

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

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MEMORANDUM

DATE: April 9, 2015

TO: Zoning and Planning Committee

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

SUBJECT: Planning Commission decisions of March 16, 2015

The following actions were taken by the Planning Commission on March 16, 2015. 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.

Committee Clerk

Lisa Kusz - 612.673.3710

Commissioners present: Matthew Brown, President | John Slack, Vice President | Alissa Luepke Pier, Secretary | Lisa Bender | Meg Forney | Ben Gisselman | Ryan Kronzer

Not present: Rebecca Gagnon | Theodore Tucker

7. South Upton Building, 4353 Upton Ave S and 2720 44th St W, Ward 13

Staff report by [Janelle Widmeier](#), BZZ-7022

The City Planning Commission adopted staff findings for the applications by Momentum Design Group, on behalf of South Upton Properties Partnership.

A. Conditional use permit to increase the maximum height of the building.

Action: **Approved** the conditional use permit to increase the maximum height from 2.5 to 3 stories and from 35 feet to 39 feet, 8 inches for the building, including a 3 foot tall parapet, rising an additional 13 feet, 8 inches above the third floor roof for mechanicals and elevator and staircase overruns, subject to the following condition:

- I. 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.

Not Approved by the Commission

Aye: Bender, Gisselman, Kronzer and Slack

Nay: Forney and Luepke-Pier

Absent: Gagnon and Tucker

A. Variance to reduce the minimum parking requirement.

Action: **Approved** the variance to reduce the minimum parking requirement from 8 spaces to 6 spaces, subject to the following condition:

1. At least 14 bicycle spaces shall be provided.

Aye: Bender, Forney, Gisselman, Kronzer, Luepke-Pier and Slack

Absent: Gagnon and Tucker

B. Variance to reduce the minimum interior side yard requirement adjacent to the east lot line to allow the parking area, retaining wall and a walkway/ramp.

Action: **Approved** the variance to reduce the minimum interior side yard requirement adjacent to the east lot line to allow the parking area, retaining walls not retaining natural grade, and a walkway/ramp.

Aye: Bender, Forney, Gisselman, Kronzer, Luepke-Pier and Slack

Absent: Gagnon and Tucker

C. Site plan review.

Action: **Approved** the site plan review to allow a new mixed use building, subject to the following conditions:

1. A walkway, at least 4 feet in width, shall provide a connection between 44th Street and the entrances facing the parking lot as required by section 530.130 of the zoning code.
2. All mechanical equipment shall be screened as required by section 535.70 of the zoning code.
3. Department of Community Planning and Economic Development staff review and approval of the final building elevations, floor, site, lighting and landscape plans.
4. Site improvements required by Chapter 530 or by the City Planning Commission shall be completed by March 16, 2017, unless extended by the Zoning Administrator, or the permit may be revoked for non-compliance.

Aye: Bender, Forney, Gisselman, Kronzer, Luepke-Pier and Slack

Absent: Gagnon and Tucker

8. Sebastian Joe's, 4321 Upton Ave S, Ward 13

Staff report by [Janelle Widmeier](#), BZZ-7023

The Department of Community Planning and Economic Development recommends that the City Planning Commission adopt staff findings for the applications by Momentum Design Group, on behalf of South Upton Properties Partnership.

A. Variance to reduce the minimum parking requirement.

Action: **Approved** the variance to reduce the minimum parking requirement from 9 spaces to 6 spaces, where one space is grandfathered, subject to the following condition:

1. At least 6 bicycle spaces shall be provided.

Aye: Bender, Forney, Gisselman, Kronzer, Luepke-Pier and Slack

Not Approved by the Commission

Absent: Gagnon and Tucker

B. Variance to reduce the minimum interior side yard requirement to allow a walkway/ramp.

Action: **Approved** the variance to reduce the minimum interior side yard requirement adjacent to the east lot line from 5 feet to 4 feet to allow a walkway/ramp.

Aye: Bender, Forney, Gisselman, Kronzer, Luepke-Pier and Slack

Absent: Gagnon and Tucker

Staff Widmeier presented the staff report.

