

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

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**MEMORANDUM**

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DATE: May 2, 2013

TO: Zoning and Planning Committee

FROM: Jason Wittenberg, Manager, Community Planning & Economic Development – Land Use, Design and Preservation

SUBJECT: Planning Commission decisions of April 8, 2013

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The following actions were taken by the Planning Commission on April 8, 2013. 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 Tucker, Gagnon, Huynh, Kronzer, Luepke-Pier and Wielinski – 6

Not present: Cohen (excused) and Schiff

Committee Clerk: Lisa Baldwin (612) 673-3710

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**2. 301 Walnut (BZZ-5981, Ward: 2), 700 Washington Ave SE (aka 301 Walnut St SE) (Janelle Widmeier).**

**A. Rezoning:** Application by Carol Lansing with Faegre Baker Daniels LLP, on behalf of Daniel Oberpriller, CPM Development LLC, for a petition to rezone the property located at 700 Washington Ave SE from C1 Neighborhood Commercial District to C3A Community Activity Center District.

**Action:** The City Planning Commission recommended that the City Council adopt the findings and **approve** the petition to rezone the property located at 700 Washington Ave SE from C1 Neighborhood Commercial District to C3A Community Activity Center District.

**Aye:** Gagnon, Kronzer, Luepke-Pier and Wielinski

**Absent:** Cohen and Schiff

**Recused:** Huynh

**B. Conditional Use Permit:** Application by Carol Lansing with Faegre Baker Daniels LLP, on behalf of Daniel Oberpriller, CPM Development LLC, for a conditional use permit to increase the maximum building height from 4 stories, 56 feet to 6 stories, 81 feet for the property located at 700 Washington Ave SE.

**Action:** The City Planning Commission adopted the findings and **approved** the conditional use permit to allow an increase in height from 4 stories, 56 feet to 6 stories, 81 feet for the property located at 700 Washington Ave SE, subject to the following condition:

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 two years of approval.

**Aye:** Gagnon, Kronzer, Luepke-Pier and Wielinski

**Absent:** Cohen and Schiff

**Recused:** Huynh

**C. Variance:** Application by Carol Lansing with Faegre Baker Daniels LLP, on behalf of Daniel Oberpriller, CPM Development LLC, for a variance to reduce the minimum lot area requirement by 12.3 percent for the property located at 700 Washington Ave SE.

**Action:** The City Planning Commission adopted the findings and **approved** the variance to reduce the minimum lot area requirement by 12.3 percent for the property located at 700 Washington Ave SE.

**Aye:** Gagnon, Kronzer, Luepke-Pier and Wielinski

**Absent:** Cohen and Schiff

**Recused:** Huynh

**D. Variance:** Application by Carol Lansing with Faegre Baker Daniels LLP, on behalf of Daniel Oberpriller, CPM Development LLC, for a variance to increase the maximum floor area ratio from 4.32 to 4.77 for the property located at 700 Washington Ave SE.

**Action:** The City Planning Commission adopted the findings and **approved** the variance to increase the maximum floor area ratio from 4.32 to 4.77 for the property located at 700 Washington Ave SE.

**Aye:** Gagnon, Kronzer, Luepke-Pier and Wielinski

**Absent:** Cohen and Schiff

**Recused:** Huynh

**E. Variance:** Application by Carol Lansing with Faegre Baker Daniels LLP, on behalf of Daniel Oberpriller, CPM Development LLC, for a variance of the PO Pedestrian Oriented Overlay District building placement standard to allow the first floor of the building to be set back more than 8 feet from a lot line adjacent to a street where a greater yard is not required for the property located at 700 Washington Ave SE.

**Action:** The City Planning Commission adopted the findings and **approved** the variance of the PO Pedestrian Oriented Overlay District building placement standard to allow the first floor of the building to be set back more than 8 feet from a lot line adjacent to a street where a greater yard is not required for the property located at 700 Washington Ave SE.

**Aye:** Gagnon, Kronzer, Luepke-Pier and Wielinski

**Absent:** Cohen and Schiff

**Recused:** Huynh

**F. Variance:** Application by Carol Lansing with Faegre Baker Daniels LLP, on behalf of Daniel Oberpriller, CPM Development LLC, for a variance to reduce the front yard requirement adjacent to Walnut Street from 15 feet (for the first 40 feet from the south lot line) to 2 feet to allow the building and a transformer for the property located at 700 Washington Ave SE.

