



## Legislation Text

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**File #:** RES 20-1729, **Version:** 1

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Memorializing the Council's decision to grant an appeal by Told Development Co. from a decision of the planning commission which had denied Told's request for a floor area variance to construct a new commercial building at 1212 Prosperity Avenue.

WHEREAS, on March 6, 2020, Told Development Company ("Applicant"), in Zoning File No. 20-018-602, duly submitted to the Saint Paul Planning Commission ("Commission") applications related to zoning and required by the City regarding the Applicant's proposal to demolish an existing one-story commercial building on property located at the northeast corner of Maryland and Prosperity Avenues that is commonly known as 1212 Prosperity Avenue and legally described as LOTS 10-17, NILSSONS SUBDIVISION OF LOTS 9 AND 10, BLOCK 4 OF ROGERS AND HENDRICKS ACRE LOTS NO. 2 (SUBJECT TO VACATED ALLEYS) [PIN No. 22-29-22-34-0082] and in place of the demolished building, construct a new commercial building of approximately the same size; and

WHEREAS, the subject property is located in a T2 zoning district. The Applicant indicated that the principal use proposed for the new commercial building was a bank. Banks are a permitted use in T2 districts. The Applicant indicated that the bank would have two dedicated "ATM" drive-through lanes and a "bypass lane" outside of the ATM lanes. A commercial use in a T2 district is allowed up to 3 drive-through lanes with a conditional use permit; and

WHEREAS, new buildings in T2 districts must have a minimum Floor Area Ratio ("FAR") of 0.3. The Applicant indicated that the new building was proposed with a FAR of 0.126. A new building with a FAR of 0.126 required a variance from the T2 district's 0.3 FAR requirement; and

WHEREAS, the Applicant therefore submitted to the Commission:

- (1) an application for a conditional use permit to allow three (3) drive-through lanes pursuant under Leg. Code § 61.501 [conditional use general standards] and 65.513 [drive-through lane general standards].
- (2) an application for a variance to decrease the building's FAR from the required 0.3 to the proposed 0.126, under Leg. Code §§ 61.202(b) [authorizing Commission to act as the board of zoning appeals and grant zoning variances], 66.331(a) [new building FAR standard in T districts] and 61.601(a-f) [variance general standards]; and

WHEREAS, on April 9, 2020, the Commission's Zoning Committee ("Committee"), pursuant to Leg. Code § 61.303, duly conducted a public hearing on Applicant's requests which, pursuant to the various Executive and Emergency Orders in effect at the time due to the Covid-19 pandemic, was conducted remotely as it was deemed neither practical nor prudent to conduct "in-person" hearings: accordingly, as provided by law, attending members of the Committee and Committee staff did so remotely as did the Applicant while members of the public were afforded the opportunity to submit, no later than noon of the said hearing date, written testimony for the Committee's consideration and inclusion in the hearing record and, further, were afforded an opportunity to audibly monitor the hearing proceedings; and

WHEREAS, following the close of the April 9, 2020 hearing, and based upon all the reports and evidence presented, the Committee moved to recommend approval of the Applicant's CUP request for the drive-through lanes for the reasons set forth in the staff report dated April 3, 2020, together with the conditions set forth therein. However, for the reasons set forth in the Committee's adopted meeting minutes, the Committee moved to recommend denial of the Applicant's requested FAR variance which are incorporated herein by reference; and

WHEREAS, on May 1, 2020, the Commission considered the Committee's April 9, 2020 recommendations and, following deliberation on the matter, the Commission, based upon the recommendations of its Committee, upon a 11-1 vote, approved the Applicant's request for a conditional use permit to allow two drive-through lanes, subject to four (4) conditions further described below, and denied the Applicant's request for a variance from the T2 district's FAR standard, based upon the following findings which are forth in Planning Commission Resolution No. 20-15 and incorporated herein for reference:

- "1. The applicant is proposing to demolish an existing 1-story building currently used for adult daycare and home healthcare and build a bank of approximately the same size on the northeast corner of Maryland and Prosperity Avenues. Banks are an allowed use in the current T2 zoning district and up to three drive-through lanes are permitted with a conditional use permit. The applicant is proposing two drive-through lanes with a bypass lane on the outside. T2 has a minimum FAR of 0.3, and the proposed FAR is 0.126, leading to the variance application.
2. § 61.501 lists five standards that all conditional uses must satisfy:
  - (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.* This condition is met. The extent, location, and intensity of the accessory drive-through use does not conflict with the Comprehensive Plan nor applicable subarea plans. While Land Use Policy 1.52 from the 2030 Comprehensive Plan "[d]iscourage[s] new and expanded auto-oriented uses," it does not prohibit them. The Zoning Code allows drive-throughs in T2 districts as long as they meet conditions established here, which mitigate potential negative impacts to nearby properties and users of the site.
  - (b) *The use will provide adequate ingress and egress to minimize traffic congestion in the public streets.* This condition can be met. The applicant is proposing to reduce the total number of curb cuts from four to three, one on Maryland and two on Prosperity. Saint Paul Public Works and Ramsey County have reviewed initial plans and asked that the applicant try to reduce curb cuts on Prosperity Avenue from two to one. Satisfaction of this standard is contingent upon site plan approval.
  - (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.* This condition is met. The existing character of the area will remain generally the same, with a one-story office building at the corner replaced with a one-story bank of approximately the same size and FAR, also located at the corner. At least two drive-throughs exist within a quarter mile of the site. The use will not 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.* This condition is met. The proposed drive-through would not impede development of the surrounding properties. (e) *The use shall, in all other respects, conform to the applicable regulations of the district in which it is located.* This condition is met.
3. § 65.513 establishes standards and conditions for drive-through sales and services:

- (a) *Drive-through lanes and service windows shall be located to the side or rear of buildings, shall not be located between the principal structure and a public street, and shall be at least sixty (60) feet from the closest point of any residentially zoned property or property occupied with a one-, two-, or multiple-family dwelling.* This condition is met. The drive-through lanes and service windows are located on the side of the building and not between the principal structure and public street. The drive-through lanes are at least sixty feet from the closest point of the residentially zoned properties to the north and east.
- (b) *Points of vehicular ingress and egress shall be located at least sixty (60) feet from the intersection of two (2) streets and at least sixty (60) feet from abutting residentially zoned property.* This condition is met. The drive-through curb cut is approximately 70' from the residential property to the north and at least 80' from the Maryland intersection. There is another site access point to the north that serves as primary site access for parking.
- (c) *Speaker box sounds from the drive-through lane shall not be plainly audible so as to unreasonably disturb the peace and quiet of abutting residential property.* This condition can be met. The project will not use traditional teller windows for either of the drivethrough lanes, instead using Automatic Teller Machines (ATMs) in each, reducing the amount of noise normally associated with bank speaker boxes.
- (d) *A six-foot buffer area with screen planting and an obscuring wall or fence shall be required along any property line adjoining an existing residence or residentially zoned property.* This condition can be met. There is 7.9 feet of buffer area and a 6-foot-tall privacy fence planned along the north side of the property. The buffer requirement is met on the east side with 56.4 feet between the face of curb and the T2 property to the east, but there is no fence shown on the plan. The condition can be met with the inclusion of a fence on the east side and screen plantings on the north and east.
- (e) *Stacking spaces shall be provided for each drive-through lane. Banks, credit unions, and fast-food restaurants shall provide a minimum of four (4) stacking spaces per drivethrough lane. Stacking spaces for all other uses shall be determined by the zoning administrator.* This condition is met based on an exhibit provided by the applicant that shows four stacking spaces per lane that would not disrupt internal site circulation.

