) 455-0712

## PROPERTY LOCATION

Project Name Lexington Station Apartments – PC File #20-102-273  
Address / Location 411-417 Lexington Parkway N, Saint Paul, MN 55104

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 February 5<sup>th</sup>, 2021 File Number #20-102-273  
(Zoning Code § 61.701 & § 61.702 require appeals to be filed within ten days after the date of decision.)

GROUND FOR 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.

Please see enclosure.

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  Date February 11<sup>th</sup>, 2021



February 11, 2021

Tamera R. Diehm  
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City of Saint Paul  
Attn: City Clerk  
1400 City Hall Annex  
25 West 4<sup>th</sup> Street  
Saint Paul, MN 55102

**VIA E-MAIL**

**Re: Notice and Statement of Grounds for Appeal of Planning Commission Denial of Site Plan for 411-417 Lexington Parkway North submitted by Alatus Development LLC (City File #20-102-273)**

Dear City Clerk and Councilmembers:

On behalf of Alatus Development LLC (“Alatus”), we submit this appeal in response to the February 5, 2021 decision of the Saint Paul Planning Commission (“Planning Commission”) to deny approval of the site plan (the “Site Plan”) for a proposed 6-story, mixed use project at 411-417 Lexington Parkway North (the “Project”). This appeal is filed pursuant to Saint Paul Code (the “Code”) Section 61.702, which provides that “[t]he city council shall have the power to hear and decide appeals where it is alleged by the appellant that there is an error in any fact, procedure or finding made by the board of zoning appeals or the planning commission.”

As demonstrated in the Site Plan Review Application (the “Application”) and Zoning Committee Staff Report dated January 7, 2021 (the “Staff Report”), the Site Plan satisfies the standards for approval that are set forth in Code Section 61.402(c). Importantly, this Project will result in the redevelopment of long-vacant and underutilized land without the need for a single variance or conditional use permit. The proposed Project supports the City’s core values and long-term goals related to housing and affordability without financial assistance from the City or any other governmental entity. However, notwithstanding these facts, the Planning Commission denied the approval of the Site Plan, relying on arbitrary and unsupported findings. For the reasons stated below, Alatus respectfully requests that the City Council reverse the decision of the Planning Commission and approve the Site Plan for the Project.

**I. The Code sets forth the standards that must be considered during the site plan review process.**

Section 61.402(c) of the Code sets forth the standards that are to be considered by the Planning Commission in evaluating a request for site plan approval. Specifically, the Code states that “[i]n

order to approve the site plan, the planning commission shall consider and find that the site plan is consistent with:

1. The city’s adopted comprehensive plan and development or project plans for sub-areas of the city.
2. Applicable ordinances of the city.
3. Preservation of unique geologic, geographic or historically significant characteristics of the city and environmentally sensitive areas.
4. Protection of adjacent and neighboring properties through reasonable provision for such matters as surface water drainage, sound and sight buffers, preservation of views, light and air, and those aspects of design which may have substantial effects on neighboring land uses.
5. The arrangement of buildings, uses and facilities of the proposed development in order to ensure abutting property and/or its occupants will not be unreasonably affected.
6. Creation of energy-conserving design through landscaping and location, orientation and elevation of structures.
7. Safety and convenience of both vehicular and pedestrian traffic both within the site and in relation to access streets, including traffic circulation features, the locations and design of entrances and exits and parking areas within the site.
8. The satisfactory availability and capacity of storm and sanitary sewers, including solutions to any drainage problems in the area of the development.
9. Sufficient landscaping, fences, walls and parking necessary to meet the above objectives.
10. Site accessibility in accordance with the provisions of the Americans with Disabilities Act (ADA), including parking spaces, passenger loading zones and accessible routes.
11. Provision for erosion and sediment control as specified in the Minnesota Pollution Control Agency’s ‘Manual for Protecting Water Quality in Urban Areas.’”

The Staff Report concluded that the Site Plan meets all eleven (11) of the criteria outlined above. As a result, Staff recommended that the Site Plan be approved. The Zoning Committee agreed and voted to approve the Site Plan with a 5-2 vote. The Planning Commission, by adopting Planning Commission Resolution 21-05 (the “Resolution”), agreed that the Site Plan satisfied standards 3 through 7 above. However, in a split vote of 8-7, a majority of the Planning Commission justified denial of the Site Plan based on findings and conclusions that are simply not supported by the facts or by the record.

