

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

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MEMORANDUM

DATE: September 13, 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 August 13, 2012

The following actions were taken by the Planning Commission on August 13, 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

8. WaHu Student Housing (BZZ-5638, Ward: 2), 1016, 1024, and 1032 Washington Ave SE, 1025 Delaware St SE, and 2408 University Ave SE (Becca Farrar). This item was continued from the July 30, 2012 meeting.

A. Rezoning: Application by BKV Group, Inc., on behalf of CPM Development, for a petition to rezone the property located at 1016 Washington Ave SE from the C2 (Neighborhood Corridor Commercial) district to the C3A (Community Activity Center) district. Both the PO (Pedestrian-Oriented) Overlay District and UA (University Area) Overlay District will be maintained.

Action: The City Planning Commission recommended that the City Council adopt the findings and **approve** the rezoning petition to change the zoning classification of the property located at 1016 Washington Ave SE from the C2 district to the C3A district. The Stadium Village Area PO (Pedestrian Oriented) Overlay District and UA (University Area) Overlay District will be maintained.

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

The motion carried 6-0; Cohen and Motzenbecker recused.

B. Conditional Use Permit: Application by BKV Group, Inc., on behalf of CPM Development, for a conditional use permit to increase the maximum permitted height of a mixed-use building from 4 stories or 56 feet to approximately 11 stories or 132 feet at the tallest point for properties located at 1016, 1024, and 1032 Washington Ave SE, 1025 Delaware St SE, and 2408 University Ave SE.

Action: The City Planning Commission adopted the findings and **approved** the application for a conditional use permit to allow an increase in height to 4 stories or 56 feet to approximately 6 stories and 11 stories or 132 feet at the tallest point for the properties located at 1016, 1024, and 1032 Washington Ave SE, 1025 Delaware St SE, and 2408 University Ave SE subject to the following conditions of approval:

1. The conditional use permit shall be recorded with Hennepin County as required by Minn. Stat. 462.3595, subd. 4 before building permits may be issued or before the use or activity requiring a conditional use permit may commence. Unless extended by the zoning administrator, the conditional use permit shall expire if it is not recorded within one year of approval.
2. Only a portion of the subject building located at the intersection of Huron Boulevard SE and University Ave SE is 11 stories or 132 feet per the submitted plans.
3. The sidewalk access along Washington Ave SE and University Ave SE shall remain open during construction. Temporary closures will be allowed, as needed, for public safety.

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

The motion carried 6-0; Cohen and Motzenbecker recused.

C. Variance: Application by BKV Group, Inc., on behalf of CPM Development, for a variance to increase the maximum permitted Floor Area Ratio (F.A.R.) from 4.32 to 5.14 for properties located at 1016, 1024, and 1032 Washington Ave SE, 1025 Delaware St SE, and 2408 University Ave SE.

Action: The City Planning Commission adopted the findings and **approved** the application for a variance to allow an increase in the maximum allowable floor area ratio (FAR) from 4.32 to 5.14 for the properties located at 1016, 1024, and 1032 Washington Ave SE, 1025 Delaware St SE, and 2408 University Ave SE.

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

The motion carried 6-0; Cohen and Motzenbecker recused.

D. Variance: Application by BKV Group, Inc., on behalf of CPM Development, for a variance to reduce the setback along the east interior side yard from 15 feet to 0 feet at the closest point for properties located at 1016, 1024, and 1032 Washington Ave SE, 1025 Delaware St SE, and 2408 University Ave SE.

Action: The City Planning Commission adopted the findings and **approved** the application for a variance to reduce the setback along the east interior side yard from 15 feet to 0 feet at the closest point for the properties located at 1016, 1024, and 1032 Washington Ave SE, 1025 Delaware St SE, and 2408 University Ave SE subject to the following condition of approval:

1. The setback reductions delineated on the final plans shall match the submitted plans.
2. Applicant shall work with the Caspian ownership group regarding the setbacks on the east interior side yard.

Aye: Huynh, Kronzer, Luepke-Pier, Mammen and Schiff.

Nay: Wielinski

The motion carried 5-1; Cohen and Motzenbecker recused.

E. Variance: Application by BKV Group, Inc., on behalf of CPM Development, for a variance to allow for an increase in the maximum retail size from 8,000 square feet up to 18,500 square feet for properties located at 1016, 1024, and 1032 Washington Ave SE, 1025 Delaware St SE, and 2408 University Ave SE.

Action: The City Planning Commission adopted the findings and **approved** the application for a variance to allow for an increase in the maximum retail size from 8,000 square feet up to 18,500 square feet for the properties located at 1016, 1024, and 1032 Washington Ave SE, 1025 Delaware St SE, and 2408 University Ave SE subject to the following condition of approval:

1. A floor plan shall be submitted for the larger commercial tenant space in order to verify that the layout does not affect required window openings. No shelving, signage, merchandise, newspaper racks or other mechanisms shall be placed in front of the required ground level transparent windows.
2. A minimum of four retail spaces shall be provided, totaling up to 30,500 square feet, with one allowed up to 18,500 square feet.
3. A pedestrian walkway/path shall be provided from the parking area to the public sidewalk.