**Action:** The City Planning Commission adopted the findings and **approved** the variance to reduce the front yard requirement adjacent to Walnut Street from 15 feet (for the first 40 feet from the south lot line) to 2 feet to allow the building and a transformer for the property located at 700 Washington Ave SE.

**Aye:** Gagnon, Kronzer, Luepke-Pier and Wielinski

**Absent:** Cohen and Schiff

**Recused:** Huynh

**G. Variance:** Application by Carol Lansing with Faegre Baker Daniels LLP, on behalf of Daniel Oberpriller, CPM Development LLC, for a variance to reduce the interior side yard requirement adjacent to the south lot line from 15 feet to 0 feet to allow the building for the property located at 700 Washington Ave SE.

**Action:** The City Planning Commission adopted the findings and **approved** the variance to reduce the interior side yard requirement adjacent to the south lot line from 15 feet to 0 feet to allow the building for the property located at 700 Washington Ave SE.

**Aye:** Gagnon, Kronzer, Luepke-Pier and Wielinski

**Absent:** Cohen and Schiff

**Recused:** Huynh

**H. Variance:** Application by Carol Lansing with Faegre Baker Daniels LLP, on behalf of Daniel Oberpriller, CPM Development LLC, for a variance to reduce the rear yard requirement adjacent to the east lot line from 15 feet to 9.3 feet to allow walls with residential windows for the property located at 700 Washington Ave SE.

**Action:** The City Planning Commission adopted the findings and **approved** the variance to reduce the rear yard requirement adjacent to the east lot line from 15 feet to 9.3 feet to allow walls with residential windows for the property located at 700 Washington Ave SE.

**Aye:** Gagnon, Kronzer, Luepke-Pier and Wielinski

**Absent:** Cohen and Schiff

**Recused:** Huynh

**I. Variance:** Application by Carol Lansing with Faegre Baker Daniels LLP, on behalf of Daniel Oberpriller, CPM Development LLC, for a variance to reduce the minimum vehicle parking requirement from 88 to 49 spaces (0.5 spaces per dwelling unit and 0.31 spaces per bedroom are proposed) for the property located at 700 Washington Ave SE.

**Action:** The City Planning Commission adopted the findings and **approved** the variance to reduce the minimum vehicle parking requirement from 88 spaces to 49 spaces for the property located at 700 Washington Ave SE.

**Aye:** Gagnon, Kronzer, Luepke-Pier and Wielinski

**Absent:** Cohen and Schiff

**Recused:** Huynh

**J. Site Plan Review:** Application by Carol Lansing with Faegre Baker Daniels LLP, on behalf of Daniel Oberpriller, CPM Development LLC, for a site plan review for the property located at 700 Washington Ave SE.

**Action:** The City Planning Commission **approved** the site plan review application for a mixed-use development with 98 dwelling units on the properties 700 Washington Ave SE, subject to the following conditions:

1. All site improvements shall be completed by May 10, 2015, unless extended by the Zoning Administrator, or the permit may be revoked for non-compliance.
2. CPED staff review and approval of the final site, elevation, landscaping and lighting plans before building permits may be issued.
3. No shelving, signage, merchandise, newspaper racks or other similar fixtures shall be placed in front of the required ground level windows as required by section 530.120 of the zoning code.
4. Mechanical equipment shall be screened as required by section 535.70 of the zoning code.

**Aye:** Gagnon, Kronzer, Luepke-Pier and Wielinski

**Absent:** Cohen and Schiff

**Recused:** Huynh

Staff Widmeier presented the staff report.

**Commissioner Kronzer:** Do you know if the sidewalk patterning is consistent with the rest of the streetscape along Washington Ave?

**Staff Widmeier:** They would have to work with Public Works on that. I'm guessing because this is all being constructed recently they're going to require them to build whatever is planned for that sidewalk.

President Tucker opened the public hearing.

