

HANFT FRIDE
A PROFESSIONAL ASSOCIATION

1000 U.S. BANK PLACE
130 WEST SUPERIOR STREET
DULUTH, MINNESOTA 55802-2094
TELEPHONE: 218/722-4766
FAX: 218/529-2401
WWW.HANFTLAW.COM

June 18, 2015

Email: wmb@hanftlaw.com

Via Hand Delivery

Duluth City Council
City Clerk's Office
City Hall, Room 330
411 West 1st Street
Duluth, MN 55802

Re: Proposed Townhome Development/Special Use Permit Appeal
Mississippi Avenue and Lyons Street, Duluth MN
Our File No. 30899.000

Ladies and Gentlemen:

Hanft Fride, a Professional Association, has been retained by a number of the neighbors who are concerned regarding the townhome development proposed for the intersection of Mississippi Avenue and Lyons Street. The leadership group relative to these neighbors consists of Al Makynen, Jim Starr and Jay Stoffel.

Via this letter, an appeal is filed of the Planning Commission decision of June 9, 2015 and will be pursued relative to the matter identified by the Planning Department as PL15-050. A Special Use Permit (SUP) was required to allow the erection of a townhome project in the residential neighborhood which, under the UDC, is in an R-1 zone. The Planning Commission voted to approve the SUP and that decision is hereby appealed.

The appeal is a general one, in which we contend that the requirements for issuance of an SUP have not been met. Specifically, but not limiting the scope of the appeal, we contend that the decision was inappropriate and incomplete for the following reasons:

1. It represents approval of an inadequately documented and presented project in the face of significant evidence regarding potential negative effect on both the immediate neighbors and the wider neighborhood.
2. The nature of the development, as presented and shown in the record here, while delineated as a "townhome development," requiring an SUP, will have the impact of an apartment complex, both by its appearance and by the nature of the way it would be operated. We understand that the developer anticipates the renting of "bedrooms" within each unit and the neighborhood impact would then be significantly more than a conventional townhome project in terms of traffic, noise and general density.

GILBERT W. HARRIES*
WILLIAM M. BURNS
JOHN D. KELLY*
FREDERICK A. DUDDERAR, JR.
TIM A. STROM*
R. THOMAS TORGERSON*
CHERYL M. PRINCE*
ROBIN C. MERRITT*
JENNIFER L. CAREY*
MARK D. PILON*
JACOB J. BAKER*
KENNETH A. KIMBER*
SCOTT A. WITTY*
DAVID L. TILDEN*
KIMBERLY E. BRZEZINSKI
NORA C. SANDSTAD
HEATHER N. KJOS
HOLLY LABOONE-HALLER
RICHARD R. BURNS*, OF COUNSEL
CHARLES H. ANDRESEN, OF COUNSEL
*ALSO ADMITTED IN WISCONSIN

3. Further, the Comprehensive Plan suggests that this particular neighborhood should have “typical density” of four to eight units per acre. The roughly half-acre lot on which the townhome development is planned falls far short of meeting that density target. It is, in fact, double the typical density. Depending on how you calculate and view it, this density could be as much as four times the identified “typical density.”
4. The topography and elevations of the neighborhood present serious questions, not adequately answered, regarding the ability of the neighborhood infrastructure, specifically the roadways, to safely handle the traffic that would be generated. While all of us Duluthians are used to dealing with the issues that our hilly terrain produces, there is a public safety issue here that has not yet been adequately addressed. Due to the steepness of Lyons Street, dangerous sight lines, lack of sidewalks and no pedestrian traffic plan, there is reason to be concerned about the overall project and the neighborhood impact.
5. It is acknowledged that flexibility is appropriate and necessary in a zoning context. SUPs are designed, as we see it, to allow the introduction of appropriate uses into a neighborhood, notwithstanding the historical and specific limitations imposed by the Code. Here, the nature of the development and its density is such as to go beyond the appropriate bounds of an SUP and allow density well in excess of that deemed appropriate in this zone when dealing with units or bedrooms only, and when dealing with the specific nature of the proposed development, many times the allowed density.

It is noted that the “endorsement” of the Planning Commission should be given little weight, since the initial vote on this amended application was deadlocked 4 to 4. The 5 to 3 vote which then occurred appeared to be as a result of an attempt to avoid the 120-day rule and/or further proceedings at the Planning Commission level and is inconsistent with the concept of support.

Finally, it is noted that there are a number technical, engineering and other issues which are important to this matter, which, even taking into account the Staff Report, are far from finally addressed. While one might assume that they ultimately will be appropriately addressed, assumptions are dangerous and the project should not go forward without you, as the ultimate decision-makers in this matter, being comfortable that all issues are addressed.

More significantly, we believe that, looking at the big picture, you will conclude, following your full review, that:

- The impact on the neighborhood is beyond that which should be allowed by a Special Use Permit.
- A hearing, with all proponents and opponents having a complete opportunity to present their positions to the Council, should be allowed by you as part of a fair and appropriate process and to meet the requirements of due process.

Duluth City Council
June 18, 2015
Page 3

Our check in the amount of \$350.00 for the appeal fee is enclosed. If you need anything else from us to perfect this appeal, please contact the undersigned.

Respectfully submitted,

HANFT FRIDE,
A Professional Association

By: 

William M. Burns

WMB/tlr
Enclosure

c: Mr. Steven Robertson, Planning Department
(via hand-delivery)