

city of saint paul  
planning commission resolution

file number 22-44

date December 9, 2022

WHEREAS, Trellis Treehouse Acquisition, File # 22-104-395, has applied for a variance for residential development on a steep slope with significant regrading, tall retaining wall, and creation of trough shaped yards between a new building and the new retaining wall, under the provisions of § 61.601 of the Saint Paul Legislative Code on property located at 0 Madison Street, Parcel Identification Number (PIN) 22.28.23.22.0080, legally described as the south 100 feet of the east 263 feet of Lot 79, Lane’s Edgicumbe Hills; and

WHEREAS, the Zoning Committee of the Planning Commission, on December 1, 2022, held a public hearing at which all persons present were given an opportunity to be heard pursuant to said application in accordance with the requirements of § 61.303 of the Saint Paul Legislative Code; and

WHEREAS, the Saint Paul Planning Commission, based on the evidence presented to its Zoning Committee at the public hearing as substantially reflected in the minutes, made the following findings of fact:

1. The applicant owns the property and proposes to develop a five-story affordable senior housing apartment building with 36 units (27 of the units to be affordable at 30% AMI and 9 units affordable at 50% AMI). The project proposes a combination of one-bedroom, studio, and efficiency units, structured tuck-under parking, and associated amenity space. The roof of the proposed building would be approximately 30’ to 40’ below the first floor of the single family residential properties to the north and northwest along Lower St. Dennis Road. The project site, located behind the Highland Chateau Health and Rehabilitation Center, at 2319 West 7<sup>th</sup> Street was chosen due to its proximity to an existing care facility that provides services that will be available to the senior residents of the new building. One-way circulation for vehicles is planned, with an entrance on the west from St. Paul Avenue to the Highland Chateau driveway and then to an exit on the east at West 7<sup>th</sup> Street; a “right turn only” sign is planned at the exit.
2. The subject property is a lot of record that has 100 feet of frontage on Madison Street, a platted but unimproved street right of way bordering the subject property on the east. Because the parcel lacks frontage on an improved street and is landlocked, the applicant proposes to gain access to the property via a private street onto which an address can be obtained (Highland Chateau’s existing semi-circular drive is proposed to be established as a private street). The applicant is working with Department of Public Works staff on the process to establish a private street. A reciprocal maintenance, use and easement agreement will allow for vehicular access and access for public sewer and water services and utilities.

moved by Reilly

seconded by \_\_\_\_\_

in favor 10

against 1 (Moore)

Legislative Code § 71.06 does not allow issuance of an address number for property that does not abut upon a graded and surfaced street or does not have public sewer and water services available for connection and does not allow a building permit to be issued for property without an official designated address number from the Department of Public Works.

3. The project site is heavily vegetated and has very steep slopes that range from 45% up to nearly 70% throughout the site (grade change of 65 feet from the south end at elevation 820' to elevation 885' at the northwest corner). § 63.111 of the Zoning Code regulates residential development on slopes greater than 12%. Item (a) in § 63.111 requires an engineering report on slope stability and hydrology if the Zoning Administrator determines one is warranted. In this case the Zoning Administrator determined an engineering report is warranted. Specific elements of the engineering report as described in § 63.111(a)(1-3) must be submitted to the city and accepted before a grading permit will be issued. An engineering report on slope stability and hydrology has been requested but not yet received. Item (b) in § 63.111 states that *"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. Multi-story buildings are encouraged to reduce the size of the building footprint."* The proposed building is designed to fit into the hillside to minimize significant regrading as much as possible. The design includes siting the building as close to the southern property line as possible, making the depth of the building as shallow as possible, and designing for multiple stories to reduce the size of the building footprint. The design allows grade on the north side of the building to be equal to the third-floor level which results in a retaining wall with an exposed face that is roughly 14' tall for its highest sections. The building footprint is stepped along the northwest corner which allows the retaining wall path to follow the natural contours at the steepest part of the hill to minimize the height as much as possible. The height of the wall is greatest for its northwest corner roughly 80' portion and it is held even tighter to the building here to keep it as low as possible. As the wall moves to the east it steps down with the natural topography which allows it to reduce the exposed face until it disappears altogether. The retaining wall will be constructed first and is intended to be slightly deeper than the footings of the proposed building. This allows the wall to serve as shoring for the building and thereby minimize any over-excavation deeper into the hillside. Sharing the existing drive way with the Highland Chateau property and using it to bring in public services and utilities also helps minimize regrading and keeps platted Madison Street right of way in its natural state. Despite these design considerations, significant regrading of about 10,800 square feet of the site (over 40%) and a tall retaining wall, about 14' in its highest sections, with the resulting trough-shaped yards are proposed for the project. Hence, a variance has been requested to permit significant regrading, a tall retaining wall, and creation of trough-shaped yards between a new building and the new retaining wall.

