

March 15, 2021

Dear Council Members,

**Re: Lexington Station Apartments / PC RES21-05 (Finding #2)**

Much of the public record and subsequent discussion has centered on the validity of the core values of the Comprehensive plan as the basis for Finding #1 of the Planning Commission's denial of the Lexington Station Apartments site plan application (PC Resolution 21-05).

However, in order to approve a site plan, the Planning Commission must find that the site plan is consistent with **all 11 Findings** under s.61.402(c) of the Saint Paul Legislative Code ('Code').

Little attention has been paid to Finding #2, which forms a legal basis for denial in its own right. This application fails to comply with the T district design standards in s.66.343(b) of the Saint Paul Legislative Code ('Code'). The Planning Commission's denial of the application was therefore appropriate under Finding #2.

**The Planning Commission's decision should be upheld by the City Council, based upon Finding #2 - noncompliance with the T district design standards in the Saint Paul Legislative Code.**

In making its finding of noncompliance with Finding #2 (*Applicable ordinances of the City of Saint Paul*), the Planning Commission found that the site plan did not comply with two of the applicable design standards required of all T4 developments in the city, as enumerated in s.66.343(b) of the Zoning Code. The two standards are as follows:

*§66.343(b)(2) - Transitions to lower density neighborhoods. Transitions in density or intensity shall be managed through careful attention to building height, scale, massing and solar exposure.*

Contrary to the requirement to pay 'careful attention' to transitions to adjacent lower density neighborhoods, the proposed 6 story development makes no attempt whatsoever to create a transition to the single story homes directly to the south, either through variation in height at its southern end (e.g. stepping back upper floors), or adjusting other aspects of the design such as the building's scale or massing as required by Code.

It should be noted that, despite the language on p.5 of the appeal, there is no requirement for the transition to be 'gradual' or otherwise ideal. The requirement is only that some attempt at transition is made.

*§66.343(b)(16)-Interconnected street and alley network. The existing street and alley network shall be preserved and extended as part of any new development. If the street network has been interrupted, it shall be restored whenever possible.*

The proposed development makes no attempt to extend or restore the interrupted East-West connection which would have been Fuller Ave. Instead, by proposing to combine two separate parcels of land that straddle the prospective right of way and build a single structure across them, the development would actively foreclose any future restoration of the street network.

Not only does the proposed building covers the entirety of the site, impeding pedestrian E-W flow, it neglects even the simplest mitigation. It would be trivial, for example, to connect the sidewalk that already runs along the north side of the Carty Heights facility and ends at the west corner of the site, to the public sidewalk at Lexington Ave., running along the existing private driveway.

**The developer does not dispute their failure to comply with the T district design standards, and no circumstances unique to the property exist that make compliance impractical or unreasonable.**

Critically, the developer does not dispute that either of these findings were reasonable or factually based (Appeal, p.5). The developer instead bases their claim of compliance with s.66.343(b) of the Zoning Code on being *exempted* from these standards through the 'Applicability' clause s.66.343(a), which states:

*Site plans and other development proposals within traditional neighborhood districts shall be consistent with the applicable design standards unless the applicant can demonstrate that there are circumstances unique to the property that make compliance impractical or unreasonable.*

It's important to note that s.66.343(a) explicitly puts the burden of proof on the *applicant* - unless the applicant can demonstrate that there is something unique about the property that makes it impractical or unreasonable to comply with the T district standards, the design standards *shall* apply.

The applicant has put forward no evidence to date to support the assertion, newly made in their appeal letter, that there is anything unique about the *site itself* which could form a basis for disapplication of the design standards required for all T district developments by Code.

There is nothing about the *site itself* inhibiting the applicant from minimally meeting the requirements of s.66.343(b)(2) and (16). The standards could be met simply by stepping back the upper floors of the building at its southern end and incorporating a continuous sidewalk connection to allow for E-W pedestrian access to N. Dunlap St.

**The developer misinterprets the Code to claim that no design standards should apply to their application. No applicable design standards exist that supersede the T district standards.**

In the alternative, the developer relies on the latter part of the 'Applicability' clause in s.66.343(a):

*In cases where more specific design standards or guidelines have been developed as part of city council-approved master plans, small area plans, or other city-approved plans for specific sites, those shall take precedence.*

In asserting that the 2008 Lexington Station Area Plan “takes precedence” over the design guidelines, the developer misinterprets the plain language of s.66.343(a). The wording “specific design standards or guidelines” is a reference to the sets of design standards that are occasionally attached to neighborhood or small area plans, not council-approved plans as a whole.

The Lexington Station Area Plan does not incorporate a set of design standards or guidelines, so cannot, therefore “take precedence” or otherwise form the basis of an exemption from the T district design standards under s.66.343(a).

Incidentally, even taken at its word, the Lexington Station Area Plan is clearly inconsistent with the present application. The Plan repeatedly stresses the importance of re-establishing the grid and street network, of which ‘Extending Fuller Avenue West to Syndicate’ is specifically described as a ‘key structural component’ (see 5.1 ‘Connections’).

**The developer does not dispute Finding #2 and has not explained why a development that fails to meet two T district design standards should be approved.**

The developer does not dispute their non-compliance with the T district design standards s.66.343(b)(2) and (16).

As discussed above, s.66.343(a) of the Saint Paul Legislative Code allows a developer to be exempted from these standards only if they are able to demonstrate either that (1) there are circumstances unique to the property that make it impractical or unreasonable for them to comply with these standards, or (2) that alternative design standards exist that supersede the applicable T district standards.

The developer has not demonstrated that they meet either of these conditions, and has therefore not stated a case which could form the basis of a valid appeal of Finding #2 under s.61.702(a) of the Saint Paul Legislative Code.

It follows that the Planning Commission’s Finding #2 of Resolution 21-05 was correct in fact and law and should be upheld by the City Council.

Simon Taghioff  
859 Osceola Ave.  
Saint Paul, MN 55105