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VIA E-MAIL

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St. Paul Zoning Committee  
PED-ZoningCommitteeSecretary@ci.stpaul.mn.us.  
25 West 4<sup>th</sup> Street, Suite 1400  
St. Paul, MN 55102

*Re: 695 Grand CUP with Variances  
ZF# 21-269-061 695 Grand CUP & Variance*

Zoning Committee:

I write on behalf of concerned residents of the area surrounding the proposed 695 Grand Avenue New Mixed-Use Development (the "Project"). Recently, the Zoning Committee addressed the Project's request to rezone from B2 (Community Business) to T3 (Traditional Neighborhood) without the East Grand Avenue Overlay. As you know, the Zoning Committee followed the staff recommendation and voted to recommend rezoning B2 to T3, but denied the rezoning out of the EG Overlay.<sup>1</sup> Because the Project is still subject to the EG Overlay, the Project now requests numerous variances for the front setback, building footprint, building height, and a conditional use permit for a 59' 10" building height. It bears repeating that the rezoning, conditional use permit, and multiple variances are all tactics after the same goal: circumventing the established building size, height and area limitations that are codified in St. Paul ordinance, all for the financial benefit of one owner and to the detriment of adjacent property owners' and the reasonable enjoyment of their property. My client's respectfully object to the Project's requests.

It should be noted, my clients support mixed-use development at 695 Grand Avenue. My clients do not, however, support a colossal structure of the scale and intensity of use proposed. The demand for variances and conditional use permit is driven solely by economic considerations, which is an insufficient basis for the Project's requests. A 3-story mixed-use project could be built by right, without any variances or a conditional use permit. Such a project would be a reasonable use consistent with current building regulations, the relevant comprehensive plans, and

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<sup>1</sup> The full St. Paul Planning Commission will vote on the recommended rezoning on July 9<sup>th</sup> and the rezoning must still be approved by the St. Paul City Council. My clients continue their objection to rezoning B2 to T3.

would ameliorate the negative impacts of increased density in the area. Accordingly, my clients respectfully request you deny the conditional use permit and variances.

## I. VARIANCE

The Project has requested several major variances: (1) a variance of 8 feet for front setback from Grand Avenue, (2) a variance of 5,500 SF of building footprint, (2) a variance of 49,000 SF total building size above grade, and a 23'-10" variance for building height. These are extremely large variance requests. Further, it is our reading of the St. Paul zoning code that additional variances should be required for this application.<sup>2</sup>

The Project's massing, land coverage, and height would dominate the location and surrounding neighborhood. Indeed, the Project's aberrant design relative to the area is reflected by its noncompliance with the express standards and regulations of the EG Overlay. The variances requested are not consistent with the comprehensive plans and are only requested due to economic considerations. Because the Project does not meet the criteria to be granted the variances, its requests should be denied.

### 1. The variance request is not in harmony with the general purposes and intent of the zoning code.

The East Grand Avenue Overlay District ("EG Overlay") was established "to provide design standards and building height, size, and footprint limits, and to reduce the shortage of parking in the east Grand Avenue area." Sec. 67.601. Concerns related to significant deviations from the historic character of East Grand Avenue are precisely why the EG Overlay was created. The EG Overlay was implemented following developers' exploitation of zoning loopholes and disregard for East Grand Avenue's existing character. Therefore, within the EG Overlay, building regulations limit the maximum building footprints to 25,000 square feet and a total above ground building size of 75,000 square feet. Building heights are limited to a maximum of three stories and 36 feet for commercial-residential mixed-use buildings.<sup>3</sup> Further, "T2" Traditional Neighborhood Design standards are required.

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<sup>2</sup> The City previously received a letter identifying additional variance(s) that should be applied, including off-street loading requirements (63.400), as well as from the dimensional standards stipulating height and setback requirements for Table 66.331(e) along the alley and St Albans. Further, the proposal does not meet required Traditional Neighborhood design standards (66.343); these must be met "unless the applicant can demonstrate that there are circumstances unique to the property that make compliance impractical or unreasonable." (66.343). The most egregious departures from these required standards are from Design Standards 2 and 3, which require "careful attention to building height, scale, massing and solar exposure" as well as, on corner lots such as this, matching the establish building line. The U-shaped design with design with a northern "bottom" of the U located just 8 feet from the property line is particularly noteworthy as it does not evince "careful attention" to solar exposure.

<sup>3</sup> Under the EG Overlay, the Project must also "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." Sec. 66.343(a). Significantly, "[t]ransitions in density or intensity shall be managed through careful attention to building height, scale, massing and solar exposure." Sec. 66.343(b)(2).