**Rolfe Worden (333 S 7<sup>th</sup> St):** I represent the owner of an adjacent property, Juno Investment Corporation, whose principal is Steven Scallen. He has a long standing out of town commitment today that prevented him from being here. He wanted me to convey a few things about this project. He's not opposing the development, but rather has some suggestions for fine tuning as it affects the Juno property at 720 Washington Ave SE. As the city planner indicated, just this afternoon there was a revision in the plans that dealt with the window alignment between the two properties. I'm going to send that out to Juno, but that appears to address one of his major issues and that was the fact that the windows were looking right into each other. That probably is solved. Another issue that is of concern...when asking for a variance from four stories to six stories, that's a 50% increase and he does have concern about the snow load that occurs when you have buildings that are either adjacent to one another with a party wall or very close to one another. I know the building code does not require the builder to address the snow load, but it seems to me that when the snow load may be increased by a variance, that might be appropriate to provide as a condition of the variance that any snow load issues be adequately addressed. The applicant did come up with a snow load drawing from an engineering firm and that is just a little hard to tell right now as to exactly what this does to take care of the snow load issue, but we would like it to be made a condition of the variance that this problem be addressed and also that Juno be notified when the staff is going to again review the elevations and the site plans prior to building permit application which I note is one of the conditions of the staff report. The next issue is that the property is somewhat L shaped. There is the applicant's building, Juno's building and behind both of them is a parking area that is owned by the Juno building and it is for the physicians and surgeons and some other U of M tenants. We want to ask the developer to put up some...instead of putting up some pretty no parking restrictions and indicate to any of its tenants that no parking is in that lot but rather the parking is in the area and should be in the area that is designated to be under the new facility. In the spirit of cooperation, there was some discussion about the transformer location being a little awkward. As it is now that doesn't impact the Juno property, but a possibility exists if everything else can be worked out that the transformer location could be moved to the other side if Juno property would give a license to access the transformer. I have nothing further.

**Karen Murdock (1212 Yale Ave SE):** I don't have any standing to be here because I live in the Prospect Park neighborhood and this is not in Prospect Park, but then it's not really anywhere. On the handout it says that the neighborhood association is University, but as a practical matter that doesn't exist so this is sort of in no man's land and when the developer came to present to our neighborhood zoning committee last week they came to Prospect Park because there was nobody else to go to. The U of M has nobody to speak for it so I'm going to speak for it. The first point I want to make is that I've been on the Prospect Park zoning committee for I'm not sure how long, but probably at least 15-17 years. One thing I've noticed recently is the problem of what I'm calling creeping variances. It used to be that somebody would come in needing a variance for something whether it was a homeowner wanting a garage or a developer wanting to put up something and they'd ask for a variance. We'd sit and talk about it for a while, but nowadays they're not just asking for one variance, they're asking for multiple. This particular project, they're asking for seven variances plus a conditional use permit to

change the height plus a zoning change. That's a new record. Once you start allowing this number of variances for a small project you really lost most of your power. You're taking all the weapons out of your hands. Don't deny this for our sake, do it for your sake because it sets a bad precedent. In particular, I'm very worried about the parking variance. Not only are the number of variances a problem, but the variation in variances that people are asking for. It used to be that somebody would ask for a one foot variance on a setback for a garage. In one particular case, someone asked for a three inch variance. He built his garage exactly where he thought he had to and then when the garage was built he had it resurveyed and it turned out it was three inches too close to the neighbor's property line so he asked for a three inch variance. That's what people used to ask for. In this particular parking variance, they're asking for 88 down to 49 – which is a 45% variance. It's not just the problem of creeping variance, it's the amount of variance they're asking for. The second point is that a hardship used to be required to get a variance, but when we asked the lawyer for the developer what the hardship was, she said a hardship was no longer needed. I find that alarming. I want to deal with the mythical problem of the high water table. This comes up almost any time anybody doesn't want to put any parking underground. I want to point out that this alleged high water table is not a permanent water table, it's a temporary water table called a perched water table and the way you get around that is because there's a impervious layer underneath and you penetrate through that four to six feet and you get into a nice sandstone layer that's easy to work with. The alleged high water table should not prevent underground parking. As proof of this, three blocks from this proposed development there's an underground parking ramp for the U of M which is six stories of underground parking. Professors aren't coming back in the afternoon to find their car floating away because of the high water table. Don't allow yourself to be influenced by this alleged high water table. Thank you.

**President Tucker:** Just a note, the term “hardship” has been replaced by “practical difficulty” which you would have read throughout the report. It's not our decision; state legislature did that for us.

