

**LAND USE APPLICATION SUMMARY**

*Property Location:* 4264 Upton Avenue South  
*Project Name:* 43<sup>rd</sup> & Upton Mixed Use Development  
*Prepared By:* Mei-Ling Smith, City Planner, (612) 673-5342  
*Applicant:* 43UP, LLC  
*Project Contact:* Jesse Hamer, Momentum Design Group  
*Request:* To construct a new, four-story mixed-use building with 29 dwelling units and approximately 6,050 square feet of commercial space.

*Required Applications:*

<b>Conditional Use Permit</b>	To increase the maximum allowed height from the permitted 3 stories/42 feet to 4 stories/55 feet, 11 inches.
<b>Variance</b>	To reduce the south interior side yard setback from 11 feet to 9 feet for the building wall on floors two through four.
<b>Variance</b>	To reduce the west interior side yard setback from 11 feet to 6.5 to allow the second floor building wall and balconies on the third and fourth floors exceeding 50 square feet, 11 to 7.5 feet for the third and fourth floor building walls, and 12 feet to 10 feet for the building wall.
<b>Site Plan Review</b>	For a new, four-story mixed-use building with 29 dwelling units and approximately 6,000 square feet of commercial space.

**SITE DATA**

<b>Existing Zoning</b>	CI Neighborhood Commercial District LH Linden Hills Overlay District
<b>Lot Area</b>	20,196 square feet / 0.46 acres
<b>Ward(s)</b>	13
<b>Neighborhood(s)</b>	Linden Hills Neighborhood Council
<b>Designated Future Land Use</b>	Mixed Use
<b>Land Use Features</b>	Neighborhood Commercial Node (43 <sup>rd</sup> Street W & Sheridan Avenue S)
<b>Small Area Plan(s)</b>	<u>Linden Hills Small Area Plan (2013)</u>

<b>Date Application Deemed Complete</b>	July 23, 2015	<b>Date Extension Letter Sent</b>	August 28, 2015
<b>End of 60-Day Decision Period</b>	September 21, 2015	<b>End of 120-Day Decision Period</b>	November 20, 2015

## BACKGROUND

**SITE DESCRIPTION AND PRESENT USE.** The subject site is located at the northwest corner of the intersection of Upton Avenue South/Sheridan Avenue South and West 43rd Street in the Linden Hills Neighborhood. The property is occupied by a vacant one-story building that was most recently occupied by Famous Dave's restaurant and was previously a gas station. At the southeast corner of the site, adjacent to the public sidewalk, there is a rectangular landscaped street easement that is approximately 725 square feet in size. The property has an irregular shape as a result of the easement and existing platting. The site contains two front yards and four interior-facing side yards.

**SURROUNDING PROPERTIES AND NEIGHBORHOOD.** The site is located within a designated Neighborhood Commercial Node with a mix of commercial uses, multi-family housing, low-density residential housing, and a library. Lake Harriet is less than a mile to the east of the subject property. There is a one-story commercial building adjacent to the west and south property lines of the subject site, and a two-story office building and parking lot directly to the north. There is a residential zoning district (RI Single-Family District) located along the northernmost 24 feet of the west property line.

**PROJECT DESCRIPTION.** The proposed development would be a four-story, mixed-use building with approximately 6,050 square feet of ground-level retail and three levels of residential uses, for a total of 29 dwelling units. The approximate gross floor area of the proposed building would be 69,653 square feet.

The applicant is proposing a total of 50 parking spaces. Thirty-six spaces would be provided below-grade and would serve the residential uses, while 14 spaces would be located on the first floor and would serve the non-residential uses. Both parking areas would be accessed via a single curb cut off of Upton Avenue South. The existing curb cut on West 43<sup>rd</sup> Street would be closed.

A conditional use permit is requested to increase the maximum allowed height in the C1 district from 3 stories/42 feet, whichever is less, to 4 stories/55 feet, 11 inches. The south and west sides of the property containing residential windows are each subject to a minimum yard requirement of 11 feet. The applicant is requesting to reduce the south interior side yard setbacks to nine feet for the building walls on floors two through four. The applicant is also requesting a setback variance from 11 feet to 6.5 feet for the second floor building wall and third and fourth floor balconies exceeding 50 square feet, and to 7.5 feet for the third and fourth floor building walls. In addition, a variance is required to locate the building ten feet from the northern portion of the west property line that is adjacent to the RI district, where a 12-foot setback is required. Finally, site plan review is required for any new mixed-use building or any building containing five or more new or additional dwelling units.

The applicant brought a previous version of this project to the City Planning Commission Committee of the Whole on June 4, 2015. Among the changes that have been made since then, the applicant has revised their exterior materials to include brick veneer on all sides of the building, and has revised the floor plans so that the fourth floor of the building would be stepped back by at least 10 feet from all street-facing facades.

This item was continued from the August 17, 2015, City Planning Commission meeting to allow additional time to notify the public of the public hearing, as the notices were posted on the site seven days prior to the August 17 public hearing, as opposed to the ten-day minimum listed in section 525.150 of the zoning code. Staff has verified that the applicant made a bona fide attempt to comply with the

ordinance, meaning that the shorter notification period for the posted cards did not invalidate the public hearing on August 17, 2015.

Since the August 17, 2015, City Planning Commission meeting, the applicant has submitted updated elevations and renderings in accordance with the staff recommendation to alter the porcelain tile bays along the ground floor, and to orient the entrance to the residential uses toward West 43<sup>rd</sup> Street.