The Project proposes a structure which includes a main floor footprint of 30,210 square feet and is approximately 60 feet tall. The proposed project is a combined 153,854 square feet, with 123,353 square feet above grade. The footprint of the Project covers approximately 85% of the existing lot with impervious surfaces. The Project would reign over the surrounding area and would not comply with “T2” Traditional Neighborhood Design standards. The preexisting structures adjacent to the Project are 20 to approximately 45 feet shorter. The Project has a building size 1.64 times larger and 1.66 times taller than what is allowed within the EG Overlay. In essence, the Project proposes a full project and 2/3rds at a single location.

The Project is surrounded by residential properties, which are shorter, less dense, and consistent with the uniquely historic character of the area. Mixed-use development could be constructed in the area under the existing building and design regulations, which would match the context and character of the area. However, the Project as currently designed is incongruous with the area. The Project’s height, mass, and density is orders of magnitude larger than surrounding apartment and condominium buildings and would be a deviation from the general purposes and intent of the zoning code. The abrupt change from shorter residential properties to the Property cannot avoid disrupting the area’s overall pattern of architectural harmony and continuity.

Moreover, the variance request for additional height, mass, and footprint to facilitate an increase in density will negatively impact the parking shortage in the area. Individuals who can afford to live in the Project’s luxury apartments will likely have personal vehicles. Residents, their guests, and patrons of the Project’s business tenants will be forced to compete for a finite and ever decreasing amount of parking. An increase in the number of personal vehicles will exacerbate preexisting traffic and parking congestion and strain road and public service infrastructure.<sup>4</sup> Bikers along the existing bikeways will be forced to navigate around additional traffic and parked cars. Pedestrians on St. Albans will be endangered by the blind exit located just three feet from a heavily used residential sidewalk.

## **2. The variances are not consistent with the comprehensive plan.**

The City of St. Paul’s Comprehensive Plan (“2040 Comp Plan”) and the Summit Hill/District 16 Neighborhood Plan (“Summit Hill Plan”) are the guiding comprehensive plans for the Project and the surrounding area. Although the Project touts its consistency with the 2040 Comp Plan, it could promote those same policies without variances to increase its height, building footprint, or building area. Nothing precludes the Project from using the property for a mixed-use development without

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<sup>4</sup> The Project’s Trip Generation Study optimistically expects that only 25% of residents will exit during peak morning hours.

additional variances. Moreover, the variances requested would fail to promote other policies of the guiding comprehensive plans.

The variance requests are inconsistent with the following comprehensive plan goals and policies:

### 2040 Comp Plan

LU-1. Contrary to 2040 Comp Plan Policy LU-1, the increased density of the Project is not focused in an area with high existing or planned transit capacity.<sup>5</sup> Grand Avenue is serviced by a single bus route, Route 63.<sup>6</sup> Due to the lack of high existing transit capacity, parking and traffic congestion will increase. As discussed above, this will negatively impact Grand Avenue and the surrounding neighborhood.

LU-29. The 2040 Comp Plan Policy LU-29 directs zoning action to ensure that building massing, height, scale and design transition to those permitted in adjoining districts. The Project would tower over the surrounding residential neighborhood. The massing effect due to its significant variances from applicable design and building regulations would stick out and disrupt the transition from Grand Avenue into the surrounding residential neighborhoods.

Housing Goal 3. This goal of the 2040 Comp Plan is to “[p]rovide fair and equitable access to housing for all city residents.” Additional above market-rate luxury apartments will worsen preexisting housing inequalities in St. Paul and further stratify existing housing.

H-16. The 2040 Comp plan aims to “increase housing choice across the city to support economically diverse neighborhoods by pursuing policies and practices that maximize housing and locational choices for residents of all income levels.” The Project fails to promote this policy and provide the type of housing the area desperately needs.

Rental rates in the Summit Hill neighborhood average approximately \$920.00 per month.<sup>7</sup> Monthly rental rates for the Project will range from \$1,400.00 for an alcove to \$2,750 for a two-bedroom apartment. Parking will be an additional \$175.00 per month. Additional market-rate rental properties do not address the real need and demand for affordable housing. Moreover, the scale of this project increases the rents: a 5-story building has higher per-square-foot costs than a code-compliant 3-story

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<sup>5</sup> Metro Transit has 14 routes defined as “High Frequency”—routes with no more than 15 minutes between trips; five of these service St Paul: Greenline LRT, A Line BRT, Route 54 on W 7<sup>th</sup> Street, Route 64 along Maryland Avenue, and Route 21 that connects Selby Avenue to Lake Street in Minneapolis.

<sup>6</sup> Route 63 generally has a frequency of 20 minutes or more most days. During rush hour, the frequency is approximately 10-20 minutes. Stated another way, 77% of the time Route 63 has a frequency of 20 minutes or more.

