



APPLICATION FOR APPEAL
 Department of Planning and Economic Development
 Zoning Section
 1400 City Hall Annex
 25 West Fourth Street
 Saint Paul, MN 55102-1634
 (651) 266-6589

Zoning Office Use Only
 File #: _____
 Fee: _____
 Tentative Hearing Date: _____

APPELLANT

Name Friends of A Better Way St. Paul, LLC
 Address 21 St. Albans St. S, #1
 City St. Paul St. MN Zip 55105 Daytime Phone 952-564-6268

PROPERTY LOCATION

Zoning File Name 695 Grand CUP with variances -- PC File # 21-269-061
 Address / Location 695 Grand Avenue, St. Paul, MN 55105

TYPE OF APPEAL: Application is hereby made for an appeal to the:

Planning Commission, under provision of Chapter 61, Section 701, Paragraph c of the Zoning Code, of a decision made by the Planning Administrator or Zoning Administrator

OR

City Council, under provision of Chapter 61, Section 702, Paragraph a of the Zoning Code, of a decision made by the Planning Commission

Date of decision: July 23, 2021 File Number: 21-269-061

GROUNDS 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.

Please see enclosure.

Attach additional sheets if necessary

Appellant's Signature *Daniel Roach* Date 05/02/21 City Agent _____



EHANSEN@BURNSHANSEN.COM
Direct Dial: 952-564-6252

August 2, 2021

City of Saint Paul
Attn: City Clerk
25 West 4th Street,
St. Paul, MN 55102

*Re: Notice and Statement of Grounds for Appeal of Planning Commission
Approval of CUP and Variances for 695 Grand Avenue submitted by Reuter
Walton Development
(City File # 21-269-061)*

City Clerk and Councilmembers:

On behalf of Friends of A Better Way St. Paul, LLC, a group of concerned residents of the area surrounding the proposed 695 Grand Avenue New Mixed-Use Development (the "Project"), we submit this appeal in response to the July 23, 2021 decision of the Saint Paul Planning Commission ("Planning Commission") to approve the CUP and Variances for the Project. This appeal is filed pursuant to Saint Paul Code (the "Code") Section 61.702.

Contrary to the Application for the CUP and variances (the "Application"), the Zoning Committee Staff Report dated July 12, 2021 (the "Staff Report"), and the Planning Commission Resolution and July 23, 2021 decision (the "PC Decision"), the proposed development does not satisfy the requirements for approval under Code Sections 61.601 and 61.501. The practical basis for the applicant's need for variances are solely economic considerations, and the Project would not be consistent or compliant with the Comprehensive Plan. Notwithstanding these facts, the Planning Commission approved the Application while ignoring these considerations, relying instead on arbitrary and unsupported facts. For the reasons stated below, Friends of A Better Way St. Paul, LLC respectfully requests the City Council reverse the decision of the Planning Commission and deny the Application for the Project.

I. CONDITIONAL USE PERMIT

The Project requested a Conditional Use Permit ("CUP") to allow for a 59' 10" building height. Section 61.501 articulates the required standards that must be met for approval of a condition use:

(a) The extent, location and intensity of the use will be in substantial compliance with the Saint Paul Comprehensive Plan and any applicable subarea plans which were approved by the city council.

(b) The use will provide adequate ingress and egress to minimize traffic congestion in the public streets.

(c) The use will not be detrimental to the existing character of the development in the immediate neighborhood or endanger the public health, safety and general welfare.

(d) The use will not impede the normal and orderly development and improvement of the surrounding property for uses permitted in the district.

(e) The use shall, in all other respects, conform to the applicable regulations of the district in which it is located.

The Staff Report and PC Decision found that the Application met all five (5) standards and recommended the CUP be approved. Following a public hearing with significant community opposition, on July 15, 2021, the Zoning Committee recommended approval with a 5-1 vote. On July 23, 2021, the Planning Commission took up the Application. The Planning Commission's resolution approving the CUP adopted nearly identical findings to that of the Staff Report. The Planning Commission voted to approve with a 9-1 roll call vote. However, the Planning Committee's resolution and decision, adopting the Staff Report, is unsupported by the facts.

