



118 Central Avenue North, New Prague, MN 56071
phone: 952-758-4401 fax: 952-758-1149

MEMORANDUM

TO: HONORABLE MAYOR AND CITY COUNCIL
CC: JOSHUA M. TETZLAFF, CITY ADMINISTRATOR
FROM: KEN ONDICH, PLANNING / COMMUNITY DEVELOPMENT DIRECTOR
SUBJECT: PLANNING COMMISSION SUMMARY - REQUEST FOR VARIANCE #V5-2024 TO ALLOW THE OFF-STREET PARKING LOT AREA TO BE LESS THAN 15' FROM THE REQUIRED SETBACK FROM STREET RIGHT OF WAY AND TO ALLOW A REDUCTION IN STALL DEPTH TO CONSTRUCT A PARKING LOT FOR A NEW 54-UNIT MARKET RATE APARTMENT BUILDING, AS PROPOSED BY TEN NINETEEN DEVELOPMENT, LLC
DATE: AUGUST 29, 2024

Planning Commission Summary

The Planning Commission heard the above variance request at their August 26th, 2024 meeting. The applicant, Ten Nineteen Development, LLC, was initially requesting following two variances:

1. To allow the off-street parking lot area to encroach 4.5' into the required 15' setback from public street right of way.
2. To allow the east row of parking spaces to be 18' deep versus 20' deep.

These variances would be in addition to setback variances for the north and south property lines that were approved in 2020 and variances for density and overall parking spaces approved earlier in 2024.

While a public hearing is not required for variances, the Planning Commission did open a public hearing for comment and no public comments were received.

The Planning Commission had discussion regarding the need for extra perimeter landscaping adjacent to public roadways to compensate for the setback variance and to go from a minimum spacing of 40' down to 30' to provide for better screening. Marv Deutsch, property owner and partner of the project, noted that they had revised the site plan (see attached revised site plan) just prior to the meeting and had been able to reduce the site plan to not need more than a 1' variance from the parking lot setback.

The Planning Commission recommended approval of the amended variance request (1' variance from the 15' parking lot setback and 18' stall depth vs. 20' stall depth on the east side of the parking lot) on a unanimous vote (4-0) based on the six findings and two conditions listed in the attached resolution.

Staff Recommendation

Staff recommends approval of the attached resolution "...Approving Variance (#V5-2024) ...".

RESOLUTION #24-09-03-03

RESOLUTION OF THE NEW PRAGUE CITY COUNCIL APPROVING VARIANCE (#V5-2024) TO ALLOW THE OFF-STREET PARKING LOT AREA TO BE LESS THAN 15' FROM THE REQUIRED SETBACK FROM STREET RIGHT OF WAY AND TO ALLOW A REDUCTION IN STALL DEPTH TO CONSTRUCT A PARKING LOT FOR A NEW 54-UNIT MARKET RATE APARTMENT BUILDING, NEW PRAGUE, MINNESOTA

WHEREAS, Ten Nineteen Development, LLC, applicant, and GTT Properties, LLC, owner of the following real estate in the County of LeSueur to wit:

Lot 1, Block 1, Deutschland First Addition, according to the plat thereof, LeSueur County, Minnesota.

are requesting a variance to allow the off-street parking lot area to encroach 4.5' into the required 15' setback from street right of way and to allow the east row of parking spaces to be 18' deep versus 20' deep, to construct a parking lot for a new 54-unit market rate apartment building on the above described real estate; and,

WHEREAS, the New Prague Planning Commission has completed a review of the application and made a report pertaining to said request (#V5-2024), a copy of said report has been presented to the City Council; and,

WHEREAS, the New Prague Planning Commission on the 28th day of August, 2024, after due consideration of presented testimony and information, voted unanimously (4-0) to forward the matter to the City Council with a recommendation for approval which includes a reduced parking lot setback variance request from 4.5' to 1'; and,

WHEREAS, the New Prague City Council finds:

- A. The requested variance is in harmony with the general purposes and intent of this Ordinance because apartment buildings are a permitted use in the RH High Density Residential Zoning District and off-street parking is a permitted accessory use.
- B. The requested variance is consistent with the comprehensive plan because apartments are a permitted use in the RH High Density Residential Zoning District.

- C. The applicant will use the property in a reasonable manner which would be an apartment building use.
- D. Unique circumstances apply to this property over which the property owners had no control and which do not generally apply to other properties in the vicinity because the lot has an unusual shape and abuts two public roadways and requires a unique building layout to fully utilize the property and provide parking to meet the minimum parking stall requirements while also maintaining accessible routes.
- E. The variance does not alter the essential character of the neighborhood because apartments are a permitted use in the RH High Density Residential Zoning District which contains another multifamily unit one block to the west, and the variance for the parking lot setback is minimal and is far enough away from any intersection to not cause any sight line issues.
- F. The variance requested is the minimum variance which would alleviate the practical difficulties because it would allow the parking spaces on the site to not only meet the minimum number required but provide one additional space over the minimum.

