



## Legislation Details (With Text)

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**Title:** Memorializing a decision of the City Council to (1) deny the appeal of height variances granted by the Planning Commission for a mixed use project proposed at 1465 Davern; and (2) modifying the decision of the Planning Commission by reducing the extent of the granted height variance.

**Sponsors:** Chris Tolbert

**Indexes:**

**Code sections:**

**Attachments:**

Date	Ver.	Action By	Action	Result
7/15/2015	1	Mayor's Office	Signed	
7/8/2015	1	City Council	Adopted	

Memorializing a decision of the City Council to (1) deny the appeal of height variances granted by the Planning Commission for a mixed use project proposed at 1465 Davern; and (2) modifying the decision of the Planning Commission by reducing the extent of the granted height variance.

WHEREAS, Shepard Development LLC ("Applicant"), on February 3, 2015, submitted to the Saint Paul Planning Commission ("Commission") an application for site plan approval under PED Zoning File No. 15-022-204 and, under PED Zoning File No. 15-007-994 an application for a variance from the 55-foot height limit imposed on mixed use buildings in T3 Districts under Leg. Code § 66.331 as well as a variance of the 40-foot height limit imposed on the site due to its location within RC3 River Corridor Overlay Districts under Leg. Code § 68.233 in order to construct a six-story, mixed-use building with a maximum height of 73 feet 6 inches on a site approximately four- acres in size and commonly known as 1465 Davern Street, [PIN No. 21.28.23.42.0016], and legally described as Whitneys Re arrangement Ofbe Vac Fairview Ave Adj And Part Of Lot 28 Steels Subd E Of 7th Blvd And In Sd Re Vac Wheeler St And Leonard Ave Alleys Accruing All Of Gertrude St E Of W L Of Lot 21 Blk 2 And Lots 16 Thru 30 Blk 1 Lots 21 Thru 30 Blk 2 All Of B; and

WHEREAS, on April 16, 2015, the Commission's Zoning Committee, in accordance with Leg. Code § 61.303, duly conducted a public hearing on the said site plan and a variance application where all persons present were given an opportunity to be heard and, at the close of the hearing, moved to recommend approval of both applications to the full Commission at its April 24, 2015, meeting; and

WHEREAS, on April 24, 2015, the Commission, based upon all the files, staff recommendation and testimony, presented to its Zoning Committee at the April 16, 2014 public hearing, for those reasons substantially reflected in the Commission's meeting minutes, duly moved to approve with specific conditions the site plan application and the height variance applications requested by the Applicant, based upon the following findings of fact as set forth in Planning Commission Resolution No. 15-23 as follows:

**1. To approve any variance, the Planning Commission must find that it meets the following findings:**

*A. The variance is in harmony with the general purposes and intent of the zoning code.*

This finding is met. In the T3 district, heights greater than 55' feet are allowed through either increased setbacks or conditional use permits, except in the river corridor (MRCCA) overlay district. The proposed height is generally consistent with similarly situated buildings along Shepard Road and with other buildings within approximately one half-mile that were constructed on similar shallow bedrock sites.

In regard to development in the RC3 district, Sec. 68.231 of the Zoning Code gives the intent statement for the district:

It is intended that land and waters within this district shall be managed to conserve and protect the existing and potential recreation, scenic, natural and historic resources. Open space provided in the open river corridor is for public use and the protection of unique natural and scenic resources. The existing transportation role of the river in this district will be protected.

The proposed building is consistent with the protection of natural, historic, and recreation resources in the river corridor. The building would have a minimal visual impact on the river valley and is consistent with the visual character of urban development along the bluffs in this segment of the river corridor.

The applicant submitted a cross section illustration of the river valley and bluff in relation to the proposed building. The building would be visible from the Saint Paul river bluff, which is directly across Shepard Road from the site. It would not be visible from the northern shoreline. During the months when leaves are on the trees, the building would not be visible from the river itself, and would be barely visible from Pike Island's trails and the river's southern shore. Pike Island is a quarter to half a mile away on the river bottom.

From Fort Snelling across the river to the west, the Shepard-Davern area is not visible from within the fort because the view is blocked by the barracks. It is only visible from the tower. The view is partially obscured by trees, but the top floors of the proposed building would be visible. The tower is half a mile away.

The site is intermittently visible from across the river in Mendota. Highway 13, running near the bluff, is three-fourths of a mile away. When viewed from across the river, Shepard-Davern lies within a panorama dominated by the green of the river valley with ribbons of urban development at the crests of the bluffs on both sides. The proposed building would become another small part of this ribbon on the bluff crests.

In regard to location relative to the bluff, the standard for bluff development is 40' landward of the bluff line, per §68.233. This building would be approximately 170' from the bluff line. Apart from the building height limit, the development is consistent with the other standards in the RC3 district (§68.233).

It should be noted that Updated DNR rules for the Mississippi River Corridor Critical Area (MRCCA) are expected to be published by June and adopted by the state by the end of 2015. Saint Paul will then be required to adopt a new plan and ordinances for the MRCCA consistent with the state rules. The most recent version of the draft DNR rules shared with City staff would allow heights of up to 65' on the project site, with the potential for greater heights with a conditional use permit based on an analysis of the impacts to views of the additional height.