<sup>7</sup> Gabriela Norton & Carolyn Szczepanski, MARKET WATCH: Saint Paul, Minnesota Housing Project, July 2018, *available at* <https://www.mhponline.org/publications/rental-market-watch/issue-2-saint-paul>.



building would. A 5-story project development can cost as much a 200% more to build per square foot and the increased costs will be passed to the development's residential and business tenants.<sup>8</sup>

Continued construction of large developments of above market-rate rentals jeopardize lower-density apartment buildings that exist along Grand Avenue and elsewhere in the neighborhood; buildings which support and enhance the historical character and charm of the neighborhood, and qualify as naturally-occurring affordable housing. The Project risks placing upward pressure on rent within the area and displacing less economically secure residents.<sup>9</sup> More affordable housing near new construction are likely to have rents higher compared to similar housing.<sup>10</sup> Even worse, allowing luxury housing to exceed design standards and building regulations will create enormous incentives toward the demolition of existing smaller multifamily housing, like the quintessential brick two-story apartment that provides much the affordable housing on and around Grand Avenue. The result is an economically exclusionary area that diminishes the diversity and vibrancy of the community.

H-45. This policy supports the preservation and maintenance of historic housing stock as an affordable housing option. Granting the Project's variance requests will create a race to demolish existing naturally-occurring affordable housing. Developers will seek variances to construct massive and dense luxury housing. Historic housing stock will be diminished and many community members will be priced out.

HP-16. This policy directs that a balance must be struck between preserving the historic neighborhood and new development by considering the impact of the Project on the character-defining features of the area and the area context. Grand Avenue and the surrounding area is a vibrant and dynamic community with a rich architectural history. Indeed, the location of the Project is within State and Federal Historic Districts. The imposition of a significantly taller and massive structure does not provide a transition to building designs in the adjoining areas and is out of context with the character-defining features of the area.

### Summit Hill Plan

H9. The Summit Hill Plan expresses a goal of ensuring "that new and renovated mixed-use buildings on Grand Avenue respect the historic nature and character of

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<sup>8</sup> Andres Torrubia, et al. FIXR: Jan 20, 2021, available at <https://www.fixr.com/costs/build-apartment#apartment-construction-costs-per-unit>.

<sup>9</sup> Atticus Jaramillo & Chip Halbach, *Sold Out*, Minnesota Housing Project, October 2016, available at [https://www.mhponline.org/images/Sold\\_Out\\_final\\_revised\\_small.pdf](https://www.mhponline.org/images/Sold_Out_final_revised_small.pdf).

<sup>10</sup> Anthony Damiano & Chris Frenier, *Build Baby Build?: Housing Submarkets and the Effects of New Construction on Existing Rents* (Center for Urban and Regional Affairs, Working Paper 2020) available at <https://www.cura.umn.edu/research/research/build-baby-build-housing-submarkets-and-effects-new-construction-existing-rents>.

the neighborhood...” The mass, bulk, and height of the Project is out of character for the neighborhood and does not respect its historic nature.

H12. The Summit Hill Plan promotes the retention of rental housing options and affordability. The Project will decrease the affordability of housing in the area and lead to the loss of naturally-occurring affordable housing.

G6. “[V]ariations are opposed by SHA in those areas where parking and traffic problems create undue hardship for neighboring businesses, residents, and visitors.” This area has intense use of on-street parking by current land uses. As discussed previously, the variations function to maximize the density of luxury apartments. Granting additional variations to increase density for this location will create additional undue hardship for neighboring businesses, residents, and visitors.

3. The applicant has not 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.

The Project asserts that the practical difficulties in complying with the EG Overlay are due to its restrictive height and density limits. This is insufficient to find a practical difficulty. Any variance request is not a result of the unique topography of the area or the Project’s location relative to other constraining features. Rather, the developer has made a choice<sup>11</sup> – a choice driven solely by economic considerations – to build a massive structure within the EG Overlay with minimal setbacks and an outdoor patio area.

The true purpose of the Project’s variance requests is to improve the economic feasibility of the development. It cannot reasonably be disputed the feasibility of the Project is directly tied to building as many luxury apartments as possible. The Project acknowledged as much during the July 1 zoning meeting. Nothing prevents the Project from building mixed-use development without the need for extensive variations. Such a development would be a reasonable use of the property. The only conclusion to be drawn is that the variations are requested solely to maximize returns on investment. Economic considerations do not constitute practical difficulties. The Project cannot establish there are practical difficulties other than their own economic considerations. Variations for the practical purpose of maximizing the number of luxury apartments does not satisfy this criteria.

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<sup>11</sup> The Developer has also made many other choices to ensure that the Project is luxury-priced rental housing, and these discretionary choices have increased the per-square foot costs. For example: ceiling heights in excess of 9 feet for the housing and in excess of 15 feet for the retail; amenities like club rooms and work out spaces; structured parking for retail spaces instead of surface parking in the rear.