**RELATED APPROVALS.** A previous applicant submitted three prior proposals for the subject site (along with other contiguous property) within the past three years. The Planning Commission approved all three and the City Council granted two appeals of the Planning Commission’s decisions. All previous applications contained additional zoning parcels (between two and five parcels, total), while the current application applies just to the property at 4264 Upton Avenue South.

Planning Case #	Application	Description	Action
BZZ-6638	CUP, Variances, Site Plan Review	Four-story, mixed-use building with 20 residential uses and 6,155 square feet of commercial space.	Approved by the CPC on July 14, 2014; appeal denied by the City Council on August 15, 2014.
BZZ-5745	Variances, Site Plan Review	Three-story mixed-use building with 18 dwelling units and 6,052 square feet of commercial space across two parcels.	Approved by the CPC on October 1, 2012.
BZZ-5420	CUP for height, Variances, Site Plan Review, Vacation	Five-story mixed-use building with 40 dwelling units and 11,227 square feet of commercial space across five parcels.	Approved by the CPC on February 6, 2012; appeal granted by the City Council on March 8, 2012.

**PUBLIC COMMENTS.** As of the printing of this report, staff has received numerous comments from the public in opposition to the project. There are approximately 125 pages of public comments in the attachments, most of which convey opposition to the proposed development. The Linden Hills Neighborhood Council has submitted correspondence to summarize the feedback they have collected on the proposed development. The Zoning Committee voted to oppose the conditional use permit for height, but the board has not expressed a formal position on the project. Any additional correspondence received prior to the public meeting will be forwarded on to the Planning Commission for consideration.

## ANALYSIS

### CONDITIONAL USE PERMIT

The Department of Community Planning and Economic Development has analyzed the application to allow increase the maximum allowed height from the permitted 3 stories/42 feet to 4 stories/55 feet, 11 inches, based on the following findings:

1. *The establishment, maintenance or operation of the conditional use will not be detrimental to or endanger the public health, safety, comfort or general welfare.*

The maximum allowed height of a building in the CI Neighborhood Commercial District is 2.5 stories or 35 feet, whichever is less. However, as noted in section 548.130(b) of the zoning code, the maximum permitted height of a structure in the CI district is three stories or 42 feet if the project qualifies for the mixed commercial-residential bonus. This project qualifies for this height increase.

The applicant is proposing a building that is 55 feet, 11 inches in height at its tallest point, not including the parapet, which is between eight and ten inches, which is exempt from the height limitations for principal structures in commercial districts per section 548.100 of the zoning code. The remainder of the building is approximately 53 feet, 8 inches in height, not including the parapet. The proposed 55 foot tall, 11-inch tall building will not be detrimental to or endanger the public health, safety, comfort, or general welfare provided that the development complies with all applicable building codes, life safety ordinances, and Public Works standards.

- 2. The conditional use will not be injurious to the use and enjoyment of other property in the vicinity and will not impede the normal and orderly development and improvement of surrounding property for uses permitted in the district.*

The surrounding area contains a range building heights of between one to seven stories. The office building directly to the north of the site contains two stories. On the same block, to the north, there are two three-story apartment buildings. To the east of the site, on the opposite side of Upton Avenue South and Sheridan Avenue South, there are four-story apartment buildings. There is another four-story building located near the southeast corner of Upton Avenue South and West 43rd Street, and a seven-story building is located one block to the south of the development. The zoning classifications in the surrounding area support as-of-right building heights of four and six stories (R4, R5, R6, OR3, and C2), understanding that some of these properties are also located in the Shoreland Overlay District. The CI zoning district applies to approximately twenty properties at or near the intersection of Upton Avenue South and West 43rd Street. The CI zoning district allows buildings heights up to three stories or 42 feet for projects that qualify for the mixed commercial-residential density bonus. As the measurement of building height in the zoning code is based on the adjacent natural grade rather than actual sea elevation, the varied topography of the area plays an important role in the impact a building's height has in conjunction with the structure's bulk and height as measured by the zoning code.

There are public streets and sidewalks along the east and south property lines, and the west and northwest portions of the site would contain landscaping between the building and property line. The closest single-family home is located approximately 70 feet to the west of the shared property line. Directly to the north of the site is a two-story office building. In addition, there is large accessory parking lot separating the subject site and a three-story residential building that is approximately 144 feet from the north.

For these reasons, CPED finds that increasing the height of the building will not be injurious to the use and enjoyment of other property in the vicinity and will not impede the normal or orderly development and improvement of surrounding property for uses permitted in the district.

- 3. Adequate utilities, access roads, drainage, necessary facilities or other measures, have been or will be provided.*

Increasing the height of the proposed building will not have an impact on utilities, access roads, or drainage.

- 4. Adequate measures have been or will be taken to minimize traffic congestion in the public streets.*

Increasing the height of the proposed building will have no impact on traffic congestion in the public streets. The development meets the minimum parking requirement for both residential and non-residential uses.

5. *The conditional use is consistent with the applicable policies of the comprehensive plan.*

The proposed development would be consistent with the following general land use policies of *The Minneapolis Plan for Sustainable Growth*:

**Land Use Policy 1.2: Ensure appropriate transitions between uses with different size, scale, and intensity.**

- 1.2.1 Promote quality design in new development, as well as building orientation, scale, massing, buffering, and setbacks that are appropriate with the context of the surrounding area.