Item (c) in § 63.111 requires tree preservation where possible and protection during construction. A tree preservation plan is required and tree replacement requirements are prescribed. A tree preservation plan was submitted with the site plan review application. Item (d) in § 63.111 provides standards for retaining walls taller than four feet and calls for walls to be constructed under city permit with frost footings as required by the state building code and engineered to retain lateral earth pressures consistent with the principles of soils mechanics, and detailed to minimize hydrostatic pressures.

4. § 61.601 states that the planning commission shall have the power to grant variances from the strict enforcement of the provisions of this code upon a finding that:

(a) *The variance is in harmony with the general purposes and intent of the zoning code.* Zoning code § 63.111 regulates residential development on slopes greater than 12%. Development on steep slopes is not easy and requires careful thought and detailed plans created by professionals to demonstrate how a project can be designed and carried out. Through its submittal of site plan review documents the applicant has demonstrated how the project can be designed to be carried out in a way that minimizes significant regrading (the site plan shows regrading about 10,800 square feet, a little over 41% of the site) and provides for a single story retaining wall (about 14' high for about 80 feet of length at its highest), rather than a three story wall, that protects the undisturbed portion of the slope after regrading. As a result, the project can be carried out in a manner that protects the public health, safety, and general welfare of the community and the variance is in harmony with this general purpose and intent of the zoning code. The variance is also in harmony with the intent of the zoning code to provide housing choice and affordability. Saint Paul is experiencing a housing shortage in general and a significant affordable housing shortage in particular. The variance would allow residential development on a challenging site to develop due to its steep slopes, noting that the developer has demonstrated how the project design can be carried out in a way that minimizes significant regrading as much as possible and provides for as low a retaining wall that protects the undisturbed portion of the slope after regrading. The concern about trough-shaped yards in § 63.111(b) appears to relate to their general aesthetics as not being attractive. While the retaining wall will result in a trough-shaped yard between the new building and the retaining wall, the wall will be located at the rear of the development and behind the Highland Chateau building and will not be visible to the general public.

(b) *The variance is consistent with the comprehensive plan.* The variance for residential development on a steep slope with significant regrading, a tall retaining wall, and creation of trough-shaped yards is consistent with the comprehensive plan. The 2040 Comprehensive Plan does not specifically address residential development on steep slopes. Land use policy LU-21 calls for identifying, preserving, protecting and, where possible, restoring natural resources and habitat throughout the city with the following ordinances: Tree Preservation Overlay District; River Corridor Overlay District; and Subdivision Regulations. However, with no subdivision proposed, none of the ordinances referenced in policy LU-21 apply to the requested variance. While the Great River Passage Master Plan addendum to the Comprehensive Plan speaks to preservation of natural areas, and the bluff is shown as a natural area on its natural areas map, the plan itself acknowledges that it is primarily a parks plan.

