

November 28, 2022 (Second letter from Rick Johnson with full list of concerns regarding the proposed Treehouse senior housing development)

Dear Zoning Committee Secretary, Ms. Dadlez, and Ms. Skarda:

I am writing this letter to express my opposition to the proposed Treehouse senior housing development currently planned by Trellis developers at 0 Madison Street (ZF# 22-104-395, ZF# 22-116-859, and ZF# 22-104-315, North of 2319 W. 7th St.). I wanted to make sure the Zoning Committee and the St. Paul Planning Commission have heard my entire list of concerns regarding the development of this property. My concerns are as follows:

1. **Severe change in zoning status:** The property being developed is currently zoned as R1 one-family residential. The developers are asking for a rezoning of the property to RM2 medium density multiple-family residential status. I believe this is too severe a change to the status of a property especially in light of the proposed scale of the development and its proximity to neighbors who have previously assumed that nothing of this scale could even possibly be built on this site.
2. **Severe sloping of the site:** The structure will be built on a currently undeveloped, extremely sloped portion of the bluff which will need to be excavated to create a buildable lot (see Photos 1-4). I am a practicing Structural Engineer, and I can confirm that this will be a difficult and costly effort to build into such a steep slope. There will be large amounts of soil from the existing bluff that will need to be removed from the site. Removal of the soil from the site will be extremely difficult with the limited access to the site for construction operations (see Photos 2-4). Temporary shoring of the bluff during construction will require a very elaborate/expensive bracing system, and the foundations that will have to permanently resist the backfill associated with building 2 stories into the hill will also be special/expensive.

In fact, the Minnesota DNR website explicitly details why not to build on or near steep slopes: Development, vegetation removal, and land disturbances on or near steep slopes commonly leads to slope erosion and failure... Property owners and communities should understand these risks to minimize impacts from existing and future development.

Strategies for reducing the risk of slope erosion and failure include:

- Avoid land disturbances and placing structures on or near steep slopes
- Establish and maintain vegetation to stabilize slopes
- Use erosion-control measures to minimize erosion during land disturbances
- Avoid placement of stormwater facilities, outfalls, or septic drainfields on slopes or near top of slopes –overland flow should be directed away from slopes when possible

The proposed Treehouse development directly contradicts the DNR's advice. In addition, as I understand it, there is a current St. Paul ordinance that prohibits building on such a slope.

3. **Development is in direct conflict with objectives and strategies spelled out in the latest "Shepard Davern Area Plan" I can find online:** Again, this development is proposing a change to the current zoning of the property from single-family residential to classification where they want to build a 56' tall structure. This is in conflict with "The Shepard Davern Area Plan" Housing Objective and Strategy H3.1 which directs the use of "zoning to protect the single-family character of these areas" (see Photo 5). In addition, the proposed development will be placing senior housing in one of the locations flagged as a "key intersection(s) for safety improvements in the "Shepard Davern Area Plan" (see Photo 6).
4. **Extreme scale of the proposed development:** The proposed 5-story structure is obviously a significant change in scale as it relates to any of the existing buildings in the neighborhood. If you travel up/down this corridor one encounters housing that is never more than 3 stories above the adjacent grade. I cannot emphasize this point enough as this development is such a dramatic shift from the current/intended scale of the area.
5. **Expense of construction:** My previous points have brought up many ways in which development of this site will be expensive. I want to emphasize this point as I feel like an investor in this development due to the fact that it will be receiving low-income housing tax credits and \$490,000 from Ramsey County (mentioned in myvillager.com article dated 10-11-22). If I were a more direct investor, I would recommend strongly that this development occur on a more accessible and flatter site- preferably one that does not take away from our natural landscaped environments.
6. **Senior housing on such a severely sloped site:** I have understood that this development will have a limited number of parking spaces for the tenants. I have serious concerns regarding the development of housing for seniors if they will have to walk down an extreme slope to get to public transportation or any local shopping opportunities (see Photos 2 and 4). Also, a building for seniors would require regular access for commercial and medical vehicles that is currently inadequate. What are the plans for addressing this?
7. **Drainage concerns:** I can report as a neighbor above the bluff from this proposed development that there are areas along the bluff that have water constantly running down the hill. I have not seen any engineering reports how the development will be dealing with the significant runoff from the bluff. Note that when I attended an HDC meeting on 5-17-22 that had a presentation by the developer another attendee at that meeting told an anecdote of helping pump large amounts of water from the basement of the Highland Chateau when the attendee was an employee there.

I strongly urge all of you who have the opportunity to debate/argue/vote on the significant zoning and variance requests for this property to make a visit to the site and try to better understand the extreme changes that are being proposed to this undeveloped, single-family lot. The level of changes being proposed feels so unfair that it has driven me to speak out in this manner for the first time in my life after spending 49 of my 55 years living in Highland Park.

Sincerely,
Rick Johnson
2112 Lower Saint Dennis Road
St. Paul, MN 55116



Photo 1- existing Highland Chateau (proposed development behind)



Photo 2- west drive of Highland Chateau towards proposed development



Photo 3- north side of Highland Chateau (proposed development site)