**Land Use Policy 1.5: Promote growth and encourage overall city vitality by directing new commercial and mixed use development to designated corridors and districts.**

- 1.5.1 Support an appropriate mix of uses within a district or corridor with attention to surrounding uses, community needs and preferences, and availability of public facilities.
- 1.5.2 Facilitate the redevelopment of underutilized commercial areas by evaluating possible land use changes against potential impacts on the surrounding neighborhood.

**Land Use Policy 1.8: Preserve the stability and diversity of the city's neighborhoods while allowing for increased density in order to attract and retain long-term residents and businesses.**

- 1.8.1 Promote a range of housing types and residential densities, with highest density development concentrated in and along appropriate land use features.

**Land Use Policy 1.11: Preserve and enhance a system of Neighborhood Commercial Nodes that includes a mix of housing, neighborhood-serving retail, and community uses.**

- 1.11.4 Encourage a height of at least two stories for new buildings in Neighborhood Commercial Nodes, in keeping with neighborhood character.
- 1.11.5 Encourage the development of medium- to high-density housing where appropriate within the boundaries of Neighborhood Commercial Nodes, preferably in mixed use buildings with commercial uses on the ground floor.

**Urban Design Policy 10.6: New multi-family development or renovation should be designed in terms of traditional urban building form with pedestrian scale design features at the street level.**

- 10.6.3 Provide appropriate physical transition and separation using green space, setbacks or orientation, stepped down height, or ornamental fencing to improve the compatibility between higher density and lower density residential uses.

The site is located within the boundaries of the *Linden Hills Small Area Plan* adopted by the City Council in December 2013. The plan identifies speaks specifically to building height, shading, and commercial character. It includes the following general guidance for building height:

- Encourage overall building heights and floor-to-floor heights that reflect the adjacent architectural context and encourage buildings that are shorter than the current Zoning Code maximums for 3 and 4 story buildings (42 feet and 56 feet respectively).

- The fourth story of any building in the three neighborhood commercial nodes and along the community corridors shall be stepped back from the street facing façade(s) of the building by at least 10 feet.

The proposed development's building height of 55 feet, 11 inches would be consistent with the overall height guidance provided by the small area plan, as the proposed height would be slightly shorter than the 56-foot maximum for four-story buildings referenced in the small area plan. The small area plan calls for floor-to-floor heights that are shorter than the zoning code maximums of 20 feet for the first story, and 14 feet for every floor above the first. The first floor of the proposed development would be 19 feet in height. The second, third, and fourth floors would be between 11 and 12 feet in height, and the fourth story of the proposed project would be stepped back at least 10 feet from both street-facing facades to minimize shadowing on adjacent streets. Staff encourages the applicant to reduce the height of the first floor below 19 feet.

The plan encourages the massing of new development to reflect the character established by the massing of existing development within the Neighborhood Commercial Node. The proposed project appropriately articulates the existing massing intervals of the surrounding node on each façade.

6. *The conditional use shall, in all other respects, conform to the applicable regulations of the district in which it is located.*

If the requested land use applications are approved, the proposal will comply with all provisions of the CI Neighborhood Commercial District.

#### **Additional Standards to Increase Maximum Height**

In addition to the conditional use permit standards, the Planning Commission shall consider, but not be limited to, the following factors when determining the maximum height of principal structures in commercial districts:

1. *Access to light and air of surrounding properties.*

The proposed building would be 55 feet, 11 inches in height as measured from curb height. However, the building walls adjacent to the public sidewalk would be approximately 42 feet above the adjacent grade, as the fourth story is stepped back from the rest of the building by 10 feet along both streets. Increasing the height of the proposed development should not impede access to light and air that the surrounding properties receive.

2. *Shadowing of residential properties, significant public spaces, or existing solar energy systems.*

The fourth story of the proposed building would be stepped back 10 feet from both street-facing facades. Allowing the proposed increase in height would not have substantial shadowing effects on adjacent residential properties, significant public spaces, or known existing solar energy systems.

The applicant submitted a shadow study showing the proposed development's impacts at 9 a.m. and 4 p.m. on June 21<sup>st</sup>, on September 23<sup>rd</sup>, and on December 21<sup>st</sup>. The shadow study indicates that there will be minimal shadowing cast on the residential properties located on the north and west sides of the proposed development site during June, September, and December. The study does indicate some shadowing impacts on the residential properties located on the west side of the development in the winter study. The shadow study also compares the effects of the proposed development with that of a three-story building with the same footprint at same times of day and times of year. Due to the massing of the proposed building, including the fourth level being stepped back at least 10 feet from the edge of the third floor on both street-facing facades, there is little difference in shadowing impacts between the 42-foot proposal and the 55 foot, 11 inch proposal.

Since the August 17, 2015, meeting, the applicant has submitted additional shadow studies, which are included in the attachments.

There are three existing solar energy panel systems in the area based. One is on a commercial building located at 2813 West 43rd Street, approximately 200 feet to the west. The proposed development will have no impact on this system. Another solar energy panel system is located 275 feet northwest of the site at 4231 Vincent Avenue South, and the proposed building would not interfere with the functionality of this system based on the submitted materials. Third, there is a solar energy panel system at 2718 43<sup>rd</sup> Street West, which is 300 feet to the east of the site. The proposed development would also have no effect this solar energy system.