Aye: Huynh, Kronzer, Luepke-Pier, Mammen and Schiff.

Nay: Wielinski

The motion carried 5-1; Cohen and Motzenbecker recused.

F. Variance: Application by BKV Group, Inc., on behalf of CPM Development, for a variance to reduce the parking requirement for the residential component of the development in the UA district from 356 spaces to 336 spaces for properties located at 1016, 1024, and 1032 Washington Ave SE, 1025 Delaware St SE, and 2408 University Ave SE.

Action: The City Planning Commission adopted the findings and **approved** the application for a variance to reduce the parking requirement for the residential component of the development in the UA Overlay District from 356 spaces to 336 spaces for the properties located at 1016, 1024, and 1032 Washington Ave SE, 1025 Delaware St SE, and 2408 University Ave SE.

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

The motion carried 6-0; Cohen and Motzenbecker recused.

G. Site Plan Review: Application by BKV Group, Inc., on behalf of CPM Development, for a site plan review to allow for the construction of a new 6 and 11-story mixed-use development that includes 333 residential dwelling units with 790 bedrooms and approximately 30,500 square feet of ground level commercial/retail space for properties located at 1016, 1024, and 1032 Washington Ave SE, 1025 Delaware St SE, and 2408 University Ave SE.

Action: The City Planning Commission **approved** the site plan review application for the construction of a new 6 and 11-story mixed-use development that includes 333 residential dwelling units with 790 bedrooms and approximately 30,500 square feet of ground level commercial/retail space on the properties located at 1016, 1024, and 1032 Washington Ave SE, 1025 Delaware St SE, and 2408 University Ave SE subject to the following conditions:

1. All site improvements shall be completed by August 13, 2013, unless extended by the Zoning Administrator, or the permit may be revoked for non-compliance.
2. Planning Staff review and approval of the final site, elevation, landscaping and lighting plans before building permits may be issued.
3. A floor plan shall be submitted for the larger commercial tenant space in order to verify that the layout does not affect required window openings. No shelving, signage, merchandise, newspaper racks or other mechanisms shall be placed in front of the required ground level transparent windows.
4. No shelving, signage, merchandise, newspaper racks or other mechanisms shall be placed in front of the required ground level transparent windows in each commercial tenant space.
5. Incorporation of windows, entries, recesses, projections or other architectural elements along the east elevation of the proposed building to break up the blank uninterrupted walls that exceed 25 feet in width per Section 530.120 of the Zoning Code.

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

The motion carried 6-0; Cohen and Motzenbecker recused.

Staff Farrar presented the staff report.

Commissioner Tucker: The landscaping requirement, is some of that in spirit addressed in this very wide sidewalk with planters? Does that provide some landscaping, trees, plants, whatever?

Staff Farrar: In this specific situation, the building is being constructed near to the property lines along the entire perimeter and obviously that relates to the east side of the property here in this location where you've got zero feet at the ground floor so that only leaves some space which varies from six to eight feet. This is the PO District so where the building is constructed these are the areas where they're showing outdoor potential seating along both Washington and University. This is a 20-65 foot public right-of-way in this location so they are integrating some landscaping, some seating areas so we thought that was a good alternative compliance measure, plus they're also adding additional street trees in this location.

Commissioner Tucker: How about with the blank wall? Which one is it that you think should be conditioned?

Staff Farrar: It's all along that east portion of the elevation so it will be everything from the 65 foot separation on the blank, all the way down to the...

Commissioner Tucker: We can ask the applicant if they have any ideas to deal with that. One other question I had was about the variance for the size of the retail; they're proposing 30,000 or so square feet of retail, without the variance that would have to go into at least four retail establishments, is that right?

Staff Farrar: Well 8000 is the maximum, so correct.

Commissioner Tucker: If we grant this variance, they could probably get by with three if they put 18,000 in one and the remainder can stay below 8000.

Staff Farrar: That's correct. I think they're looking to put smaller tenants in the spaces should they secure that...

Commissioner Tucker: We could add a condition if we wanted to in order to maintain small retail to have at least four businesses in there.

Commissioner Tucker opened the public hearing.

Jack Borman (BKV Group) [not on sign-in sheet]: We spent almost four months working with the neighborhood group, went through several renditions of the design, it was a very interactive process. The final design I think is very much, especially at the streetscape level and all the perimeter public areas for the project, very much influenced by the master planning and the overall Prospect Park neighborhood vision for their area. If there are questions about the overall design, I'd be happy to talk about those.

Commissioner Tucker: You might highlight the changes you made after our meeting at CoW.