**II. Contrary to Finding #1, the Site Plan is consistent with the City’s core values of equity, affordability and sustainability.**

In its written findings, the Planning Commission concluded that denial of the Site Plan is justified because the Site Plan is not consistent with certain “core values” of the City. Specifically, the Resolution states:

- Planning Commission Finding #1: *While the site plan is generally consistent with the applicable policies of the 2040 Saint Paul Comprehensive Plan (2020), the*

*Lexington Station Area Plan (2008), and Union Park Community Plan (2016), on balance the site plan is inconsistent with the 2040 Saint Paul Comprehensive Plan (2020) core values of equity, affordability, and sustainability.*

- **RESPONSE: This finding acknowledges that the Site Plan is consistent with all applicable policies and reaches an unsupported conclusion of inconsistency with the City’s core values. The totality of the record clearly demonstrates that the Site Plan, and the resulting Project, support the City’s core values of equity, affordability and sustainability by creating a dense, affordable and sustainable housing development near transit.**

Importantly, the Code section governing site plan review notes that the site plan must be consistent with the “city’s adopted comprehensive plan and development or project plans for sub-areas of the city.” (Code 61.402(c)(1)). Finding #1, quoted above, acknowledges that the Site Plan is, in fact, consistent with the 2040 Saint Paul Comprehensive Plan (2020) (the “Comprehensive Plan”) as well as with the Lexington Station Area Plan (2008) (the “Lexington Station Area Plan”) and the Union Park Community Plan (2016).

While these three (3) documents are the guiding land use policies by which the Site Plan should be evaluated, the Planning Commission concluded, without evidentiary support, that the Site Plan is somehow inconsistent with certain core values contained in the Comprehensive Plan. This finding is erroneous.

The Comprehensive Plan references several core values. With respect to equity, the City’s core values state:

***Equity and opportunity.** We are a city where opportunities in education, employment, housing, health and safety are equitably distributed and not pre-determined by race, gender identity, sexual orientation or age; we are a city that creates opportunities for all residents to achieve their highest potential.*

The Site Plan and the Project support this core value. First, affordable housing is major component of the Site Plan. As a result of this Project, 288 new residential units will be created in the City. By voluntarily participating in the 4(d) Affordable Housing Incentive Program, 144 new residential units will be affordable at 60% AMI rental rates for 10 years. In addition, the co-living suites (which are private on-suite living quarters with shared kitchen facilities and convertible bedroom and living spaces) will be leased for less than \$1,000 per month. By providing these new residential units at affordable rates, the Project is creating housing opportunities and supporting equity, all in accordance with the City’s core value of equity and opportunity.

With respect to sustainability, the Comprehensive Plan recognizes the following core value:

***Resiliency and sustainability.** We are a city that understands the importance of environmental stewardship of our abundant natural resources.*

The record contains considerable evidence of ways in which the Site Plan and the Project support the City’s aspirational values related to sustainability. The Project includes a rooftop solar array to significantly reduce carbon emissions at the property and lower utility bills for all residents. In addition, the Resolution itself acknowledges that the Site Plan promotes sustainability, noting the energy conserving design in Finding #6 and expressly stating that:

*Higher density development is inherently more energy conserving because it has fewer exterior walls...minimizing heat loss...allowing the building to gain solar heat...[t]he proposed development is...conducive to walking, biking, and using public transit rather than driving.*

Given this, not only is the statement about inconsistency with the City’s core values not supported by the record, it is directly contradicted in the detailed findings contained within the Resolution itself.

Finally, with respect to sustainability, the property at 411-417 Lexington Parkway North has been a vacant, underutilized eyesore for more than a decade. City staff noted that this Site Plan “increases density on valuable urban land and calls for high-quality urban design that supports pedestrian friendliness and a healthy environment, and enhances the public realm.”

Accordingly, the Planning Commission’s first finding is not supported by the record and the City Council should find that not only is the Site Plan consistent with the City’s guiding planning documents, but it is also consistent with the City’s core values of equity, affordability and sustainability.