Other than the first floor, the zoning code limits the height of a story to 14 feet in height. In the past, many conditional use permits to increase the height of a building from three stories to four stories have been approved. In most cases, the overall height of the five-story building was 56 feet, and the height of the proposed building is four stories/55 feet, 11 inches.

3. *The scale and character of surrounding uses.*

The buildings in the surrounding area range between one and seven stories. Directly to the north of the site is a two-story office building. In addition, there is large accessory parking lot separating the subject site and a three-story residential building that is approximately 144 feet from the north. There are four-story buildings located towards the northeast and east sides of the site, there is a four-story building located near the southeast corner of Upton Avenue South and West 43rd Street, and there is a seven-story building located one block south of the site on the northwest corner of Upton Avenue South and West 44th Street.

The character of the buildings in the neighborhood is varied. Most of the commercial buildings and many of the single-family homes were built in the early 1900s, while many of the multiple-family dwellings were built mid-twentieth century. There are, however, several infill buildings that have been built within the last ten years.

4. *Preservation of views of landmark buildings, significant open spaces or water bodies.*

The proposed development will not block views of landmark buildings, significant open spaces, or bodies of water.

## VARIANCES

The Department of Community Planning and Economic Development has analyzed the application for a variance to reduce south interior side yard setback from 11 feet to nine feet; to reduce west interior side yard setback from 11 to 6.5 feet for the building structure and two balconies exceeding 50 square feet in area, from 11 feet to 7.5 feet for the third and fourth floor building walls, and from 12 feet to 10 feet for the building wall, based on the following findings:

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.*

**All variances:** Residential uses with windows facing an interior side lot line are required to provide building setback distance of 5+2x, where x is equal to the number of floors above the ground floor, per section 548.140 of the zoning code. Since there are three stories above the first floor, a minimum 11-foot setback applies to the south- and west-facing side lot lines on the residential floors (floors two, three, and four). The applicant is seeking a variance to reduce the south interior side yard setback from 11 feet to nine feet for the building walls containing residential windows on floors

two through four. The applicant is also seeking a variance to reduce the west interior side yard setback from 11 to 6.5 feet for the building wall containing residential windows. The building wall is set back approximately 7.5 feet from the west interior property line on the third and fourth floors adjacent to the commercial property, which requires a variance to be located within the 11-foot setback.

The zoning code allows balconies, decks, and ground level patios not exceeding 50 square feet in area to project up to four feet into a required interior side yard of a multiple family dwelling, provided that the balcony, deck, or ground level patio be located no closer than ten feet from the interior side lot line. One west-facing third-floor balcony exceeds 50 square feet, and one west-facing fourth floor balcony exceeds 50 square feet and both are located within the ten-foot minimum distance to the property line that would be required for a permitted obstruction.

In addition, the applicant is requesting a variance to reduce the northernmost portion of the west interior side yard setback adjacent to the R1 Single-Family District from 12 feet to 10 feet. The required setback along the rear property line of the R1 district is  $6+2x$ , where  $x$  equals the number of stories above the first floor. The 12 foot setback applies to all levels of the structure along the portion of the property that abuts the R1 district.

The site is zoned C1 Neighborhood Commercial District and is located in a designated Neighborhood Commercial Node. The applicant is trying to balance the policies that support increased commercial activity and residential density on the site with the need to provide outdoor space for the residents by designing the development as a mixed-use building. The site has an irregular shape as a result of the easement and existing platting and contains two front yards and four interior-facing side yards. The building footprint follows the shape of the lot, which makes it difficult to accommodate outdoor open space for the residential units. Balconies or patios are being proposed for each unit to accommodate outdoor space for the residents. CPED staff finds that practical difficulties exist in complying with the ordinance because of the circumstances unique to the property.

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.*

**All variances:** The request to allow a reduced setback along the south interior and west interior property lines to accommodate the building structure and balconies is reasonable and is in keeping with the spirit and intent of the ordinance and comprehensive plan. The intent of having yard controls is to provide for the orderly development and use of land, and to minimize conflicts between adjacent land uses by regulating the dimension and use of yards by providing adequate light, air, open space, and separation of uses. The proposed building and balconies will not diminish light, air, or open space for the adjacent properties. The single-family homes that are located to the west of the site are located approximately 70 feet away, and there is a one-story commercial building located to the south and west of the subject site.

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.*

**All variances:** Granting the variance will not alter the essential character of the locality or be injurious to the use or enjoyment of other property in the vicinity. Again, the single-family homes located to the west of the site are located approximately 70 feet away and there is a one-story commercial building located to the south and west of the subject site.

## SITE PLAN REVIEW

The Department of Community Planning and Economic Development has analyzed the application based on the required findings and applicable standards in the site plan review chapter:

### **I. Conformance to all applicable standards of Chapter 530, Site Plan Review.**

#### **Building Placement and Design – *Requires alternative compliance***

- The building reinforces the street wall, facilitates pedestrian access, and maximized natural surveillance. The building entrances at street level can be accessed by residents, guests, employees, and customers. There are large windows facing the street that maximize the opportunities for people to observe adjacent spaces and the public sidewalks.
- There are two principal entrances to the building. The principal entrance to the ground floor retail space is oriented toward West 43<sup>rd</sup> Street. In addition, the retail tenant space would have multiples entrances facing Upton Avenue South. Since the August 17, 2015, City Planning Commission meeting, the applicant has updated the orientation of the principal entrance for the residential use so that it also faces a public street (West 43<sup>rd</sup> Street). This update can be found in the elevations and rendering in the attachments.
- The site is located on a reverse corner lot, which requires that both walls abutting the streets be located within eight feet of the property line. The first floor of building is within eight feet of the front property line on Upton Avenue South, but a portion of the building wall along West 43<sup>rd</sup> Street exceeds eight feet and is located between 8.5 feet and 10.25 feet from the south property line. This item requires alternative compliance.
- The area between the building and property lines will contain additional sidewalk space and landscaping.
- All of the proposed parking is located below ground or enclosed within the building.
- The building wall along Upton Avenue South is approximately 158 feet in length, and the building wall along West 43<sup>rd</sup> Street is 95 feet in length. The applicant has used a variety of materials, recesses in the building wall, and differently sized window openings to break up the façade into smaller sections.
- There are no areas of the development that are over 25 feet in length and void of windows, entries, recesses or projections, or other architectural elements. To comply with this requirement, the applicant has proposed a series of porcelain tile bays around the perimeter of the first floor parking area. The applicant has updated the elevations and renderings since the August 17, 2015, City Planning Commission meeting, per staff recommendation, by removing the stucco band above the porcelain-covered bays on the north, south, east, and west elevations, and replacing the tile with brick for the first three feet or more above grade.
- Plain face concrete block is not proposed as an exterior material. The sides and rear of the building are similar to and compatible with the front of the building.
- As proposed, the primary exterior materials of the building would be stucco, brick veneer, and porcelain tile, with glass, metal, and wood laminate accents. The submitted materials are consistent with the City's policy of allowing no more than three exterior materials per elevation, excluding windows, doors, and foundation materials.
- The Linden Hills Overlay District requires that at least 40 percent of the first-floor façade facing a public street or sidewalk be windows or doors of clear or lightly tinted glass that allows views into and out of the building, as measured between two and ten feet above the finished level of the first floor. In addition, at least 10 percent of the upper floors facing a public street, sidewalk, pathway, or on-site parking lot are required to be windows. The window requirement applies to the Upton Avenue South (east) and West 43<sup>rd</sup> Street facades (south). The project is in compliance with the minimum window requirement (see **Table I**).
- The windows are vertical in nature and are evenly distributed along the building walls.

- Sixty-seven percent of the building frontage along Upton Avenue South and 100 percent of the building frontage along West 43rd Street contain active functions. As 32 percent of the Upton Avenue South ground floor frontage contains parking, exceeding the 30 percent maximum, alternative compliance is required.
- The principal roof line of the building will be flat. The majority of the commercial buildings and the multiple-family buildings in the area have flat roofs and the majority of the single-family homes in the area have pitched roofs.

**Table 1. Percentage of Windows Required for Elevations Facing a Public Street, Sidewalk, Pathway, or On-Site Parking**

	Code Requirement		Proposed	
<b>East elevation (facing Upton Ave S)</b>				
1 <sup>st</sup> Floor	40% minimum	506 sq. ft.	43%	542 sq. ft.
2 <sup>nd</sup> Floor	10% minimum	177 sq. ft.	31%	550 sq. ft.
3 <sup>rd</sup> Floor	10% minimum	177 sq. ft.	28%	499 sq. ft.
4 <sup>th</sup> Floor	10% minimum	170 sq. ft.	34%	582 sq. ft.
<b>South elevation (facing W 43<sup>rd</sup> Street)</b>				
1 <sup>st</sup> Floor	40% minimum	304 sq. ft.	68%	516 sq. ft.
2 <sup>nd</sup> Floor	10% minimum	160 sq. ft.	24%	381 sq. ft.
3 <sup>rd</sup> Floor	10% minimum	160 sq. ft.	19%	302 sq. ft.
4 <sup>th</sup> Floor	10% minimum	156 sq. ft.	22%	342 sq. ft.

**Access and Circulation – Meets requirements**

- All of the principal entrances leading into and out of the building are connected to the public sidewalk either directly or via a walkway.
- No transit shelters are proposed as part of this development.
- All of the proposed parking is located below-ground or enclosed within the building. The proposed development would have a single curb cut accessed from Upton Avenue South. Vehicular access has been designed to minimize conflicts with pedestrians and surrounding residential uses.
- There are no public alleys adjacent to the site.
- There is no maximum impervious surface requirement in the CI zoning district. According to the materials submitted by the applicant, 92.8 percent of the site will be impervious. Currently, 93.8 percent of the site is impervious.

**Landscaping and Screening – Meets requirements**

- The composition and location of landscaped areas complement the scale of the development and its surroundings.
- The zoning code requires that at least 20 percent of the site not occupied by buildings be landscaped. The lot area of the site is 20,196 square feet and the building footprint is 15,929 square feet. The difference is 4,267 square feet, and 20 percent of this number is 853 square feet. The applicant is proposing approximately 1,461 square feet of landscaping on the site, or approximately 34 percent of the site not occupied by the building.
- The zoning code requires that the site contain at least one canopy tree per 500 square feet of required green space and at least 1 shrub for each 100 square feet of required green space. The tree requirement for this site is two and the shrub requirement is nine. The applicant is providing a total of two canopy trees and 13 shrubs on-site, as well as a variety of perennials, which meets the

minimum requirements. The applicant is also proposing nine additional canopy trees, an ornamental tree, shrubs, perennials, and grasses landscape materials in the right-of-way along both Upton Avenue South and West 43rd Street. See **Table 2**.