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

The plight – the need for variances for the Project as currently designed – is not due to circumstances unique to the property. Again, the Project could be designed to comply with design and building regulations required by the EG Overlay. The EG Overlay was established based upon stakeholders carefully considering the needs of the community. It is not that a mixed-use development cannot be built at the location. Rather, the Project is unwilling to be designed consistent with the EG Overlay. Any plight of the landowner is self-imposed and not a basis to grant the variances requested.

5. The variance will not permit any use that is not allowed in the zoning district where the affected land is located.

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6. The variance will alter the essential character of the surrounding area.

The essence of the surrounding area is a vibrant community of historic, mixed income housing and local businesses. Mixed-use development could be constructed at this location without altering the essential character of the area. However, instead of incorporating itself into the community, the Project proposes a hulking structure that would impose itself on the community and change its essential character. At 20 feet to 45 feet taller than any building in the adjacent area, the Project would loom over the neighborhood and its mass would jut out of the surrounding area. Its design would be an aberration from the historic nature of the community. The variances, which would result in significantly increased density and intensity of use, would negatively impact the livability of the neighborhood. Rental prices would increase. Parking and traffic congestion would worsen. Public infrastructure and services would be overburdened. The fabric of the community would begin to fray under the mass of the Project. Undoubtedly, the Project would be noteworthy for its alteration to the area. Not only for its height, bulk, and footprint, but also how it portends the destruction of the surrounding area's essential character. Accordingly, the Project's variance requests should be denied.

## II. CONDITIONAL USE PERMIT

In addition to the variances, the Project requests a Conditional Use Permit ("CUP") to allow for a 59'-10" building height. St. Paul Ordinance articulates the required findings for approval of a conditional use as follows:

- (a) The extent, location and intensity of the use will be in substantial compliance with the Saint Paul Comprehensive Plan and any applicable subarea plans which were approved by the city council.
- (b) The use will provide adequate ingress and egress to minimize traffic congestion in the public streets.
- (c) The use will not be detrimental to the existing character of the development in the immediate neighborhood or endanger the public health, safety and general welfare.
- (d) The use will not impede the normal and orderly development and improvement of the surrounding property for uses permitted in the district.
- (e) The use shall, in all other respects, conform to the applicable regulations of the district in which it is located.

Sec. 61.501

Many of the reasons the Project's variance requests should be denied can be applied to denial of its request for a CUP. The zoning committee should consider the effects of the increased density and intensity of use when evaluating the Project's request for a CUP. In summary, the Project's height, which is proposed solely to maximize the number of luxury apartments at the location, is not in compliance with the applicable comprehensive plans. The Project is not located near high existing transit capacity, does not transition to nor consider the historic character of the surrounding area, and does not promote the retention of naturally-occurring affordable housing.

The increase in height permitted under a CUP will also endanger the public health, safety, and general welfare of the community. Additional height beyond what is allowed under the EG Overlay would cast maximum shadows on surrounding residential properties. Neighbors will have less privacy due to the residents and guests of the new mixed-use development living high above them. Pedestrians and bikers will be endangered by increased traffic and parked cars caused by the intensification of use for the location. Existing sewer, water, parking, road, and public service infrastructure will also be strained. The area will experience an overall reduction in the health, safety, and welfare of its residents.

The Project will also impede the normal and orderly development and improvement of the surrounding property for uses permitted in the district. It is clear, based upon the EG Overlay, which limits the size of mixed-use development, that normal and orderly development included limitations on the size and height of



buildings. The construction of a large building will impede the development because it will be an outlier in a historic area of smaller residential and commercial properties. This would lead to a race to rezone the area and construct equally large residential and mixed-use developments thereby destroying the orderly development of Grand Avenue as an area of smaller buildings built within the context of its historic character.

A conditional use permit for the purpose of maximizing the number of luxury apartments does not meet the required criteria. Because the Project cannot establish the required findings, its Conditional Use Permit should also be denied.

### III. CONCLUSION

The variances and Condition Use Permit requested should be denied because the requests do not satisfy the required criteria and are driven by the Project's profit margins. The Project obscures its primary focus on economic considerations behind the laudable policies of the area's comprehensive plans and the purportedly restrictive requirements of the EG Overlay. The EG Overlay was established to maintain the neighborhood's uniquely historic character and vibrant community. A three-story mixed-use development could be developed at this location and could conform to existing design and building regulations. Moreover, a smaller structure would provide more housing in a neglected segment of the housing market while providing a smooth transition to the surrounding residential neighborhood. The Project's requests for variances and a CUP, however, disregard these facts in pursuit of maximizing the Project's profits. Because the Project has failed to establish a basis for variances or a Conditional Use Permit, their requests should be denied.

Sincerely,

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

Erik F. Hansen  
Attorney at Law

EFH/DRR/md

cc: Client