

**Excerpt from the  
CITY PLANNING COMMISSION MINUTES  
Minneapolis Community Planning & Economic Development (CPED)  
Planning Division**

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**MEMORANDUM**

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DATE: July 12, 2012

TO: Steve Poor, Planning Manager – Zoning Administrator, Community Planning & Economic Development - Planning Division

FROM: Hilary Dvorak, Interim Planning Manager, Community Planning & Economic Development - Planning Division, Development Services

CC: Jason Wittenberg, Interim Planning Director, Community Planning & Economic Development Planning Division

SUBJECT: Planning Commission decisions of June 11, 2012

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The following actions were taken by the Planning Commission on June 11, 2012. As you know, the Planning Commission's decisions on items other than rezonings, text amendments, vacations, 40 Acre studies and comprehensive plan amendments are final subject to a ten calendar day appeal period before permits can be issued.

Commissioners present: President Motzenbecker, Cohen, Huynh, Kronzer, Luepke-Pier, Mammen, Schiff, Tucker and Wielinski – 9

Committee Clerk: Lisa Baldwin (612) 673-3710

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**4. 3535 Grand (BZZ-5562, Ward: 10), 3535, 3539 and 3543 Grand Ave S (Joe Bernard).**

**A. Variance:** Application by David Motzenbecker and Karl Drecktrah with BKV Group, on behalf of CPM Development, for a variance to the rear yard setback from 11 feet to 4 feet for a 4-story 30 unit multiple-family dwelling at 3535 Grand Ave S in the R5 Multiple-family District.

**Action:** The City Planning Commission adopted the findings and **approved** the application for a variance to reduce the east rear yard setback from 11 feet to 4 feet for the properties located at 3535-43 Grand Ave S.

**Aye:** Huynh, Kronzer, Luepke-Pier, Mammen, Schiff and Wielinski; Motzenbecker recused.

**Nay:** Cohen

The motion carried 6-1.

**B. Variance:** Application by David Motzenbecker and Karl Drecktrah with BKV Group, on behalf of CPM Development, for a variance to the front yard setback from the established 20 feet 5 ½ inches to 15 feet for a 4-story 30 unit multiple-family dwelling at 3535 Grand Ave S in the R5 Multiple-family District.

**Action:** The City Planning Commission adopted the findings and **approved** the application for a variance to reduce the required front yard setback from the established 20 feet 5 ½ inches to 15 feet for the properties located at 3535-43 Grand Ave S.

**Aye:** Huynh, Kronzer, Luepke-Pier, Mammen, Schiff and Wielinski; Motzenbecker recused.

**Nay:** Cohen

The motion carried 6-1.

**C. Variance:** Application by David Motzenbecker and Karl Drecktrah with BKV Group, on behalf of CPM Development, for a variance to the side yard setbacks from 15 feet to 11 feet for a 4-story 30 unit multiple-family dwelling at 3535 Grand Ave S in the R5 Multiple-family District.

**Action:** The City Planning Commission adopted the findings and **approved** the application for a variance to reduce the north and south side yard setbacks from 15 feet to 11 feet to allow for side entrances for the properties located at 3535-43 Grand Ave S, subject to the following condition:

1. The landscaping and screening adjacent to building entrances on the north and south elevations shall be 6 feet in height and a minimum of 95 percent opaque throughout the year.

**Aye:** Huynh, Kronzer, Luepke-Pier, Mammen, Schiff and Wielinski; Motzenbecker recused.

**Nay:** Cohen

The motion carried 6-1.

**D. Site Plan Review:** Application by David Motzenbecker and Karl Drecktrah with BKV Group, on behalf of CPM Development, for a site plan review for a 30 unit multiple-family development located at 3535 Grand Ave S in the R5 Multiple-family District.