- All areas not occupied by buildings contain landscaping or walkways.
- There is no surface parking proposed for the site, so the site is not subject to the screening and landscaping requirements for parking areas per Chapter 530.

**Table 2. Landscaping and Screening Requirements**

	<b>Code Requirement</b>	<b>Proposed</b>
<b>Lot Area</b>	--	20,196 sq. ft.
<b>Building footprint</b>	--	15,929 sq. ft.
<b>Remaining Lot Area</b>	--	4,267 sq. ft.
<b>Landscaping Required</b>	853 sq. ft.	1,461 sq. ft.
<b>Canopy Trees (1: 500 sq. ft.)</b>	2 trees	2 trees
<b>Shrubs (1: 100 sq. ft.)</b>	9 shrubs	13 shrubs

**Additional Standards – Meets requirements**

- There are no surface parking spaces proposed on the site.
- There are no important elements of the city near the site that will be obstructed by the proposed building.
- This building should have minimal shadowing effects on public spaces and adjacent properties.
- This building should have minimal wind effects on the surrounding area.
- The site plan complies with crime prevention design elements as the building entrances and windows are located along the front property lines, people can see in and out of windows at all levels of the building, there are distinct pathways across the site for pedestrians, and the development integrates entrances, exits, signs, and landscaping to provide natural access control and guide people coming to and going from the site.
- This site is neither historically designated nor is it located in a historic district.

**2. Conformance with all applicable regulations of the zoning ordinance.**

The proposed use of a multiple-family dwelling with five or more units and general retail sales and services is *permitted* in the CI zoning district.

**Off-street Parking and Loading – Meets requirements with Conditions of Approval**

- The minimum parking requirement for the residential uses is 29 (1 per dwelling unit), with a ten percent reduction based on the transit incentives in section 541.200 (1) of the zoning code, as the multiple-family dwelling would be located within 300 feet of a transit stop with midday service headways of thirty (30) minutes or less in each direction. The total parking requirement for the residential uses is 26 spaces, and there is no maximum parking restriction. Based on the proposed retail space of 6,047 square feet, the parking requirement for the non-residential use is four. The total minimum requirement is 33 and 50 spaces are provided, as shown in **Table 3**. The applicant has indicated that 14 spaces would be available to the public, and the 36 below-grade spaces would be reserved for the residential uses.
- The Linden Hills Overlay District requires that the number of accessory spaces for nonresidential uses shall not exceed 150 percent of the minimum requirement. The minimum requirement for non-residential uses is four and the allowance under the overlay district regulations is six.

However, the zoning administrator may authorize additional parking spaces to serve other uses. The proposed total of 14 spaces exceeds the Linden Hills Overlay District maximum for the non-residential uses. The applicant has not shown how the 6,047 square feet of retail space would be divided among individual tenants, which could increase the minimum parking requirement and, as a result, the overlay district allowance for non-residential uses. The specific commercial use could also result in an increase in the minimum parking requirement. For example, a restaurant tenant would increase the minimum parking requirement in the Linden Hills Overlay District, as the parking requirement is one space per three seats, but not less than four parking spaces overall. In addition, the applicant has not indicated whether the residents of the building or their guests would be able to park in a portion of the spaces on the first level, or if the parking would be available to other businesses in the commercial district. The final site plan must provide additional detail to demonstrate compliance with the applicable parking minimums and maximums.

**Table 3. Vehicle Parking Requirements Per Use (Chapter 54I)**

	<b>Minimum Vehicle Parking (Before Reductions)</b>	<b>Applicable Parking Reductions</b>	<b>Minimum Vehicle Parking (Total)</b>	<b>Maximum Parking Allowed</b>	<b>Max. with Linden Hills Overlay District</b>	<b>Proposed</b>
<b>General retail sales and services</b>	4	--	4	30	6 (see above explanation)	14
<b>Residential dwellings</b>	29	3 (10% reduction)	26	No maximum	No maximum	36
<b>Total</b>	33	3	<b>30</b>	30 (retail only)	<b>6 (retail only – see above)</b>	<b>50</b>

- The minimum bicycle parking requirement for multiple-family dwellings with five or more units is one space per two dwelling units. The development contains 29 dwelling units and the minimum number of bicycle parking spaces is 15, of which at least 14 must meet the definition of long-term bicycle parking. The applicant is proposing one long-term bicycle parking space for each below-grade parking stall to exceed the minimum requirement.
- The minimum bicycle parking requirement for the general retail sales and services use is 3 spaces, of which at least 2 must be short-term. Non-residential uses that have less than 1,000 square feet in gross floor area are exempt from this requirement. The one proposed retail space is 6,047 square feet in area. Again, the bicycle parking may change based on the final layout of the non-residential uses. The proposed plan includes seven short-term bicycle parking spaces, which exceeds the minimum requirements (**Table 4**).
- The development is not subject to a loading requirement, as the use is less than 20,000 square feet.