- i. **The Project is not in substantial compliance with the Saint Paul Comprehensive Plan and applicable subarea plan.**

The PC Decision found the Project complied with the City of St. Paul's Comprehensive Plan ("2040 Comp Plan"), the Summit Hill/District 16 Neighborhood Plan ("Summit Hill Plan"). Specifically, they found the CUP would promote Policies LU-1, LU-29, and H-46 of the 2040 Comp Plan, as well as Policies H7, H9, G3, and G10 of the Summit Hill Plan.

As an initial matter, the policies cited in support of the Project could be promoted by any new mixed use development at 695 Grand Avenue, including projects that would not require a CUP. Simply put, the Project is not unique in its promotion of these policies. Moreover, the findings are factually incorrect and do not address the policies the Project does not comply with.

The following findings are in error:

Finding: The proposed height provides for a higher density mixed-use development that supports existing transit on Grand Avenue and Dale Street, as well as the additional planned transit capacity of the Metro B Line on nearby Selby Avenue.

Response: This portion of Grand Avenue is not identified as a potential “urban village” site. The increased density of the Project is not focused in an area with high existing or planned transit capacity.¹ Grand Avenue is serviced by a single bus route, Route 63.² Route 63 is not part of the High Frequency network. The planned Metro B Line would be more than half a mile away. This finding is in error.

Finding: Regarding LU-29

Response: Within the EG East Grand Avenue Overlay District (“EG Overlay”), building heights are limited to 30’ for commercial buildings, 36’ for mixed use buildings, and 40’ for residential or institutional buildings. The adjoining RM2 district permits taller buildings, but buildings adjacent to the location are consistently 20’ to approximately 45’ shorter. The findings reference a 65’ building that is a block away in support of this transition, but ignores the much shorter heights of adjacent buildings and adjoining districts. Although it is claimed the setbacks and stepbacks will reduce the perception of height and bulk, the Project’s scale is an obvious deviation from the human-scaled development found within the area.

Finding: The additional height allowed by the proposed conditional use permit supports the development of new housing in a mixed-use area to allow more residents to live in the walkable, transit-accessible, urban neighborhood along the Grand Avenue corridor

Response: See Appellant’s Response to the Finding regarding LU-1. Moreover, the finding fails to articulate why the additional height promotes Policy H-46. The vagueness of this finding belies the fact that any mixed-use development would comply with this policy.

Finding: Regarding H7

Response: This finding accepts as a given the proposed increase in density conforms to zoning and building requirements with requested variances and rezoning to T3. There is no finding that the Project would conform without the variances, and it has not been established that the variances should be granted.

¹ Metro Transit has 14 routes defined as “High Frequency”—routes with no more than 15 minutes between trips; five of these service St Paul: Greenline LRT, A Line BRT, Route 54 on W 7th Street, Route 64 along Maryland Avenue, and Route 21 that connects Selby Avenue to Lake Street in Minneapolis.

² Route 63 generally has a frequency of 20 minutes or more most days. During rush hour, the frequency is approximately 10-20 minutes. Stated another way, 77% of the time Route 63 has a frequency of 20 minutes or more.

Moreover, the findings only address the adverse impact on traffic in the area. The policy explicit states the City should consider the adverse impact on existing municipal services “including, but not limited to, traffic and parking.” Not only is the lack of an adverse impact based upon the entirely self-serving trip generation analysis provided by the developer, but there is no consideration of the impact on municipal services such as water, sewer, fire and law enforcement services, and other municipal and social services.

Further, the Project’s Trip Generation Study optimistically expects that approximately 25% of residents will exit during peak morning hours. This contradicts U.S. Census data³, which would estimate that of individuals who could afford to live at the Project, less than 10% would not require a car or truck to commute to work.⁴ Moreover, no consideration is given to parking and traffic impacts due to residents’ visitors. The reliance on the Trip Generation Study as a basis for meeting this standard is in error.

