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August 11, 2015

City of Minneapolis
Zoning and Planning Committee
c/o Hilary Dvorak, Principal Planner
Public Service Center
250 South Fourth Street, Room 300
Minneapolis, MN 55415

Re: **Appeal of Minneapolis Planning Commission Decision (BZZ–7170)**
**Handicraft Building City Apartments: Interior Side Yard Variance**

Dear Committee Members:

This firm represents CBS Corporation and WCCO-TV ("WCCO") with respect to the proposed Handicraft Building City Apartments (the "Project"), located at 89-91 South 10th Street and 1004 and 1016 Marquette Avenue (together, the "Site") in the City of Minneapolis (the "City"). At the August 3, 2015 meeting of the City Planning Commission, Village Green (the "Applicant") requested and was granted multiple land use applications necessary to construct the Project, including a variance to reduce the south interior side yard setback from fifteen (15) feet to one (1) foot for the building wall and from fifteen (15) feet to two (2) inches for the exposed balconies (the "Variance"). The Project is located immediately northeast of the WCCO television studio and north of the WCCO outdoor plaza and parking ramp. Approval of the Variance will be injurious to WCCO's property and operations. WCCO has repeatedly expressed opposition and concern about the Variance and this letter shall serve as an appeal of the decision of the Planning Commission to grant the Variance.

Variance Standard and Findings

Under both Minnesota Statutes section 462.357, subd. 6(2) and Minneapolis Code of Ordinance section 525.500, a variance request must be predicated on "practical difficulties" in meeting the municipality's ordinance standards. This must be demonstrated by meeting the required findings under the City Code. Minnesota courts will reverse a zoning authority's decision, including a variance, if the decision is arbitrary and capricious. A decision is arbitrary and capricious where it is based on insufficient evidence or arises from a failure of the zoning authority to apply relevant provisions of the zoning ordinance. *In re Stadsvold*, 754 N.W.2d 323, 332 (Minn. 2008). As is described below, the Applicant has not satisfied the conditions necessary to approve the Variance under state law or the City ordinance. Therefore, we respectfully request that this appeal be sustained and the Variance overturned.

1. *Practical difficulties exist in complying with the ordinance because of circumstances unique to the property. The unique circumstances were not created by persons presently having an interest in the property and are not based on economic considerations alone.*

The practical difficulties described by the Applicant and adopted by the City Planning Commission are predicated on the argument that the existing Handicraft Guild Building reduces the buildable area of the Site and that in order to construct a "reasonably sized" building, the south building wall must be located only one foot away from the property line shared by the parties. There is no evidence to demonstrate that an apartment building constructed at the required fifteen (15) foot setback would not be "reasonably sized." Granting a variance in order to allow a "reasonably sized" building is an arbitrary and capricious basis upon which to approve a variance. There is no right derived from either the City Code or state law to construct a "reasonably sized" building. Nothing in the record supports a conclusion that holding the south building wall to the required setback would cause the Project to be unfeasible. The decision is plainly motivated by economic considerations and the desire to maximize profitability without regard to the required setback.

The fifteen (15) foot side yard setback is required because the Project includes windows facing the interior side yard, which were added at the recommendation of the Community Planning and Economic Development (CPED) staff. The alternative would be to have a blank wall, which would allow a zero lot-line setback. While this may not be as aesthetically pleasing, it would eliminate a substantial conflict that otherwise results from the Variance. While the addition of windows is largely the result of CPED's influence to address aesthetic concerns of the City, this condition does not resolve a practical difficulty associated with building dimensions nor does it address a condition unique to the Site or uncommon among similar downtown residential developments. Adhering to the setback accomplishes the City objective while respecting the rights of WCCO.

2. *The property owner or authorized applicant proposes to use the property in a reasonable manner that will be in keeping with the spirit and intent of the ordinance and the comprehensive plan.*

As the staff report states, the intent of yard controls is to "provide for the orderly development and use of land and to minimize conflicts among land uses by regulating the dimension and use of yards in order to provide adequate light, air, open space and separation of uses." Approving the Variance, however, directly conflicts with this intent.

The Variance will increase the likelihood of conflict between the Project and the existing WCCO studio. The result will concentrate activity on the south property line of the Site, rising twenty stories above the WCCO plaza. This will increase the likelihood of disruptions to outdoor broadcasts by residents on the proposed balconies, as well as create a substantial risk to sensitive telecommunications equipment on the roof of WCCO's facility.

Any potential future redevelopment of the WCCO site would likely consist of an office or multi-family structure constructed at the zero lot-line setback along the shared property line. The approval of the Variance and construction of the Project would virtually guarantee future conflict

arising from the elimination of access to light, air, and open space between the structures when the WCCO site is redeveloped. The proposed one (1) foot setback is not a reasonable use of the Site and approving the Variance would increase the likelihood of future conflict, directly contradicting the spirit and intent of the ordinance.

3. *The proposed variance will not alter the essential character of the locality or be injurious to the use or enjoyment of other property in the vicinity. If granted, the proposed variance will not be detrimental to the health, safety, or welfare of the general public or of those utilizing the property or nearby properties.*

Granting the Variance would be injurious to the use and enjoyment of other property in the vicinity. The Variance would result in the concentration of activity on the shared property line with sixteen floors of balconies overlooking the WCCO plaza. The potential for resulting noise and disruption to outdoor broadcasts or damage to sensitive equipment will be detrimental to WCCO's longstanding business operations.

The Variance would virtually guarantee future conflict in the event that the WCCO site is redeveloped in the future. The immediate proximity of the Project balconies with respect to the property line would have adverse impacts on any potential future redevelopment of the WCCO property. Not only would the one (1) foot setback result in the elimination of access to light, air, and open space between the properties, but the two (2) inch balcony setback virtually guarantees repeated trespasses into WCCO's air rights over the property line by residents who merely lean over the balcony railings. If redevelopment of the WCCO property were to be constructed at the lot line, as is allowed under the B4-1 District, the Variance would allow residents to damage or disrupt the building façade or windows facing the balconies.

The City has largely created this problem through the strong encouragement and/or requirement of Project windows along it's south property line. The City has further exacerbated the likelihood of injury and risk to WCCO by approving the Variance. By concentrating outdoor residential activity within two (2) inches of the property line, the City requires WCCO to bear the risks and possibility of damage or disruption to broadcasting activities and sensitive equipment.

In addition to the conflict created by the proximity of the Project balconies, physical construction of it poses a serious risk of damage to WCCO's fiber optic line feeding its studio building; this line is embedded in the green space situated directly north and parallel to the WCCO parking ramp.. The Applicant has yet to confirm how it will manage construction of the Project without intruding into WCCO's property either on a temporary or permanent basis. Disruption of the fiber optic line, for any reason, for any duration, would be very harmful to WCCO's broadcast operations. Similarly, given the lack of certainty as to the construction method being pursued by the Applicant, WCCO is concerned that the construction of the Project's southern wall will cause structural damage either to the WCCO ramp/retaining wall or the parking facility itself in the event some form of piling is used to support the foundation and wall.

The Applicant has not demonstrated that the Variance satisfies the requirements of state law or the City Code. A less intrusive option exists for the Applicant to achieve its business objective

without placing any risk of damage or loss on the WCCO property. On behalf of CBS and its WCCO-TV operations, we urge the Council to grant this appeal and deny the Variance.

Please contact me with any questions about this letter. I request that you make it part of the City's record of this matter.

Sincerely,

Peter J. Coyle, for
Larkin Hoffman

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