**Action:** The City Planning Commission adopted the findings and **approved** the application for site plan review located at the property of 3535-43 Grand Ave S, subject to the following conditions:

1. Community Planning and Economic Development Department – Planning Division staff review and approval of the final elevations, floor, site, lighting and landscape plans.
2. All site improvements shall be completed by June 11, 2013, unless extended by the Zoning Administrator, or the permit may be revoked for non-compliance.
3. The exterior materials of brick cladding shall extend from the front of the building around the northwest corner and along the north elevation for a distance not less than what is provided on the south elevation.
4. The landscaping and screening adjacent to building entrances on the north and south elevations shall be 6 feet in height and a minimum of 95 percent opaque throughout the year.
5. Applicant shall work with staff to increase setbacks on the fourth floor along Grand Ave S.
6. Lighting shall be added along the retaining wall along the alley.

**Aye:** Huynh, Kronzer, Luepke-Pier, Mammen, Schiff and Wielinski; Motzenbecker recused.

**Nay:** Cohen

The motion carried 6-1.

Staff Bernard presented the staff report.

**Commissioner Cohen:** I've driven by it a couple times and I noticed that the apartment buildings on the west side, they're all three stories aren't they?

**Staff Bernard:** Yes. Most of the multi-family buildings that exist today on this street are two and a half to three stories.

**Commissioner Cohen:** Though the neighborhood group has endorsed this proposal, I notice that they also express some concern with the height. In the signed petition we received, there was concern expressed about the height. That seems to be the basic concern of the people in this area, but the zoning permits four stories and it's already zoned for that, am I correct?

**Staff Bernard:** That is correct.

**Commissioner Cohen:** We have no option in that particular area to deal with that concern that I'm aware of. Is there option that the Planning Commission would have to deal with that height issue?

**Staff Bernard:** There is no application for a conditional use permit or rezoning that would directly address the height.

Commissioner Tucker opened the public hearing.

**Karl Drecktrah (222 N 2<sup>nd</sup> St):** I'm from BKV Group representing CPM Development on this. I'll show a few slides to show the character. I think Joe did a great job describing the conditions. There is overall context. As you can see, we have a heavily landscaped neighborhood and we are a heavily landscaped site. The rear yard setback in question is really for that portion of the underground parking garage that sticks up a couple feet above grade and then we're going to provide a planter wall, green roof system and occupied patio. Just behind the face of the building will be the occupied patio bed for the last 15 feet of that structure. There will be a green roof and heavily planted system. This image is from across the street from the businesses across the street looking at the scale and character of the building. Three stories of brick and then the fourth story we're staggering the massing a bit to temper the height. We're four stories and 48 feet is the proposal, four stories and 56 feet is allowed in the zoning. Last slide from the sidewalk on the east side of Grand Ave S showing how our intention of relating well to the three story brick apartment buildings across the street and creating a compatible context with that. I think that's probably all I'll share unless there are questions.

**Commissioner Wielinski:** One of the concerns mentioned was that the parking underneath the building would be sold separate from the apartments, it wouldn't be included. Is that the plan going forward?

**Karl Drecktrah:** I'm not aware of that. We're meeting the parking requirement and whether the stalls are to be rented out to the tenants. They're certainly not to go beyond the tenants themselves or if they come with 28 of the 30 units I'm not aware.

**Commissioner Huynh:** Looking at the elevation again, have you looked at scenarios where you've actually stepped back the fourth story a couple of feet to try to reduce the perception of the fourth floor?

**Karl Drecktrah:** We're trying to be as compact as we can with 30 units. The sizes of units range from 700 to a little over 900 square feet. We're trying to keep as far off the alley, but then meet the front yard setback per the zoning district. We're working within the very compact footprint of stackable units to carve out some patio spaces on the upper floor that is set back about eight inches. There's a material change from brick to metal panel and then as you can see there is some terraces that the roof does not continue at the corners of the building and then the center of the structure.