Jack Borman: Overall, the basic concept was to begin to look at these parts of the building. To simplify, we had much more of a staggered building modulation here and we straightened those out to simplify the façade so there was a little less activity with the overall massing. We did that in both the Washington Ave façade and the Huron Ave façade. We also opened up this main entry area, created the steps, created this intermediate terrace area that really opened up the entryway into this main courtyard. We also developed a little bit better relationship of how this pool building and outside deck really helps articulate the relationship between the central building tower and the two wings as you looked at the building from the plaza area all the way over by the stadium. You can see that a little better in this drawing. Here is the view from Huron. We've also simplified these building corners to be flush with the property line. From this point here, to this point here, we're set back the eight feet to create the expanded sidewalk area. This is the view over off of Washington and here you can see the simplified building façade here. We also cut back the projection and the overhang so they're all flush with the building façade. We toned down the overall overhang at this corner. We're flush with the adjoining building here with this façade and then as far as this element and then the actual building face is set back four feet from that. I think that was one of the concerns about being a little simpler at these two corners. The streetscape, we did develop much more of a pattern that relates to the overall sidewalks in the general area. We did maintain this more specific paving pattern area here off of University and Washington because we're hoping to continue to work with the university on developing this triangle as a major outdoor space. I think there was quite a few changes in simplifying this area of Huron to blend it in with the neighborhood sidewalk treatment.

Commissioner Tucker: Did you have any ideas on that blank wall?

Jack Borman: From the very beginning, we have felt that the building needed to have...even though we're in a zoning area that would allow us to do a blank wall at the internal property line, this is Uptown City Apartments which has a single loaded corridor at the back end of the property, this is a midblock property line, we felt that was the wrong thing to do. We also have been concerned about other buildings where you have a low building and high building having blank walls so we felt that was a very inappropriate urban thing to do. As a result, from the very beginning, we have always had...here's what our original design was...from the very beginning, we've always had a few areas that touched the property line and therefore could not have windows and that was three 20 foot wide panels up off of Washington so it was 20 feet, 10 feet width, 10 feet deep, 20 feet, 10 foot width so on. The City wants walls to have either windows or something every 25 feet so knowing that, we basically designed this wall originally...here is the adjoining neighbor's building...so these three areas abutted their building but then we had these light wells in between and then once we got back to this point, which was about 70 feet, then we stepped back all the way for another 200 feet, 10 feet, continuous terrace at the second floor and then there were areas that were set back 10 more feet and that's the issue of the zero to 20 feet. On the Delaware side of the block, we had three more 20 foot panels that were at the property line and then these 10 foot light wells in between. That did create a snow loading condition at this location. In meeting with the owners of the adjoining property, they were very much concerned about that so we went back and did the redesign that's in the amendment. This shows how it was originally. Their building is about eight feet higher than our second floor. Basically, what we have done is in the original design, this is a cross section, this is their building, it's approximately 26 feet high, we're 20 feet, this is grade level here, this is 20 feet, this is 10 feet back and then originally we had these 20 foot wide projections that touched their building and we have gotten rid of those. Now we're 10 feet back for our housing and we're eight feet lower than their building so we have this setback and our second floor is lower than their building and how that visually looks now is like this. What we've done is taken in from Washington, back past their building 65 more feet, we have a ten foot recess at the second floor and then 20 feet at these respective recesses where we have additional windows. Our engineer really feels confident that we will not have any negative impact on their building. We've asked as we've finished the design to work with the building owner to have their engineer give us a report as to what the structure is so we could work together between the two entities to come up with a confirmation of our current assessment that we are set back far enough and the fact that we're lower that there won't be a negative impact on their building. We do have a common bearing wall here which we're going to keep even though we're tearing down the rest of the building. We're going to waterproof it, fix it up so that it would not ever be a detriment to their building. Hopefully that describes the building setback to help our neighbor feel more comfortable that we're not going to negatively impact their building.

Commissioner Huynh: So on the main level there, is that still continuous blank space that's exposed to that surface parking lot?

Jack Borman: That would have a recess relief of a different material color every 25 feet. There wouldn't be any windows here because that's all parking ramp, but we are going to articulate the wall every 25 feet with indentations of a relief.

Commissioner Huynh: So you'd meet the City's requirements as far as the blank wall. My second question is, can you further explain the need for the retail variance?

Jack Borman: It's flexibility. There's been a broad range of potential retail people that have contacted the developer. It's an outstanding location. There's been discussions of up to 12,000

or 18,000 square foot grocery type, multiple discussions about the 1000-2000...it's just a wide range so we're just hoping to have flexibility so we can really provide for this area of the university community.

Commissioner Tucker: Where does the number 18,500 come from?

Jack Borman: That just happened to be the one largest piece.

Commissioner Tucker: So your retail is in three different pieces, is that correct?

Jack Borman: Yes, because we have the piece at Huron and Delaware, the original piece that came all the way up...it must be less than 12 now because we've created that entry...the housing entrance actually comes in at that point now is around 10 or 12.

Commissioner Tucker: Nobody is lined up for the largest space yet?

Jack Borman: We're trying to tee up what we think is the potential, which would mean the potential for something larger than 8000 square feet.

Commissioner Tucker: I noticed the neighborhood you worked with suggested you just do this case by case when an actual tenant comes forward.