NOW, THEREFORE BE IT RESOLVED, by the City Council of New Prague, Minnesota, that the request for variance #V5-2024 to allow the off-street parking lot area to encroach 1' into the required 15' setback from street right of way and to allow the east row of parking spaces to be 18' deep versus 20' deep, to construct a parking lot for a new 54-unit market rate apartment building, is hereby approved based on the above findings and with the following conditions:

- 1. Perimeter parking lot landscaping trees are required at a spacing of no more than 30' versus the typical ordinance requirement spacing of no more than 40'.
- 2. The City Council approves and the applicant must enter into an encroachment agreement for the easement encroachment whereby they agree they are responsible for any removal and replacement of landscaping should work within the utility easement necessitate it.

This Variance approval becomes effective immediately upon its passage and without publication.

Passed this 3rd day of September, 2024.

Duane J. Jirik, Mayor

State of Minnesota)
)ss.
County of Scott & Le Sueur)

(CORPORATE ACKNOWLEDGMENT)

Subscribed and sworn before me, a Notary Public this _____ day of _____, 2024.

Notary Public

ATTEST: _____
Joshua M. Tetzlaff, City Administrator

State of Minnesota)
)ss. (CORPORATE ACKNOWLEDGMENT)
County of Scott & Le Sueur)

Subscribed and sworn before me, a Notary Public this _____ day of _____, 2024.

Notary Public

THIS INSTRUMENT DRAFTED BY:
Kenneth D. Ondich
City of New Prague
118 Central Ave. N.
New Prague, MN 56071
(952) 758-4401

ENCROACHMENT AGREEMENT

THIS AGREEMENT is made as of the 3rd day of September, 2024, by and between **Ten Nineteen Development, LLC**, Minnesota Limited Liability Corporation, hereinafter referred to as “Owner” and the **City of New Prague**, a Minnesota Municipal Corporation, hereinafter referred to as the “City”.

RECITALS

A. The owner is the owner of certain real estate located at 102 Chalupsky Ave. SE (PID 23.501.0010), New Prague, Minnesota, in the County of LeSueur which is legally described as follows:

Lot 1, Block 1, Deutschland First Addition, according to the plat thereof, LeSueur County, Minnesota.

B. The above property contains a lawfully established public drainage and utility easement dedicated in the Plat of Deutschland First Addition, the location of which is depicted on the attached Exhibit “A”.

C. The landowner has requested that the City of New Prague allow the installation of private landscaping improvements which could encroach up to approximately 3.5’ feet into the drainage and utility easement area (the “Encroachment”).

D. The parties hereto desire to enter into this agreement with respect to the Encroachment subject to the conditions described herein.

NOW THEREFORE, for valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. The recitals set forth above are incorporated herein and made a part of this agreement.

2. The Owner shall be permitted to maintain the Encroachment upon the drainage and utility easement while requiring that the Owner is responsible for any removal or replacement of their landscaping within the encroachment area should any work within the easement necessitate landscaping modifications. The City shall give written notice to the Owner if the Owner must remove the Encroachment.

3. The Owner shall maintain the Encroachment in good condition and repair, at Owner's expense.

4. The Owner hereby waives and releases any and all right to make claim against or recover from the City, and its officials, agents and employees, for damage, destruction or loss of the Encroachment, including any claims that Encroachment has not been repaired, replaced or restored in relation to work performed in the drainage and utility easement.

5. The Owner shall indemnify the City, and its officials, agents and employees, and hold same harmless from and against any and all claims and demands relating to the Encroachment or arising from the Encroachment, including the payment of reasonable attorneys' fees and costs.

6. This Agreement shall run with the land, and shall be binding upon and inure to the benefit of the parties hereto, their successors and assigns.

IN WITNESS WHEREOF, the parties hereto have set their hands to this Agreement on the day and year first above written.

CITY OF NEW PRAGUE

_____, OWNER(S)

By: _____
Its: Mayor

By: _____
Its: City Administrator

[illegible]

The foregoing instrument was acknowledged before me this _____ day of _____, 2024, by _____, the _____.

Notary Public

[illegible]

The foregoing instrument was acknowledged before me this ____ day of _____, 2024, by Duane J. Jirk and Joshua M. Tetzlaff, the mayor and city administrator, respectively, of the City of New Prague, a Minnesota municipal corporation, on behalf of the said corporation.

Notary Public

This instrument was drafted by:
Kenneth D. Ondich
Planning / Community Development Director
City of New Prague
118 Central Ave. N.
New Prague, MN 56071
952-758-4401

305420v1 SJR NE300-3

DEUTSCHLAND FIRST ADDITION

KNOW ALL MEN BY THESE PRESENTS, That GTT Properties, LLC, a Minnesota limited liability company, owner and proprietor of the following described property situated in the County of LeSueur and State of Minnesota to-wit:

Outlot A, Block 1, PILZEN COMMERCE CENTRE, Le Sueur County, Minnesota.

has caused the same damage to the public as the defendant. The defendant was and should dedicate the easements as shown on this plot for drainage and utility purposes only.

use for the public way and also without the expenditure of money, the proper officer

in 2020, whereas sold GTT Properties, LLC, a Minnesota limited liability company, has caused these presents to be signed by its proper officer on this 3rd day of July, 2020.