**Commissioner Huynh:** Do you have a perspective showing the north elevation?

**Karl Drecktrah:** We do not.

**Commissioner Huynh:** I'm asking because right now your north elevation doesn't show any brick cladding that wraps around the corner of the building, is that correct?

**Karl Drecktrah:** That's correct.

**Commissioner Huynh:** As a condition of approval, I think staff maybe recommending additional brick along the north elevation or is that not a condition as part of this project?

**Staff Bernard:** We recommended that any combination of brick and metal cladding that was found to be appropriate, it was really about moving that back to be as...to extend as far back on the building as it does on the south side. Whether or not it is entirely brick or partly brick is open to discussion.

**Karl Drecktrah:** The developer has agreed to meet the recommendations of staff as they're stated.

**Commissioner Huynh:** I think for that reason I'd probably be more supportive of brick wrapping around the corner on the north elevation because you do have existing metal, to have that consistency between the north and south elevation.

**Karl Drecktrah:** To clarify, there are three stories of brick at that corner and then the three stories are intended to wrap back with metal panel above.

**Commissioner Kronzer:** I have a question about the retaining wall along the alley. It says it's four feet and it varies. I'm wondering if you can tell me how it varies and if there are any plans for lighting along the alley because there is a little bit of a safety concern of someone being able to hide behind that wall.

**Karl Drecktrah:** The staggering has to do with the fact that the lot is not perfectly square, but the building is intended to be. Our parking garage is about two feet above grade. We're building

an additional two feet on top of that so we can get a heavy soil base and a heavily planted landscaped area so we're keeping underneath the height of what we'd be allowed to do with a fence so that there's still full visibility over the wall. We're trying to create a visual and storm water amenity on that. Lighting, there will be three residential...well, all the residential units on the back of the building will have patio lights, I should say they will have sconces next to their exterior doors. We haven't addresses any particular site lighting strategy at that rear four feet between the retaining wall and the alley.

**Tran Muehler (4323 Fremont Ave N):** I'm here today to give my testimony that I'm opposing this project. You may have gotten the packet that I delivered with the petition. We have 30 signatures from neighbors opposing the project. We also have about 30 signatures from the customers of the businesses as well as staff. That was generated in only a few days, there will be more if we get the time. Getting into the reasons we feel they should not be granted these variances, there are a lot of items that are within the zoning requirements, but as Mr. Cohen stated, it is a high building. It's within the zoning criteria, but like we said, you don't see any buildings around there that are four stories tall. That's legal, of course. Let's talk about the variances; those are not legal. I feel that they should not be allowed these variances because they're basically close to the limits on all the different zoning criteria. When you talk about height, they're maxed out. Units, they're way over maxed out. Twenty two is the max, they're getting by on technicalities in both parking and affordable housing. Yes, they are providing underground parking. We don't have much parking in the neighborhood as it is. The primary reason is the parking so let's go into the details on that.

**Commissioner Tucker:** Just a note on that, there is not a parking variance or CUP in front of us. It does comply with the requirement. You can make your point, but that's not something that we can vote on here.

**Tran Muehler:** I'm just giving details on why I feel they shouldn't be granted the variances. In the zoning law, it states that in order to get accommodations made, the proposals...some of the criteria I read on the website was basically that they had to comply with aesthetics. The number one reason that Joe was talking about is that they have to propose a reason besides economic reasons alone. When we talk about parking, that to me is a big negative when it comes to aesthetics. Every person I talked to said that parking is already close to saturation and if we get this 30 unit building in there, it's not going to work. When you have that many, you're looking at if they're going to charge for parking. If they do, some people will charge on the street. You've got more than one person per unit with vehicles and that's going to be extra cars on the street and you have visitors with parties and deliveries. With all that, you can have an extra 50 cars on the street when you only have next to five spaces now. On Sunday when you go in there, you have to walk about a block away. It's not going to improve the neighborhood. He said he's trying to fit in to the fabric of the community. A huge four story building does not fit in to the fabric of the community. They're getting extra bonuses for affordable housing, but they have a 20%, which will give you about five out of the 30, but yet the average price of the units are \$1150 a month. That's expensive housing. The construction, their allowance is up to a year to build it. That could block traffic and hurt businesses. Then you've got the environmental concerns. I applaud them for doing green accommodations, but when you talk about putting in a 30 unit building, in general, that's not very environmental. It's going to produce a lot more waste and it's a huge eyesore that's going to block the scenery. It was a community garden at one point. We think it'd be great if it could once again be a community garden. Joe said more condensed housing would provide good environmental benefits, but is there a shortage of housing? We've got a buyer's market right now and we have tons of developers. Do we need another one? We've