Jack Borman: It's an option. We think it's more proactive for those people who are wanting to quickly look at options to know that we have some viability rather than coming back again. We'd like to get the opportunity to seek that out. They always have to come back for permits so if there's anything that changes in the approvals, that would bring us back to you.

Commissioner Kronzer: Question about the neighboring building, what is it made out of?

Jack Borman: From my exterior observation, it's a two story brick building with wood joist floors and a wood joist ceiling. I know that the wall that we share is a brick masonry bearing wall – a two foot thick common brick bearing wall.

Commissioner Kronzer: I appreciate the notion to finish and waterproof that wall and the offer to reinforce the roof structure as well.

Jack Borman: It's very common to be in a situation where the new building next to an older building and the new building is higher to need to work out a snow loading issue. We approach this that that's pretty standard care. I think the preference was that they felt a setback was more their preference so we felt that this 10 foot setback, especially since we're eight feet lower and we've actually done the triangle snow loading analysis with our engineer, we feel puts us in a safe position to not be detrimentally impacting their building and we'll be continuing to work with them to further ensure that because we want to be a good neighbor.

Commissioner Kronzer: About the retail space, it doesn't appear that there are any doors between the 80 stalls of retail parking into the retail from the parking side.

Jack Borman: We have not finalized the walking zone for the relationship of the grade level retail parking. We anticipate since we have two cores on either end that whatever housing issues there will be focused, people will focus to those two cores then we would assume that we would

need to develop some striping that would work so we could have direct access to the exterior street front and then they'd come in that direction or for employees there will be a service corridor on the back side for service and for employees. We would want to move the customer traffic directly to the outside street.

Commissioner Kronzer: So your intent is to have the customers walk to the public street and then around.

Commissioner Tucker: Based on the memo of understanding that you worked out with the neighborhood, it's impressive that you answered a number of questions. I had particular interest in this agreement, four bedroom units can be split and converted into two bedroom one units – can you just show how that's done? The second part of that was three separate entrances so that one can be treated differently at some future time.

Jack Borman: The development of student housing in these key sites in the university area is very important for the neighborhood group, for the university and for our city. The idea of doing it in a way that makes it fit in well, that's where the three entrances, the Huron and Dakota entrance, the University Ave entrance and then the corner at Huron and Washington entrance became three building entrances and three building masses, six compared to 11 and then 11 compared to six again and then the main entrance between the six and 11 story off the plaza area – those were ways that we discussed with the committee about how to create a sense of an assemblage of buildings rather than one large building. We still wanted it to work together and there's that subtlety between how far you go, we don't want the red, green and blue effect, but the point is that was a lot of the three entries. The issue of the internal apartments, enough people have been in the community long enough to realize that maybe it won't be student housing forever so then what do you do? Maybe it's not going to be for students, maybe it will be for faculty or seniors who want to live near the university. There's a pretty even mix between one, two, three and four bedroom units in the building so that made them feel good. They wanted it to be more like an apartment building so when we came to the four bedrooms, we have a living room and two bedrooms over here and two over here. It could be converted to more of an apartment building. I applaud the neighborhood's work and effort because all that was before we arrived. I think it became an outstanding urban design checklist for us and it really made the process work well.

Carol Lansing (90 S 7th St): What I submitted to you does entail what that setback requirement is intended to protect. If you have any questions about that, I can discuss it more.

Chuck Lloyd (2520 University Ave): I'm with Livgard and Lloyd and represent three groups in opposition to the applications. The property owners of the two adjoining parcels as well as the owners of the Caspian Bistro, the business that occupies the building next door. I'm part of a team of presenters tonight because I think part of what you need to hear is some of the legal issues and I also think you need to hear some of the practical issues, one from a structural engineer. It's interesting that our friends who are proposing this want to be good neighbors, or so they say. Good neighbors don't take a problem that they know exists, a problem that could cause a collapse of the neighboring building and ignore it until it gets raised. They make a big issue about the fact that we didn't meet with them until recently, the problem is that the issues that we are presenting here are not secrets, they're not things that are maintained in the basement of the Caspian, they are things that any engineer would know and for that reason, the application that was presented here was incomplete at best and dishonest at worst. The requirements for a variance and for a conditional use permit require that there be a finding, in other words, they have

