

city of saint paul  
planning commission resolution  
file number  
date

WHEREAS, in File # 21-225-115, Chet Funk et al. have applied for a conditional use permit for a 65' 8" building height and variances for front yard setback (25' minimum, 18 ft. proposed), rear yard setback (11' 9 1/2" minimum, 0' proposed), and side yard setbacks (north: 16' 10" minimum for tall portion, 10' proposed; 11' 9 1/2" minimum for short portion, 10' proposed; south: 16' 10" minimum, 10' proposed) under the provisions of §§ 61.501, 61.601, and 66.231 of the Saint Paul Legislative Code on property located at 1074-1096 James Avenue, Parcel Identification Numbers (PINs) 11-28-23-23-0070, -0071, -0072, -0073, -0074, and -0075 and legally described as Michel & Robertson's Addition, Block 14, Lots 7-12; and

WHEREAS, the Zoning Committee of the Planning Commission, on February 11 and March 11, 2021, held public hearings at which all persons present were given an opportunity to be heard pursuant to said application in accordance with the requirements of § 61.303 of the Saint Paul Legislative Code; and

WHEREAS, the Saint Paul Planning Commission, based on the evidence presented to its Zoning Committee at the public hearing as substantially reflected in the minutes, made the following findings of fact:

1. The six subject parcels were rezoned from R4 to RM2 in September of 2020. The applicants are proposing to demolish the six single family homes and build a five-story apartment building with structured parking. The project would take advantage of the recent RM zoning district text amendments and provide that at least at least ten (10) percent of new dwelling units are affordable at sixty (60) percent of the area median income for at least fifteen (15) years to allow a 0.5 increase in floor area ratio maximum.
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 future land use designation for this parcel is Urban Neighborhood and while the proposed density is high for that category, it is consistent with multi-family housing predominating along arterial and collector streets (note that the 2040 Comprehensive Plan was adopted on November 18, 2020 and resulted in a change to the future land use designation of the property from Mixed-Use Corridor as defined in the 2030 Comprehensive Plan to Urban Neighborhood). There are numerous policies in the 2040 Comprehensive Plan that support a higher-density multi-family development in this location, such as policy LU-1 for transit-supportive density near good bus service on Randolph and Lexington,