*B. The variance is consistent with the comprehensive plan.*

This finding is met. The future land use map of the Land Use chapter of the Saint Paul Comprehensive Plan identifies the area of the proposed development as part of a Mixed Use Corridor. The Land Use chapter describes Mixed Use Corridors as characterized by a fine-grain mix of uses including residential, commercial, retail, office, small scale industry, institutional, and open space at residential densities of up to 150 dwelling

units per acre.

The Shepard-Davern Area Plan, an update to the 2007 District 15 Plan, was adopted by the City Council in early 2015. The vision articulated in the plan calls for redevelopment of the area's under-utilized land with the following: 3-5 story mixed use development; better pedestrian orientation in new development; new development consistent with the character of the neighborhood; and a better balance of housing types and tenures, including high quality housing that will act as a neighborhood amenity. Although the proposed building is a story taller than the range identified in the plan, it is similar in height to existing buildings similarly situated along Shepard Road and within approximately one half-mile, where even taller buildings have been built on similar shallow bedrock sites.

*C. The applicant has established that there are practical difficulties in complying with the provision and 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.*

This finding is met. The proposed development eliminates large off-street surface parking lots, which characterized previous development on the site. The incorporation of resident and commercial tenant parking into the structure allows for an improved relationship of the overall development to the street. It also allows space for significant landscaping along Shepard Road and the proposed S. Wheeler extension. However, due to shallow bedrock, structured parking cannot be buried underground and must be incorporated into the above-ground portions of the building. A taller building is needed to accommodate the residential potential of the site that is being displaced by the above-grade parking garage. This constitutes a practical difficulty. The proposed use is reasonable given the location and zoning of the site.

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

This finding is met. The plight of the landowner is the result of shallow bedrock, a condition over which the landowner has no control.

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

This finding is met. The variance allows additional height, but the use itself (mixed use with accessory parking) is a permitted use of the property.

*F. The variance will not alter the essential character of the surrounding area.*

This finding is met. The area has been long developed, and a large commercial building was located just west of the site until its recent demolition. The proposed building is adjacent to an existing parking garage on the site. Allowing additional height will not substantially alter how the site appears as viewed from the area north of Norfolk Avenue. The building is also similar in mass to existing buildings similarly situated along Shepard Road and within approximately one half-mile, where even taller buildings have been built on similar shallow bedrock sites.

**2. To approve a variance to permit a building height of 73'4" in the RC3 (Urban Open District District), the Planning Commission must find the variance request meets the following test, spelled out in §68.601:**

The burden of proof shall rest with the applicant to demonstrate conclusively that such variance will not result in a hazard to life or property and will not adversely affect the safety, use or stability of a public way, slope or drainage channel, or the natural environment; such proof may include soils, geology and hydrology reports which shall be signed by registered professional engineers. Variances shall be consistent with the general

purposes of the standards contained in this chapter and state law and the intent of applicable state and national laws and programs.

This finding is met. The area of the proposed building has long been in urban use and the proposed building will not result in the loss of natural habitat. Previous development immediately adjacent to the site and existing development of similar scale nearby adequately demonstrate that the proposed building will not affect the safety, use, or stability of a public way, slope, or drainage.

Building plans submitted to the City are required to be signed by a registered professional engineer or architect and will confirm among other things that the site has the bearing capacity for the proposed building.

In regard to the general purposes of the development standards for the RC3 district, please refer to variance Finding 1 above, which covers the same point.

WHEREAS, on May 4, 2015, the Friends of the Mississippi River ("Appellant"), under PED Zoning File 15-033-501 and pursuant to Leg. Code § 61.702(a), filed an appeal from the Planning Commission's April 24, 2015 decision to grant variances from the maximum height limits established for mixed use buildings in T3 zoning districts and building height generally in RC3 zoning districts and requesting a public hearing on the same before the Saint City Council; and

WHEREAS, on June 3, 2015, pursuant to Leg. Code § 61.702(b), and upon notice to affected parties, the City Council duly conducted a public hearing on the said appeal where all interested parties were given an opportunity to be heard; and

WHEREAS, the Council, upon closing the public hearing on the appeal and having heard all the statements made, and having considered the variance application, the staff report, and all the files, minutes and the Commission's resolution in this matter, does hereby

RESOLVE, That the Council of the City of Saint Paul hereby affirms the decision of the Planning Commission to grant to the Applicant in this matter, both a variance from the height standard established for mixed use buildings in T3 Districts as well as from the height standard established for structures in RC3 Overlay Districts as the Council finds that the Appellant has failed to meet its burden of demonstrating an error in any fact, finding, or procedure on the part of the Planning Commission in granting the height variances requested by the Application and, to that end, the appeal by the Friends of the Mississippi be and is denied; and, be it

FURTHER RESOLVED, that the Council nevertheless finds the specific height variances granted by the Commission in this instance to be excessive and therefore, pursuant to the authority vested in the Council pursuant to Leg. Code § 61.704 and based upon the records and the testimony submitted relative to this application and appeal, the Council finds that the Commission's decision to approve height variances in order to permit a 73.5 foot building should be modified; and be it

FURTHER RESOLVED, for the following reasons, that Planning Commission Resolution No. 15-23 requires modification to findings No.'s 1(a), 1(b), and 1(f). The modification will reduce Applicant's maximum building by 13.5 feet and has the effect of granting a 10-foot variance from the T3 district's building height maximum [50 feet permitted, 60 feet allowed with the variance] and a 20-foot variance from the RC3 district building height maximum [40 feet permitted, 60 feet allowed with the variance].