a burden to come forward to establish that there is no threat to public safety and that there is no detriment to the adjoining property. They cannot establish that. By law, they cannot leave here tonight with the conditional use permit that they request or the variances that they have applied for because they cannot satisfy the code requirements. Absolutely cannot. At best, what they should hope for is a delay so that there can be further study with respect to the impact of the Caspian. If there has to be an up or down vote, by law, it has to be down because they cannot satisfy the code requirements for a conditional use permit or a variance. There are at least two or three reasons why I say that the law cannot be complied with; the Caspian building is at risk from this development. The snow load, which they acknowledged, the roof cannot withstand additional snow load so they backed the building off but they ignored the building code requirement. The building code requires that the building be backed off 20 feet and you'll hear from our structural engineer about that, not 10 feet. Ten feet reduces the amount of the load, but does not eliminate the problem and when they acknowledge that there cannot be a significant increase in the load, they must necessarily acknowledge that moving it back only 10 feet still causes the problem for the Caspian. This is not a problem where it's just going to be a little difficult for them to operate their business. As you saw from the engineering letter that we provided, the risk is a collapse, a catastrophe, a failure of the building and by definition a threat to public safety. It is also by definition, injurious to the neighboring property. This isn't a setback issue, this is a building code issue and it arises because of their request for a conditional use permit. They want to go significantly higher than the Caspian building and that's what creates the problem. That's why you have to consider this issue because to grant the conditional use permit under these circumstances requires you to ignore public safety and requires you to ignore the injury to the Caspian property. It's not addressed in the application at all, not one word is mentioned about the Caspian. As a consequence, it's not mentioned in the staff report because the staff was working with what they had before them. I don't fault staff for this, I fault the applicants. There's a second problem; that same issue applies with the setback request, but there's a second problem relative to the variance and that is they have an obligation to come forward and establish that the problems that they face, the things that they seek to vary are not of their own doing. The reality is, is that this has nothing to do with the parcel of land and everything to do with the building that has been designed. They're trying to put 10 pounds of potatoes in a five pound bag. We can see that. The floor area ratio, they already get 60% bonus for the density issues and even that is not enough, they want 90% over what is normally allowed – to go from 2.7 to up over 5.0. It's all economic. They could set the building back without difficulty. They could set it back 20 feet and they could follow the 15 foot setback for the remainder of the Caspian property without issue. The only reason that it's not being done is economic and by code that can't be the basis for the variance. Where, in their showing, do they establish that there is anything that would satisfy that requirement? They do not. As a consequence, for those reasons, as a matter of law, this body cannot grant the variance or the conditional use permit request that they have made.

Doug Fell (621 Lilac Ave N, Golden Valley): I'm a partner with Clark Engineering in Golden Valley. I'm a structural engineer. I think in your packet you have a letter from Dr. Abi Assadi that commented on the loading, the snowdrift requirements and what's going to happen if this proceeds. Unfortunately, Dr. Assadi was called out of town on business so I'm stepping in for him. I did review his letter and I do agree with it. I've been a structural engineer for about 33 years, I know a little bit about existing buildings, building restoration, calculations. I was the structural engineer of record for the Metrodome collapsed. When it collapsed, I came in and helped them out of that mess until they got going [tape ended]...between a higher building versus a lower building. If there's any new building or obstruction that's higher than the existing and it's closer than 20 feet, you do have to take into account the snowdrift upon the existing building.

From the 20 foot to zero foot, they have a linear type of an equation where you can drop off the effects of the snowdrift as you move further away from the building. At 10 feet, you'd be at approximately 50% of what the snowdrift load would be upon that existing building would have to be supported by the existing building, which is still a significant amount of load and this is an older building. I personally have not gone in and evaluated the building. My experience tells me that most likely there will be the need to reinforce that building. I've heard that they've had a history of roof structure problems in the past. It's not going to be easy and it's going to be very disruptive to come in and reinforce it. I've done a lot of these and my experience has told me it can be done, but it's expensive and disruptive to the existing building. In my opinion, if it goes ahead as it is it will need to be reinforced more than likely. This action does create a hazard, a hazard that does need to be addressed. It is a life safety issue so just by approving this as is with the ten foot, is being a party to the creation of this hazard. Transparency of the matter, I'm kind of surprised that this whole thing just came up at the last minute about the snowdrift. That's usually one of the first things that people consider when you put a building that close. The biggest concern I have is that this action will create this very dangerous condition that does need to be then addressed.

Commissioner Luepke-Pier: Is the height difference between the two buildings, is there some sort of ratio where if they were only 10 feet or 20 feet higher versus 50 feet higher...what's the variables?

Doug Fell: The snowdrift calculation takes into account not only the height, but also the horizontal distances that are included. Years ago, it used to be just a matter of how high and how much snow is going to build up by height, now it takes into account the lengths of the buildings and a lot of other factors.

Commissioner Luepke-Pier: I'm envisioning a ten foot gap between the buildings and I'm wondering if their building was only two feet higher or 10 feet higher, how much of an impact does that height of their building at that proximity make?

Doug Fell: The higher it is, the more load you're going to get up to a point. It is significant that it's higher. If it's a couple of feet, if it's a rooftop piece of equipment or something like that, usually it's not a real big factor.

Commissioner Luepke-Pier: But you're saying even one story has a significant impact at 10 feet.

Doug Fell: It does affect it, especially on a building that might be marginal at best as it sits. Anything that you do...that's one of the first things we have to look at if we're ever going to build up to somebody else's building is what impact it's going to have upon them. Normally, we'll put a step in our building at that height and then go up.

Commissioner Luepke-Pier: If they were at a 20 foot setback from your building, would that negate that snow load requirement altogether?

Doug Fell: Yes, according to the code. If it's 20 feet away, we don't have to deal with the existing building at all, it just goes away.

Commissioner Kronzer: In your professional opinion, can this roof be reinforced to meet the snow load as the project is designed?