Finding: Regarding H9

Response: The finding accepts without any analysis that the Project respects the historic nature and character of the neighborhood. In support of this, the finding references the use of stone, masonry, decorative metal, and design that breaks up the scale and mass of the building, and stepback to reduce perceived height. The lack of critical analysis renders this finding meaningless. Almost any residential building would promote this policy. Moreover, it ignores the renderings of the Project that clearly show it does not align with the historic character of the neighborhood, which consists of shorter and less dense structures.

Finding: Regarding G3

Response: This finding is in error because it ignores T2 design standards limit mixed-use developments to 35’ and does not address the lack of transition to surrounding residential neighborhoods. Section 66.343(b)(2) requires density and intensity to be managed through “careful attention to building height, scale, massing and solar exposure.” Again, the height, scale, and massing effect of the Project is clear from its proposed design and renderings. It is internally inconsistent that the Project both

³ U.S. Census Bureau (2019). MEANS OF TRANSPORTATION TO WORK BY SELECTED CHARACTERISTICS. Retrieved from <https://data.census.gov/cedsci/table?q=Commuting&g=1400000US27123035800,27123042900&tid=ACSST5Y2019.S0802&hidePreview=false>;

U.S. Census Bureau (2019). COMMUTING CHARACTERISTICS BY SEX. Retrieved from <https://data.census.gov/cedsci/table?q=Commuting&g=1400000US27123035800,27123042900&tid=ACSST5Y2019.S0801&hidePreview=true>.

⁴ The Project falls along the line of census tract 358 and 429. Assuming the average individual living at the Project would earn \$50,000 or more per year to afford monthly rent, residents would be part of the 47.2% or 47.8% of individuals within the area earning \$50,000 or more per year. According to available census data, only 19.9% or 18% of individuals living in the area did not use a vehicle to commute to work. Therefore, more than 90% would require a vehicle to commute to work.

exceeds the standards set forth under T2, which reinforce human-scale building characteristics, and yet promotes those policies. This finding is in error.

Finding: Regarding G10

Response: The finding acknowledges the limitations in height and scale limitations for the EG Overlay are in place. Yet, because the Summit Hill Plan may undergo changes, somehow this policy is promoted by the Project. The Planning Commission is required to make its determination based upon the facts and the relevant comprehensive plans. The Project does not comply with the current Summit Hill Plan. A finding reliant on possible changes in the future is in error. The PC Decision must be reversed and the CUP should be denied.

The Planning Commission's Decision also ignores the numerous ways the Project is not in substantial compliance with the comprehensive plans.

Housing Goal 3. This goal of the 2040 Comp Plan is to “[p]rovide fair and equitable access to housing for all city residents.” Additional above market-rate luxury apartments will worsen preexisting housing inequalities in St. Paul and further stratify existing housing. This Goal is unaddressed by the PC Decision.

H-16. The 2040 Comp plan aims to “increase housing choice across the city to support economically diverse neighborhoods by pursuing policies and practices that maximize housing and locational choices for residents of all income levels.” The Project fails to promote this policy and provide the type of housing the area desperately needs.

Rental rates in the Summit Hill neighborhood average approximately \$920.00 per month.⁵ Monthly rental rates for the Project will range from \$1,400.00 for an alcove to \$2,750 for a two-bedroom apartment. Parking will be an additional \$175.00 per month. Additional market-rate rental properties do not address the real need and demand for affordable housing. Moreover, the scale of this project increases the rents: a 5-story building has higher per-square-foot costs than a code-compliant 3-story building would. A 5-story project development can cost as much a 200% more to build per square foot and the increased costs will be passed to the development's residential and business tenants.⁶

Continued construction of large developments of above market-rate rentals jeopardize lower-density apartment buildings that exist along Grand Avenue and elsewhere in the neighborhood; buildings which support and enhance the historical character and charm of the neighborhood, and qualify as naturally-occurring

⁵ Gabriela Norton & Carolyn Szczepanski, MARKET WATCH: Saint Paul, Minnesota Housing Project, July 2018, *available at* <https://www.mhponline.org/publications/rental-market-watch/issue-2-saint-paul>.