The project seeks to provide high quality affordable and deeply affordable housing for seniors. The comprehensive plan supports the development of affordable housing. The variance would permit the proposed affordable housing to be developed on a steep slope as demonstrated by the developer that it can be carried out in a way that minimizes significant regrading as much as possible and provides for as low a retaining wall a possible that protects the undisturbed portion of the slope after regrading. Policy H-31 calls for supporting the development of new affordable housing units throughout the city and Policy H-37 calls for encouraging the development of affordable housing in areas well-served by transit and/or in proximity to employment centers. The Highland District Plan includes housing objectives and policies that support the development of affordable housing. Objective H.1 calls for increasing the diversity of housing options so that people of all ages, cultures, ethnicities and incomes have a place in the neighborhood and Policy H1.8. encourages development of affordable housing

throughout Highland Park.

- (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.* The application states that the steep slopes of the project site present practical difficulties in complying with the requirement for residential development on steep slopes and that it would not be possible to develop the project without significant regrading, a tall retaining wall, and resulting trough-shaped yards. The applicant acknowledges that the reason for the standard in the zoning code is the reason for the need for the variance. The applicant has developed a design and plan for the project that seeks to minimize significant regrading, minimize slope disruption, and stabilize the slope with as low a retaining wall as possible. The applicant provided the following information on the three main functions the retaining wall will serve:
- a. The building is designed to strike a balance of fitting into the hillside while still achieving the goal of 36 affordable units for seniors. The design prioritizes placing all interior spaces that do not need windows along the north side of the building on the first two floors. This approach allows grade on the north side of the building to be equal to the third-floor level which results in a retaining wall with an exposed face that is roughly a single story tall at its highest point rather than three stories tall. The building footprint is stepped along the northwest corner which allows the retaining wall path to follow the natural contours at the steepest part of the hill to minimize the height as much as possible. The height of the wall is greatest at the northwest corner and it is held even tighter to the building here to keep it as low as possible. The result of these strategies is the creation of a recessed yard between the north side of the building and the retaining wall itself which acts as a light well allowing access to natural light for the third-floor spaces facing north. The stairs and elevator shaft are located at the northwest corner to mitigate the reduced access to daylight given the height and proximity of the retaining wall. As the wall moves to the east it steps down with the natural topography which allows it to reduce the exposed face until it disappears altogether. The third-floor units at grade on the north side are arranged to maximize views and daylight.
  - b. The retaining wall will be constructed first and is intended to be slightly deeper than the footings of the proposed building. This allows the wall to serve as shoring for the building and thereby minimize any over-excavation deeper into the hillside. It also addresses the challenging issue of drainage by dealing with hydrostatic pressure created by water runoff to be handled at the retaining wall rather than the building foundation wall. A series of drain tiles along the retaining wall will be able to direct water away from the building's foundation and into catch basins that will connect into the retention pipe.
  - c. The site is bordered on the south side by an existing utility easement. The entire parcel is steeply sloping up to the north. These conditions make locating an underground storm retention tank extremely challenging. By constructing the retaining wall prior to the building, the resulting interstitial space allows a reinforced concrete pipe to be installed between the wall and building without needing to expand excavation to the east or west. This solution also substantially reduces the need for additional tree removal.
- (d) *The plight of the landowner is due to circumstances unique to the property not created by the landowner.* While acknowledging that the practical difficulties for the proposed

development in complying with the requirements and standards for residential development on steep slopes are due to the steep slopes and heavy vegetation on the site, the application addresses three challenges unique to the property that were not created by the landowner: existing grade; stormwater; and utility easement.

**Existing Grade** - The challenging grade on the parcel exists naturally and is not a condition that was created by the owner. The slopes range from 45% up to nearly 70% throughout the site. The retaining wall and resulting yard between itself and the building are a solution to allow light into the north facing units on the third floor. The building is designed to fit into the hillside as much as possible. The footprint of the building is organized as a long east-west bar with as narrow a profile as possible to minimize excavation. To achieve this, the north facing units are designed to be very shallow (only 18' deep), which reduces the overall depth and footprint of the building. Furthermore, no basement is proposed to minimize excavation.