Doug Fell: In my professional opinion as a structural engineer, you can do just about anything if you have enough money. It's not a matter of "can it be" because it can. Can it be practically done, can it be done without being disruptive...for the most part, physically it can be done I'm sure. What I'm not sure about is the condition of the existing walls that now have to carry some additional load. A building tends to reach an equilibrium after it's been there for such a long time and now you're imposing a different type of load.

Commissioner Kronzer: So it can be done.

Doug Fell: It can be done.

Commissioner Kronzer: I have a question about foundation and footings, there was some mention of risk with foundation and footings and you haven't mentioned anything about that.

Doug Fell: There is additional load there and there may need to be some reinforcement of the existing foundations.

Commissioner Kronzer: That's not in relationship to excavation, it's in relation to the snow load issue.

Doug Fell: Well, there's the snow issue that might impart additional vertical load to the foundation so it may not have the capacity and then always when there's adjacent construction to an existing building there's always a chance that things are going to...

Commissioner Kronzer: You don't see an inherent difficulty of digging a hole next door as long as...

Doug Fell: As long as the shoring is done and things are taken care of.

Paul Erickson (8501 Golden Valley Rd): I'm president of ATS&R Planners/Architects/Engineers. I have 33 years of experience in the architecture profession as a registered architect and have designed projects upwards of \$80 million, complex projects. I look at this proposal from a design and construction standpoint and believe the obvious major flaw with this proposal and the reason it should not be approved as proposed is that the developer is pushing too large of a building on too small of a lot, evidenced by the fact that numerous variances and a conditional use permit are desperately needed by the developer to make this work. All of these hardships are directly caused by the developer and the decisions within the control of the developer. The scale of the project is needlessly large, which is why the laundry list of variances are necessary. It needs to be higher than it's zoned for, it needs to ignore setback requirements, it needs to be granted more floor area than permitted. Contrary to the application, there's nothing about the property that requires those variances, but rather it is due entirely to the decisions made by the developer that are within his control. Ultimately, it is the design that is driving the needs for the changes, not the character of the property as the city reports. They're simply pushing too big of a project on too small of a lot. It pushes more density than currently zoned so it needs rezoning from the city, it pushes more height than permitted which exceeds the number of permitted by seven stories and exceeding the height permitted by 76 feet and desperately needing a conditional use permit for this to happen. It pushes more floor area than permitted even with the two bonus increases and the floor area ratio allowed under code and desperately needing a variance for an additional 70,000 square feet more than permitted. It pushes an increase on the retail floor area while their proposal violates the city requirements for

residential floor area, retail floor area, number of buildings and building height, all requiring major variances. The developer now cannot meet the required ordinance for the number of off-site residential parking stalls and needs a variance to provide less on-site parking. Due to the size of the development, the City is recommending waiving the 20% landscaping requirement to a lesser requirement. According to the staff report, zero square feet will be landscaped within that property line. As a result of this overly sized development, 333 residential units, 790 bedrooms, the developer now seeks relief proposing a variance for a zero setback line on their east side yard so their development can fit on to a lot that is too small to comply with city ordinance requirements. The Caspian Bistro building is the property on the east side yard. It seems that the Caspian Bistro, which has successfully operated for over 26 continuous years in the same location at 2418 University Ave, with an impressive list of faithful patrons is now expected to take the brunt of this excessively over designed proposal. The revised drawings that were provided, they look nice, but it does not solve the problem. Most importantly, the developer's requested variance for zero lot line building setback adjacent to the Caspian Bistro property will violate the building code and life safety codes causing enormous snowdrift load on the Caspian Bistro's building which is over 100 years old. According to the Caspian Bistro's structural engineer, you heard Doug, the load demand on the roof will be tripled and even by moving it 10 feet out further, it will still cause snow load on the existing structure. The developer is causing injury to the Caspian Bistro with a zero lot line building setback variance and as Clark had said, a 20 foot setback from the Caspian Bistro's building is required to avoid that snowdrift. As an architect, it's shocking to find as of last week that the developer was not prepared to address the snowdrift concerns, had never visited the Caspian Bistro building and had not done a structural review of the building. With a zero lot line sideyard setback, the developer will cause Caspian's building structure to fail and cause injury to the future use of Caspian's property and the Caspian Bistro is not interested in the developer attempting to structurally reinforce the building as it will cause major disruption to the business operation and negatively impact its architecture. The Caspian Bistro building would need to be shut down over an extended period of time during structural retrofitting, if retrofitting can even be done with that age of a building. The loss of customers would be devastating to the Caspian Bistro operation. In summary, the city must deny the requested sideyard setback variance and must require the developer to redesign his proposal to eliminate the life safety and building code violations his design is causing to the Caspian property. By the city denying the requested setback variance, it protects Caspian Bistro from injury the development causes and protects Caspian property rights for the future. If the proposed development were not excessively oversized on too small of a site, the sideyard setback variance would not be needed and other requested variances may be unnecessary. The following must be done in order to meet building code life safety code: first, set the building back 15 feet along 395 feet of the property line to meet city ordinance and fire access to protect the rights of the Caspian. The staff report says that 70% of the residential floors of the building meet the 15 foot setback. It appears, from my calculations, only 10% meets the setback while 90% of the residential floors of the building violate the 15 foot setback. This is a very serious concern of the Caspian that there seems to be a major discrepancy between the design drawings and the staff report and perhaps my misunderstanding, but I looked at the drawings today and over the weekend. With 90% of the floors being noncompliant with the setback, they also are noncompliant in height by an additional two stories in this area, further compounding injuries and violations of Caspian's rights regarding the reduced setback. Set the building back an additional five feet from the Caspian building so the distance is 20 feet from the Caspian building to eliminate the developer's snow load violation on the building. Regarding the party wall with the demolition of the 2408 University Ave, we don't know what the conditions are, we are uncertain of what that wall is. It could be a party wall or it could be two independent walls that are structurally tied together. As far as we know this has not been explored or investigated. The developer must be responsible for all Caspian structural