By: Marcus J. Deutsch
 Marcus J. Deutsch / Managing Partner

STATE OF MINNESOTA
COUNTY OF State
The foregoing instrument was acknowledged before me this 20th day of July, 2020 by _____ Marvin
Deisen, Managing Partner, GTT Properties, LLC, a Minnesota limited liability company, on behalf of the company.

A. J. Dautsch
J. Dautsch, Managing Partner, CFF Properties, LLC, a Minnesota limited liability company, on behalf of the company.

Debra A. Wagner
Debra A. Wagner
Notary Public, State of Minnesota
My Commission Expires Jan 31, 2023

My Commission Expires Jan 31, 2022
I hereby certify that I have surveyed and plotted the property described on this plat as DEUTSCHLAND FIRST ADDITION; that this plat is a correct and true copy of the original plat on file in the office of the County Clerk of the County of Santa Clara, State of California; that all monuments shown on this plat are in place and correct; that the area of the property described on this plat is 1.00 acre, more or less, and that the same is more particularly described on the aforesaid plat.

correct representation of the boundary survey, that all mathematical data and labels are correctly designated on the plat; that all monuments depicted on the plat have been correctly set as indicated on the plat; that all water boundaries and wet lands are defined in MS 505.01, Subd. 3, existing as of the date of this certification are shown and labeled on the plat; and that all public ways are shown and labeled on the plat.

Thomas T. Johnson

STATE OF MINNESOTA
Thomas J. O'Meara, Land Surveyor
Minnesota License No. 46167

STATE OF MINNESOTA
COUNTY OF Dakota
The foregoing instrument, Certificate
was acknowledged before me this 27th day of July, 2020 by Thomas J. O'Meara,

The foregoing Surveyor's Certificate was acknowledged before me this 27 day of July, 2006 by Indira S. Uppala,
Minnesota License No. 48167.



DOROTHY L. BOHLEN County, Minnesota
Notary Public,
My Commission Expires Jan 31, 2020

This plot was reviewed by the Planning Commission of the City of New Prague, Minnesota, this 22nd day of January, 2020.

3rd Feb 1911
J. D. C. Dir. Secretary
the City Council of the City of New Haven, Conn.

I/we do hereby certify that on this 3rd day of January, 2020, the City Council of the City of New Prague, Minnesota, approve this plot and is in compliance with the provisions of Minnesota Statutes, Section 505.03, Subd. 2.

City of Chicago
Mayor

Michael J. Johnson
City Administrator

I hereby certify that I have examined this plat of DEUTSCHLAND FIRST ADDITION, and do hereby recommend this plat for approval as to form
this 24th day of MAY 2020

This _____ day of _____ 20____

 City Attorney, New Prague, Minnesota

LESLEUR COUNTY AUDITOR/TREASURER
I hereby certify that the current and delinquent taxes on the lands described within are paid and the transfer is entered this 20th day

01 August 2020

Amyla Simonetta County Auditor/Treasurer

LESEUR COUNTY RECORDER
I solemnly certify that this is the 10th day of August 2020 at 11:31 o'clock A.M. and duly

I hereby certify that this plot was filed in this office this 10th day of August 2008 at 11:11 o'clock, A.M., and was recorded as Document No. 4350089

Wesley J. Andra
 County Clerk

LeSueur County Recorder
(Abst. Property)

10



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MEMORANDUM

TO: PLANNING COMMISSION
FROM: KEN ONDICH – PLANNING / COMMUNITY DEVELOPMENT DIRECTOR
SUBJECT: REQUEST FOR VARIANCE #V5-2024 TO ALLOW THE OFF-STREET PARKING LOT AREA TO BE LESS THAN 15' FROM THE REQUIRED SETBACK FROM STREET RIGHT OF WAY AND TO ALLOW A REDUCTION IN STALL DEPTH TO CONSTRUCT A PARKING LOT FOR A NEW 54-UNIT MARKET RATE APARTMENT BUILDING, AS PROPOSED BY TEN NINETEEN DEVELOPMENT, LLC
DATE: AUGUST 23, 2024

Background / History

The applicant, Ten Nineteen Development LLC, previously applied for and was approved for Variance #V3-2024 which allowed an increase of density on the site from 32 units per acre up to 40 units per acre as well as reduced the minimum parking from 2 spaces per unit to 1.7 spaces per unit. Previous to this variance, the site was approved for Variance #V8-2020 that allowed a rear yard setback reduction from the north line from 30' to 10' a front yard setback reduction from the south lot line from 30' to 27'7". Said variances would allow for a 54-unit market rate apartment building to be constructed.

As the applicant has continued to refine their site plan, they have found that the east portion of the parking lot is not fitting within the confines of the required parking lot setbacks. As with all parking lots abutting a public road right of way, there is a requirement to be setback 15' from the right of way, which typically is space used for perimeter trees to be planted (at 40' spacing) as well as typically contains a 10' wide drainage and utility easement.