Accordingly, Finding's no.'s 1(c), 1(d), and 1(e), together with Finding no. 2, as set forth in Resolution No. 15-23 are adopted as stated therein by the Council as its own in support of this decision and that finding's no.'s 1(a), 1(b), and 1(f) of the Commission's Resolution shall be modified so as to be consistent with the following reasons:

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

The proposed building site is visible from locations within Fort Snelling State Park and other bluff top locations in and around the area of the confluence of the Mississippi and Minnesota rivers. The confluence of rivers in Fort Snelling State Park is recognized as having significant cultural and historic value and the impact of building design must be sensitive to these values. One purpose of zoning code regulations is to promote and protect community aesthetics and one way to do this is by placing limits on the height of buildings in certain zoning districts. Another purpose of the zoning code is to grant variances under certain situations including variances of building height regulations. Building heights for existing buildings in the general vicinity already range from 55 to 60-feet high. The height of the existing buildings in the vicinity indicates that it is not unreasonable to exceed the RC3's 40-foot limit in order to develop the site, especially given the proximity of bedrock to the surface. However, a 73.5 foot high building would clearly be out of scale with the existing pattern of building heights in the area, will be an aesthetic mismatch with these buildings as a result and will not be in keeping with the general purposes and intent of the zoning code.

Reducing the height of the proposed building brings it closer to the general purposes and intent of the zoning code. The Council notes that the DNR is currently studying new rules for the Mississippi River Corridor Critical Area and is advised that as of December 2014, the DNR study proposes to increase the height limit for RC3 sites to 65 feet along with an option for additional height with a conditional use permit. Allowing the proposed building to be built up to 60 feet in height is reasonable given the bedrock on the site, the already existing pattern of 55 to 60 foot tall buildings, and the zoning code's goal of promoting and protecting the aesthetics and historical and cultural values of the community and of the River Corridor and the DNR's preliminary determination that an increase in building heights beyond the current 40 foot limit would be reasonable.

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

The River Corridor Chapter, RC Policy 7.2.1, states that building standards should recognize the importance of the river as a scenic waterway and that building massing in an urban environment should give equal consideration to the visibility of buildings from the river as well as the surrounding "uplands." The River Corridor Chapter states that The City supports maintaining building heights that maximize public views of the high bluff line from the high water mark on the opposite bank of the river." RC Policy 7.2.4. The developer's sight line study indicated that the proposed building would not be visible during summer months from the ordinary high water level from the shores of Pike Island. The developers study however did not address building visibility during the winter months. In contrast, the Planning Commission found that the proposed building is visible from parts of Pike Island and would be throughout the year. The Council notes that a 73.5 foot high building is taller than the existing parking garage adjacent to the site (approximately 40-45 feet high) and notes that portions of the parking garage are visible from Pike Island. The Council notes that portions of the existing large multifamily residential buildings in the general area (approximately 55-60 feet high) are also visible from the bluffs in and around the general area including Fort Snelling State Park. The Council finds that the developer inadequately evaluated the impact of a 73.5 foot tall building on views from Fort Snelling State Park and the surrounding high bluff/uplands on a year round basis. Given the Council's findings under no. 1 (a), the Council further finds that a building 60 feet high overall is more consistent with the scale of existing development, and would substantially reduce the alteration of views from Fort Snelling State Park and surrounding bluffs and uplands.

The recently adopted Shepard Davern small area plan calls for 3-5 story buildings in the area of the proposed building. The Planning Commission's conclusion that a 73.5 foot tall building is consistent with this plan is inaccurate. However, a 60-foot tall building would generally provide greater consistency with the Comprehensive Plan.

*1(f) The variance will not alter the essential character of the surrounding area.*

A 73.5 foot tall building is substantially taller than the tallest buildings existing in the general area and will negatively alter views from the River Corridor, to and from the high bluffs in the area and how this upland area will appear when viewed from Fort Snelling State Park. In contrast, a building that is 60 feet high is similar in scale to existing development in the area and would not substantially increase the impact on views or otherwise alter the essential character of the surrounding area as it exists today.

AND, BE IT FINALLY RESOLVED, that the City Clerk shall immediately mail a copy of this resolution to the Applicant Shepard Development LLC, to the Appellant Friends of the Mississippi River, to the Zoning Administrator and to the Planning Commission.