**Florence Littman (76 Clarence Ave NE):** Anything that goes on in any university neighborhood affects us. In fact, things go on citywide that affect us. You don't actually have to live in the place to be affected by it. What's going on with these variances and zoning changes affect everyone in the city. Any project that needs seven variances, a zoning change and is in conflict with the neighborhood plan...I could be nice and say it ought to be considered carefully. I actually think the applicant ought to be told to go home and rethink it or told to go home and show us something that is so wonderful, so creative that it is a model that will encourage other people to do wonderful things in the neighborhood. We haven't gotten either of those. Our neighborhood planned for the transit corridor. We knew there'd be additional density and more commercial and we wanted to be proactive so we did our planning. We have some wonderful plans here and these neighborhood plans were adopted by the city. We even did some work with the university. These plans have not been mentioned, not even in passing. We know the plan doesn't control; the zoning controls. Really? Does it? Not in our neighborhood. As soon as the plan doesn't conform to what somebody wants to do, you ignore it you go to the city plan which is so elastic you could fit anything at all in there and that's what has happened. Regardless of the zoning and the number of variances, the fact is that the planner has recommended approval. Another thing that happens is that it's used as a precedent for the next one. The WaHu project which was something like this with all the variances, that was approved. It's like, “you did this over here so why can't you do this for me?” You did it over there and you're going to do it in my neighborhood too which is why I'm here in this futile attempt to speak against it. In addition, it seems that there is ignorance or ignoring of the trend toward distance learning, which seems to be happening and it's possible we won't need all this student housing. Student housing always has vacancies. These projects are not full. We've got hundreds of beds with the WaHu project, the recently built project in Stadium Village whose name I don't even remember and the Fountain project. Our plan has said that density is fine near the transit corridor but it has to be density that is for a number of people not just students. There are other people besides students living near the university but why do we only have student housing? Students can live with other people. You

can have buildings for students, buildings for singles...it's a great place on the line, it shouldn't only be for student housing and that's our objective. Since it's only for student housing, why are they getting a zoning change for something that is contrary to the plan and all these variances when we're not getting anything that we want? At a minimum, I would suggest that you take a look at what has been done...you don't have to rush into this. You can take a look at what's been done and see if it makes any sense to encourage development that we really don't need and that's in conflict with the plan. It's really discouraging how many volunteer hours have gone to working on the plans, how much staff time has gone and they just seem to be ignored. I hope you do something about that trend. Thank you.

**Carol Lansing (90 S 7<sup>th</sup> St):** I'm representing the application CPM Development. We did get contacted by the neighboring property owner and his attorney Mr. Worden and were able to meet with them last week. It wasn't until after that meeting that we identified that part of our building was going to overlap their second story windows so we were very glad that that was brought to our attention and we were able to make that change. This project is consistent with the Stadium Village plan, small area plan and the staff report does address how that is true. I'm here for questions so we can talk about what's a concern to you.

President Tucker closed the public hearing.

**Commissioner Luepke-Pier:** I have a question for staff. Do you know how deep the parking lot is in the building to the west?

**Staff Widmeier:** The one to the west is only one story. I forgot the other two; Jason do you remember?

**Staff Wittenberg:** I don't recall.

**Commissioner Luepke-Pier:** Do we have the water table report?

**Staff Widmeier:** I don't have a report with me. They addressed this with the one on the west side of Walnut so I'm looking in the PDR report. There's nothing with them referencing the water level table.

**Commissioner Luepke-Pier:** Ms. Lansing, do you have a copy of the water table report?

**Carol Lansing:** I don't believe this team has done any additional study, it was based on what was just across the street with the station development by Opus. I would say that in terms of the parking variance that even if you could put in two levels of parking, given that there's no demand for it and the experience has shown that in all of these student housing projects it would be a waste of a lot of people's money resources.

**Commissioner Luepke-Pier:** With the parking shown on the plan, is that dedicated just for the residents or is it also used for retail that you have on the first floor?

**Carol Lansing:** It's for the residents. If it didn't lease out to all the residents then it's possible then it could be made available to commercial tenants if they needed it for their employees and staff. It wouldn't be public parking.

**Commissioner Luepke-Pier:** Where would the public park?

**Carol Lansing:** There are large parking ramps in the neighborhood. The TDMP studied the available parking and found that there's quite a bit of it in the area.

**Commissioner Gagnon:** What would happen if you don't rezone from neighborhood commercial district to the activity center?