Photo 4- east drive of Highland Chateau towards proposed development

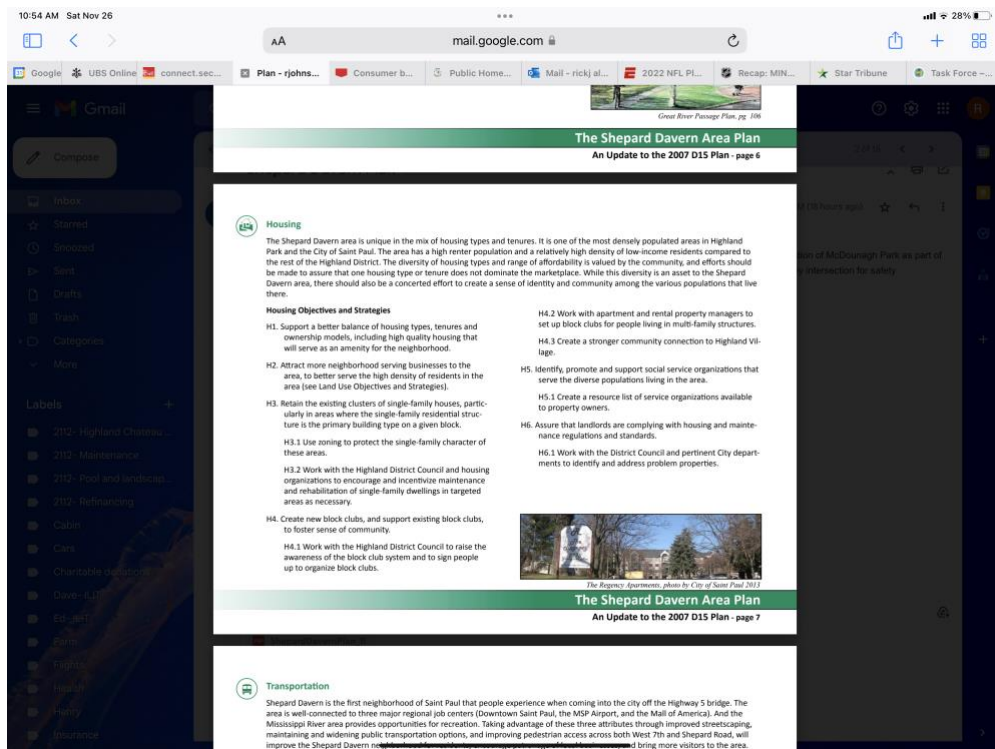


Photo 5- page 7 of “The Shepard Davern Area Plan”

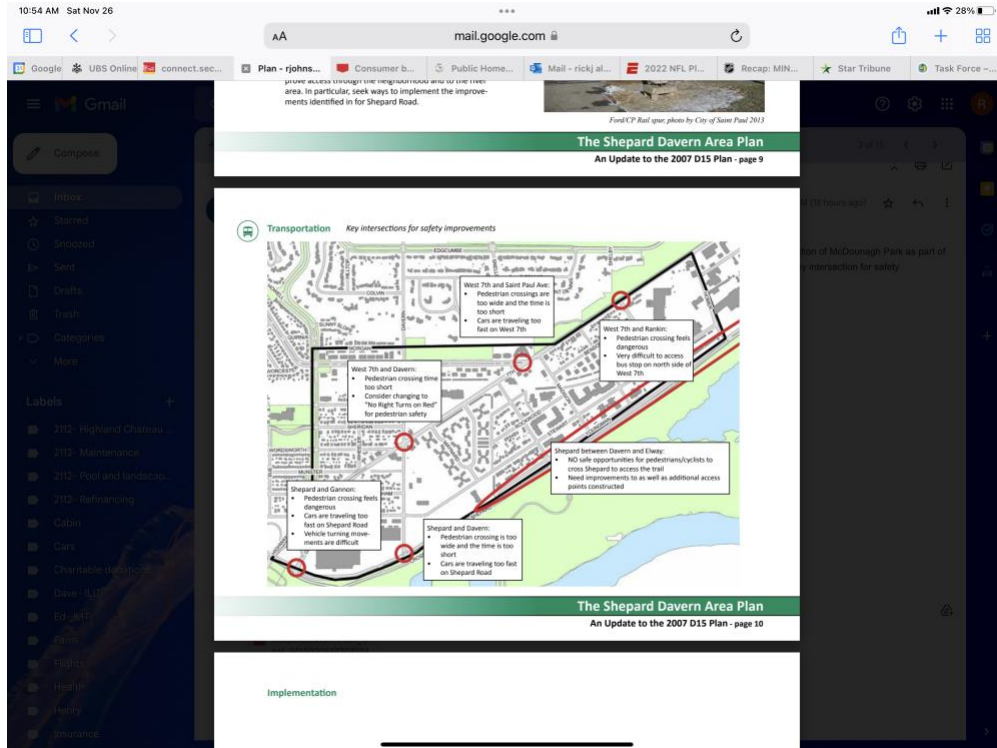


Photo 6- page 10 of “The Shepard Davern Area Plan”

**Chad and Jolene Cutshall
2108 Lower Saint Dennis Road
Saint Paul, MN 55116
651.274.1824
651.368.2305**

November 30, 2022

Planning Commission
City of Saint Paul
15 Kellogg Blvd., West
St. Paul, MN 55102

Dear Members of the Planning Commission, Zoning Committee Secretary, Ms. Dadlez, and Ms. Skarda:

We are writing this letter to express our opposition to the proposed Treehouse senior housing development currently planned by Trellis developers at 0 Madison Street (ZF# 22-104-395, ZF# 22-116-859, and ZF# 22-104-315, North of 2319 W. 7th St.). We are residents of the neighborhood along the ridge directly above the proposed construction site with property adjacent to the proposed development. We are expressing both our opposition and our frustrations, with the intention of making this part of the public record and persuading the City of Saint Paul to deny the rezoning of the property and to deny all variances requested by Trellis.

1. **Conflict with City Plan.** The proposed Trellis development is directly in conflict with the city's adopted comprehensive plan and specifically the Shepard Davern Area Plan as set forth in 2015. This alone is sufficient to deny the requests of Trellis.

