ZONING APPEAL APPLICATION

To/From Board of Zoning Appeals

Dept. of Safety & Inspections
Zoning Section
375 Jackson Street, Suite 220
Saint Paul, MN 55101-1806
(651) 266-9008

To / From Planning Commission

Dept. of Planning & Econ. Devt.
Zoning Section
1400 City Hall Annex, 25 W 4th St.
Saint Paul, MN 55102-1634
(651) 266-6583

Zoning Office Use Only
File # 25-007075
Fee Paid $ 462.00
Received By / Date D. Eide - 1/16/2025
Tentative Hearing Date 2/12/2025

APPELLANT

Name(s) Sean Ryan - Ryan Companies US, Inc.
Address 533 S Third Street City Minneapolis State MN Zip 55415
Email Sean.Ryan@RyanCompanies.com Phone 612-492-4638

PROPERTY LOCATION

Project Name Highland Bridge - Block 2C
Address / Location 0 Cretin Avenue South, St Paul MN 55116

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

- ☐ **Board of Zoning Appeals,** under provisions of Zoning Code § 61.701(c), of a decision made by the Zoning Administrator.
- ☐ **Planning Commission**, under provisions of Zoning Code § 61.701(c), of a decision made by the Planning Administrator or Zoning Administrator.
- ■ **City Council,** under provisions of Zoning Code § 61.702(a), of a decision made by the Board of Zoning Appeals or the Planning Commission.

Date of decision January 6th, 20 25 File Number 24-096392

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 or Board of Zoning Appeals. Attach additional sheets if necessary.

Please See Attached Letter

☐ If you are a religious institution you may have certain rights under RLUIPA. Please check this box if you identify as a religious institution.

Appellant's Signature Sean Ryan **Date** 1/16/2025

Rev 7.4.2019

Grounds for Appeal
0 Cretin Avenue South; Block 2C Project

I. INTRODUCTION

Ryan Companies US, Inc. ("Appellant") brings this appeal because there were numerous errors in fact, procedure, and findings made by the Board of Zoning Appeals ("BZA") during its consideration of and action related to File No. 24-096392 (the "Application"). The Application is comprised of certain variance requests made by Appellant relating to the property commonly known as 0 Cretin Avenue South (Highland Bridge Block 2C), legally described as Lot 3 Block 1, Northern Highland Bridge (the "Property"). As established herein and further supported by the record, each variance requested within the Application indeed satisfies the criteria required by Minn. Stat. § 462.357, subd. 6(2) and City Code § 61.601. Consequently, and in accordance with City Planning Staff ("Staff") recommendations, the variances requested in the Application should have been granted in their entirety by the BZA. Appellant, therefore, respectfully requests that the City Council: (i) grant this appeal; (ii) reverse all actions of the BZA denying variance requests under File No. 24-096392; and (iii) affirmatively and conclusively cause approval of the totality of variances requested within the Application.

A. The Record

1. HB Block 2C Variance Application. *See* **Attachment A**
2. HB Block 2C Variance Narrative. *See* **Attachment B**
3. HB Block 2C Variance Exhibits. *See* **Attachment C**
4. HB Block 2C Variance Supplement. *See* **Attachment D**
5. 12/9/2024 BZA Meeting PowerPoint Slide Deck. *See* **Attachment E**
6. HDC Resolution for Highland Bridge Lot 2C. *See* **Attachment F**
7. BZA Staff Report File # 24-096392. *See* **Attachment G**
8. BZA Agenda Results, December 9, 2024. *See* **Attachment H**
9. BZA Agenda Results, January 6, 2025. *See* **Attachment I**

B. The Project

The Highland Bridge Block 2C Commercial Project (the "2C Project") is a Ryan Companies owned and developed project located in the northern portion of the Highland Bridge development, west of Cretin Ave and south of Outlot B (also known as the Civic Square). The 0.77 acre site is one of four parcels split from the original Block 2 within the City's F5 Business Mixed Zoning District. Block 2 was initially divided between Lot 1 and Lot 2 through the original FORD plat by a diagonal line between Outlot B and Outlot C, but the Northern Highland Bridge plat was recorded in 2023 to split Block 2 into four separate parcels, Lots 1-4:

1. Lot 1, Block 2 (or "Block 2A"), will be developed at a future date, anticipated to be a Mixed-Use Project or Commercial Project.
2. Lot 2, Block 2 (or "Block 2B"), is proposed to be developed into a Mixed-Use Project.

3. Lot 3, Block 1 (or "Block 2C"), is proposed to be developed into a Commercial Project.
4. Lot 4, Block 2 (or "Block 2D"), is currently under construction with a senior housing development anticipated to open in Spring of 2025.

The 2C Project is a proposed a one-story commercial building with approximately 13,000 square feet of retail. Private street parking exists along the private Hillcrest Drive roadway to the south. Vehicular access to the Property is directly along Hillcrest Drive from Cretin Ave to the east or through Outlot C to the west. The commercial component of the 2C Project is consistent with the business mixed focused goals of the F5 Zoning District. Construction is expected to start in the Spring of 2025 with the 2C Project being completed in the Fall of 2026.