### **III. Contrary to Finding #2, the Site Plan complies with the applicable design standards.**

In its written findings, the Planning Commission concluded that denial of the Site Plan is justified because the Site Plan does not comply with two provisions of the traditional neighborhood district design standards. Specifically, the Resolution states:

- Planning Commission Finding #2: *The Site Plan does not comply with the following Code Section 66.343 – Traditional neighborhood district design standards:*
  - *66.343(b)(2) - Transitions to lower density neighborhoods. Transitions in density or intensity shall be managed through careful attention to building height, scale, massing and solar exposure.*
  - *66.343(b)(16) - Interconnected street and alley network. The existing street and alley network shall be preserved and extended as part of any new development. If the street network has been interrupted, it shall be restored whenever possible.*

- **RESPONSE: The Site Plan complies with all applicable design standards. In focusing on these two (2) subsections of the Code provision governing design standards for traditional neighborhoods, the Planning Commission ignored the fact that (a) the Code provides for flexibility in compliance with these requirements where unique circumstances make compliance impractical or unreasonable; and (b) the Project complies with the specific design guidelines set forth in the Lexington Station Area Plan, which take precedence over the traditional neighborhood design guidelines.**

Code Section 66.643 states:

“Site plans and other development proposals within traditional neighborhood districts shall be consistent with the applicable design standards **unless the applicant can demonstrate that there are circumstances unique to the property that make compliance impractical or unreasonable. In cases where more specific design standards or guidelines have been developed as part of city council-approved master plans, small area plans, or other city-approved plans for specific sites, those shall take precedence.**” (emphasis added).

Importantly, Finding #2 is incorrect because there are circumstances unique to the property that make transition and restoration of roadways unreasonable. As noted in the Application materials, the site is bordered by a gas station, parking garage, four-lane road and a commercial area. Not only is a “gradual transition” in building height and mass unreasonable, it is simply impractical for this particular location given the surrounding land uses. Similarly, the preservation or restoration of the street network is unnecessary and impractical. Lexington Parkway North is a Ramsey County roadway and therefore, a potential continuation of the previous grid infrastructure is beyond the control of both the developer and the City.

In addition, the Site Plan is consistent with the design guidelines set forth in the Lexington Station Area Plan which takes precedence over the general design guidelines contained in the Code. The Lexington Station Area Plan includes contemplative design standards that are intended to promote flexibility and allow for subjective interpretation. Section 4.0 of the Lexington Station Area Plan promotes the inclusion of public art, the creation of active uses on the first floor and the display of large glass frontages. Importantly, the Plan warns that it should be “interpreted to support flexibility in the application of these guidelines in order to achieve transit-supportive or denser development...” (Lexington Station Area Plan, page 23). The Project is exactly the type of dense, active, transit-supportive development that the Plan seeks to promote. The Site Plan achieves the broad design guidelines that are articulated in the Plan by incorporating large glass, commercial locations on the first floor and the installation of locally commissioned, historically significant art work, estimated at \$150,000.

Despite the clear Code language regarding the precedence of the small area plan, the Finding adopted by the Planning Commission inappropriately focused on specific design standards for

traditional neighborhoods contained in the Code. Based on this error, Finding #2 is unsupported by the record and does not provide justification to deny the Site Plan.

#### **IV. Conclusion**

The Planning Commission's attempt to deny approval of the Site Plan is based on two (2) erroneous findings of fact that are wholly unsupported by the record. As demonstrated in the Application materials, the Staff Report, the testimony at the Zoning Committee, and all other aspects of the public record, the Site Plan satisfies all standards for approval set forth in Code Section 61.402(c). The Project, which proposes to successfully redevelop long-vacant and underutilized land, without variance, conditional use permit or public subsidy, will result in the creation of 288 transit oriented, largely affordable, residential units and supporting commercial space. The Site Plan is consistent with all of the City's guiding planning and land use documents for development in this area and the Project supports the City's core values of equity, affordability and sustainability. For all of these reasons, we respectfully request that the City Council reverse the decision of the Planning Commission and approve the Site Plan for the Project.

Very truly yours,

WINTHROP & WEINSTINE, P.A.



Tammera R. Diehm

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