Contrary to the contention of Trellis, the proposed site plan does not preserve the "unique geologic, geographic or historically significant characteristics of the city and environmentally sensitive areas" as required by the Zoning Code. The Highland Bluff is an iconic natural feature of the City of Saint Paul and preservation of its natural beauty is part of the comprehensive plan for the area. The importance of the Highland Bluff was specifically referenced in the 2015 Shepard Davern Area Plan updated by the Saint Paul City Council in 2015. Specifically, the Shepard Davern Area Plan states that "[t]he concerns for the future are: that new development will be incompatible with the rest of the Shepard Davern area and Highland Park in scale or use, and that development will overshadow the natural environment along the Mississippi River." In fact, the specific bluff in question was mentioned in the Shepard Davern Plan where the Plan recognized this bluff and its natural beauty as a component of an envisioned "Gateway to Saint Paul" when entering the City from Highway 5. Specifically, the Plan sought to "[i]mprove and maintain the appearance of City-owned land on the hill adjacent to West 7th Street north of Saint Paul Avenue (including McDonough Park), in particular to enhance the area and create a Gateway to Saint Paul." Trellis' proposition is to dig away a large portion of this specific area of Highland Bluff, remove more than 50 trees, install a 15-foot tall retaining wall that spans the entire length of the property, and

erect a skyscraper building in a residentially zoned area adjacent to this parkland. It is this commercial activity that is the exact type of development that the City Council sought to prevent in the Shepard Davern Area Plan. This development is in clear opposition to the City Plan as set forth in the Shepard Davern Area Plan. This is not the Gateway to Saint Paul that the City Council planned.

2. **Environmental Destruction.** The environmental impact of destroying a significant portion of Highland Bluff is substantial and inexcusable. The City's policy is to encourage environmental responsibility. The destruction of a natural bluff that can never be replaced is the opposite of environmental responsibility. Trellis proposes an absurd amount of grading, along with an enormous man-made retaining wall, and trenching to shore up the property. None of these uses is compatible with the conditions for variance. And none of this will prevent the erosion that is inevitable on the Highland Bluff. In addition to the visual importance of the Highland Bluff as identified in the Shepard Davern Area Plan, the bluff is home to abundant wildlife, hundreds of trees, and is the site for significant watershed. Trellis requests this committee to recommend a variance to allow destruction of the Highland Bluff. Trellis has not presented engineering, hydrology, erosion, forestry, or other studies regarding the environmental impact of this development. All of the proposed plan, from the grading, to the trenches, to the retaining wall, is man's effort to conform the environment to his man-made reckless adventure. Environmental destruction for the benefit of a few is a thing of the past. It is the City's duty to preserve the environment for all of the citizens of City. Otherwise, there is nothing stopping businesses from building a city into the bluffs all the way down West 7th Street, Shepard and the Mississippi River. Destruction of a natural bluff is contrary to the City's policy and the City Plan commitment to preserve the environment. We call upon the City leadership to hold true to its commitment, do the environmentally correct thing and protect the Highland Bluff as well as all of the bluffs along the Shepard Davern corridor.

3. **Contrary to Established Law.** The proposed development is inconsistent with the City's comprehensive plan; does not satisfy the criteria for site plan approval established by the City's zoning ordinance; and does not satisfy multiple statutory requirements necessary for granting of a zoning variance. Not only does the proposed development not qualify as a matter of law, Trellis cannot demonstrate the necessary standard for granting a variance or a zoning change.

- a. It is zoned for residential use. A skyscraper is not in harmony with the general purposes and intent of the zoning code, which limits the height and density for the building on the property.
- b. The property owner is not proposing a reasonable use of the property. The destruction of the bluff is in no way a reasonable use of the bluff, which is protected by statute and case law from being destroyed as contemplated by Trellis.
- c. Trellis purchased this property knowing that it is not zoned for what they want to use it for. Any zoning change or variance required is due to the plight the landowner created. They knew when they bought the property that an enormous amount of work would need to be done to even lay a foundation. They are creating this problem by their proposed change in the use of the property. This is the landowner's own problem.

- d. The need for the zoning change and variances is purely for the profit of Trellis. If they were limited to the height limitations for property zoned for residential use, the number of units that Trellis could build would deem the project unprofitable. This is the reality of the situation, even if Trellis wants to spin a different story. Bluntly stated, economic considerations are NOT justifications for granting the zoning change and variance.
- e. The variance will absolutely alter the essential character of the surrounding area. A skyscraper in the middle of a bluff surrounded by three-story buildings.

4. **Incompatible Use for Elderly Housing.** Not only is the proposed development in direct opposition to the goals of the Shepard Davern Plan and a destruction of the natural environment, but the contention that this location is appropriate for the type of housing proposed is also false. Trellis has incorrectly represented that this is a quality location for senior housing. This is simply not true. Imagine elderly individuals with mobility issues navigating the high traffic speeds on West 7th Street, lack of a connection to the Mississippi River and a lack of a pedestrian-friendly street environment.

Even with the destruction of the natural bluff, the property is the location of significant run-off during the spring/summer resulting in flooding and during the winter resulting in chronically icy conditions at the base of the bluff. The Highland Chateau actually receives significant runoff issues throughout the year. During the winter/spring this results in a significant amount of flooding and ice production throughout the property.

This concern is exacerbated by the lack of on-site parking and the distance of the property from the road where city transit can be accessed. Elderly residents will be required to traverse this long and icy walkway on a daily basis to reach any outside services or transportation. The property does not have street access for efficient resident, visitor, and/or emergency services. Parking for the structure and nature of the building is grossly insufficient. The proposed structure includes only seven parking spaces for 36 dwelling units. Although additional parking may not be required by ordinance, the proposed structure does not directly abut an actual road with roadside parking. Residents, visitors, and emergency services unsuccessful in their battle for access to the limited on-site parking will be required to park on street. On street parking in the area is already limited by the proximity of the structure to the dangerous intersection already mentioned, by the existing driveways at Highland Chateau, and the presence of existing multifamily residential structures (which are limited to three stories) located adjacent to Highland Chateau. Visitors and residents parking in the street would have to walk through the entire Highland Chateau complex to reach the development. Is this an appropriate senior living situation?