been here for 22 years and have been a positive development for the community. We hope that they don't get allowed approval to build this building.

**Commissioner Cohen:** I just have one comment on your comments. We now have a 2% vacancy rate for rentals in Minneapolis. That's why we're sitting here today and we see project after project.

**Tran Muehler:** Is that high?

**Commissioner Cohen:** No, it's extremely low. It's as if there is nothing for rent.

**Patrick Kegley (3436 Lyndale Ave N):** I'm here to voice opposition to the proposal. Upon learning of the building plan and reading the specifics of design, I determined I am opposed to the development. The issues of most concern seem to be that there would be insufficient parking for the needs of a building that size. I've lived at a place not too long ago of similar size and often times visitors would be towed from the area. This could be something that would occur if people were to park there for any length of time, there would have to be changes made. Another concern would be the disruption to the surrounding blocks during construction, which could take up to a year.

**Commissioner Tucker:** Excuse me. I understand your concern and as I expressed before, it's not something this commission can rule on one way or the other. If you can, I'd appreciate you talking about the variances and why you think those are good or not good.

**Patrick Kegley:** I would say that considering that the building proposal is out of character with the neighborhood as it is, larger variances on all four sides would have further negative impact. This would also affect existing businesses as it is because the foot traffic and other considerations would be affected for up to nine months at the very least. We have a number of people that have expressed their concerns and many others we have not yet talked with. I hope you consider the negative potential impact on the whole community in that area.

**Leslie Davis (Box 11688):** I'm with the Earth Protectors located at 622 Lowry Ave N. I'm a friend of the family of Tran and his father who have owned the Present Moment Herb and Bookstore for decades. They've been supporting this city from the time these developers were in kindergarten or diapers. They've been paying sales tax and property tax and income tax. Well, these guys haven't paid a dime on anything and they want to come in with this monstrosity and stuff it on to a small lot and come here and use the process in order to have their way with the people. I want to address two comments of Mr. Cohen's before I go further. One is saying that ordinance says they can go 58 feet and they're only going 48 feet and that you guys aren't addressing parking today, you're addressing variances. Well, you become an accessory to the parking problem if you allow the project to go forward by giving them these variances. They have a 15,000 foot lot, that's not enough to feed the monster, they need more. They need to encroach on everything. They need to suck up the space and the air of the community so they can have air and space for their residents. You know it's going to exacerbate the parking. You guys are pros; you've been at this stuff for a long time. This is an outrageous project to inflict on a community. We go day to day trying to get along and things move along and suddenly a big ugly monster shows up on your block. I frequent the businesses in this area. It's a wonderful little business area. We talk about small business being protected and expanding because that's where the growth and the jobs will come from. They're going to employ some contractors to build this building. They can build it wherever they want. You want to increase or decrease that vacancy

rate, go to the upper harbor terminal in north Minneapolis, you can put in 1000 apartments over there and people will love you for it. They're not going to love you for stuffing this monstrosity down their throats [tape ended]. The parking is in front of you because if you ok the variances for them to build, then the parking becomes a problem. This is a terribly disgusting project trying to be inflicted on a neighborhood of innocent victims and I implore you to reject this project.