**Table 4. Bicycle Parking and Loading Requirements (Chapter 54I)**

	<b>Minimum Bicycle Parking</b>	<b>Minimum Short-Term</b>	<b>Minimum Long-Term</b>	<b>Proposed</b>	<b>Loading Requirement</b>	<b>Proposed</b>
<b>General</b>	3	(2) Not less	--	7	Low (20,000)	0

<b>retail sales and services</b>		than 50%			sq. ft. or greater)	
<b>Residential dwellings</b>	15	--	(14) Not less than 90%	36	None	0
<b>Total</b>	<b>18</b>	<b>2</b>	<b>14</b>	<b>43</b>	<b>0</b>	<b>0</b>

**Building Bulk and Height – Requires conditional use permit**

- The maximum floor area ratio (F.A.R.) in the CI zoning district is 1.7. The development qualifies for two floor area bonuses worth 20 percent each: the enclosed parking density bonus, and the mixed residential-commercial density bonus. The maximum allowed floor area ratio for the development is 2.38. The lot in question is 20,196 square feet in area. The applicant is proposing 47,285 square feet in gross floor area, for a total of 2.34 (see **Table 5**).
- As previously mentioned, a conditional use permit is required to increase the development’s allowed height in the CI zoning district from 3 stories/42 feet, whichever is less, to 55 feet, 11 inches.

**Table 5. Building Bulk and Height Requirements**

	<b>Code Requirement</b>	<b>Proposed</b>
<b>Lot Area</b>	--	20,196 sq. ft. / 0.46 acres
<b>Gross Floor Area (GFA)</b>	48,066 sq. ft. max	47,285 sq. ft.
<b>Maximum Floor Area Ratio (GFA/Lot Area)</b>	2.38	2.34
<b>Maximum Building Height</b>	3 stories or 43 feet, whichever is less	55 feet, 11 inches

**Lot Requirements – Meets requirements**

- The proposed dwelling units (DUs) are part of a mixed-use building and the residential lot dimension requirements for the CI district do not apply to this development (**Table 6**).

**Table I. Lot Requirements Summary**

	<b>Code Requirement</b>	<b>Proposed</b>
<b>Dwelling Units (DU)</b>	--	29 DUs
<b>Density (DU/acre)</b>	--	63 DU/acre
<b>Minimum Lot Area</b>	Not less than 5,000 sq. ft.	20,196 sq. ft.
<b>Maximum Impervious Surface Area</b>	Not applicable	92.8%
<b>Maximum Lot Coverage</b>	Not applicable	79%
<b>Minimum Lot Width</b>	Not applicable	152 ft.

**Yard Requirements – Requires variance(s)**

- The front yard setback along Upton Avenue South and West 43rd Street is zero feet. In the CI zoning district, setback requirements do not typically apply when adjacent to another commercial zoned property. However, when the use is residential and there are windows facing an interior side

or rear property line, a setback is required of  $5+2x$ , where  $x$  equals the number of stories above the first floor. This provision applies to the residential uses along the north, west, and south interior property lines. The resulting setback is 11 feet. In addition, the northern portion of the west building wall is adjacent to property that is zoned R1, so the west interior setback is  $6+2x$  for this portion of the building, resulting in a setback of 12 feet for this portion of the building alone. Please refer to **Table 7**.

- The applicant has applied for variances to reduce the south and west interior setbacks to accommodate the building structure and two balconies.

**Table 2. Minimum Yard Requirements**

	<b>Zoning District</b>	<b>Proposed</b>
<b>Front</b> (East – Upton Ave S)	0 ft.	3 ft.
<b>Front</b> (South – W 43 <sup>rd</sup> St)	0 ft.	3-10 ft.
<b>Interior Side</b> (West, adjacent to R1)	11 ft.	10 ft. (1 <sup>st</sup> and 2 <sup>nd</sup> floors) – <i>requires variance</i> 13-14 ft. (3 <sup>rd</sup> and 4 <sup>th</sup> floors)
<b>Interior Side</b> (West, floors 2-4 only)	11 ft.	6.5 ft.-7.5 ft. for the building wall and balconies exceeding 50 sq. ft. (2 <sup>nd</sup> , 3 <sup>rd</sup> , 4 <sup>th</sup> floors) – <i>requires variance</i>
<b>Interior Side</b> (South, floors 2-4 only)	11 ft.	9 ft. (2 <sup>nd</sup> , 3 <sup>rd</sup> , 4 <sup>th</sup> floors) – <i>requires variance</i>
<b>Interior Side</b> (North, floors 2-4 only)	11 ft.	11 ft.

**Signs – Meets requirements with Conditions of Approval**

- The applicant’s preliminary sign plans show one attached sign approximately 16.5 feet above the adjacent grade and approximately ten square feet in area. The sign would be externally illuminated from above.
- Assuming no freestanding or roof sign is also proposed, the each primary building wall is allowed 1.5 square feet of signage for each foot of linear building wall in the CI district. The Upton Avenue South façade is allowed up to 237 square feet of sign area (45 square foot max per sign), while the West 43<sup>rd</sup> Street façade is allowed up to 142.5 square feet of signage. Additional provisions apply for additional types of signage. The maximum height allowed is 14 feet.
- All signage is subject to the standards in Chapter 543, On-Premise Signs. The applicant will be required to submit a separate signage permit application for any signage that is proposed in the future.

**Refuse Screening – Meets requirements**

- There will be trash and recycling rooms located within building on the first floor.

**Screening of Mechanical Equipment – Meets requirements**

- The transformer adjacent to the driveway along Upton Avenue South will be fully screened within the building.