⁶ Andres Torrubia, et al. FIXR: Jan 20, 2021, *available at* <https://www.fixr.com/costs/build-apartment#apartment-construction-costs-per-unit>.

affordable housing. The Project risks placing upward pressure on rent within the area and displacing less economically secure residents.⁷ More affordable housing near new construction are likely to have rents higher compared to similar housing.⁸ Even worse, allowing luxury housing to exceed design standards and building regulations will create enormous incentives toward the demolition of existing smaller multifamily housing, like the quintessential brick two-story apartment that provides much the affordable housing on and around Grand Avenue. The result is an economically exclusionary area that diminishes the diversity and vibrancy of the community. It is an error for the PC Decision to fail to analyze the Project's effect on housing affordability when reaching its decision.

H-45. This policy supports the preservation and maintenance of historic housing stock as an affordable housing option. Granting the Project's requests will create a race to demolish existing naturally-occurring affordable housing. Developers will seek variances to construct massive and dense luxury housing. Historic housing stock will be diminished and many community members will be priced out. The PC Decision does not address the long-term implications of the Project on housing affordability. Its decision should be reversed because the Project is not in substantial compliance with this policy.

HP-16. This policy directs that a balance must be struck between preserving the historic neighborhood and new development by considering the impact of the Project on the character-defining features of the area and the area context. Grand Avenue and the surrounding area is a vibrant and dynamic community with a rich architectural history. Indeed, the location of the Project is within State and Federal Historic Districts. The imposition of a significantly taller and massive structure does not provide a transition to building designs in the adjoining areas and is out of context with the character-defining features of the area. The PC Decision's conclusory references to the effects of setbacks and stepbacks reducing the effect of massing and providing a transition to the adjacent area are in error. When considering this policy, the PC decision must be reversed and the CUP denied.

H12. The Summit Hill Plan promotes the retention of rental housing options and affordability. The Project will decrease the affordability of housing in the area and lead to the loss of naturally-occurring affordable housing.

⁷ Atticus Jaramillo & Chip Halbach, *Sold Out*, Minnesota Housing Project, October 2016, available at https://www.mhponline.org/images/Sold_Out_final_revised_small.pdf.

⁸ Anthony Damiano & Chris Frenier, *Build Baby Build?: Housing Submarkets and the Effects of New Construction on Existing Rents* (Center for Urban and Regional Affairs, Working Paper 2020) available at <https://www.cura.umn.edu/research/research/build-baby-build-housing-submarkets-and-effects-new-construction-existing-rents>.

- ii. The use will be detrimental to the existing character of the development in the immediate neighborhood or endanger the public health, safety and general welfare.

Finding: The proposed project will not be detrimental to the existing character of the development in the immediate neighborhood or endanger the health, safety, or general welfare. The proposed height of 59' 10" is compatible with the surrounding context given there is a six-story approximately 65-foot (as measured in Google Earth) condominium building located one block to the west, and many neighboring buildings range from 39' to 50' (as measured in Google Earth).

Response: This finding is in error because it inadequately addresses why the Project would not be detrimental to the existing character of the development in the immediate area. Again, it refers to the height of a single structure that is a block away. The existing character of the development in the area is defined by its shorter, less dense, and naturally affordable structures. Structures in the immediate neighborhood – not a block away – are 20' to approximately 45' shorter. The height combined with the bulk and massing effect will be detrimental to the architectural continuity of the area.

The increase in height permitted under a CUP will also endanger the public health, safety, and general welfare of the community. Additional height beyond what is allowed under the EG Overlay would cast maximum shadows on surrounding residential properties. The Project's own shadow study establishes surrounding properties will be covered by the Project's significant shadow from September through March. Moreover, neighbors will have less privacy due to the residents and guests of the new mixed-use development living high above them. Pedestrians and bikers will be endangered by increased traffic and parked cars caused by the intensification of use for the location. Existing sewer, water, parking, road, and public service infrastructure will also be strained. The area will experience an overall reduction in the health, safety, and welfare of its residents. The PC Decision assumes, without any basis in fact, the CUP would not endanger the health, safety, and general welfare of the community. However, it is unavoidable such a significant increase in density and intensity of use, would have a negative impact without additional mitigation. Due to this error, the PC decision must be reversed.