*Additional conditions in the T2 traditional neighborhood district:*

- (f) *There shall be no more than one (1) drive-through lane and no more than two (2) drivethrough service windows, with the exception of banks, which may have no more than three (3) drive-through lanes.* This condition is met. The proposal includes two drivethrough lanes and one bypass lane.
  - (g) *The number of curb cuts shall be minimized. In light rail station areas, there shall generally be no more than one (1) curb cut on a block face per drive-through. Drivethrough sales and services are prohibited along the entire length of block faces adjacent to light rail transit station platforms.* This condition can be met. As described in Finding 2(b), the applicant has been asked to try to reduce the number of curb cuts on Prosperity from two to one and is currently going through the site plan review process to determine the best solution with City and County approval. Satisfaction of this condition is contingent upon site plan approval. The site is not near a light rail station.
4. § 61.601 states that the Planning Commission shall have the power to grant variances from the strict enforcement of the provisions of this code upon a finding that:
- (a) *The variance is in harmony with the general purposes and intent of the zoning code.* This finding is not met. The variance is in harmony with the general purposes and intent described in § 60.103 of the zoning code except for implementing the policies of the Comprehensive Plan. See finding 4(b) for rationale. The variance is in harmony with the intent of the zoning district with an exception. The T2

traditional neighborhood district is “designed for use in existing or potential pedestrian and transit nodes. Its intent is to foster and support compact, pedestrian-oriented commercial and residential development that, in turn, can support and increase transit usage. It encourages, but does not require, a variety of uses and housing types, with careful attention to the amount and placement of parking and transitions to adjacent residential neighborhoods.” The site is served by the 64 and 54 bus lines and part of the Phalen-Rose Neighborhood Node as defined in the *2040 Comprehensive Plan* and the Phalen Village Neighborhood Center as defined in the *2030 Comprehensive Plan*. A bank in this location is consistent with having a variety of uses available near transit and could provide an anchor for the intersection and a transition to less intense residential uses to the north and east. The bank use itself is consistent with the 2030 and 2040 comprehensive plans, as well as the applicable small area plans. The location of the building oriented to the corner is consistent with district design standards and improves access for pedestrians. The location of parking (if properly buffered) is located away from the corner helps with the transition to nearby residential uses. However, *compact* development is guided in large part by the FAR requirements in the traditional neighborhood districts, and therefore the variance for FAR is not in harmony with that element of the intent.

Regarding the FAR calculation, § 66.331(a) reads in part “where the new building and its associated parking and landscaping will cover only part of the site and leave the rest of the site open for an additional building, minimum FAR may be calculated based on the area of the site covered by the new building and its associated parking and landscaping.” Though the applicant has not indicated whether it would be split or built upon, the eastern 50 feet of the parcel fits this description. The area of this open portion of the site is approximately 6,000 square feet. With this area removed, the new FAR calculation would be  $3,855 / (30,563 - 6,000)$ , or 0.157, which is still less than the minimum but varies less from the minimum FAR requirement. This eastern portion could support up to a three-story building in the future under current zoning. An additional 5,314 square feet of additional GFA would meet the minimum FAR requirement.

- (c) *The variance is consistent with the comprehensive plan.* This finding is not met. FAR is a tool used to ensure appropriate intensity and compactness of development to meet City goals. A project with less than half of the minimum FAR conflicts with the following plans and policies:

#### *2030 Comprehensive Plan*

The future land use designation of the site is Mixed Use Corridor and it is also part of the Phalen Village Neighborhood Center. Mixed Use Corridors encourage a variety of uses, including commercial. The following policies apply:

Land Use 1.15 Promote Neighborhood Centers as compact, mixed-use communities that provide services and employment close to residences.

Land Use 1.52 Prioritize the development of compact commercial areas accessible by pedestrians and transit users over commercial areas more readily accessed by automobile. Discourage new and expanded auto-oriented uses.

#### *2040 Comprehensive Plan* (Approved by City Council in 2019, but not yet adopted by the Metropolitan Council)

Policy LU-1. Encourage transit-supportive density and direct the majority of growth to areas with the highest existing or planned transit capacity.