**Stormwater** - The slopes on the site coupled with the heavy vegetation are existing conditions that make managing stormwater very challenging. The retaining wall solves two problems: 1) The retaining wall and resulting yard space create a space to locate an underground stormwater retention pipe; and 2) The retaining wall allows the below grade water and surface runoff coming down the hill to be handled at the retaining wall rather than the building foundation.

**Utility Easement** - The existing electrical utility easement along the south edge of the parcel requires the building to be sited further into the hillside which further necessitates the need for the retaining wall.

- (e) *The variance will not permit any use that is not allowed in the zoning district where the affected land is located.* This finding can be met. The applicant has applied to rezone the property from R1 single family residential to RM2 multiple family residential to allow construction of the proposed apartment building. A variance of 63.111(b) is needed to allow the development. If the rezoning to RM2 is approved, the variance would not permit any use that is not allowed in the zoning district.
- (f) *The variance will not alter the essential character of the surrounding area.* The parcel has steep slopes and is heavily vegetated. The proposed retaining wall allows the first two stories of the building to be built into the hillside and preserve the natural topography and vegetation directly to the north and west of it on about 60% of the site. The resulting recessed yard space between the retaining wall and the building is critical to provide light into the north facing units on the third floor. While the variance to allow the development will represent a change to the character of the previously undeveloped property itself, the variance will not alter the essential character of the surrounding area. Unlike the wooded steep slopes that have been preserved and kept free from development immediately to the east and southwest because they are in public ownership, the subject property and the developed R1 properties to the north are in private ownership. The lots to the north are developed with single family residential uses on flatter ground on top of the bluff. Development of the subject property will result in a change to the wooded steep sloped site, which is inconsistent with the undeveloped nature of the steep slope portions of R1 properties to the north, east and west, but compatible with the essential character of the surrounding area. The surrounding area is characterized by Highland Apartments to the southwest where there are two three-story apartment buildings, Highland Chateau directly to the south that provides transitional care rooms, unimproved Madison Street to the east and wooded bluff parkland beyond, and Snelling Avenue South and single family homes to the north and northwest along

Lower St. Dennis Road and their steep sloped and wooded backyards abutting and near the project site.

NOW, THEREFORE, BE IT RESOLVED, by the Saint Paul Planning Commission, under the authority of the City's Legislative Code, that the application of Trellis Treehouse Acquisition for a variance of the requirements and standards for residential development on a steep slope to permit significant regrading, tall retaining wall, and creation of trough shaped yards on property at 0 Madison Street (north of 2319 West 7<sup>th</sup> Street at West 7<sup>th</sup> Street and St. Paul Avenue), PIN 22.28.23.22.0080, is hereby approved, subject to the following additional five conditions:

1. Final plans approved by the Zoning Administrator for this use must be in substantial compliance with the plans submitted and approved as part of this application.
2. The specified elements of the required engineering report on slope stability and hydrology per § 63.111(a)(1-3) must be submitted to the City for review and acceptance before any permits will be issued, including grading permits. The findings in the engineering report may result in required revisions to project plans as determined by Department of Safety and Inspections staff. If revisions to project plans are required as a result of the engineering report, these revisions to plans must be made to all plans submitted to the City for approval before any permits will be issued, including grading permits.
3. A private street to serve the development must be established. The private street must be established based upon a plan submitted to and approved by both the Department of Public Works and the Department of Safety and Inspections, Division of Fire Inspections, before final site plan approval.
4. The present reciprocal maintenance, use and easement agreement must be reviewed by the Department of Public Works and the City Attorney's Office. This review may result in revisions to the said agreement being required as added conditions to the variance granted here. Revisions resulting from the review must be made to the present reciprocal maintenance, use and easement agreement. The revised reciprocal maintenance, use and easement agreement must be duly recorded with Ramsey County before final site plan approval.
5. Approval of the rezoning of the property from R1 – one-family residential district to RM2 - medium-density multiple-family residential district.