As provided for in Variance #V5-2024, the parking was allowed at 1.7 spaces per unit, meaning the 54 unit apartment building required 92 parking spaces. The site plan as proposed provides for 93 parking spaces (47 surface spaces and 46 in the parking garage).

The applicant looked at various ways to avoid this additional variance application, but due to site elevations and maintaining ADA compliance, they had to move parking spaces east towards the Chalupsky Ave. SE right of way as well as reduce the striped depth of the majority of the eastern side

spaces from the 20' ordinance requirement to 18' in an effort to keep the parking lot out of the drainage and utility easement located there.

Legal Description

Lot 1, Block 1, Deutschland First Addition, according to the plat thereof, LeSueur County, Minnesota.

Neighborhood Conditions and nearby land uses

North – Walgreens (zoned B-2 Community Commercial)

South – Townhomes (zoned RH High Density Residential)

East – Chalupsky Ave. SE and a Strip Mall (zoned B-2 Community Commercial)

West – Single Family home with some agricultural land (Zoned B-2 Community Commercial)

Zoning

The subject site is zoned RH High Density Residential. As noted previously in this report, two prior variances have been approved for this site relating to building setbacks per Variance #V8-2020 and relating to density and number of parking stalls per Variance #V3-2024.

As noted previously, the building would be 54 units and the current proposed mix of units is as follows:

Alcove (Studio) – 12

1 Bedroom – 29

1 Bedroom + Den – 2

2 Bedroom - 11

Statement of Practical Difficulties

The applicant has stated that the land has a unique shape and abuts two public streets and was not originally intended to be a residential lot, however, deed restrictions that the Walgreens development placed on the property severely limited the ability of the lot to be used commercially. The developer acknowledges that the site was previously approved for two prior variances for this site relating to building setbacks per Variance #V8-2020 and relating to density and number of parking stalls per Variance #V3-2024, but that the unique shape of the lot is once again proving challenging to fit the required parking and have ADA walkways maintained and to provide one additional parking space over the minimum that they believe would be valuable to have on the site while maintaining a pleasing aesthetic look for the property overall.

Staff Notes

Staff believes that the lot is unique in both lot shape and location as well as due to the deed restrictions towards commercial uses on the lot that have led the lot to be looked at for residential purposes. Of the 47 surface parking stalls, 19 are encroaching minimally into the 15' parking lot setback along Chalupsky Ave. SE (no more than approximately 4.5' at its largest area of encroachment). Additionally, staff notes that the applicant is proposing all stalls on the east side of the lot to be 18' versus the ordinance required 20' depth (measured from curb face to end of the painted line). The argument the applicant made was that many cities allow a reduction in parking lot depth when parking

stalls do not abut a sidewalk. Staff researched this further and found that area cities do in fact allow for “bumper overhang” reductions in depth for stalls that either do not abut sidewalks or if they do abut but can maintain an accessible route on the adjacent sidewalk. The City of Lakeville allows a 2’ stall reduction (they also require 20’ depth, but allow reduction to 18’ for bumper overhang) and the City of Shakopee only requires 18’ of depth and allows a 1’ reduction to 17’ for bumper overhang. Staff will strongly consider adding similar language in the zoning ordinance re-write, but for now, staff believes a variance is the best way to accommodate this request. In the case of this variance for stall depth, the spaces would not abut any public or private walkway and therefore staff does not have any concerns about reducing stall depth as overhang can easily be accommodated.

Staff notes, that not only is the setback variance noted, but that an encroachment agreement for parking lot perimeter tree planning would be necessary to allow required trees to be planted within the drainage and utility easement.

New Prague Utilities Commission Manager, Bruce Reimers, indicated that they are OK with the encroachment, however, they require an encroachment agreement that would require the applicant to be responsible for any removal or replacement of trees/landscaping within the encroachment area should any work within the easement necessitate their removal.

Staff believes the proposed layout for reduced setback and reduced stall depth are reasonable variances to accommodate the parking stalls.

Criteria for Granting Variance – Section 507

The Zoning Ordinance defines a variance as follows: A modification or variation of the provisions of this Ordinance where it is determined that by reason of unique circumstances relating to a specific lot, that strict application of the Ordinance would cause practical difficulties. Practical difficulties is a legal standard set forth in law that cities must apply when considering applications for variances. To constitute practical difficulties, all three factors of the test must be satisfied, which are reasonableness, uniqueness and essential character. The Zoning Ordinance’s criteria addresses these standards.

The Zoning Ordinance identifies criteria for granting variances as noted below. These items must be evaluated by the Planning Commission and City Council when considering variance requests. It is important to note that variances should only be granted in situations of practical difficulties. A variance may be granted only in the event that all of the circumstances below exist. Staff has attempted to evaluate the established criteria for this specific request. Staff’s comments are highlighted in yellow below:

- A. The variance is in harmony with the general purposes and intent of this Ordinance. (The requested variance is in harmony with the general purposes and intent of this Ordinance because apartment buildings are a permitted use in the RH High Density Residential Zoning District and off-street parking is a permitted accessory use.)