**Commissioner Luepke-Pier:** I appreciate your passion, but I was wondering because we're restricted on what we can rule on and the specific variances we can hear your commentary on are in regard to the front yard setback, the side yard setback, the rear setbacks or the site plan review. Do you have any comments in regard to those specific variances? Any way you could talk about the required findings that we have to make in order to overcome staff recommendation?

**Leslie Davis:** Well, what practical difficulties existing in complying with the ordinance as it is? Why do they need these variances? There are no practical difficulties except maybe economic ones, but they should not be based on economic considerations alone. Well, what is this based on if not economic considerations? It's about economics. It says it won't alter the essential character of the locality. Did you see when they put up a picture of this monstrosity, the giant bulk and it's not going to alter the character of the locality? It's outrageous that you could say something like that because it's totally false. It's going to change the whole thing, it's going to suck up the air, it's going to suck up the parking and it's just a disgusting project. It says the intent of the sideyard setbacks in this instance is to ensure adequate access to light and air for not only the subject property, but for the adjacent structures. They're going to put this thing up and it's going to block all the eastern sun and light. If fails on everything. There's not one thing that you could find that makes this project sensible. I agree with Mr. Cohen in that we do need housing, but go find vacant land where this will fit or build a project that fits in here and they don't have to come for special permission from you.

**Katherine Kleynhan (7005 Sally Lane, Edina):** We own three buildings directly across the street; 3526, 3534 and 3538 Grand. We have another building about a half block down, 3615 Grand Ave S. We've owned buildings there for 12 years. We feel a little differently than the previous people. We're excited to have something new and we're excited to have that lot filled. We are a little concerned with the size and how big it's going to be and you can't help to be concerned about the parking. I know you're not voting on that. That's probably our main concern. We think it will be really different from the buildings we own that are 1930s so one of the things we think about is competition and these two different animals. I don't see it as a negative for the neighborhood. I think we think it's a little bigger than we'd prefer it, but our biggest concern is the parking.

**Ben Kleynhan (7005 Sally Lane, Edina):** I'd like to reiterate the concerns of previous people; if they're working on setbacks then that is a little bit different character than the neighborhood has and that includes more people and more parking and it's going to affect us. It's going to be a mess, but if someone was going to build a building similar in character to what's there and keep the character then it'd be great. Thank you.

Commissioner Tucker closed the public hearing.

**Commissioner Cohen:** I want to raise a point here that's been bothering me ever since I got these papers in the mail. This application is signed by the president of the Planning Commission. I talked to the City Attorney's office and there's not a problem with that and he's a decent honorable person and he's done a good job and he continues to do a good job and by recusing

himself from the vote he satisfies all the ethical requirements of the city, but it makes me extremely uncomfortable to sit here as a planning commissioner and vote for a project that is applied for by the president of the Planning Commission and who uses the Planning Commission staff to vet his proposal and it's not right in my opinion. My understanding is that the City Attorney's office is going to be adopting a new set of rules having to do with potential conflicts of interest, they're not applicable here, I'm speaking from a purely personal point of view, but I can't vote for a project under these circumstances and it's not with the project. I don't have any problem with the project itself, it's all been properly explained, but I don't like the process anymore.

**Commissioner Tucker:** I don't want to debate the recusal. I think the recusal is the proper form. Mr. Motzenbecker is not up here, he is not conducting the meeting, he is a professional who has a job to do in his outside life and he gives time to this commission. I'd really rather get on with our business and discuss the applications before us.

**Commissioner Huynh:** I'd like to move staff recommendation of variance A (Wielinski seconded).

**Commissioner Luepke-Pier:** I'd like to move all three at once (Cohen seconded).

**Commissioner Tucker:** All in favor of the substitute motion?

The motion carried 6-1; Cohen no, Motzenbecker recused, Tucker chair.