The 2C Project design is significantly affected by geological constraints, and City-Required pedestrian easements (resulting in an abnormal parcel shape and size). The 2C Project design seeks to accommodate these practical difficulties. Through the use of variances, 2C Project design will deliver a viable development that reasonably conforms with the spirit and intent of the F5 Business Mixed District.

C. Summary of Application

Appellant submitted the Application on November 18, 2024. *See* **Attachment A**. Among the Application were requests for variances from the strict application of City Code § 66.931 concerning building floor area ratios (FAR) and building heights. *See* **Attachment B**. Specifically, for the 2C Project, a FAR minimum of 2.0 is required; a FAR of 0.3 is proposed, for a variance of 1.7. ("Request 1"). *See* **Attachments B** and **G**. Also for the 2C Project, a building height minimum of 40 feet is required; 18 feet is proposed, for a variance of 22 feet. ("Request 2"). The Highland District Council passed and submitted to the City a resolution supporting the sum of variances contained in the Application. *See* **Attachment F**. City staff evaluated the Application against the criteria required by Minn. Stat. § 462.357, subd. 6(2) and City Code § 61.601 and, for each of the requested variances contained in the Application, found the request met the collective criteria. *See* **Attachment G.**

The BZA held a public hearing on the Application at its December 9, 2024 meeting. *See* **Attachment H**. After closing the public hearing, the Application was laid over to the BZA's January 6, 2025 agenda. *See* **Attachment H**. At its January 6, 2025 meeting, the BZA passed a motion to deny Requests 1 & 2. *See* **Attachment I**. The BZA's findings were conclusory in nature and confined to Staff findings No. 2, 3, and 4. *See* **Attachment I.** That is, the BZA's limited finding were that Staff erred in finding: (i) variance Request 1 and 2 were consistent with the comprehensive plan; (ii) that there are practical difficulties in complying with the FAR and building height standards provided in City Code § 66.931; and (iii) the plight of the Appellant is due to circumstances unique to the Property not created by Appellant. *See* **Attachment I**. The result of the BZA's action relating to the Application was the denial of Request 1 & 2, and approval of the balance of variances requested in the Application. *See* **Attachment I.**

While well intentioned, BZA commentary made in support of the motion to deny Variances 1 & 2 did not objectively focus on the procedural criteria required by Minn. Stat. § 462.357, subd.

6(2) and City Code § 61.601 but, rather, included subjective personal opinions about 2C Project, about bicycle parking, about the City's diminishing downtown tax base, and about housing demands citywide. In effect, the BZA's stated rational for denying Requests 1 & 2 were related to personal opinions that the 2C Project should be held to a higher standard and deliver solutions to citywide concerns, each of which are beyond the scope of the criteria required by Minn. Stat. § 462.357, subd. 6(2) and City Code § 61.601.

Moreover, the BZA reviewed the 2C Project under the premise that each platted parcel should be looked at independently for City Code compliance. While the Application responds to this City guided premise, the premise ignores the definition "Zoning Lot" within the City Code. City Code § 60.213 defines "Lot, zoning" as: "*A single tract of land which, at the time of filing for a building permit, is designated by its owners or developers as a tract to be used, developed or built upon as a unit, under ownership or control of one (1) person or joint tenants. A zoning lot shall satisfy this code with respect to area, size, dimensions and frontage as required in the district or districts in which the zoning lot is located. A zoning lot, therefore, may or may not coincide with a lot of record as filed with the county recorder but may include one (1) or more lots of record.*" Even though the 2C Project is seeking variances, consideration should be given to the overall reasonableness of the 2C Project in light of the fact that the combined originally conceived and platted Block 2 (as envisioned in the Ford Site Master Plan) would have built dimensions close to, or perhaps meeting, the dimensional standards contained in City Code § 66.931 under identical development and design conditions as the 2C Project.

II. THERE ARE PRACTICAL DIFFICULTIES NECESSITATING THE REQUESTED VARIANCES

Pursuant to Minnesota law, variances may be granted "when they are in harmony with the general purposes and intent of the ordinance and when the variances are consistent with the comprehensive plan … [and] when the applicant for the variance establishes that there are practical difficulties in complying with the zoning ordinance." Minn. Stat § 462.357, subd. 6(2). The City may approve variances from strict application of the zoning code where "practical difficulties" result from carrying out the strict letter of the regulations. "Practical difficulties" in this case means (1) that Appellant proposes to use the Property in a reasonable manner not permitted by the zoning provisions of the City's Code; (2) that the plight of the Appellant is due to circumstances unique to the Property not created by Appellant; and (3) that the variances, if granted, will not alter the essential character of the locality. Minn. Stat § 462.357, subd. 6(2). With respect to the 2C Project and the Property, practical difficulties would indeed result if Appellant were required to carry out the strict letter of the City's zoning regulations. The follow established that fact:

1. The variances are in harmony with the general purposes and intent of the zoning code.

Staff found this criteria was established for each of the variances requested in the Application. *See* **Attachment G**. This criteria is further established by the overall content of Appellant's collective submittals. *See* **Attachment B** and **Attachment D**. The BZA did not assign any error to this finding with respect to any of the variances requested in the Application. *See* **Attachment I**. This finding, accordingly, has been met for all requested variances.

