

## **REASONS TO GRANT THE FLOOR AREA RATION APPEAL FOR 1212 PROSPERITY AVENUE [APC 20-4]**

**I'm going to move to grant the appeal based upon the following reasons:**

After reviewing all the testimony and the planning commission's decision, I find that the planning commission erred when it denied the Appellant's Floor Area Ratio variance based on the reasons in findings 4 a, b, c, and d of Planning Commission Resolution No. 20-018-602:

**I find that the each of these reasons are in error as follows:**

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

On balance, the FAR variance for this site is reasonable. The Appellant worked extensively with City staff to come up with a building site design which the planning commission found to meet the general purpose and intent of the zoning code as well as the design requirements for T2 districts for the following reasons:

- Consistent with T2 district design standards, the bank building will be oriented to the corner. This orientation improves access and visibility for pedestrians and provides an anchor for the corner of the intersection.
- Parking for the bank will be located away from the corner and behind the building. Provided the parking areas are properly buffered and landscaped, the overall design of the property helps transition the site to the adjacent residential uses to the north and east.
- A bank not only falls within the variety of uses that should be easily available to those using the nearby transit services, it is also a desirable neighborhood amenity at this site which can meet the financial service needs for neighborhood residents as well as for the employees of who work in the nearby employment centers.
- The Gross Floor Area of the proposed building is 3,855. The Commission estimated that an additional 5,314 Gross Floor Area was needed to meet the minimum FAR requirement for this parcel. Requiring Appellant to construct another "building-and-a-half" simply to meet the district's FAR requirement as a means to facilitate "compact development" is not a reasonable basis to deny this specific application on this unusually shaped lot. It should also be noted that Appellant agreed to construct a taller building in an attempt to visually conform with the FAR requirement when viewed from the street.
- Although the interior gross floor area of Appellant's proposed building is less than half the minimum FAR, having no building in which to provide what is otherwise a highly desirable and stable land use is equally inconsistent with the Comprehensive Plan's goals to increase the desirability and livability of neighborhoods by having amenities such a banks locate in and along transit corridors. Facilitating a use that will assist in revitalizing and growing this neighborhood through a FAR variance is more in keeping with the general purpose and intent of the zoning code.

- This is a large lot that could be split up in the future. The Commission noted that the easterly portion of the lot could support up to a three-story building in the future under current zoning. Splitting the lot in the future for redevelopment purposes could be consistent with the goals of compact development. Granting a FAR variance for this use on this portion of the current lot does not prohibit more compact development in the future.

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

While the planning commission found that compact development is guided in large part by the FAR requirements in the traditional neighborhood districts, and that a project with less than half of the minimum FAR conflicts with several plans and policies in the comprehensive plan, it is equally true that granting the FAR variance complies with several plans and policies in the comprehensive plan:

- A bank is a permitted use at this location. A bank on the site is also consistent with the current 2030 as well as the pending 2040 comprehensive plans as well as the small area plan for this district.
- While FAR is a means to ensure appropriate intensity and compactness of building development to meet City goals, locating a bank at this location clearly meets the goals of the 2030 Comprehensive Plan:
- The bank will provide services and employment close to residences. Land Use policy 1.15.
- The design and location of the bank on the subject fulfills T2 design guidelines which makes the bank accessible by pedestrians and transit users. Land Use policy 1.52.
- The location of the bank is near existing neighborhood businesses and employment centers which is consistent with the pending 2040 Comprehensive Plan:
- As a stable use of land and a desirable neighborhood amenity, a bank will encourage transit-supportive density Policy LU-1.
- The location of the bank building “holds the corner” and its proximity to transit services will help focus growth at Neighborhood Nodes. Policy LU-29.
- A bank provides good, stable employment opportunities, improves job access and aids in the promotion of higher density transit-oriented development envisioned along the White Bear and Maryland corridors and is consistent with the goals of the Greater East Side District Plan [D1b] because due to the banks its proximity to other employment centers in the immediate area.

*4(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.*

As noted above, banks are a permitted use in this district and banks are also a desirable use. The Appellant claims it is difficult to meet the minimum FAR due to the site layout issues that emerged

because of the zoning code's requirement for drive-through services. While proximity to the residential property to the north, the need to position the building at the corner, and the drive-through lane separation requirement on an oddly-shaped lot limit how far north the northern wall can be built, these factors alone would not necessarily prevented construction of a building that would meet the minimum FAR requirement. However, the Appellant worked with staff to design a building which met most of the code's requirements and, on balance, requiring appellant to simply construct another "building-and-a-half" to meet an FAR requirement as a means to facilitate "compact development" is a practical difficulty because the additional gross floor area needed to meet the FAR requirement for this lot, as presently configured, results in the creation of interior space for which the Appellant has no use. At the very least, mandating the creation of interior floor space for which there is no use seems an unwise use of resources.

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

While the Appellant chose to purchase the subject lot for the purpose of constructing a "prototypical" bank building, the Appellant did not create the lot size which drives one half of the FAR calculation. The size of the lot is therefore a circumstance unique to the property that the Appellant did not create. Finally, given that the subject property is large enough to split into separate parcels and that a parcel that could be split from the existing parcel large enough to construct a building which can meet the minimum FAR for this district, granting a FAR variance for Appellant's building is not unreasonable because the large size of the lot, if split, allows for a new building on the new lot of a size which will allow for a building that meets the FAR requirements for this district.

**The Commission found that findings 4(e) and 4(f) were met and I move that those findings be made a part of my motion to grant the appeal.**

**In granting this appeal, in addition to all the conditions imposed by the Commission under Planning Commission Resolution No. 20-018-602, I would add the following condition:**

In approving the Appellant's FAR building variance for this large parcel, that the area of this large parcel, described in the Commission's staff report as "the eastern 50 feet of the parcel" which is "approximately 6,000 square feet" which, the Appellant has indicated, could or would be split from the present lot, must be planted and maintained as "green space" as a means to offset the impact of Appellant's reduced building size on this otherwise large lot until such time as the lot is split for redevelopment purposes. The Appellant's green space must be approved by DSI and Appellant shall submit site plan for this green to DSI staff to review and approve for consistency with the requirements of this condition.