

Section 60.103

To assist city decision makers in fulfilling this intent and purpose, the Code contain a series of basic technical provisions, ranging from building height and set back requirements, to alley access and storm water discharge considerations. These provisions are expressly declared by the Code to be only a set of "minimum" requirements to guide planning decisions.

"The provisions of the code shall be held to be minimum requirements adopted for the promotion of the public health, morals, safety, comfort, aesthetics, economic viability, convenience or general welfare...

Section 60.108 (emphasis added).

Because technical considerations of the Code are only a minimum, each City official who reviews a site plan is expressly authorized under the Code to set additional conditions and limitations on a proposed structure in order to protect adjacent properties and fulfill the purpose of the Code and Comprehensive Plan. This directive to consider a planning proposal in the context of a broader public interest and established planning policies is articulated not once, but twice in the opening provisions of the Code.

First, immediately following the declaration of minimum requirements, the Code provides:

The city may impose additional requirements where deemed reasonable and necessary to protect the public interest and to ensure compliance with the standards and purposes of this zoning code and the policies of the comprehensive plan.

Section 60.108 (emphasis added).

Second, in a general statement regarding conditions of approval of land use proposals (including site plan review), the Code provides:

The planning commission, planning or zoning administrator, board of zoning appeals, or city council may impose such reasonable conditions and limitations in granting approval of a site plan, permit, variance or other zoning approval, and in making a similar use determination, as are determined to be necessary to fulfill the spirit and purpose of the zoning code, to ensure compliance, and to protect adjacent properties.

Section 61.107 (emphasis added). Contrary to comments by Commissioners at the public hearing of May 18th that they cannot consider policy, the Code unequivocally instructs city officials to give full consideration to the spirit and purpose of the Code and the policies of the Comprehensive Plan and to impose necessary conditions and limitations on site plans in order to protect adjacent properties and the surrounding community. The Planning Commission abdicated this responsibility in approving the site plan for the five-story, 80-occupant student apartment building on the corner of Grand and Finn. The City Council now has an opportunity to remedy this error.

- 2. The proposed structure is inconsistent with planning documents for the site, including the City of St. Paul's Comprehensive Plan, as well as the Conditional Use Permit issued to the University of St. Thomas and the Macalester Groveland Master Plan (both adopted by the City Council as addendums to the Comprehensive Plan).**

In order to approve a site plan, the Code requires the Commission to consider and find that the site plan is consistent with eleven specific factors. Section 61.402(c) ("[T]he planning commission shall consider and find that the site plan is consistent with" the stated factors) (emphasis added). Among those factors, the Commission must assure that the site plan is consistent with the City's "adopted comprehensive plan and development or project plans for sub-areas of the city." Section 61.402(c)(1).¹

¹ The complete list of factors under Section 61.402(c) with which the site plan must be consistent are:

In its resolution approving the site plan, the Commission briefly articulated a series of findings consistent with this Code requirement, but in so doing, the Commission superficially emphasized one goal of the City's Comprehensive Plan – higher density – to the exclusion of all other planning considerations. As such, the Commission's findings appear to be an expedited checklist designed to fulfill the mandatory findings provision of Section 61.402(c) and to justify the proposed project, rather than a comprehensive evaluation of the broader planning context and substantive consideration of the effect this proposal would have on the abutting properties and surrounding community. This is particularly true where the resolution purports to address whether the site plan is consistent with the City's Comprehensive Plan.

In addressing the Comprehensive Plan and attempting to justify construction of an 80-student private dormitory, the resolution focuses almost exclusively on select provisions in the Plan related to increased density. Provisions of the plan speaking to density are excerpted and dropped into the resolution with no context for nor meaningful discussion of the particular use under consideration (a private dormitory) and how this unprecedented five story private dormitory sited in a non-commercial zone fails to conform to multiple other provisions of the City's Comprehensive Plan, including, by incorporation, the University of St. Thomas Conditional Use Permit and the Macalester Groveland Community Plan.

A. The Commission overemphasized generalized goals of “increased density” while failing to address any of the specific conditions necessary to implement this massive density increase in a manner consistent with other goals and requirements of the Plan, particularly height limits established in the University of St. Thomas Conditional Use Permit.

As an example of the Commission's superficial analysis of the project and its overemphasis on undifferentiated density goals, the Planning Commission resolution quotes the Comprehensive Plan: “Greater housing density will be the hallmark of the next 20-30 years. This density should be geographically focused on transit and commercial corridors....” and “Maps in the Plan show this site in an area along Grand Avenue designated as a Residential Corridor and says ‘Policies in this strategy direct new, higher density development to Downtown, the Central Corridor, Neighborhood Centers, Residential and Mixed-Use Corridors.’”

