



**May 28, 2015**

Councilmember Chris Tolbert  
City of Saint Paul  
310-C City Hall  
15 Kellogg Blvd. West  
Saint Paul, MN 55102

**VIA EMAIL**

**Re: Shepard-Davern Development (City File Nos. 15-007994 and 15-022204)**

Dear Councilmember Tolbert:

As the State's largest local chamber and an advocate for expanding the tax base through private investment, the Saint Paul Area Chamber of Commerce (SPACC) writes to express its strong support for the proposed mixed-use development at 1475 Davern Street. For the reasons discussed in greater detail below, we ask members of the city council to support this important project.

Shepard Davern LLC is seeking to invest roughly \$40 million in Saint Paul by redeveloping the former US Bank site along Shepard Road. The first phase of the development would include a six-story building providing new rental housing opportunities in the neighborhood and a small amount of added commercial space. The development would also provide new park and open space. In doing so, this development would enhance the vibrancy of the neighborhood, provide expanded community amenities, and significantly expand the tax base. We believe this development would be good for Saint Paul. Recognizing this, the planning commission voted overwhelmingly in favor of approving this project.

In approving the development, the planning commission granted two height-related variances (one from the 55' limitation in section 66.331 and another from the 40' limitation in section 68.233). However, because of concerns surrounding building height, the Friends of the Mississippi River (FMR) now appeals this project to the city council. FMR argues that despite city staff's and the planning commission's findings to the contrary, the variances do not meet the relevant requirements in sections 61.601 (variance findings) and 68.601 (river corridor overlay variance findings) and therefore cannot be approved. The Chamber disagrees.

As noted in the zoning committee staff report, dated April 9, 2015, the variances are in harmony with the general purposes and intent of the zoning code. The proposed building height is consistent with similarly situated buildings within the surrounding neighborhood. In addition, the new building will be setback roughly 170' from the bluffline, allowing for the protection of recreational, scenic, natural, and historic resources. The proposed development will have minimal

visual impact on the river valley. It will also not have a significant visual impact on scenic viewpoints or from adjacent structures. As a result, the development will not alter the essential character of the surrounding area.

It is also critically important to recognize that the Minnesota Department of Natural Resources is presently engaged in an administrative rulemaking process that will result in new development and zoning standards governing land use in the Mississippi River Corridor Critical Area (MRCCA). This area includes the parcel of property where this development is proposed. Under the DNR's proposed MRCCA rules, which are expected to be enacted into law (as proposed) by the end of 2015, new buildings will be allowed to be constructed up to 65' without a variance, with greater heights permitted if a conditional use permit is approved. Under these standards, the proposed height is only slightly more than 8' from the soon-to-be new zoning rule, or 12 percent deviation (as opposed to the 33.5' variance approved by the planning commission, or 82 percent deviation).

The Chamber, similar to city staff, the zoning committee, and the planning commission believes that the proposed development is consistent with Saint Paul's comprehensive plan. The location of the development is identified in the comprehensive plan as a mixed-use corridor. The development provides mixed-use amenities with the potential for increasing transit-oriented opportunities in the neighborhood. In addition, although the new building is slightly taller than the height ranges outlined in the Shepard-Davern Area Plan, the building is consistent with similarly situated surrounding buildings. The development is therefore consistent with the character of the neighborhood. It is worth pointing out that even if the proposed height was considered inconsistent with the comprehensive plan, it is highly questionable whether that inconsistency alone would provide the city with a sufficient legal basis to overrule the planning commission's approval of this project. *See e.g. RDNT, LLC v. City of Bloomington*, No. A13-0310 at 22 (Minn. 2015) (Anderson, G. B. concurring) (explaining that "historical and current planning legislation [...] counsels against using comprehensive plans to make specific land-use decisions").

Moreover, the height variances are needed to accommodate construction on a parcel of land significantly burdened by geological constraints—constraints that are certainly due to circumstances unique to the property and not created by the landowner. Because of shallow bedrock on the site, there are widespread practical difficulties in complying with the height limitations enumerated in the zoning code. The geological features of the site do not allow for parking to be constructed below grade and make it extremely challenging to arrange the development in such a way to satisfy existing height restrictions. It is therefore not only economic considerations that create the practical difficulties, but also the presence of geological constraints that make this development infeasible without the variances. In light of these factors, we believe the development satisfies Minnesota's variance statute, Minn. Stat. § 462.357, subd. 6(2). *See Krummenacher v. City of Minnetonka*, 783 N.W.2d 721, 730 (Minn. 2010) (explaining factors used to assess whether a practical difficulty has been shown).

Finally, city staff recommends approval of this development. In addition, the planning commission voted 11-1 in favor of approving the project as proposed. At each stage of the regulatory process, this project has received overwhelming support of the reviewing body. It is for these reasons the Chamber supports the proposed mixed-use development.

Please feel free to contact me with any questions or comments. Thank you.

With Kind Regards,

A handwritten signature in black ink, appearing to read 'MB', with a long horizontal flourish extending to the right.

Michael J. Belaen  
Director of Public Affairs and Legal Counsel

cc: Russ Stark, President, Saint Paul City Council  
Members of the Saint Paul City Council  
Josh Williams, planner, city of Saint Paul