Policy LU-29. Focus growth at Neighborhood Nodes using the following principles:

...4. Improve access to jobs by prioritizing development with high job density.

*Greater East Side District Plan (2009)*

D1b. Promote higher density transit-oriented development along the White Bear and Maryland corridors, consistent with the White Bear Avenue and Phalen Village plans.

- (d) *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.* This finding is not met. The applicant states that the difficulty in achieving the minimum FAR is due to the site layout issues that emerge when a drive-through with its associated requirements is included. 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, those factors do not prevent construction of a building that would meet the minimum FAR. A bank with a drive-through is a reasonable use of the property.
- (e) *The plight of the landowner is due to circumstances unique to the property not created by the landowner.* This finding is not met. The applicant cites zoning requirements as the reason for the difficulty, yet those requirements are not unique to the property.
- (f) *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. A bank with accessory drive-through service use is permitted in the T2 zoning district.
- (g) *The variance will not alter the essential character of the surrounding area.* This finding is met. The existing character of the area will remain generally the same, with a one-story office building at the corner replaced with a one-story bank of approximately the same size and FAR, also located at the corner.”

AND, WHEREAS, the conditions placed by the Commission on the approved conditional use permit, as set forth under Planning Commission Resolution 20-15, were as follows:

- “1. Final plans approved by the Zoning Administrator for this use shall be in substantial compliance with the plan submitted and approved as part of this application.
2. The number and location of curb cuts is approved by Saint Paul Public Works and Ramsey County as part of the site plan approval process.
3. A privacy fence of at least 6 feet in height is built along the eastern property line and screen plantings are planted on the north and east sides.
4. The speaker box volume must be set so as to not unreasonably disturb the peace and quiet of abutting residential property.”

AND, WHEREAS, on May 8, 2020, the Applicant, pursuant to Leg. Code § 61.702(a), duly filed an appeal from the Commission’s May 1, 2020 decision alleging errors on the part of the Commission when it denied the Applicant’s FAR variance request and requesting a public hearing before the City Council; and

WHEREAS, the Applicant's appeal was assigned Council File No. APC 20-4 and set on for a public hearing before the Council on June 3, 2020; and

WHEREAS, on June 3, 2020, the City Council, pursuant to Leg. Code § 61.702(b), duly conducted a public hearing on the Applicant's appeal which, pursuant to various Executive and Emergency Orders in effect at the time due to the Covid-19 pandemic, was conducted remotely as it was deemed neither practical nor prudent to conduct "in-person" hearings: accordingly, as provided by law, Council members and City staff attending the hearing did so remotely with City Staff presenting the matter to the Council and the Applicant and all members of the public desiring to do so being afforded the opportunity to submit, no later than noon the day before the said hearing date, written testimony for the hearing record and the Council's consideration and, further, were also afforded the opportunity to audibly monitor the Council's hearing proceedings; and

WHEREAS, at the conclusion of June 3, 2020 public hearing, the Council closed the public hearing and, following deliberation on the matter, the Council laid the matter over to June 10, 2020 in order to take additional time to review the Applicant's proposal, the analysis and recommendation in the staff report and the record and findings of the Commission; and

WHEREAS, on June 10, 2020, the Council again took up the Applicant's appeal and having deliberated on all the files, records and testimony submitted, the Council; DOES HEREBY,

RESOLVE, that the Council of the City of Saint Paul hereby grants the Applicant's appeal in this matter as the Applicant has demonstrated that certain Commission facts and findings, as set forth under section 4 of Planning Commission Resolution No. 20-018-602, which respond to the standards for granting zoning variances under Leg. Code 61.601 and which formed the Commission's basis for denying the Applicant's Floor Area Ratio variance request, were in error. Accordingly, the Applicant's FAR variance request applied for under Zoning File No. 20-018-602 is therefore granted for the following reasons and as set forth in the written reasons submitted into the record by Council Member Yang which shall also be incorporated herein by reference:

*4(a). The variance is in harmony with the general purposes and intent of the zoning code.* On balance, the requested FAR variance for this site is reasonable. The Applicant's building 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, is in harmony with the general purposes and intent of the zoning code for the following reasons:

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 Applicant 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 Applicant agreed to construct a taller building to visually conform with the FAR requirement when viewed from the street.