Further, the intersection adjacent to the proposed development is a dangerous intersection as identified by the 2015 Shepard Davern Plan. The Plan specifically notes that one of the most worrisome issues in the Shepard Davern Area is “high traffic speeds on West 7th Street, lack of a connection to the Mississippi River and a lack of a pedestrian-friendly street environment.” The Plan specifically identifies the intersection in front of the proposed development as a “Key Intersection for Safety Improvement” with 4 lanes of road to cross and insufficient pedestrian crossing time and frequent right turns on red. Elderly individuals with mobility issues will not be able to easily access resources along West 7th Street. It simply is not a pedestrian corridor.

Finally, the entire North side of the development will receive no significant sunlight. Residences on the North side of the development will face directly into the 15' tall retaining wall constructed after removing a portion of Highland Bluff. These units will have essentially no outside view and will receive no sunlight throughout the entire year. Is this the best that the City can do for its senior living? Especially when balanced against the environmental cost to the project. With the bluff on the back of the building, what light will this building receive? It is called "TreeTop." But they propose cutting down trees and leaving our trees on our bluff as the trees to which the residents will enjoy. Is this the City of Saint Paul's long term development plan?

5. **Inappropriate Use of Tax Dollars.** It is our understanding that Trellis is receiving supporting tax resources for this building. It is also our understanding that to build on this site, a tremendous amount of resources will be required simply to build retaining walls and mutilate the landscape. And this is going to be done with tax dollars. This is, quite simply, an absolute outrage. For the cost of the building site, the funds could be used on a more appropriate site to build significantly more or better housing for the individuals seeking its care.

Trellis is proposing to build a skyscraper into the natural environment and does not legally qualify for rezoning the property or the requested variance. To have commercial development built into the bluff along West 7th Street and Shepard Road? How about the Mississippi River? At the end of the day, Highland is a community of residents. There are many locations to build housing in compliance with the current zoning regulations, even along West 7th Street. We are not opposed to the development of the housing. It is simply inappropriate to destroy what is a natural part of the landscape with a skyscraper that has no business on that lot.

6. **Lack of Community Involvement.** It is our understanding that Trellis has made representations that they have worked with the neighbors and neighborhood in developing this project. Let us be clear - this is not true. We received one flyer related to an appearance at the Highland Council. We appeared at that meeting to express our opposition to what was presented, which was nothing more than a discussion of preliminary plans. At that meeting, concern was raised about water and run off concerns, including a person knowledgeable about the annual flooding of the Highland Chateau as a result of that run off. Without any further discussion regarding the environmental impact or any other considerations of neighbors who will need to live with this skyscraper in their residential back yard, this was presented for approval by the Highland Council. Trellis has boasted that the Highland Council approved this project with no opposition. In fact, had we known that this was going to be before the Highland Council, we would have presented adamant opposition, as we are now.

7. **Residential Property Reliance.** Before purchasing our property at 2108 Lower Saint Dennis Road, we researched the surrounding properties. The value attributable to our property is the bluff in our backyard and the City's resistance to allowing skyscrapers to be built along the Shepard Road/West 7th Street corridor. We reviewed the property and purchased our property knowing that McDonough Park was the dominate green space at the bottom of the hill. It is our understanding that that land has deed restrictions prohibiting commercial development. We were aware of the Shepard Davern Area Plan. The property purchased by Trellis for less than \$7,000 was zoned for residential property use, which would limit the height of the building. Our

assumption, which is entirely reasonable, was that no property would be built on that land at a height higher than the Highland Chateau. The proposed Trellis skyscraper will tower over all other multi-family housing in the area. Highland Chateau has height limitations. The Jewish Community Center has height restrictions. All of the apartment buildings down St. Paul Avenue have height restrictions. There is absolutely no reason to allow an exception for this property. Trellis is seeking the zoning change to maximize profits by building more units on a site that is inappropriate and will fundamentally change the residential nature of the neighboring homes.

Trellis is seeking a zoning change and variance from the laws in place to protect our natural resources. If established law is ignored and the request granted, Trellis will destroy the bluff and the natural environment. Destruction of the space is directly inapposite to the objectives of the City of Saint Paul to be environmentally responsible. As a developer, Trellis' objective is to maximize profit. It is the City of Saint Paul's responsibility to protect the City's natural environment and the citizens of the city. We are long-time residents of this City, and we have a vested interest in the responsible development of the West 7th and Shepard Road corridor.

Respectfully submitted,

Chad and Jolene Cutshall
2108 Lower Saint Dennis Road
Saint Paul, MN 55116

MALKERSON GUNN MARTIN LLP

5353 GAMBLE DRIVE, SUITE 225
MINNEAPOLIS, MINNESOTA 55416
TELEPHONE 612-344-1111
FACSIMILE 612-344-1414

Patrick B. Steinhoff
Attorney at Law

Direct: 612.455.6601
pbs@mgmlp.com

November 29, 2022

Planning Commission
City of Saint Paul
15 Kellogg Blvd. West
St. Paul, MN 55102

RE: Variance, Site Plan and Rezoning Applications of Trellis Treehouse Acquisition, LLC
Unaddressed Property North of 2319 West 7th Street
City Planning File Nos. 22-104-395; 22-116-859; and 22-104-315
Our File No. 3737.001

Dear Members of the Planning Commission:

I represent Chad Cutshall, Jolene Cutshall, Rick Johnson and Mary Johnson, the owners of homes on Lower St. Dennis Road. I write this letter in connection with the application for a zoning variance; for site plan review approval; and for rezoning submitted by Trellis Treehouse Acquisition, LLC (“Trellis”) relating to certain property without an assigned street address located to the north of 2319 West 7th Street (the “Property”). Trellis proposes to develop a five-story apartment building on a steeply sloped, heavily wooded parcel which does not even have existing public street frontage. To do so, Trellis requests that the Property be rezoned from R1 to R2. Trellis also requests a variance from 63.111(b) of the City’s zoning ordinance, which prohibits extensive grading on steep slopes. My clients’ homes are located at the top of the steep slope on which Trellis proposes to construct its five-story building following extensive grading.