Focusing exclusively on higher density aspirations, the Commission failed to note that the Comprehensive Plan also recommends protection of established neighborhoods, and encourages design standards that provide a transition between single-family houses and nearby taller buildings... [including attention to] height, mass, scale and architectural context.” p. 32, Land Use Plan to the St. Paul Comprehensive Plan (emphasis added). That the Comprehensive Plan articulates a vision of increased density is undisputed. But the Commission's reference to that goal and to various generalized technical density ranges and calculations

-
- (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 assure 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.”

(which, by the way, are miscalculated here) does not begin to comprehensively address what “increased density” can or should mean when applied to a traditional single family neighborhood adjacent to a college campus, particularly with respect to the intended use of the proposed higher density units, to wit, a dormitory. A 3-story multifamily apartment complex attracting families and single professional occupants and a five story 80-resident complex for undergraduate university students both “increase density,” but are nowhere near the same types of land use, and certainly the adjacent homeowners in this neighborhood would not perceive the two uses as the same. In fact, nowhere on the south side of Grand Avenue would there be any precedent for a five-story traditional apartment complex, let alone a five-story building with this specific use and residential density (80 undergraduate student residents in 20 dormitory-like units). The highest multifamily dwellings along this near West section of Grand Avenue are traditional multifamily 1-2 bedroom apartments comprised of three stories and a garden level. Even the Oxford Hill Condominiums located much further down Grand Avenue – and notably in a commercial district -- received greater planning scrutiny, and resulted in approval of only a four-story building (three residential floors and the fourth housing a CVS and Starbucks on the first floor) with multiple design requirements imposed on the upper three stories in order to reduce the impacts of scale and massing and create a better transition into the adjoining residential neighborhood.

Remarkably, the resolution approving the proposed student apartment gives little consideration of how to achieve consistency with other established goals of the Plan should density be increased in this manner in the near UST neighborhood. As described more fully below, the Commission completely fails to address that density has been rigorously analyzed in this exact location in a prior recent planning for the 2004 UST CUP, in which **a residential building height limit of 40 feet** was imposed on the North side of Grand Avenue (directly across from the proposed 53 foot structure) as a way to transition out of campus and into the residential neighborhood. Significantly, the resolution approving the proposed student apartment neither mentions the 2004 CUP or the parallel Zoning Code requirement for careful management of density transitions. As a result, the resolution completely fails to answer the key questions of how this unprecedented five story off campus dormitory could possibly be considered an appropriate transitional building and use when the structure directly and immediately abuts single family homes in an established neighborhood and at heights exceeding the limits already established in 2004 UST CUP. See Section 63.343 (b)(2). (“Transitions in density or intensity shall be managed through careful attention to building height, scale, massing and solar exposure.”) The developer mistakenly argued in public hearings that he had no obligation to adhere to any provisions in the Comprehensive Plan as to building heights directly across the street from his intended dormitory. The Commission should have known better, but instead, it adopted a rote approach to RM-2 zoning requirements that utterly failed to address the broader context for its application. In short, the Commission’s rote references to “increased density” provisions falls far short of the effectively addressing the multitude of other factors that the Commission is required to assess under the Code when reviewing a site plan, particularly a proposal for construction of a five-story private dormitory in this neighborhood. For this reason alone, the site plan approval must be rejected.

B. The Commission erred in failing to issue findings as to the glaring inconsistencies between the site plan and the University of St. Thomas Conditional Use Permit.

Nowhere in its review and erroneous approval of the site plan does the Commission refer to the requirements contained in that portion of the Comprehensive Plan which is the Conditional Use Permit issued to the University of St. Thomas (whose students would occupy this *de facto* dormitory) and the obvious inconsistencies between that set of planning requirements and the lack of similar requirements for this proposed project right across the street. Density considerations, including heights and setbacks, were *the* major topics of concern during the rigorous work undertaken in the early part of the 2000’s to update UST’s Conditional Use Permit. After literally hundreds of hours of planning department study (which included preparation of an EAW), community input, and litigation, an updated conditional use permit was issued in 2004 which established firm 25 foot set backs and 40 foot residential building heights (in order to properly transition from a high density campus use to a single family residential neighborhood). Nowhere in its resolution does the Planning Commission address the fact that this proposed five-story off campus dormitory project, in height, scale, massing and solar exposure is completely inconsistent with the terms of the Conditional Use Permit issued to the University across the street. This inconsistency is more fully addressed in paragraph 5, below.

C. The resolution gives only the most superficial nod to the numerous goals and recommendations of the Macalester Groveland Community Plan, failing completely to cite the Plan's recommendation that mixed development be limited to 2-3 stories.