- B. The variance is consistent with the comprehensive plan. (The requested variance is consistent with the comprehensive plan because apartments are a permitted use in the RH High Density Residential Zoning District.)
- C. The applicant proposes to use the property in a reasonable manner not permitted by this Ordinance, the City Code or the City Subdivision Ordinance. (The applicant will use the property in a reasonable manner which would be an apartment building use.)
- D. Unique circumstances apply to the property which do not apply generally to other properties in the same zone or vicinity and result from lot size or shape, topography or other circumstances over which the owner of the property since enactment of this Ordinance has had no control. The unique circumstances do not result from the actions of the applicant. (Unique circumstances apply to this property over which the property owners had no control and which do not generally apply to other properties in the vicinity because the lot has an unusual shape and abuts two public roadways and requires a unique building layout to fully utilize the property and provide parking to meet the minimum parking staff requirements while also maintaining accessible routes.)
- E. The variance does not alter the essential character of the neighborhood. (The variance does not alter the essential character of the neighborhood because apartments are a permitted use in the RH High Density Residential Zoning District which contains another multifamily unit one block to the west, and the variance for the parking lot setback is minimal and is far enough away from any intersection to not cause any sight line issues.)
- F. That the variance requested is the minimum variance which would alleviate the practical difficulties. Economic conditions alone do not constitute practical difficulties. (The variance requested is the minimum variance which would alleviate the practical difficulties because it would allow the parking spaces on the site to not only meet the minimum number required but provide one additional space over the minimum.)
- G. The Board of Adjustment may impose such conditions upon the premises benefited by a variance as may be necessary to comply with the standards established by this Ordinance, or to reduce or minimize the effect of such variance upon other properties in the neighborhood, and to better carry out the intent of the variance. The condition must be directly related to and must bear a rough proportionality to the impact created by the variance. No variance shall permit a lower degree of flood protection than the Regulatory Flood Protection Elevation for the particular area or permit standards lower than those required by federal, state or local law. (A condition is recommended to require the applicant to enter into an encroachment agreement for the easement encroachment whereby they agree they are responsible for any removal and replacement of landscaping should work within the utility easement necessitate it.)

Staff Recommendation

Staff recommends **approval** of Variance #V5-2024 to allow the off-street parking lot area to encroach 4.5' into the required 15' setback from street right of way and to allow the east row of parking spaces to be 18' deep versus 20' deep, to construct a parking lot for a new 54-unit market rate apartment building, as proposed by Ten Nineteen Development, LLC with the following findings:

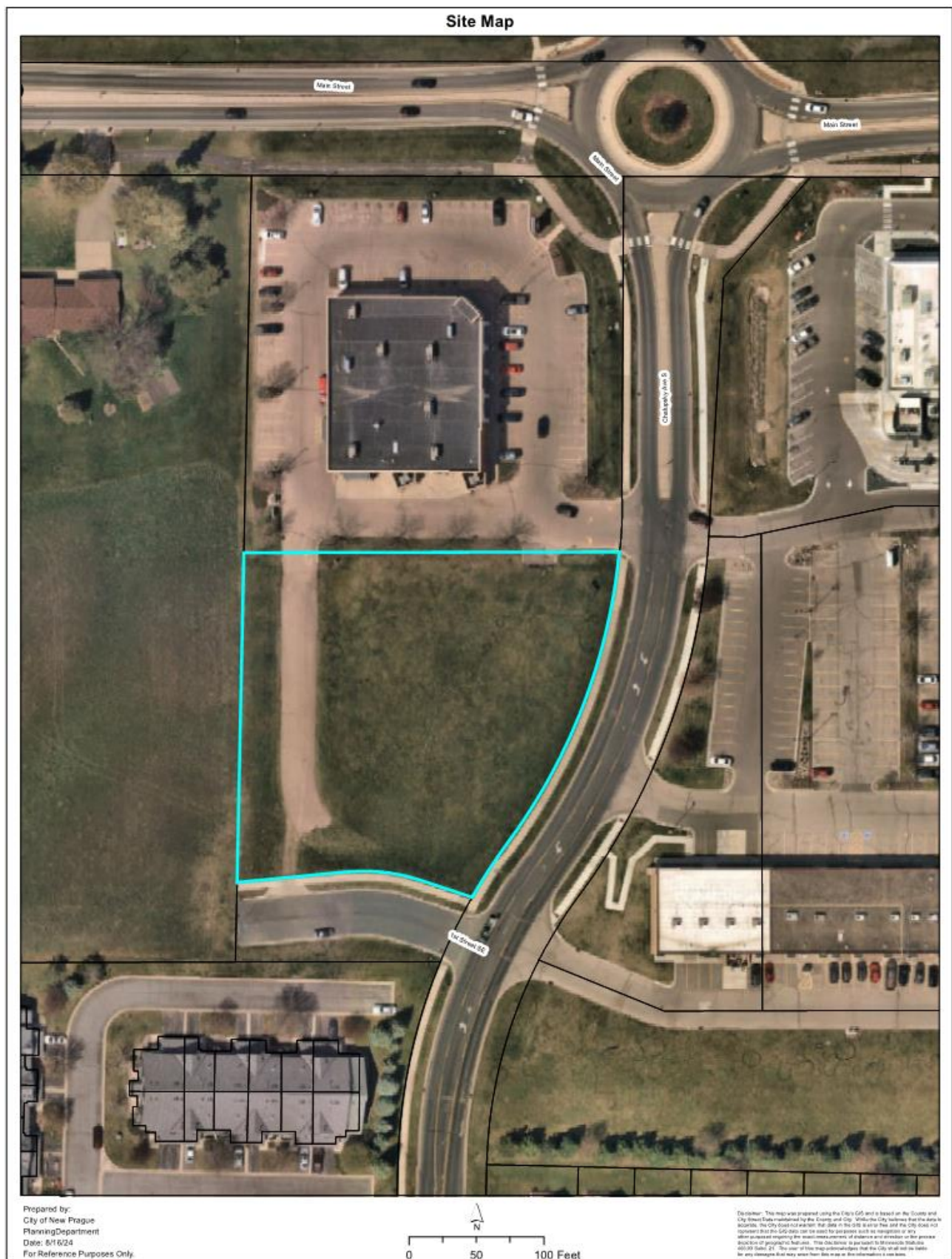
- A. The requested variance is in harmony with the general purposes and intent of this Ordinance because apartment buildings are a permitted use in the RH High Density Residential Zoning District and off-street parking is a permitted accessory use.
- B. The requested variance is consistent with the comprehensive plan because apartments are a permitted use in the RH High Density Residential Zoning District.
- C. The applicant will use the property in a reasonable manner which would be an apartment building use.
- D. Unique circumstances apply to this property over which the property owners had no control and which do not generally apply to other properties in the vicinity because the lot has an unusual shape and abuts two public roadways and requires a unique building layout to fully utilize the property and provide parking to meet the minimum parking stall requirements while also maintaining accessible routes.
- E. The variance does not alter the essential character of the neighborhood because apartments are a permitted use in the RH High Density Residential Zoning District which contains another multifamily unit one block to the west, and the variance for the parking lot setback is minimal and is far enough away from any intersection to not cause any sight line issues.
- F. The variance requested is the minimum variance which would alleviate the practical difficulties because it would allow the parking spaces on the site to not only meet the minimum number required but provide one additional space over the minimum.

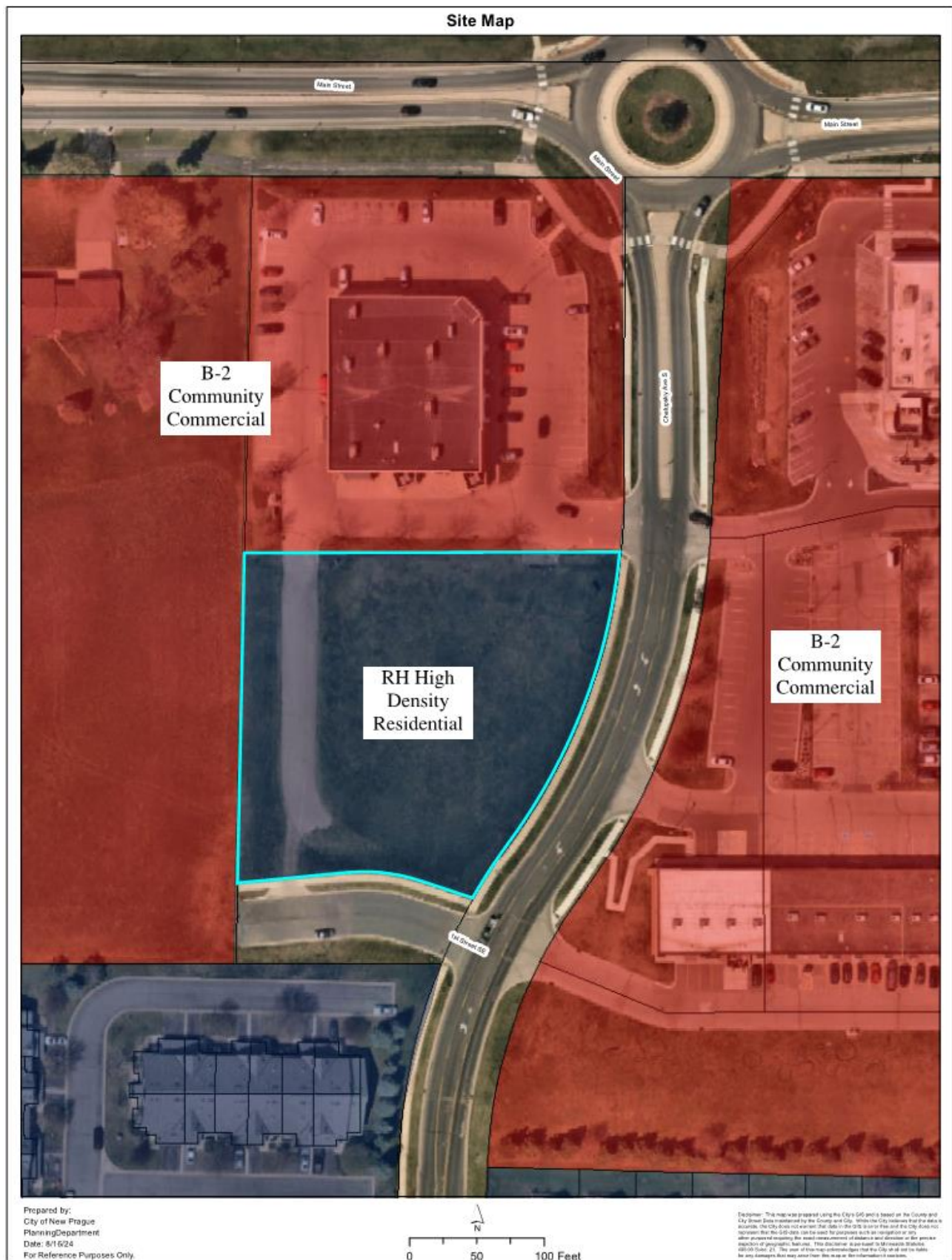
And with the following condition:

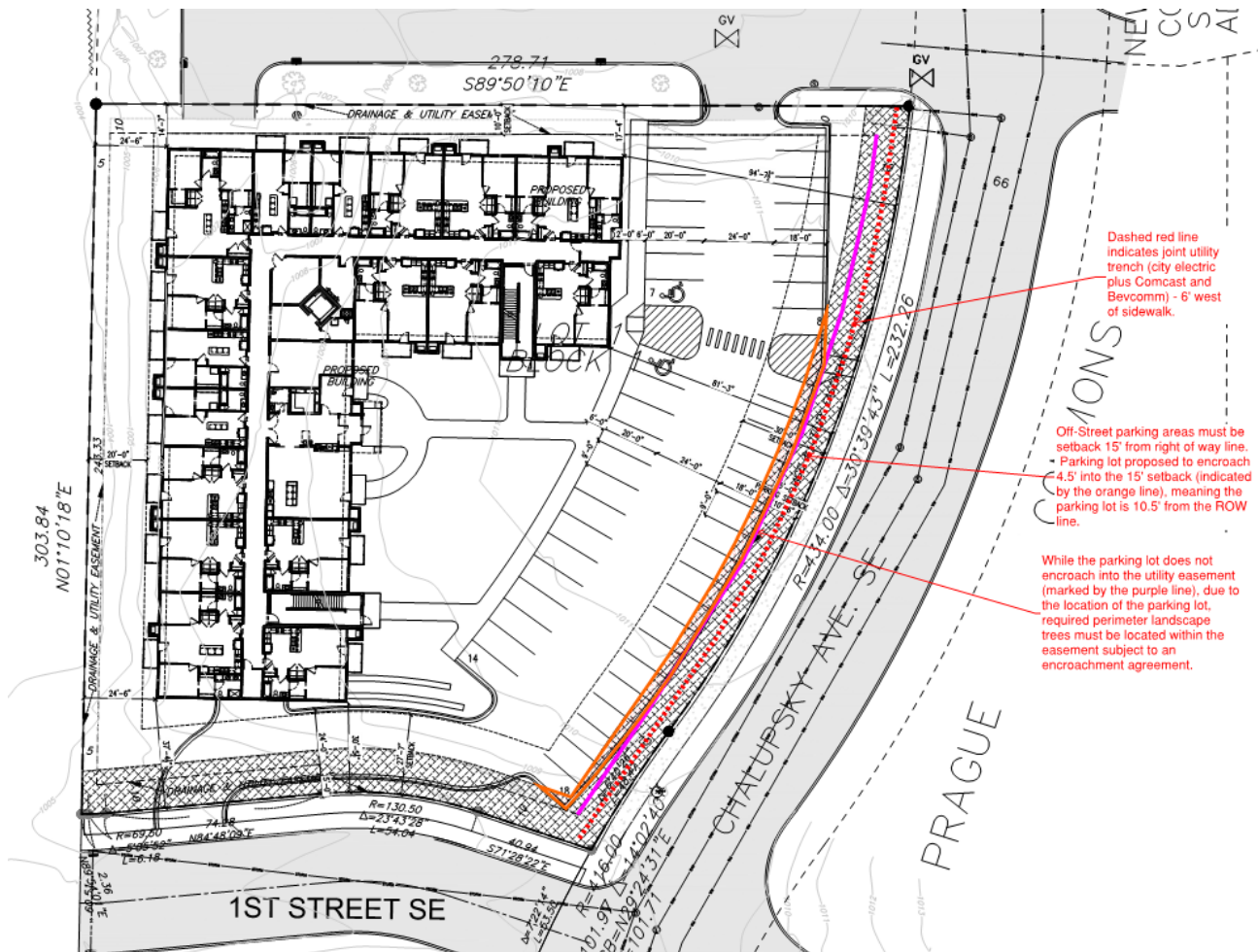
- 1. The applicant must enter into an encroachment agreement for the easement encroachment whereby they agree they are responsible for any removal and replacement of landscaping should work within the utility easement necessitate it.