- iii. The use will impeded the normal and orderly development and improvement of the surrounding property for uses permitted in the district.

Finding: The proposed mixed-use building and proposed height are consistent with and complementary to existing development in the areas, which is fully developed. The proposed height will not prevent future development and improvement of the surrounding property that is consistent with the Comprehensive Plan and existing zoning.

Response: As discussed above, the proposed height is a significant deviation from the height. This finding ignores that the location is still subject to the EG Overlay. Based upon the EG overlay, which limits the size of mixed-use development, that normal and orderly development included limitations on the size and height of buildings. The construction of a large building will impede the development because it will be an outlier in a historic area of smaller residential and commercial properties. Permitting the Project to be built as designed would be an immediate disruption to the continuity of the area. It would lead to a race to rezone the area and construct equally large residential and mixed-use developments thereby destroying the orderly development of Grand Avenue as an area of smaller buildings built within the context of its historic character.

- iv. The use does not, in all other respects, conform to the applicable regulations of the district in which it is located.

Finding: This standard can be met subject to the requested variances and rezoning to T3 Traditional Neighborhood District.

Response: This finding is in error because it ignores that the Project's use does not conform to applicable regulations currently in place. The Project's significant noncompliance with the EG Overlay can only be resolved by the approval of variances, which should have been denied and will be discussed in greater detail below.

The Planning Commission's Resolution contains numerous errors and its conclusory findings are an incorrect basis for granting the Project's requested CUP. Because the CUP requested does not meet the standards of Section 61.501 it should be denied.

II. VARIANCE

The Project requested several major variances: (1) a variance of 8 feet for front setback from Grand Avenue, (2) a variance of 5,500 SF of building footprint, (2) a variance of 49,000 SF total building size above grade, and a 23'-10" variance for building height. These are extremely large variance requests. Further, it is our reading of the St. Paul zoning code that additional variances⁹ should have been required for the Application, but have not been addressed.

Section 61.601 lists the standards for a variance to be granted:

⁹ The City previously received a letter identifying additional variance(s) that should be applied, including off-street loading requirements (63.400), as well as from the dimensional standards stipulating height and setback requirements for Table 66.331(e) along the alley and St Albans. Further, the proposal does not meet required Traditional Neighborhood design standards (66.343); these must be met "unless the applicant can demonstrate that there are circumstances unique to the property that make compliance impractical or unreasonable." (66.343). The most egregious departures from these required standards are from Design Standards 2 and 3, which require "careful attention to building height, scale, massing and solar exposure" as well as, on corner lots such as this, matching the establish building line. The U-shaped design with design with a northern "bottom" of the U located just 8 feet from the property line is particularly noteworthy as it does not evince "careful attention" to solar exposure.

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

(b)The variance is consistent with the comprehensive plan.

(c)The applicant has established that there are practical difficulties in complying with the provision, 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.

(d)The plight of the landowner is due to circumstances unique to the property not created by the landowner.

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

(f)The variance will not alter the essential character of the surrounding area.

The Project's massing, land coverage, and height would dominate the location and surrounding neighborhood. Indeed, the Project's aberrant design relative to the area is reflected by its noncompliance with the express standards and regulations of the EG Overlay. The variances requested are not consistent with the comprehensive plans and are only requested due to economic considerations. Because the Project does not meet the criteria to be granted the variances, the PC Decision is in error. Appellant respectfully requests the City Council reverse the PC Decision and deny the request for variances.

- i. The variance request is not in harmony with the general purposes and intent of the zoning code.