Finally, only in the most limited way does the resolution reference that portion of the Comprehensive Plan that is the Macalester Groveland Community Plan. The resolution states simply:

The plan says "Maintain the single family character of the district" but also says "Diversify housing to meet the needs of all income levels and lifestyles...." It does not suggest limiting apartment buildings in areas zoned for apartment buildings. It also says "The community believes that surface parking lots are unattractive but that the parking requirements should not be relaxed until viable transit alternatives are in place." The proposed underground parking is consistent with this.

Like the Comprehensive Plan, the Macalester-Groveland Community Plan is a much fuller document with a multitude of goals and directives. Like the broader city-wide plan, higher density is supported, but within the context of a primarily single family residential community, only in selected commercial clusters, and with a key recommendation supporting mixed use development but limited to 2-3 stories.

Specifically, the Macalester-Groveland Community Plan provides in relevant part:

Vision:

The Macalester-Groveland Community Council envisions its area to be a primarily single-family community with higher density vertical mixed use development in selected existing commercial clusters. The community will be pedestrian friendly, with efficient transit services and pleasant streetscapes. It will be a safe and caring community where people can live, work and recreate together. The community will enjoy a clean, quiet and pollution-free environment... The community recognizes the interdependence of successful businesses and healthy neighborhoods.

Recommendations:

Land Use

Retain and improve upon the residential quality of the community.

Housing

Maintain and preserve the district's current housing stock.

Maintain the single family character of the district.

Urban Design

Develop design guidelines for residential and commercial development.

Encourage preservation and restoration of housing stock and commercial properties that are compatible with the character of the neighborhood.

Encourage new and replacement construction which would be compatible with neighborhood structures and setbacks.

Encourage mixed use development of two to three stories.

Macalester-Groveland Community Plan (Addendum to Comprehensive Plan for Saint Paul Recommended by Planning Commission (August 24, 2001), adopted by City Council on October 3, 2001

While acknowledging that the Plan directs the City to maintain the single family character of the area, nowhere in the Commission's resolution is there mention of the key 2-3 story urban design recommendation or the directives to preserve the existing housing stock and encourage preservation of housing stock compatible with the character of the neighborhood. Instead, the Commission isolates a parallel goal of diversified housing stock as if it alone can justify the razing of two single family homes and replacement of those homes with a five-story campus dormitory abutting the single family homes that remain.

Although it made requisite findings under, the Commission failed in every other way to meet its obligations under the Zoning Code. It neither genuinely nor effectively considered whether the proposed structure was consistent with the Comprehensive Plan, as it is required to do, nor did it accept its authority under the Zoning Code to set forth conditions necessary to protect adjacent properties and fulfill the spirit and intent of the Code. These reasons merit rejection of the site plan approval.

D. The site plan does not meet all Zoning Code requirements and the Commission's findings of fact failed on multiple fronts, including consideration of effect on neighboring properties, density, parking, setback, and height requirements.

In addition to requiring site plan consistency with various planning documents, the Code requires the Commission to consider and find that the site plan is consistent with additional specific factors. Section 61.402(c) ("[T]he planning commission shall consider and find that the site plan is consistent with" the stated factors) (emphasis added). Here again, the Commission erred and the resolution fails to correctly address this requirement on multiple fronts.

First, as outlined above, Section 61.402(c)(4) requires the Commission to consider and find the site plan is consistent with "[p]rotection of adjacent and neighboring properties through reasonable provision for such matters as... sound and sight buffers, preservation of views, light and air, and those aspects of design which may have substantial effects on neighboring land uses."

Once again, although findings were made, the Commission completely ignored the effect of the proposed student housing on the duplex to the west. The five-story dormitory would block light and the view from the east far more than the existing house, and make the backyard shaded half of the day. The owner (Exley) submitted a letter to this effect. So did owners to the south – they submitted evidence of the substantial effect a five-story building would have on their privacy and use of their yard. The Commission did not actively consider such testimony and therefore, erred in its finding.

Second, Section 61.402(c)(5) also requires the Commission to consider and find that "[t]he arrangement of buildings, uses and facilities of the proposed development in order to assure abutting property and/or its occupants will not be unreasonably affected." Again, the Commission heard testimony, which caused some members of the Zoning Committee to find property owners were "unreasonably affected." Owners across the alley submitted the picture below, showing the stark, towering nature of the new building as opposed to the current building; neighbors also testified that the use – high density student housing -- would cause substantially increased noise and quality of life issues. The full Commission did little to alleviate these issues, requiring only that some windows on the proposed structure be moved. Thus the Commission as a whole did not adequately assure occupants of abutting property would not be "unreasonably affected."