2. <u>The variances are consistent with the comprehensive plan.</u>

Staff found this criteria was established for each of the variances requested in the Application. *See* **Attachment G**. This criteria is further established by the overall content of Appellant's submittals. *See* **Attachment B** and **Attachment D**. The BZA incorrectly assigned error to this finding with respect to Requests 1-4. *See* **Attachment I**. The BZA's findings, however, were erroneous and not based on fact. Request 1 is consistent with the comprehensive plan for the reason set forth in **Attachment G** (at Finding 2), **Attachment B** (at page 5), and **Attachment D** (at pages 2-3). Request 2 is also consistent with the comprehensive plan for the reason as set forth in **Attachment G** (at Finding 2), **Attachment B** (at page 7), and **Attachment D** (at pages 6-7). This finding, accordingly, has been met for all requested variances, including Requests 1 & 2.

3. <u>The applicant has established that there are practical difficulties in complying with the provisions, that the property owner proposes to use the property in a reasonable manner not permitted by the provisions. Economic considerations alone do not constitute practical difficulties.</u>

Staff found this criteria was established for each of the variances requested in the Application. *See* **Attachment G**. This criteria is further established by the overall content of Appellant's collective submittals. *See* **Attachment B** and **Attachment D**. The BZA incorrectly assigned error to this finding with respect to Requests 1 & 2. *See* **Attachment I**. The BZA's findings, however, were erroneous and not based on fact. With respect to Request 1, there are practical difficulties in complying with the FAR requirement of City Code § 66.931 for the reasons set forth in **Attachment G** (at Finding 3), **Attachment B** (at page 4), and **Attachment D** (at pages 3-4). With respect to Requests 2, there are practical difficulties in complying with the building height requirements of City Code § 66.931 for the reasons set forth in **Attachment G** (at Finding 3), **Attachment B** (at pages 6-7), and **Attachment D** (at pages 7-8). This finding, according, has been met for all requested variances, including Requests 1 & 2.

4. <u>The plight of the landowner is due to circumstances unique to the property not created by the landowner.</u>

Staff found this criteria was established for each of the variances requested in the Application. *See* **Attachment G**. This criteria is further established by the overall content of Appellant's collective submittals. *See* **Attachment B** and **Attachment D**. The BZA improperly assigned error to this finding with respect to Requests 1 & 2. *See* **Attachment I**. The BZA's findings, however, were erroneous and not based on fact. With respect to Request 1, plight of the Appellant is due to circumstances unique to the Property not created by the Appellant for the reasons set forth in **Attachment G** (at Finding 4), **Attachment B** (at page 4), and **Attachment D** (at pages 4-5). With respect to Requests 2, the plight of the Appellant is due to circumstances unique to the Property not created by the Appellant for the reasons set forth in **Attachment G** (at Finding 4), **Attachment B** (at pages 6-7), and **Attachment D** (at page 8). This finding, accordingly, has been met for all requested variances, including Requests 1 & 2.

5. <u>The variances will not permit any use that is not allowed in the zoning district where the affected land is located.</u>

Staff found this criteria was established for each of the variances requested in the Application. *See* **Attachment G**. This criteria is further established by the overall content of Appellant's submittals. *See* **Attachment B** and **Attachment D**. The BZA did not assign any error to this finding with respect to any of the variances requested in the Application. *See* **Attachment I**. This finding, accordingly, has been met for all requested variances.

6. <u>The variances will not alter the essential character of the surrounding area.</u>

Staff found this criteria was established for each of the variances requested in the Application. *See* **Attachment G**. This criteria is further established by the content of Appellant's submittals. *See* **Attachment B** and **Attachment D**. The BZA did not assign any error to this finding with respect to any of the variances requested in the Application. *See* **Attachment I**. This finding, accordingly, has been met for all requested variances.

III. <u>CONCLUSION</u>

As stated herein, the BZA's action to deny Requests 1 & 2 contained errors in fact, procedure, and findings. Said action was contrary to the findings of the Highland District Council, contrary to the findings of City Planning Staff, any contrary to an objective application of the criteria required by Minn. Stat. § 462.357, subd. 6(2) and City Code § 61.601. The BZA action was based upon subjective and personal opinions, rather than content of Appellant's submittals. As established herein, with respect to the 2C Project and the Property, practical difficulties would indeed result from carrying out the strict letter of the City's regulations.

Notwithstanding the BZA's focus Requests 1 & 2, Appellant respectfully requests that the City Council: (i) grant this appeal; (ii) reverse all actions of the BZA denying variance requests under File No. 24-096392; and (iii) affirmatively and conclusively cause the approval of the totality of variances requested within the Application.