Finding: The proposed variances from the EG East Grand Avenue Overlay District regulations for building height, footprint, and overall size are in harmony with the general intent and purposes of the zoning code, including the following: to protect and promote the public health, safety and general welfare; to provide for the orderly and economic development of land; to implement the policies of the comprehensive plan; to ensure adequate light, air, privacy, and convenience of access to property; to provide housing choice and housing affordability; and to encourage a compatible mix of land uses, at densities that support transit, that reflect the scale, character and urban design of Saint Paul's existing traditional neighborhoods.

Response: The EG Overlay was established "to provide design standards and building height, size, and footprint limits, and to reduce the shortage of parking in the east Grand Avenue area." Sec. 67.601. Concerns related to significant deviations from the

historic character of East Grand Avenue are precisely why the EG Overlay was created. The EG Overlay was implemented following developers' exploitation of zoning loopholes and disregard for East Grand Avenue's existing character. Therefore, within the EG Overlay, building regulations limit the maximum building footprints to 25,000 square feet and a total above ground building size of 75,000 square feet. Building heights are limited to a maximum of three stories and 36 feet for commercial-residential mixed-use buildings.¹⁰ Further, "T2" Traditional Neighborhood Design standards are required.

The Project proposes a structure which includes a main floor footprint of 30,210 square feet and is 59' 10" tall. The proposed project is a combined 153,854 square feet, with 123,353 square feet above grade. The footprint of the Project covers approximately 85% of the existing lot with impervious surfaces. The Project would reign over the surrounding area and would not comply with "T2" Traditional Neighborhood Design standards. The preexisting structures adjacent to the Project are 20' to approximately 45' shorter. The Project has a building size 1.64 times larger and 1.66 times taller than what is allowed within the EG Overlay. In essence, the Project proposes a full project and 2/3rds at a single location.

The Project is surrounded by residential properties, which are shorter, less dense, and consistent with the uniquely historic character of the area. Mixed-use development could be constructed in the area under the existing building and design regulations, which would match the context and character of the area. However, the Project as currently designed is incongruous with the area. The Project's height, mass, and density is orders of magnitude larger than surrounding apartment and condominium buildings and would be a deviation from the general purposes and intent of the zoning code. The abrupt transition from shorter residential properties, built according to human-scale designs, to the massive Property cannot avoid disrupting the area's overall pattern of architectural harmony and continuity.

Moreover, the variance request for additional height, mass, and footprint to facilitate an increase in density will negatively impact the parking shortage in the area. Individuals who can afford to live in the Project's luxury apartments will likely have personal vehicles used for, among other things, commuting to work. This fact is supported by the available census data. Residents, their guests, and patrons of the Project's commercial tenants will be forced to compete for a finite and ever decreasing amount of parking. An increase in the number of personal vehicles will exacerbate preexisting traffic and parking congestion and strain road and public service infrastructure. Bikers along the existing bikeways will be forced to navigate around additional traffic and parked cars. Pedestrians on St. Albans will be endangered by

¹⁰ Under the EG Overlay, the Project must also "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." Sec. 66.343(a). Significantly, "[t]ransitions in density or intensity shall be managed through careful attention to building height, scale, massing and solar exposure." Sec. 66.343(b)(2).

the blind exit located just three feet from a heavily used residential sidewalk. The Project is not in harmony with the general intent and purpose of the EG Overlay, and any finding to that effect is in error.

Although the Planning Commission's Resolution references the Summit Hill Association's letter in support of the Project, the location is still subject to the general purposes and intent of the EG East Grand Overlay District. It notes the purpose of the limitation on building height is to retain human scale. Appellant is unsure how a structure that exceeds the building height limitation by 23' 10" and the building size limitation by 49,000 SF is considered human scale under the EG Overlay and still in harmony with the zoning code. Accordingly, the PC Decision is in error and must be reversed.

ii. The variances are not consistent with the comprehensive plan.

The Planning Commission Resolution touts the Project's consistency with the 2040 Comp Plan. However, nearly any new mixed-use development could promote those same policies without variances to increase its height, building footprint, or building area. Nothing precludes the Project from using the property for a mixed-use development without additional variances.