moved by \_\_\_\_\_

seconded by \_\_\_\_\_

in favor \_\_\_\_\_

against \_\_\_\_\_

- policies LU-8 and LU-14 for efficient land use (the proposed building has two levels of underground parking), and policy LU-35 for multi-family housing along arterial streets (Lexington and Randolph). This is also a location where residents can meet many of their daily needs within walking distance to neighborhood retail and services at Randolph and Lexington and to the west along Randolph, and multi-family development here would support local businesses. Regarding scale, Comprehensive Plan policy LU-34 addresses the need to providing a diversity of housing options “compatible with the general scale of Urban Neighborhoods.” The proposed height is less than Montcalm Apartments (RM3 zoning district) on the west side of Lexington just south of Randolph and compatible with the apartment complex on a hill at the southwest corner of Randolph and Lexington. While it is significantly larger than other buildings in the immediate vicinity, the substantial distance between them eases the transition. In addition, the building is articulated with a shallow balcony courtyard and steps down a floor on the east side of the building to accommodate the perceived change in height as the elevation of grade decreases. Finally, the north side of James Avenue is unique in that the front yards of the parcels do not all face James and the proposed project, but rather one is oriented to Lexington Parkway, an unbuilt right-of-way enters from the north, and the two houses on the remaining parcels are partly or completely offset from the proposed building. The Macalester Groveland (District 14) Community Plan is similar to the Comprehensive Plan in that it encourages multi-unit development in mixed-use corridors (H2.5, LU1.2) and identifies a need for sensitivity to scale of the context in policies H1.5 and LU3.2, the latter of which calls for design standards that preserve “the traditional aesthetic appearance and appeal of the neighborhood with appropriate scale and mass to the surrounding buildings.” The transition of mass and scale is accomplished as described above.
- b. *The use will provide adequate ingress and egress to minimize traffic congestion in the public streets.* This condition is met. The proposed height itself will not impact traffic congestion or ingress or egress issues. However, circulation and traffic will be considered as part of the site plan review and approval process.
  - 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 proposed project would not endanger health, safety, or general welfare. The Lexington Parkway and Randolph Avenue corridors are defined by variety in scale and use, including some large multi-family buildings. The proposed building adds to this variety and uses horizontal and vertical articulation to respond to immediate context.
  - 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 project would not impede development of neighboring 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 subject to variances considered as part of this application.
3. Zoning Code § 66.231 requires a minimum front yard setback of 25 feet in the RM2 district. The application proposes a setback of 18 feet from Lexington Parkway. § 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 met. The proposed 18-foot front yard setback along Lexington Parkway is in harmony with the general purposes and intent of the zoning code “to promote and to protect the public health, ... aesthetics ... and general welfare of the community...” An 18-foot front yard setback would allow light, air, privacy and access to surrounding properties. The variance would not conflict with the intent of the RM2 zoning district: “[t]he RM2 medium-density multiple-family residential district is designed for multiple-family residential and supportive, complementary uses. Its intent is to foster and support pedestrian- and transit-oriented residential development and provide for infill housing to meet a variety of housing needs.” The 30’ alley to the east is significantly wider than the standard alley width of 20’. The western 15’ (approximate) of the right of way is turf and trees that appears similar to private rear yards in most other cases. It may be possible to vacate a portion of the alley, which would allow a shift of the building to the east which would reduce or eliminate the need for a front yard setback variance.
- b. *The variance is consistent with the comprehensive plan.* This finding is met. Compatibility with scale per LU-34 is met due to its location on Lexington Parkway and Randolph Avenue corridors and the RM2 zoning district on the south side of the block, all of which have a variety of scales and setbacks consistent with the proposal. The building is built into the hill, reducing the effective height of the west facade.
  - 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.* This finding is met. The applicant has demonstrated that due to the space needed to meet minimum parking requirements, the footprint of the lower levels cannot be reduced to meet the setback requirement and the building has been shifted as far to the east as possible to maximize the front yard setback on Lexington Parkway. The property owner proposes to use the property in a reasonable manner as a multiple-family apartment building.
  - d. *The plight of the landowner is due to circumstances unique to the property not created by the landowner.* This finding is met. The applicant cites steep slopes on both axes and the jog on James Avenue as circumstances unique to the property and not created by the property owner. The slope is significantly more profound than that of nearby parcels and introduces unique challenges to creating a workable site plan.
  - 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. Multiple-family residential is a permitted use in the RM2 multiple family zoning district and the proposed variance does not impact that use.
  - f. *The variance will not alter the essential character of the surrounding area.* This finding is met. There is a range of building types, scales, and setback distances in the surrounding area. An 18’ setback from Lexington Parkway would increase the existing setback distance by approximately 10’. The building on the south side of the block is built to the Lexington Parkway right-of-way line.
4. Zoning Code § 66.231 requires minimum rear and side yard setbacks of 9’ in the RM2 district. § 66.231(k) requires that for portions of a building over 50’ in height, the minimum side and rear setbacks shall be 9’ plus half the building height over 50’. § 60.203, in the definition of *building height*, states that where a building is located on sloping terrain the height is measured from the average grade at the building wall. 11’ 9

1/2" minimum side and rear yard setbacks are required for the 4-story eastern portion of the building. The application proposes a 0' rear (east) setback and a 10' north side setback for the 4-story eastern portion of the building. A variance for the south side of the 4-story portion of the building is not required. § 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 met. The east facade faces an alley and interstate off ramp, and the building is stepped down one floor to help mitigate any impact from a building on this sloping site. The variance is also mitigated by the significant distance to the nearest buildings to the north, and there are no buildings between the site and Interstate 35E to the east. In addition, the 30' alley to the east is significantly wider than the standard alley width of 20'. The western 15' (approximate) of the right of way is turf and trees that appears similar to private rear yards in most other cases. It may be possible to vacate a portion of the alley, which would allow a shifting of the building to the east and/or larger rear and front yards. The proposed variances of the rear and side yard setbacks would not conflict with the general intent of the zoning code, nor would it conflict with the intent of the RM2 zoning district: "[t]he RM2 medium-density multiple-family residential district is designed for multiple-family residential and supportive, complementary uses. Its intent is to foster and support pedestrian- and transit-oriented residential development and provide for infill housing to meet a variety of housing needs."
- b. *The variance is consistent with the comprehensive plan.* This finding is met. The building and variances are consistent with policy LU-5 to "encourage flexible building design to ensure ongoing functionality and viability, and respond to new market opportunities." These relatively small variances help provide for a full 4<sup>th</sup> floor and enough additional density to subsidize the provision of some affordable dwelling units in the building, consistent with Housing Chapter Policy H-16 which calls for an increase in housing choice across the city to support economically diverse neighborhoods and H-31 supporting the development of new affordable housing units throughout the city.
- 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.* This finding is met. The proposed 4-story eastern portion of the building is a reasonable use of the property. The substantial slope of the property, measurement of building height from the average grade, and increased setback requirements based on the resulting greater measured building height creates practical difficulties. The applicant has also demonstrated that compressing the footprint of the building is not possible due to minimum requirements for parking stall count and dimensions.
- d. *The plight of the landowner is due to circumstances unique to the property not created by the landowner.* This finding is met. The east side of the property is unique in that it is adjacent to a series of significant rights-of-way, including an alley that is 10' wider than the standard alley width, with a street and MnDOT right-of-way beyond that. The alley ROW along the east side of the property, between the property and the street, is located where the rear yard would more normally be. Vacation of a portion of the ROW is likely to be pursued. With alley vacation, it would be possible to reduce or eliminate the need for a rear setback variance.