**Commissioner Huynh:** I wanted to speak specifically to some of the variances. Looking at variance B, there's a 20 foot, five and a half inch variance to 15 feet. Some of these conditions aren't necessarily driven by the developer. Just because one of the setbacks on the northern side of the development was 20 feet, but if that housing development wasn't there, they would meet the requirements just because that's an existing condition. A lot of these conditions, such as that, aren't necessarily driven by economics, it's the fact that there's existing context that is very unique and requires a variance for them to comply with the 15 foot setback.

**Commissioner Luepke-Pier:** I second Commissioner Huynh's comments, but I want to speak to the rear and side yards because I find myself a little torn between the things that the neighbors are saying. On one hand, I didn't find any strong testimony in regard to the rear and sideyard setbacks, which is actually the place where I think there might have been some question, but at the same time I heard a lot of testimony about parking, which we can't rule on, but removing the rear or side setbacks would actually reduce the amount of parking. I think removing the rear setback would actually prevent drive aisles to get to parking altogether and removing the sideyard setbacks appears to actually reduce the parking capacity by at least two spaces, at least based on the dimensions given on the plans. So, on one hand, as much as I would possibly be inclined to have not found for the rear and side variances, although I didn't get strong findings to really support that kind of possible inclination, the fact is that supporting that would actually make worse hindrances to the neighborhood than supporting them so I will actually be supporting this motion. It assists the neighborhood for increased parking even though we're not allowed to rule on parking.

**Commissioner Schiff:** I concur with the comments that have been made. It's the underground parking that's driving this variance or all the variances. Without the underground parking, which they've already had the maximum amount of compact parking spaces, particularly towards the

alley and then they wouldn't have this size of a frame of a building and it's their desire to provide underground parking that is really setting the parameters for these variances. The front yard variance is the one I'd object to the most because it'd infringe on the character of the street, but the front yard variance on this case is simply to allow four patios which we warmly welcome as good urban design in the city and it makes it more pedestrian friendly. I'm more than happy to grant the front yard setbacks for those patios.

Commissioner Tucker: Other comments?

**Aye:** Kronzer, Huynh, Luepke-Pier, Mammen, Schiff and Wielinski

**Nay:** Cohen

The motion carried 6-1.

**Commissioner Huynh:** I'd like to move staff recommendation for the site plan review with the following modifications for conditions three; I'd like to strike "and metal panels" so it says, "The exterior materials of brick cladding shall extend from the front of the building around the northwest corner and along the north elevation for a distance not less than what is provided on the south elevation." The second modification is to add a fifth condition to ask the applicant to continue working with staff on potential setbacks along Grand. I understand that you have eight inches now but it'd be nice to be able to perhaps look at a foot or two feet just to be able to create more of a perception with three foot with the base of the building and allow a little more light and air. I'm not going to determine what that setback is, but for you to work with staff. To increase setbacks on the fourth floor (Schiff seconded).

Commissioner Kronzer: I'd like to add a condition for the applicant to add some site lighting along the retaining wall along the alley. We do have some lumen requirements not to go over the property lines, but I think a low level amount of light back there will aid in the perception of safety (Schiff seconded).

**Aye:** Kronzer, Huynh, Luepke-Pier, Mammen, Schiff and Wielinski

**Nay:** Cohen

The motion carried 6-1 to add lighting along the alley.

**Commissioner Luepke-Pier:** I just wanted to say that I support the motion and have no qualms in doing so because we've had no prior discussion about this outside of the public hearing. I'm evaluating this like I would any other project that comes before us. The fact that someone on our commission is someone who contributed to this project, I don't see how that's to be avoided unless you don't want to have any design professionals sitting on the Planning Commission, which would make it a little uninformed on some of the issues we consider. I have no qualms about supporting this based on its merits alone, having nothing to do with who is or isn't working on the project.

**Aye:** Kronzer, Huynh, Luepke-Pier, Mammen, Schiff and Wielinski

**Nay:** Cohen