Appellant will not readdress the comprehensive plan policies discussed above, and would note the deficiencies of the findings regarding the CUP's noncompliance with LU-1, LU-29, H-46, G3, G10, and H7 equally apply to the findings regarding the variances' inconsistency with the relevant comprehensive plans. The PC Decision is also in error due to its failure to address the Project's inconsistency with Housing Goal 3, and policies H-16, H-45, HP-16, H9 and H12. In addition to the foregoing, the following findings of the PC Decision are in error:

Finding: The proposed variance provide for a building that retains existing local businesses and facilitates business creation with the development [of] new commercial spaces.

Finding: The proposed variances support local business owner efforts to maintain and expand their business and facilitate local business creation with the development of new commercial spaces for small businesses.

Response: Although the Project was developed to retain two (2) existing businesses at this time, the luxury nature of the development risks displacing these businesses and other local businesses over time. Commercial gentrification is unaddressed and the Project will place upward pressure on rent. More experienced commercial

retailers, who can afford the ever increasing rent, will displace these businesses and irrevocably alter the character of the neighborhood.¹¹

Finding: The proposed project includes sufficient parking to meet zoning code requirements, and the applicant submitted a trip generation analysis that concludes that the addition of the proposed 695 Grand Avenue development is not anticipated to noticeably impact traffic operations in the area.

Response: As discussed previously, the Planning Commission Findings simply accept the trip generation analysis and do not adequately address the likely impact on parking and traffic in the area. The trip generation analysis differs significantly from what would be expected based upon available census data. The Planning Commission's Decision regarding the effect on traffic and parking is in error and must be reversed.

- iii. The applicant has not established that there are practical difficulties in complying with the provision, that the property owner proposes to use the property in a reasonable manner not permitted by the provision.

The Planning Commission Resolution finds there are practical difficulties in complying with the EG Overlay are due to its restrictive height and density limits. This is insufficient to find a practical difficulty. Any variance request is not a result of the unique topography of the area or the Project's location relative to other constraining features. Rather, the developer made a choice¹² – a choice driven solely by economic considerations – to build a massive structure within the EG Overlay with minimal setbacks and an outdoor patio area.

The true purpose of the Project's variance requests is to improve the economic feasibility of the development. It cannot reasonably be disputed the feasibility of the Project is directly tied to building as many luxury apartments as possible. The Project previously acknowledged as much during the July 1 zoning committee meeting. Nothing prevents the Project from building mixed-use development without the need for extensive variances. Such a development would be a reasonable use of the property. The only conclusion to be drawn is that the variances are requested solely to maximize returns on investment. Economic considerations do not constitute practical difficulties. The Project cannot establish there are practical difficulties other than their own economic considerations and the PC Decision ignores this. Variances

¹¹ See Sharon Zukin et al., *New Retail Capital and Neighborhood Change: Boutiques and Gentrification in New York City*, 8 CITY & COMMUNITY 47, 47 (2009).

¹² The Developer has also made many other choices to ensure that the Project is luxury-priced rental housing, and these discretionary choices have increased the per-square foot costs. For example: ceiling heights in excess of 9 feet for the housing and in excess of 15 feet for the retail; amenities like club rooms and work out spaces; structured parking for retail spaces instead of surface parking in the rear.

for the practical purpose of maximizing the number of luxury apartments does not satisfy this criteria.

Assuming, *Arguendo*, the Project maximized the allowed building footprints to 25,000 square feet and a total above ground building size of 75,000 square feet the FAR for the Project would be approximately 2.08. This would be permitted under the current zoning regulations. If the roof and floors 4 and 5 of the Project were removed to reduce the building height to 36' allowed under the EG Overlay, according to the 695 Application, 42 residential units would remain. This would equate to approximately 50 units/acre, which is within the base range for residential land use density in the 2040 Comp Plan. There is nothing inherent to the location that creates a practical difficulty with complying with the EG Overlay.