The development proposed by Trellis is inconsistent with the City’s comprehensive plan; does not satisfy the criteria for site plan approval established by the City’s zoning ordinance; and does not satisfy multiple statutory requirements necessary for the granting of a zoning variance. I therefore respectfully request that the Planning Commission vote to deny the Trellis variance application; deny the Trellis site plan approval application; and recommend denial of the Trellis rezoning application.

I. THE PLANNING COMMISSION SHOULD DENY TRELLIS’ REZONING VARIANCE APPLICATION.

The Trellis proposal requires extensive grading of steep slopes and construction of excessively tall retaining walls. These activities are strictly prohibited by the City’s zoning ordinance. Accordingly, Trellis seeks a variance from Section 63.111(b) of the City’s zoning ordinance. This provision reads in relevant part as follows:

In reviewing residential development on slopes of greater than twelve (12) percent, the zoning administrator shall... consider the following requirements and standards:

...Buildings should be designed to fit into the hillside without significant regrading to protect the stability of the slope and preserve existing trees while preventing excessively tall retaining walls and unattractive trough-shaped yards between buildings and retaining walls.

City Code § 63.111(b). The City lacks authority to approve the variance sought by Trellis, for two reasons. First, the requested variance is an unlawful “use variance” of the sort that is clearly prohibited under Minnesota law. Second, the Trellis variance application fails to satisfy at least three of the requirements necessary for the granting of a zoning ordinance under Minnesota’s municipal zoning enabling statute and the City’s own zoning ordinance. I address both reasons separately below.

a. Trellis Seeks an Unlawful “Use” Variance.

Trellis seeks a variance to conduct activities (extensive grading of steep slopes and construction of excessively tall retaining walls) that are strictly prohibited by the City’s zoning ordinance. The City may not lawfully grant variances of this type, which are known as “use” variances. To the contrary, the City may only grant so-called “area” variances, or variances that relate to dimensional or distance requirements (*e.g.*, building height requirements, setback requirements, lot coverage requirements, and the like). The Minnesota Supreme Court has described the distinction between “use” and “area” variances as follows:

There are two types of variances: use variances and area variances. A use variance ‘permits a use or development of land other than that prescribed by zoning regulations.’ ... An area variance controls ‘lot restrictions such as area, height, setback, density, and parking requirements.

In re Stadsvold, 754 N.W.2d 323, 329 (Minn. 2008), quoting *In re Appeal of Kenney*, 374 N.W.2d 271, 274 (Minn. 1985). Minnesota law allows “area” variances but prohibits “use” variances. *Id.* This prohibition on “use” variances is expressly memorialized in both the Minnesota municipal zoning enabling statute and the City’s own zoning ordinance. See Minn. Stat. § 462.362, subd. 6(2) (2022) (a municipality “may not permit as a variance any use that is not allowed under the zoning ordinance for property in the zone where the affected person's land is located”); and City Code § 61.601(e) (a variance may “not permit any use that is not allowed in the zoning district where the affected land is located”).

The provision of the zoning ordinance at issue, Section 63.111(b), is not a dimensional or area requirement of the sort zoning variances are intended to address. Rather, it is a categorical prohibition of particular uses or activities: Extensive grading of steep slopes and construction of excessively high retaining walls. If the Planning Commission believes that these activities should be allowed, it can advise the City Council to amend the City’s zoning ordinance to remove the prohibitions established by Section 63.111(b) for all properties within residential zoning districts. However, it cannot and should not grant a variance that allows a single applicant to engage in an activity (*i.e.*, extensive grading of steep slopes) that is prohibited of everyone else.

b. **Trellis Fails to Satisfy the Requirements for Variance Approval Established by Statute and Ordinance.**

In addition to seeking an unlawful “use” variance, Trellis also fails to satisfy the statutory and ordinance requirements necessary for variance approval. Minnesota’s municipal zoning statute authorizes a municipality to provide for variances from strict application of the municipality’s zoning ordinance upon satisfaction of certain criteria. See Minn. Stat. § 462.357, subd. 6(2) (2022). Pursuant to this authority, the City’s zoning ordinance allows the City to grant variances if an application satisfies criteria that mirror the criteria established by the statute. See City Code § 61.601.