reconstruction of that party wall and support reinforcement, frost issues that may occur at that outside wall that is now an interior wall but will become an outside wall and must provide complete exterior weatherproofing to the exposed wall and roof with materials approved by the Caspian. Caspian adjacent building rely on each other's roof area for water drainage and overflow. There's a serious concern that the demolition of 2408 University will negatively impact the Caspian's current roof drainage overflow system and this must be addressed. Moreover, there's a major concern about maintaining Caspian operations during any reconstruction efforts of the party wall. The developer is causing the need for numerous variances by proposing too large of a project on too small of a lot. The hardship is caused solely by the developer and are being pushed on to the Caspian Bistro, a 26 year staple of the university community causing severe injury to the Caspian property. There are reasons for setbacks and the City should adhere to them. Case in point, the snowdrift problem on the Caspian's building. It's beyond comprehension how the City can even entertain the developer's proposal while it violates building codes, life safety codes and zoning codes causing irreparable injury and damage to the Caspian Bistro.

Florence Littman (76 Clarence Ave SE): I'm a member of the PPERRIA zoning committee and I was previously chair. There was a group of people that met with the developers and they did develop a memorandum of understanding. Unfortunately, none of those people could be here tonight. I have a copy of the letter. People on the committee felt that they made some changes that were positive, however, it is mentioned in the staff report that there was this memo of understanding but it wasn't included.

Commissioner Tucker: It was included in the packets that we have.

Florence Littman: Oh, it was in the packet, but it was not online. The report makes it seem like everybody agreed with everything, which was not the case. The thing I take exception to is that it's quite clear in our letter, it says "variances to allow commercial retail space that are greater than 8000 square feet in size should be reviewed on an individual case by case basis." We were quite surprised to see that this was ignored, never mentioned and I guess it's difficult to understand how the code said 8000 so you'd give them 18,500. My understanding is that you get a variance for a hardship. The code says the commercial spaces shall be no larger than 8000 square feet; what is the hardship? The gentleman says he wants it for flexibility. Not having flexibility is not a hardship. They did change the mix of unit sizes, we never like four bedrooms in dorms because those always cause more problems. You can divide them in two and there can be a mix of units, however, there isn't going to be any mix of residents. In the spirit of working with the community, we have always said, "if you want to build a building, make it attractive to a mix of people, not only students." One of the things that might possibly happen is that maybe the three buildings be separate and could house people who work in the area instead of students. The other thing that was mentioned was that the project hasn't addressed fitting in with the adjacent buildings on the east side of University Ave. So while the committee was happy with the changes they made, there are these outstanding issues which I had hoped would be noted. The most glaring one is the variance from 8000 to 18,500 and I think that should be changed.

Carol Lansing: The issues of construction impacts have not been ignored, rather they are going to be addressed in the appropriate time. Those are not land use issues. Snow loading separation is not governed by the zoning code and, in fact, contrary to what you've heard, the building code does not require a new development to be set back 20 feet from adjacent properties. It does not require it to take into account snow loading issues for adjacent development. I just want to point out if these were limitations on what you could approve, you could not have approved this

Stadium Flats Village building right next to a one story building. You couldn't have approved Edge on Oak, 212 Lofts...this is routinely done in urban development. Property owners need to address those issues and we have been and want to continue working with the neighbors but that happens as you get into the engineering stage of a development not at the zoning application stage. As we've indicated, we've offered to reinforce their building. This additional setback that has been provided today is also a measure to address it since they have not been really responsive to allowing us to reinforce the building. I don't think you can say that their business would be shut down by what needs to be done, that's an assumption based on a worst case scenario. With respect to why the variance for the setback and the FAR, City goals are calling for the most dense development we can put in the city outside of downtown and that's true with the neighborhood plans. The Stadium Village plan is calling for a tall signature building in this location in order to get the density and height. You need the density to pay for that development. With respect to the retail variance, I'll note for Calhoun Square, you did approve variances to allow increased retail areas above 8000 square feet in anticipation of the need to have a marketable space to attract tenants who need to have confidence that their lease is not going to be subject to a future variance. We think it's appropriate for this development. There's a lot of retail area, it's an unusual area within Stadium Village, it's not next to small retail stores that it's going to negatively impact.