**Staff Widmeier:** The size of the development would have to be reduced quite a bit. The lot area per unit in the C1 district is 900 square feet per dwelling unit so quite a number of units would have to be eliminated or they'd have to be made into larger units with more bedrooms. It could possibly affect the commercial uses somewhat, but what's proposed to go there, if Sally's is returning they'd be allowed to return. It wouldn't affect the parking requirements. It affects the height that's allowed. The C1 district allows only a three story mixed use building. The C3A district allows you to go to four stories. The floor area ratio that's allowed is different; lower in C1, higher in C3A. I think those are the main differences.

**Commissioner Gagnon:** This is the most variances I've seen, but three months is not a long time to have a history of any of this. Is this typical or do you see this amount of variances come through?

**Staff Widmeier:** It's not typical, but there are occasions where we do have projects and I think they've centered more around the university where we've had more variances like this to get higher density because a downtown zoning district wouldn't be appropriate here and that would eliminate a lot of these variances.

**Commissioner Gagnon:** I will move staff recommendation (Kronzer seconded)

**Aye:** Gagnon, Kronzer, Luepke-Pier and Wielinski

**Absent:** Cohen and Schiff

**Recused:** Huynh

**Commissioner Gagnon:** I will move the CUP for the height of the building (Kronzer seconded). You said rezoning it allows four stories instead of two, but now we're moving it to six.

**Staff Widmeier:** Yes. A conditional use permit is required to go above four. They could apply for a conditional use permit to increase the height to six stories as well. It's the same for any commercial district to go above what is allowed.

**Commissioner Gagnon:** Ok, so they had a conditional use permit as a C1 to go to four instead of two, but now we're going to six instead of four.

**Staff Widmeier:** The rezoning will change it to four so the conditional use permit is based off of this C3A allowance to take it to six.

**Aye:** Gagnon, Kronzer, Luepke-Pier and Wielinski

**Absent:** Cohen and Schiff

**Recused:** Huynh

**Commissioner Luepke-Pier:** I'm going to move variances C, D, E, F, G and H (Wielinski seconded).

**Commissioner Kronzer:** I just wanted to make a quick comment about the number of variances. Our zoning code is very tightly controlled and to do anything out of the box requires variances. A dense mixed use project like this is much different from a single family development so comparing a project like this to a single family garage addition is really not a fair comparison. My personal record for variances is 11, plus a CUP and a rezoning. While it does appear on the surface to be a large number, the end result is a building that's compatible with the district that is forming there.

**Aye:** Gagnon, Kronzer, Luepke-Pier and Wielinski  
**Absent:** Cohen and Schiff  
**Recused:** Huynh

**Commissioner Luepke-Pier:** With variance I, I'd like more information on that to show it's not a problem.

**President Tucker:** I heard two things; that the demand for parking close to the LRT was not so high that they'd want to go down another level with or without the geological situation. We heard from staff that the project across Walnut is similar in size and has the same parking ratio as this one has requested.

**Commissioner Gagnon:** I will move item I (Kronzer seconded).

**Aye:** Gagnon, Kronzer, Luepke-Pier and Wielinski  
**Absent:** Cohen and Schiff  
**Recused:** Huynh

**Commissioner Wielinski:** I will move the site plan review (Luepke-Pier seconded).

**Commissioner Luepke-Pier:** In regards to the blank wall, in this southern portion there are those little bump outs that are approximately 28 feet or so wide and I see how the southeast corner would be completely pointless to put windows there but I'm wondering if the southwest corner could have something put in because there is that angle that could have access to light and air and views and I think it could fit in there. I wouldn't mind granting alternative compliance for a blank wall on the southeast corner on the south side but not the southwest because I think they could add windows there.

**Staff Widmeier:** So you'd like to see something closer to Walnut.

**Commissioner Luepke-Pier:** Yes, because there is an angle view where they're not up against a building.

**Staff Widmeier:** On the south side that's the parking lot and the building wall would be less than three feet there so they would have to take out a notch to put windows in there.

**Commissioner Kronzer:** I believe that's a rated wall condition so it'd have to be a fire rated wall or the indent like Janelle is speaking of.

**Commissioner Luepke-Pier:** Then I withdraw that.

**Aye:** Gagnon, Kronzer, Luepke-Pier and Wielinski  
**Absent:** Cohen and Schiff  
**Recused:** Huynh