The Trellis variance application fails to satisfy at least three of the criteria necessary for variance approval established by statute and ordinance. I address each of these criteria below as follows:

1. *The requested variance is not consistent with the comprehensive plan.* An applicant must show a requested variance to be consistent with the City’s comprehensive plan. See City Code § 61.601(b). Here, the City’s comprehensive plan repeatedly promotes a “healthy” and “sustainable” environment, though “environmentally ... efficient, resilient land use development”. See Policy LU-7, 8, Comprehensive Plan, pp. 38-40. It requires the City to “preserve, protect and, where possible, restore natural resources and habitat throughout the city.” See Policy LU-21, Comprehensive Plan, p. 40. It also states that the City is to prioritize measures to achieve a long-term increase in tree canopy coverage and, indeed, devotes almost an entire page to extolling the virtues and benefits of the “Urban Forest.” See Policy LU-19, Comprehensive Plan, pp. 38, 40. Needless to say, allowing an applicant like Trellis to destroy a heavily wooded steep slope through the improper granting of a zoning ordinance would not be consistent with these policy goals.¹ For this reason, Trellis fails to satisfy the requirement that its requested variance be consistent with the City’s comprehensive plan.
2. *The plight of the landowner is due to circumstances unique to the property not created by the landowner.* An applicant for a variance must show there to be practical difficulties in complying with the zoning ordinance due to “circumstances unique to the property.” See City Code § 61.601(c), (d). There is nothing unique about the Property here. It is steeply sloped, but it is no different than any other property with similarly steep slopes protected by Section 63.111(b) of the ordinance. The “circumstance” at issue here is therefore the requirements of the City’s zoning ordinance prohibiting grading of steep slopes, not the property itself. However, the zoning ordinance itself cannot be a “circumstance unique to the property” sufficient to justify the granting of a zoning variance, as the Minnesota Court of Appeals recently recognized in a case that is strikingly similar to the present one. See *Tulien v. City of Minneapolis*, No. A20-0542, 2021 WL 79526, at *4 (Minn. Ct. App. Jan. 11, 2021) (holding that the fact that “the current zoning code ... makes it difficult to create a contemporary apartment building on this site” is not a “circumstance unique to the property”), *review denied* (Mar. 30, 2021). If the City wants to allow extensive grading on

¹ It is true that, in addition to encouraging protection of natural resources, the Comprehensive Plan also promotes the development of affordable housing. However, these goals need not be in tension. The City can and should encourage Trellis and other developers to pursue affordable housing developments on one or more of the many other available sites throughout the City which do *not* require destruction of a heavily wooded steep slope.

steep slopes, the proper way to accomplish this is through amendment of its zoning ordinance to eliminate Section 63.111(b).² It is not to allow a single developer to bypass the requirements of Section 63.111(b) that apply to everyone else through the granting of an improper zoning variance.

3. *The variance, if granted, would not alter the essential character of the locality.* An applicant must show that a requested variance does not “alter the essential character of the surrounding area.” See City Code § 61.601(f). The defining topographical feature of this area of the City is the heavily wooded steep slope that overlooks segments of West 7th Street, St. Paul Avenue and other City streets. This wooded steep slope obviously can never be replaced. Allowance of the Trellis development through the granting of an improper zoning variance would therefore alter the essential character of the area surrounding the Property. The Planning Commission should not allow that.

As the variance requested by Trellis fails to establish at least three of the necessary requirements for variance approval established by Section 61.601 of the City’s zoning ordinance and by Section 462.357, subd. 6(2) of the Minnesota Statutes, the Planning Commission should deny the Trellis variance application.

II. THE PLANNING COMMISSION SHOULD DENY TRELLIS’ APPLICATION FOR SITE PLAN APPROVAL.

In order to approve a site plan, the Planning Commission must find, among other things, that the proposed site plan is consistent with 1) the City’s comprehensive plan; 2) “[p]reservation of unique geologic ... characteristics of the city and environmentally sensitive areas;” and 3) “[p]rotection of adjacent and neighboring properties.” City Code § 61.402(c)(1), (3)-(4). It is impossible for the Planning Commission to make those findings here. First, the Trellis proposal is not consistent with the City’s comprehensive plan for the reasons set forth above. Second, the Trellis proposal is manifestly inconsistent with the protection of environmentally sensitive areas, as it proposes extensive grading on a heavily wooded steep slope (something that would only be possible through the granting of an improper variance). Finally, the Trellis proposal does not adequately protect adjacent property owners, particularly those like my clients who reside at the top of the steep slope proposed to be removed to accommodate Trellis’ five-story apartment building. For these reasons, I respectfully ask that you vote to deny Trellis’ site plan approval application.

III. THE PLANNING COMMISSION SHOULD RECOMMEND DENIAL OF TRELLIS’ REZONING APPLICATION.

A rezoning decision by a municipality that is inconsistent with the municipality’s comprehensive plan lacks a rational basis as a matter of law and is therefore unlawful. See *Mendota Golf, LLP v. City of Mendota Heights*, 708 N.W.2d 162, 174 (Minn. 2006). Here, approval of the Trellis application to rezone the Property would be inconsistent with the City’s comprehensive plan which, as set forth above, requires sustainable development that preserves and protects the City’s natural resources and habitats. The

²To be clear: My clients would be opposed to elimination of 63.111(b) or any other ordinance amendment that endangers steep slopes. The point of the above statement is that use and activity restrictions in a zoning ordinance can only be modified through ordinance amendment. They cannot be waived for individual applicants through abuse of the variance process.

rezoning proposed by Trellis will result in destruction of a heavily wooded steep slope and is therefore inconsistent with the City's comprehensive plan. See Policy LU-7, 8, 19, and 21, Comprehensive Plan, pp. 38-40. For these reasons, I respectfully ask that you recommend denial of Trellis' rezoning application.

IV. CONCLUSION.

There are many other sites in Saint Paul on which Trellis could build a five-story apartment building. On the other hand, steep wooded slopes are in short supply and can never be replaced. Destroying steep wooded slopes to make way for an apartment building that can easily be constructed elsewhere is a spectacularly bad and shortsighted idea. Moreover, it is flatly unlawfully, as it would require the City to ignore multiple provisions of its comprehensive plan and zoning ordinance relating to the protection of sensitive habitats and steep slopes. For this reason and the others set forth above, I respectfully ask that the Planning Commission deny the Trellis variance application; deny the Trellis site plan approval application; and recommend denial of the Trellis rezoning application.