Commissioner Kronzer: You mentioned the story building of 39 feet 8 inches with a 13 foot 8 inch addition for the elevator run and mechanical room. When I add that together I get 53 feet and 4 inches.

Staff Widmeier: Right. If you add them together, you have to take out the three feet for the parapet and then you get 50 feet two inches. The mechanical and elevator overrun, those are from the level of the third floor roof, not from the top of the parapet. The 39 feet 8 inches is measuring to the top of the parapet, but the third level roof is actually 36 feet 8 inches.

Commissioner Kronzer: If we're taking three feet away from 53 feet 4 inches, it's then 50 feet 4 inches.

Staff Widmeier: Yes. The overall height is actually 50 feet 2 inches, but I was rounded numbers and trying to be conservative.

Commissioner Kronzer: So the overall height of the building with the overrun is 52 feet 4 inches when you take away the parapet measuring from the roof surface.

Staff Widmeier: Yes. We're measuring from 44th so there is a little bit of a grade change. That number, if you look at the south elevation, that's the technical overall height per the zoning code.

President Brown opened the public hearing for items seven and eight.

Tim Pellizzer: We have owned this series of parcels for a little over 25 years. We had always wanted to develop it. We considered numerous different proposals and we finally landed on this one. We feel that this one fits in best with our current business, which is Sebastian Joe's, and also fits in well with the neighborhood.

Commissioner Slack: You're increasing impervious surface on this site. It looks like you're planning on having underground infiltration storage. Reading through the PDR report there was a mention of discharge location and some communications that need to happen with adjacent property owners regarding that discharge. Can you elaborate on that?

Patrick Sarver: I'm with Civil Site Group. I'm not exactly certain what the specific areas are, but I can give you an overall description of the stormwater system. The site drains to the north and east and it discharges down a very narrow concrete curb to the back alley and then drains into the storm sewer system and down to the lake. Since we're creating more parking here, we can't create any harm downstream so we're obligated to design the system so that we don't discharge at the rates that are increased from the cause of our development. We sized the underground system so that we reduce and hold the discharge rate and infiltrate a substantial amount of water on site. Along that process, we interacted with the Public Works Department and they asked us that instead of discharging in the direction that it's currently going and has always gone, could we look at an

Not Approved by the Commission

opportunity where we could discharge to the street and hit the storm sewer out on 44th and we were able to do that.

Kris Schweizer: I have never felt so strongly as to speak publicly. Our building is directly across the street from Sebastian Joe's. For those like me on the east side of the building, the lake views that solidified our purchases of our condos will be completely gone, along with the value of the condos with this development, staring at a brick building versus Lake Harriet. It feels very disingenuous of the developer and the owners of Sebastian Joe's to request the two and a half to three stories plus the additional 13 foot variance needed to ensure that the elevator gets to the proposed rooftop deck. The reason for this rooftop deck on this development is that it is to be an amenity to those who have invested to locate their retail office space to Linden Hills. Pride of location does not equate to a rooftop deck, it equates to the value of the location known as Linden Hills. When we pushed to understand what would be the hours of this deck, the answer was "it depends on the hours that the tenants have for their respective businesses." This does sit well with the peacefulness that Linden Hills brings and it leaves the door open to a potential liquor permit request. This deck would be the on-ramp to the next conversation that we have the chance of never having by voting against some of these variances. Minnesota Statute 561.01 for Nuisance states "anything which is injurious to health, or indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property, is a nuisance. " A rooftop deck is a nuisance. It is awful enough to lose the sunrise view of Lake Harriet and add to that a rooftop deck. I also want to mention the beauty of two trees that are at least 15-20 years old on the duplex property, what happens to them?

Commissioner Luepke-Pier: You have a concern that the added elevator access point will block views of Lake Harriet from what you currently see?

Kris Schweizer: At 2.5 I'd still have a chance, I'm in unit 310. We are on a hill so as soon as it goes to three plus the additional 13 feet, the view is completely gone.

Commissioner Luepke-Pier: Your building is how many stories?

Kris Schweizer: It's six stories.

(Male speaker): My main concern with the height is that they don't need the extra height for the mechanicals, they can store them internally or in the basement. Once this building gets higher for that reason, then other new buildings will come along and try to do that as well. Don't set a precedent. Thank you.