Commissioner Kronzer: Is your client proposing to keep the sidewalks open along Washington to University during construction?

Carol Lansing: I'm getting nods, but I'll let him speak.

Jack Borman: With the setbacks, we should be able to keep Washington Ave open. As far as Huron, that's going to be the major construction access area and there could be some construction truck traffic there that would be better to not have pedestrian traffic, but I don't think from talking to our contractor that's going to be the case along Washington.

Commissioner Tucker closed the public hearing.

Commissioner Tucker moved staff recommendation for the rezoning (Huynh seconded).

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

The motion carried 6-0.

Commissioner Tucker moved staff recommendation item B (Kronzer seconded).

Commissioner Kronzer: Just to the point of ensuring sound building practice, it is required in the state building code that neighboring buildings do not get damaged during construction. That's not an issue for this body, it's Chapter 33 of the building code, but we all know that. I would like to make a condition about maintaining sidewalk access along Washington and University during construction. It's important for small business to have access and closing the sidewalk is probably the most detrimental thing for small businesses.

Commissioner Tucker: You think this is connected to the height or maybe the site plan review?

Commissioner Kronzer: It was brought up during the conditional use permit discussion. If you think it's more appropriate...

Staff Dvorak: I think it could go under either of them, I would just to note that if the Building Department requires a sidewalk closure that that should be noted for safety reasons.

Commissioner Tucker: Can we have that as a recommendation that it stay open...

Commissioner Kronzer: Allowing temporary closures, as needed, for public safety. So the condition would be, temporary sidewalks should be maintained open along Washington Ave SE and University Ave SE during construction; closed only for public safety during certain construction periods (Huynh seconded).

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

The motion to add the condition carried 6-0.

Commissioner Luepke-Pier: I will be voting with the motion, but with the note that building code requirements take precedent over any decision this body makes so if it's required by code then you'll have your way regardless, but it isn't really our purview to weigh in on that.

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

The motion carried 6-0.

Commissioner Tucker moved staff recommendation for item C (Huynh seconded).

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

The motion carried 6-0.

Commissioner Tucker moved staff recommendation for item D (Mammen seconded).

Commissioner Huynh: I'd like to add a condition for the applicant to work with the owner group at Caspian on continuing discussions on the setback. I think that that's a very important item to try to work out. I think there can be a compromise. My condition is, the applicant continue to work with the owner group at Caspian regarding the east interior sideyard.

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

Nay: Wielinski

The motion to add the condition carried 5-1.

The vote for the main motion:

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

Nay: Wielinski.

The motion carried 5-1.

Commissioner Tucker moved denial of the retail size (Wielinski seconded).

Commissioner Schiff: I disagree with this motion. I'm not an expert in retailing. I'm not an expert in leasing empty space, I just know there's a lot of it right now. I don't think we should do anything but encourage flexibility for developers that are trying to fill retail space. I think if we had to do it over again we'd reconsider this element of our city zoning code. It was written long before the recession hit. It was written originally to stop big box retailers from coming into the city. This is not a big box retail situation and even if Ikea did open I think there would be celebration. I'd encourage us to grant the variance and to allow them to manage the space that they know best in this difficult economic period.

Commissioner Kronzer: I agree with Commissioner Schiff on this. I think giving flexibility to the developer at this time is good. We know that the space is, we know what fronts the sidewalk. I would ask for a condition to have the developer note where the pedestrian path is in the parking ramp to the public sidewalk as a condition of approval of this if this gets approved. This is an urban retail space.

Aye: Wielinski; Cohen and Motzenbecker recused.

Nay: Huynh, Kronzer, Luepke-Pier, Mammen and Schiff.

The motion failed 1-5.

Commissioner Tucker moved staff recommendation for the retail size (Huynh seconded).

Commissioner Tucker: Can I ask for a condition that we ask for at least four retail spaces and let them have the flexibility within that, but the idea is to have many small retail spaces in Stadium Village. Let them have four up to 18,500 square feet.

Commissioner Schiff: Since we're coming up with suggestions that really impact the development, I'd like to ask the developers for a response to that. You can only have so many tiny retailers in a neighborhood before it's unbalanced, you need some larger retailers. I'd ask them if they're ok with the condition and what their plan is.

Staff Dvorak: Could you clarify that?

Commissioner Tucker: In the entire 30,000 of which one can be 18,500.

Jack Borman: I think we can live with that.

Commissioner Kronzer: I'd like to add the condition to have the applicant provide the pedestrian path from the parking to the public sidewalk.

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

The motion to add the two conditions carried 6-0.

The vote on the main motion:

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

Nay: Wielinski

The motion carried 5-1.

Commissioner Tucker moved the variance to reduce parking (Huynh seconded).

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

The motion carried 6-0.

Commissioner Tucker moved the staff recommendation for the site plan review (Huynh seconded).

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

The motion carried 6-0.