Representatives of the Cutshall and Johnson families will be in attendance at the public hearing on these applications and will be happy to answer any questions you may have about their objections to the Trellis proposal. I thank you in advance for your thoughtful consideration of this letter.

Very Truly Yours,

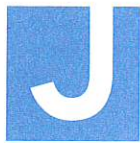
MALKERSON GUNN MARTIN LLP

/s/Patrick B. Steinhoff

Patrick B. Steinhoff

PBS/ksk

c: Clients



Minnesota JCC

To Whom it May Concern:

We are aware that Trellis is planning a 36 unit, deeply affordable senior housing project directly behind the Highland Chateau at the intersection of St. Paul Avenue and West 7th Street.

As a neighbor just down the street from the Chateau, the Minnesota JCC has no opposition to the rezoning that would be necessary for this project. Further, the Minnesota JCC is a supporter of all projects in the West 7th neighborhood that improve or beautify our community. We believe that all people deserve to live in a safe and secure home. We are supportive of projects that provide support for older adults living on the margins of society who do not have the means to provide all the care they need. This project seems to be providing a desperately need resource without creating a material impact on the natural environment.

Please feel free to reach out to me at michaelw@minnesotajcc.org if you have any additional questions.

Sincerely,

Michael Waldman
Chief Executive Officer
Minnesota JCC

**Chad and Jolene Cutshall
2108 Lower Saint Dennis Road
Saint Paul, MN 55116
651.274.1824
651.368.2305**

December 1, 2022

Planning Commission
City of Saint Paul
15 Kellogg Blvd., West
St. Paul, MN 55102

Dear Members of the Planning Commission, Zoning Committee Secretary, Ms. Dadlez, and Ms. Skarda:

This letter is a follow up to our letter of November 30, 2022 related to our opposition to the proposed Treehouse senior housing development currently planned by Trellis developers at 0 Madison Street (ZF# 22-104-395, ZF# 22-116-859, and ZF# 22-104-315, North of 2319 W. 7th St.).

As residents of the property immediately above the proposed development site, we just received the attached letter dated November 21, 2022 from the Capitol Region Watershed District (CRWD). The CRWD is a local unit of government that manages the water resources of the relevant area of Saint Paul. In their letter, the CRWD indicates that a previously identified groundwater seep or spring is located on or near our property and they would like to access our property to confirm the location of the seep or spring and record observations. The CRWD has published a 2021-2030 Water Management Plan ("Plan"), which can be located at https://www.capitolregionwd.org/wp-content/uploads/2022/07/Updated_CRWD_WatershedManagementPlan_MainBody.pdf.

On page 50 of this Plan, a copy of which is attached, a map is provided of the known location of seeps or springs in the watershed district. A yellow dot indicating the presence of a known spring or seep is indicated on the property immediately North of the existing Highland Chateau in the exact location of the proposed development. Highland Chateau is clearly identifiable in the map as a white structure partially occluded by the yellow dot indicating the location of this spring. On page 84 of this document the CRWD states:

In 2008, as part of the development of the 2010 Plan, the spring lines and springs in the District were identified. Dozens of springs can be found along the most coherent spring-line, looping Saint Paul like a "necklace" and roughly following the Mississippi River. With increasing rainfall volumes and frequencies due to climate change, some springs are flowing year-round, year after year. Partners, with technical support of the District, will investigate groundwater springs and seeps along this "necklace" and other known areas.

This is further evidence of the extreme importance of preserving the natural state of this area of the Highland Bluff, not only for the abundant wildlife and forestry, but also because of the location of a known spring or seep responsible for stormwater and groundwater runoff that feeds the Minnesota Mississippi River Confluence at the precise location of the proposed development.

The CRWD Water Management Plan notes: “High imperviousness and land disturbance (e.g., construction) result in increased amounts of nutrients, chloride, sediment, and other pollutants carried in District stormwater runoff (i.e., loading). Increased stormwater runoff rates and volumes resulting from impervious area also contribute to erosion, threaten existing infrastructure and increase flood risk.” The presence of this spring at the exact location of the proposed development should be sufficient on its own to demonstrate the environmental importance of this specific area and prohibit rezoning of the area to allow significant destruction of the Highland Bluff at this location.

The impact of the proposed development on both the flow of natural water drainage in this area of Saint Paul and the impact on already existing properties below the bluff could be catastrophic. At the very least, widespread hydrologic and environmental studies should be performed before the City even entertains a zoning change that would allow excavation of the site of this spring or seep and the installation of a greater than 100 foot long, presumably impervious, 14-foot-tall retaining wall and a nearly 60-foot tall skyscraper in this location.

Respectfully submitted,

Chad and Jolene Cutshall
2108 Lower Saint Dennis Road
Saint Paul, MN 55116

Cc: Richard Johnson (via email)
Dan Walsh, Vice President Housing Development, Trellis (via email
dwalsh@trellismn.org)



Capitol Region Watershed District

595 Aldine Street • Saint Paul, MN 55104

T: 651-644-8888 • F: 651-644-8894 • capitolregionwd.org

November 21, 2022

Jolene M Cutshall
2108 Lower Saint Dennis Road
Saint Paul, MN 55116-2831

Re: Seeps and Springs Inventory – Permission for Property Access

Dear Jolene M Cutshall:

Capitol Region Watershed District (CRWD) is a special purpose local unit of government that manages water resources within portions of Lauderdale, Falcon Heights, Maplewood, Roseville and Saint Paul, Minnesota. Currently CRWD is updating an inventory of groundwater seeps and springs throughout the watershed. You are receiving this letter because we have identified a potential seep or spring on or near your property. CRWD is notifying you that we need to access your property one or two days during the months of December, January or February to confirm the location and record observations. You do not need to be present for this visit. No work is being planned to remediate or address property related issues caused by seeps or springs. The purpose of this property access notification is to document seeps and springs location information.