Although the interior gross floor area of Applicant'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 as 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 large lot could be split in the future. The Commission noted that the easterly portion of the lot could support a three-story building under current zoning. Splitting the lot in 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.

The building design is also consistent with T2 district design standards as 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 will be located away from the corner and behind the building. Provided the parking areas are buffered and landscaped, the overall design helps transition the site to the adjacent residential uses to the north and east.

*4(b). The variance is consistent with the comprehensive plan.* Although the 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 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 2030 and the pending 2040 comprehensive plans as well as the small area plan for this district. While FAR is an appropriate means to ensure the intensity and compactness of building development 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 fulfills T2 design guidelines which makes the bank accessible to 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 stable employment opportunities, improves job access and aids in the promotion of higher density transit-oriented development along the White Bear and Maryland corridors and is consistent with the Greater East Side District Plan’s [D1b] goals due to the banks 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.*

Banks are a permitted and desirable land use. The Applicant has shown that it is difficult to meet the FAR minimum due to site layout issues which emerged because of zoning code requirements for drive-through services. With a residential property to the north, the need to position the building at the corner and the drive-through lane separation requirements on an odd-shaped lot limits where the building’s northern wall can be built. While these factors alone would not prevent construction of a building meeting the minimum FAR, the Applicant’s design meets most zoning requirements. Requiring construction of an additional “building-and-a-

half” to meet the FAR requirement to facilitate “compact development” is a practical difficulty as the additional gross floor area needed to meet the FAR requirement for this lot, as it is presently configured, results in the creation of space for which the Applicant has no use. Mandating the creation of interior floor space for which this Applicant has no use but must maintain and heat and cool, 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.* Although the Applicant purchased the subject lot for the purpose of constructing a “prototypical” bank building, the Applicant did not create the size of the lot which drives one half of the FAR calculation. The lot’s size is a circumstance unique to the property that the Applicant did not create. Applicant’s lot is large enough to split into separate parcels. A parcel could be split from the existing lot that would be large enough to construct a building which can meet the minimum FAR for this district. Granting Applicant’s FAR variance where the lot, if split, allows for a new building on the new lot that would meet the district’s FAR requirement is not unreasonable.

AND, BE IT FURTHER RESOLVED, that the Planning Administrator is instructed to correct the enumeration of the following subparagraphs in section 4 of Planning Commission Resolution No. 20-018-602 as follows: 4(c) is corrected to read 4(b); 4(d) is corrected to read 4(c); 4(e) is corrected to read 4(d); and 4(g) is corrected to read 4(e) and, further, that the erroneous findings set forth in Planning Commission Resolution No. 20-15 incorrectly enumerated therein as findings 4(a), 4(c), 4(d) and 4(e) are stricken and replaced with the language from the findings of fact identified above in this Resolution as 4(a), 4(b), 4(c) and 4(d); AND, BE IT

BE IT FURTHER RESOLVED, with these corrections and amendments to Planning Commission Resolution No. 20-15 regarding the Applicant’s FAR variance request, the Council adopts as its own in support of this decision all the Commission’s finding approving the FAR variance request and the conditional use permit request together with the conditions imposed by the Commission; AND,

BE IT FURTHER RESOLVED, in granting the Applicant’s FAR request, the Council, pursuant to Leg. Code § 61.704, imposes the following condition applicable to the FAR variance:

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

BE IT FINALLY RESOLVED that a copy of this adopted Memorialization Resolution shall be provided to the Applicant, the Zoning and Planning Administrators and to the Planning Commission.