Further, the potential reduction in neighborhood benefits and compliance with the comprehensive plans are hypothetical. Retail space and street-level *could* be reduced, or the quality of façade materials *could* be reduced. However, these are decisions the developer would make, and an examination of these claims would reveal that these choices would be economic in nature to reduce the expense of construction.

The lack of mixed-use development in the area since the EG Overlay was adopted is not evidence of practical difficulties. This is merely a reflection of developers' unwillingness to construct projects complying with current regulations, and whose profit margin and return on investment would be insufficient in their eyes. Inconvenience to the developer is not a practical difficulty as contemplated by Section 61.601. The Planning Commission's reliance on this was in error. The PC decision should be reversed and the variances requested should be denied.

- iv. The plight of the landowner is not due to circumstances unique to the property not created by the landowner.

The plight – the need for variances for the Project as currently designed – is not due to circumstances unique to the property. As discussed previously, the Project could be designed to comply with design and building regulations required by the EG Overlay. The EG Overlay was established based upon stakeholders carefully considering the needs of the community. Any plight of the landowner is self-imposed and not a basis to grant the variances requested. The PC Decision finding the plight was due to the unique circumstances of the Property was in error and must be reversed.

- v. The variance will alter the essential character of the surrounding area.

Finding: The variances for the proposed 59'10" height, 30,500 sq. ft. footprint, and 124,000 sq. ft. building size will not alter the essential character of the surrounding area.

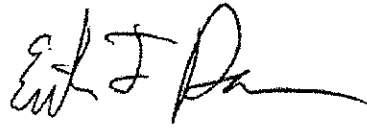
Response: The essence of the surrounding area is a vibrant community of historic, mixed income housing and local businesses. 695 Grand Avenue is also located in the State Designated Historic Hill District. The block is also surrounded by the Local Heritage Preservation District of the same name. The Planning Commission, however, failed to address the interplay between the historic neighborhood designation and the proposed design of the Project. However, instead of incorporating itself into the community, the Project proposes a hulking structure that would impose itself on the community and change its essential character. At 20' to 45' taller than any building in the adjacent area, the Project would loom over the neighborhood and its mass would jut out of the surrounding area. Its design would be an aberration from the historic nature of the community. The variances, which would result in significantly increased density and intensity of use, would negatively impact the livability of the neighborhood. Rental prices would increase. Parking and traffic congestion would worsen. Public infrastructure and services would be overburdened. The fabric of the community would begin to fray under the mass of the Project. Undoubtedly, the Project would be noteworthy for its alteration to the area. Not only for its height, bulk, and footprint, but also how it portends the destruction of the surrounding area's essential character. Accordingly, the Project's variance requests should be denied. The PC Decision arbitrarily finding the essential character of the area would not be altered was a plain error. We respectfully request the PC Decision be reversed and the variances requested be denied.

III. CONCLUSION

The Planning Commission's approval of the CUP and variances is based on numerous conclusory, incorrect, and inadequate findings. The variances and Condition Use Permit requested should have been denied because the requests do not satisfy the required criteria and are driven by the Project's economic considerations. The Project has obscured its primary focus on economic considerations behind the laudable policies of the area's comprehensive plans and the purportedly restrictive requirements of the EG Overlay. The EG Overlay was established to maintain the neighborhood's uniquely historic character and vibrant community. A three-story mixed-use development could be developed at this location and could conform to existing design and building regulations. Moreover, a smaller structure would provide more housing in a neglected segment of the housing market while providing a smooth transition to the surrounding residential neighborhood. The Planning Commission's Decision regarding the Project's requests for variances and a CUP disregard these facts. Moreover, the PC Decision contains numerous errors of fact undermining its basis for granting the requests. Because the Planning Commission's Decision is in error, and the Project has failed to establish a basis for variances or a Conditional Use Permit, we respectfully request the City Council reverse the Planning Commission's decision and deny the Condition Use Permit and variances.

St. Paul Zoning Committee
Page 15
August 2, 2021

Sincerely,

A handwritten signature in black ink, appearing to read "Erik F. Hansen". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Erik F. Hansen
Attorney at Law

EFH/DRR/md

cc: Client