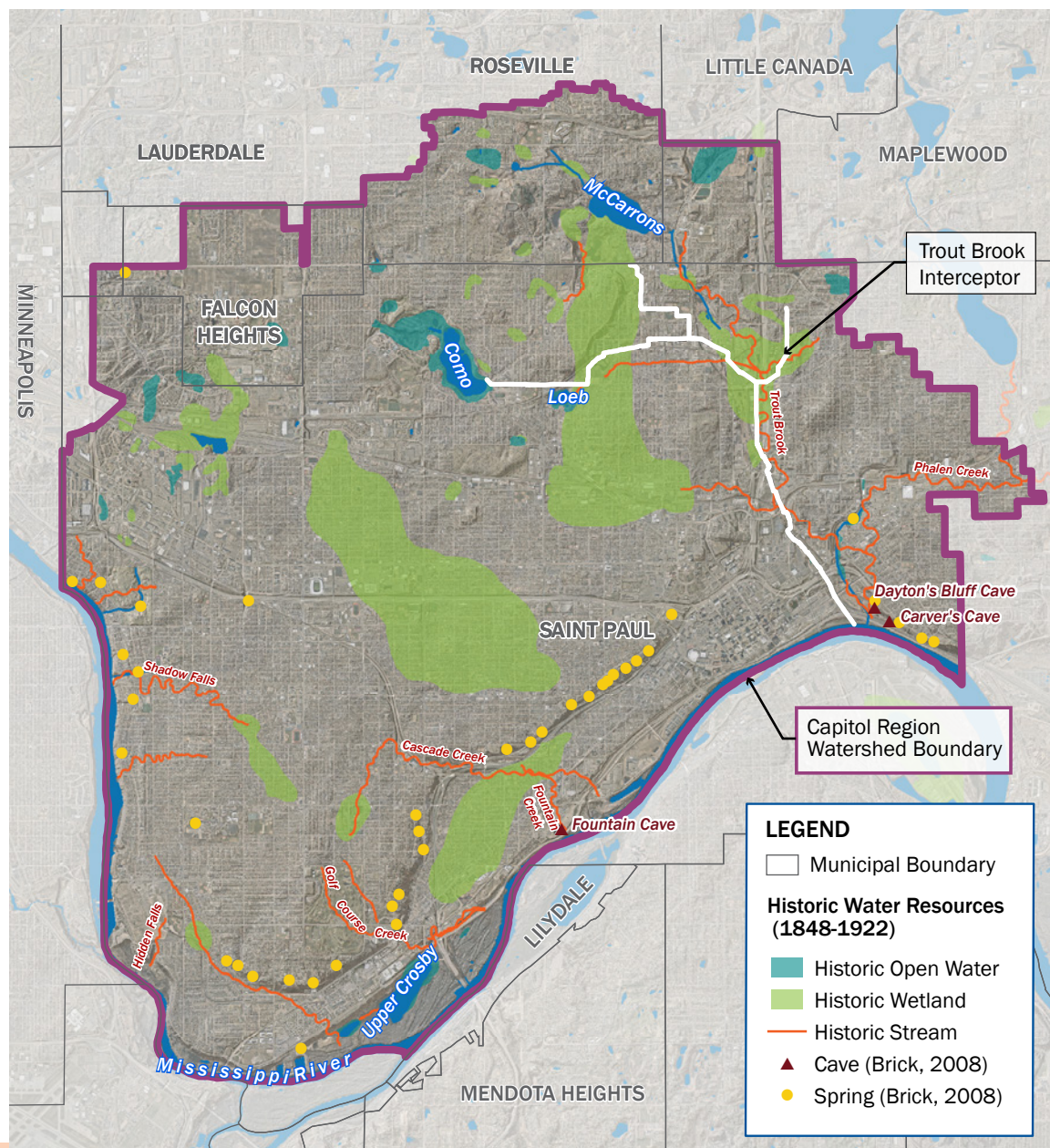
CRWD has hired Stantec, a local engineering firm, to conduct the inventory. Stantec staff will be accessing your property to reach the seep or spring to record observations and take photographs. They will knock on your door first and will be wearing marked safety vests. There will be no temporary or permanent disturbance to your property. Please contact me at lcaram@capitolregionwd.org or (651) 644-8888 Ext. 111 if you have any questions or concerns related to accessing your property.

CRWD appreciates your cooperation on this project.

Sincerely,

Lucas Roessler-Caram

Lucas Roessler-Caram
Water Resource Technician



understanding soil and groundwater conditions, drainage issues, and potential restoration opportunities. Potential restoration areas are identified in the District implementation plan (see [Table 3-5](#)) including:

- Phalen Creek
- Hidden Falls Creek
- Swede Hollow
- Cascade Creek/Fountain Creek

Maintaining the ecological health and integrity of natural areas is key to achieving the direct and indirect environmental benefits these areas provide. This requires that both positive and negative impacts on ecological health and environmental functions be considered with water resource and land management activities.

Historically, the District's efforts to protect and improve ecological health have accompanied projects with primary goals related to water quality or water quantity. During the development of this plan, stakeholders frequently identified ecosystem health issues and concerns and generally expressed a desire for an expanded District role in addressing ecosystem health, including restoration of altered historical creeks and wetlands. Stakeholders also identified potential opportunities for the District to address ecosystem health concerns in partnership with residents, cities, and other cooperators. This Plan also prioritizes lake ecology by including goals that address macrophyte communities in Como Lake and Lake McCarrons.

Figure 2-10: Historic Resources