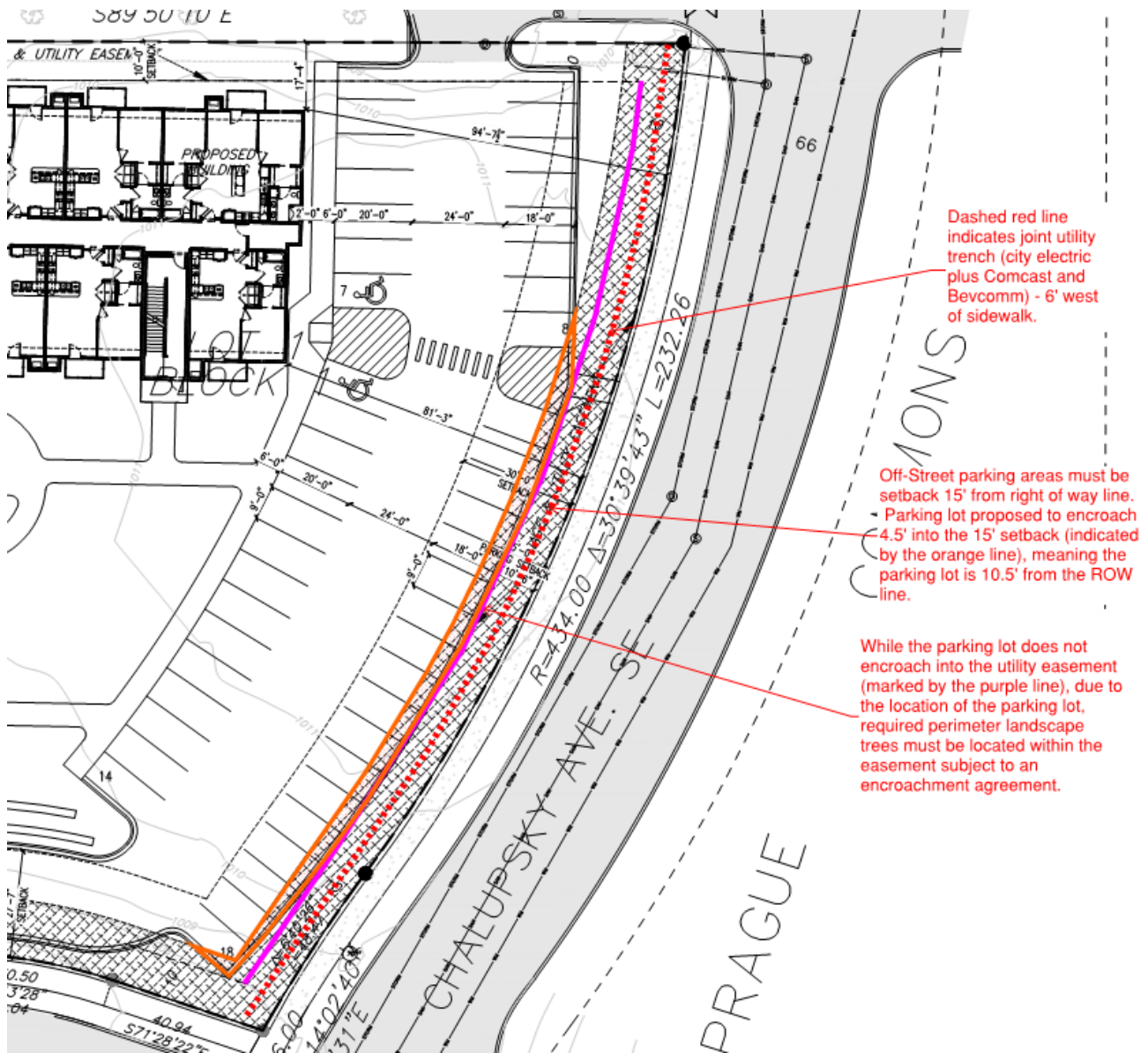
Attachments

- 1. Site Map Aerial – Dated 8/16/24
- 2. Zoning Site Map – Dated 8/16/24
- 3. Site Sketch – Undated
- 4. Photos – Dated 4/24/24
- 5. Google Street View Photos - Undated









Off-Street parking areas must be setback 15' from right of way line.

- Parking lot proposed to encroach 4.5' into the 15' setback (indicated by the orange line), meaning the parking lot is 10.5' from the ROW line.

While the parking lot does not encroach into the utility easement (marked by the purple line), due to the location of the parking lot, required perimeter landscape trees must be located within the easement subject to an encroachment agreement.



Looking west from Chalupsky Ave. SE.



Looking East from 1st Street SE and curb cut to site.



Looking west from Chalupsky Ave. SE.