- 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. Multiple-family residential is a permitted use in the RM2 multiple family zoning district and the proposed variance does not impact that use.
  - f. *The variance will not alter the essential character of the surrounding area.* This finding is met. The proposed rear and side yard setback variances for the 4-story eastern portion of the building that is stepped down one floor from the rest of the building and faces an alley and interstate off ramp would not alter the essential character of the surrounding area.
5. Zoning Code § 66.231 requires minimum side yard setbacks of 9' in the RM2 district. § 66.231(k) requires that for portions of a building over 50' in height, minimum side setbacks shall be 9' plus half the building height over 50'. § 60.203, in the definition of *building height*, states that where a building is located on sloping terrain the height is measured from the average grade at the building wall. 16' 10" minimum side yard setbacks are required for the 5-story portion of the building, the roof deck of which is 65' 8" above average grade at the building wall. The application proposes 10' side setbacks for the 5-story portion of the building. § 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 met. The roof surface is about 53' above grade at the west end of the building; a side setback requirement based on that (rather than height above average grade for the entire building) would be 10' 6". The impact of a variance to permit 10' side setbacks for the 5-story portion of the building is mitigated by the significant distances to the nearest buildings to the north and south, which are separated from the site by a street on the north and an alley on the south. The wall of the central part of the building (where the grade is lower) is set back further to about 16' from the north property line and 33' from the south; this is within one foot of the setback required based on the height of the building above average grade for the north and is set back further than is required in the middle of the south side of the building. This articulation in the middle of the 5-story part of the building mitigates the impact of the variance.
  - b. *The variance is consistent with the comprehensive plan.* This finding is met. The building and variances are consistent with policy LU-5 to "encourage flexible building design to ensure ongoing functionality and viability, and respond to new market opportunities." The variance provides for a fifth floor and enough additional density to subsidize the provision of some affordable dwelling units in the building, consistent with Housing Chapter Policy H-16 which calls for an increase in housing choice across the city to support economically diverse neighborhoods and H-31 supporting the development of new affordable housing units throughout the city.
  - 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.* This finding is met. The proposed 5-story portion of the building, which is just slightly more than 50' above grade at the west end of the building and is set back about 16' from the north property line in the central part of the building where the grade is lower, is a reasonable use of the property. The substantial slope of the property, measurement of building height from the average grade of the entire building, and increased setback requirements based on the resulting greater measured building height creates practical difficulties.

- d. *The plight of the landowner is due to circumstances unique to the property not created by the landowner.* This finding is met. The steep slope and 20-foot grade change over the length of the proposed building are circumstances unique to the property.
- 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. Multiple-family residential is a permitted use in the RM2 multiple family zoning district and the proposed variance does not impact that use.
- f. *The variance will not alter the essential character of the surrounding area.* This finding is met. The proposed side yard setback variances for the 5-story portion of the building, which is just slightly more than 50' above grade at the west end of the building, is set back about 16' from the north property line in the central part of the building where the grade is lower and 33' from the south, and is adjacent to RM2 zoning along the Randolph corridor to the south, would not alter the character of the surrounding area.

NOW, THEREFORE, BE IT RESOLVED, by the Saint Paul Planning Commission, under the authority of the City's Legislative Code, that the application of Chet Funk et al. for a conditional use permit for a 65' 8" building height and variances for front yard setback (25' minimum, 18 ft. proposed), rear yard setback (11' 9 1/2" minimum, 0' proposed), and side yard setbacks (north: 16'10" minimum for tall portion, 10' proposed; 11' 9 1/2" minimum for short portion, 10' proposed; south: 16' 10" minimum, 10' proposed) at 1074-1096 James Avenue is hereby approved subject to the following conditions.

1. Final plans approved by the Planning Commission or Zoning Administrator for this use shall be in substantial compliance with the plan submitted and approved as part of this application, with sign-off from relevant city departments.
2. Units required to be affordable shall be occupied by qualifying low-income residents. Prior to receiving a certificate of occupancy for the new building (or building expansion), demonstration of the commitment to affordable housing must be provided as: a deed restriction or other contractual agreement with the city, or a city housing and redevelopment authority financing agreement or other similar financing agreement, and documentation of low-income residents' qualifications.
3. The Applicant shall apply to the owner of the north-south portion of the alley right-of-way immediately to the east of the parcel to request a vacation of at least seven (7) feet adjacent to the parcel to allow the building footprint to shift far enough to the east to meet the front (Lexington Parkway) setback requirement. Denial of an application for alley vacation does not change an approval decision for the requested variances or conditional use permit applied for herein.