Dave (no last name): The duplex will go away. We have a retaining wall there now and we're about eight feet away from that retaining wall, maybe 15 feet away from their duplex building that will be torn down. Our view is of the old duplex, somewhat a view of across their back yard but all we see is a tall condo building on 44th St. The height of the building isn't really an issue for us because even if it's shorter then we just see more of the big condo building, but we will get more light when the duplex goes away. We've been working with the Pellizzer's over the past few weeks to discuss issues we have. The retaining wall will be landscaped and have a nice appearance from our side. We're working on what kind of fencing will go in there to keep people from falling off of it. We've talked about drainage. We'd like a couple more drains in the parking lot so that trash doesn't get caught in a heavy rain storm and then flood over, which would then flood over on to our property and go toward the alley on the north side. They've spent a lot of time massing the building the building with limestone, brick, they've picked up the elements of our building, they picked up wrought iron from other buildings, it fits in well.

Not Approved by the Commission

Commissioner Gisselman: I have a question for the applicant. Hearing some concerns raised today, regarding the mechanicals. Is there any validity to what's been said here today regarding the height?

Brian Higgins: I'm the project manager on the project. We did several reviews with elevator systems and with what's required per the elevator manufacturers, the lowest height we can get there is 13'8". There is no mechanical equipment up there, it is strictly for overrun.

Commissioner Luepke-Pier: Could you elaborate a little on the elevator overrun and roof access in terms of the square footage on the roof that it actually occupies? I was doing a rough sketch regarding the view of the lake and obstructions and it seems that it's only a 4'8" difference and whether that would make a difference to prevent the view of the lake from being blocked, I'm not sure.

Brian Higgins: The size of the elevator shaft is approximately 7.5x8 feet. There is a vestibule up there so that the elevator doors do not open directly on to the rooftop.

Commissioner Luepke-Pier: Have you done any analysis of what the site line...if you built it without needing any conditional use permits for the height, what it would be versus this?

Brian Higgins: The conditional use permit would be needed regardless.

Commissioner Luepke-Pier: My question is, have you drawn site lines? I was doodling here with an ink pen and a straight line, but have you done any to show where the lake is compared to this building and what you're seeing versus that to show the change?

Brian Higgins: We did not do that.

Commissioner Gisselman: I have a question for staff. This pertains to the concern voiced about obstruction to a view of the lake. We've had that discussion before this group in the past. It's easy to understand that concern that an existing resident would have, but Janelle, can you remind us, obviously we are constricted by the code, can you remind us how those concerns can come into play?

Staff Widmeier: The findings for the conditional use permit direct us to look at views from the lake or views if it's blocking landmark buildings, significant open spaces or bodies of water. It's not necessarily directed towards private use because anywhere you put up a building it's going to block some kind of private view. It's meant to be more what views are significant for the public.

Commissioner Gisselman: I will move staff recommendation for item A (Slack seconded). I hear concerns that people would have about how that kind of development will obstruct their existing view that they have because that is understandable, but as far as how our work plays out, we are constricted by what the code allows us to impose or not. As Ms. Widmeier pointed out, with the plan for growth in this community, we have a lot of development that's going to obstruct some various views that people are going to hold dearly and I don't think that can be the precedent that we can set in making these kinds of decisions.

Aye: Bender, Gisselman, Kronzer and Slack

Nay: Forney and Luepke-Pier

Absent: Gagnon and Tucker

Commissioner Luepke-Pier: I will move items B and C (Slack seconded).

Aye: Bender, Forney, Gisselman, Kronzer, Luepke-Pier and Slack

Not Approved by the Commission

Absent: Gagnon and Tucker

Commissioner Slack moved staff recommendation for item D (Luepke-Pier seconded).

Aye: Bender, Forney, Gisselman, Kronzer, Luepke-Pier and Slack

Absent: Gagnon and Tucker

President Brown: May I have a motion on item 8?

Commissioner Gisselman: I will move approval of A and B (Luepke-Pier seconded).

Aye: Bender, Forney, Gisselman, Kronzer, Luepke-Pier and Slack

Absent: Gagnon and Tucker