**Lighting – Meets requirements with Conditions of Approval**

- A lighting plan showing footcandles shall be submitted to show compliance with the requirements of Chapter 535, Regulations of General Applicability:

**535.590. Lighting.** (a) *In general.* No use or structure shall be operated or occupied as to create light or glare in such an amount or to such a degree or intensity as to constitute a hazardous condition, or as to unreasonably interfere with the use and enjoyment of property by any person of normal sensitivities, or otherwise as to create a public nuisance.

(b) *Specific standards.* All uses shall comply with the following standards except as otherwise provided in this section:

- (1) Lighting fixtures shall be effectively arranged so as not to directly or indirectly cause illumination or glare in excess of one-half (1/2) footcandle measured at the closest property line of any permitted or conditional residential use, and five (5) footcandles measured at the street curb line or nonresidential property line nearest the light source.
- (2) Lighting fixtures shall not exceed two thousand (2,000) lumens (equivalent to a one hundred fifty (150) watt incandescent bulb) unless of a cutoff type that shields the light source from an observer at the closest property line of any permitted or conditional residential use.
- (3) Lighting shall not create a sensation of brightness that is substantially greater than ambient lighting conditions as to cause annoyance, discomfort or decreased visual performance or visibility to a person of normal sensitivities when viewed from any permitted or conditional residential use.
- (4) Lighting shall not create a hazard for vehicular or pedestrian traffic.
- (5) Lighting of building facades or roofs shall be located, aimed and shielded so that light is directed only onto the facade or roof.

### **Specific Development Standards – Not applicable**

#### **LH Linden Hills Overlay District Standards – Meets requirements**

- The proposal is in compliance with the LH Linden Hills Overlay District.

### **3. Conformance with the applicable policies of The Minneapolis Plan for Sustainable Growth.**

*The Minneapolis Plan for Sustainable Growth* identifies the site as Mixed Use on the future land use map and is located within a designated Neighborhood Commercial Node. In addition to the policies cited for the conditional use permit application, the proposed development is consistent with the following principles and policies outlined in the comprehensive plan:

#### **Urban Design Policy 10.4: Support the development of residential dwellings that are of high quality design and compatible with surrounding development.**

- 10.4.1 Maintain and strengthen the architectural character of the city's various residential neighborhoods.

#### **Urban Design Policy 10.5: Support the development of multi-family residential dwellings of appropriate form and scale.**

- 10.5.1 Smaller-scale, multi-family residential development is more appropriate along Community Corridors and Neighborhood Commercial Nodes.

#### **Urban Design Policy 10.6: New multi-family development or renovation should be designed in terms of traditional urban building form with pedestrian scale design features at the street level.**

- 10.6.1 Design buildings to fulfill light, privacy, and view requirements for the subject building as well as for adjacent properties by building within required setbacks.
- 10.6.3 Provide appropriate physical transition and separation using green space, setbacks or orientation, stepped down height, or ornamental fencing to improve the compatibility between higher density and lower density residential uses.
- 10.6.4 Orient buildings and building entrances to the street with pedestrian amenities like wider sidewalks and green spaces.
- 10.6.5 Street-level building walls should include an adequate distribution of windows and architectural features in order to create visual interest at the pedestrian level.

**Urban Design Policy 10.14: Encourage development that provides functional and attractive gathering spaces.**

**Urban Design Policy 10.15: Wherever possible, restore and maintain the traditional street and sidewalk grid as part of new developments.**

**Urban Design Policy 10.16: Design streets and sidewalks to ensure safety, pedestrian comfort and aesthetic appeal.**

- 10.16.1 Encourage wider sidewalks in commercial nodes, activity centers, along community and commercial corridors and in growth centers such as Downtown and the University of Minnesota.
- 10.16.2 Provide streetscape amenities, including street furniture, trees, and landscaping, that buffer pedestrians from auto traffic, parking areas, and winter elements.
- 10.16.3 Integrate placement of street furniture and fixtures, including landscaping and lighting, to serve a function and not obstruct pedestrian pathways and pedestrian flows.
- 10.16.4 Employ pedestrian-friendly features along streets, including street trees and landscaped boulevards that add interest and beauty while also managing storm water, appropriate lane widths, raised intersections, and high-visibility crosswalks.

**Urban Design Policy 10.18: Reduce the visual impact of automobile parking facilities.**

CPED finds that the proposed development is in conformance with the above policies of *The Minneapolis Plan for Sustainable Growth*.

#### **4. Conformance with applicable development plans or objectives adopted by the City Council.**

The site is located within the boundaries of the *Linden Hills Small Area Plan* adopted by the City Council in December 2013. The project is also located within a Neighborhood Commercial Node and is consistent with the small area plan's land use guidance:

- The Neighborhood Commercial Nodes and Community Corridors are valued for their eclectic diversity of buildings and their scale. New development should reflect the character of the area through articulation, such as massing intervals and varied setbacks. This should be achieved through more than just a change in building materials.

The proposed project appropriately articulates the existing massing intervals of the surrounding node on each façade through regular projections and recesses in the building wall, awnings, windows, and exterior building materials.

The plan speaks specifically to building height, shading, and commercial character. It includes the following general guidance for building height:

- Encourage overall building heights and floor-to-floor heights that reflect the adjacent architectural context and encourage buildings that are shorter than the current Zoning Code maximums for 3 and 4 story buildings (42 feet and 56 feet respectively).
- The fourth story of any building in the three neighborhood commercial nodes and along the community corridors shall be stepped back from the street facing façade(s) of the building by at least 10 feet.

The small area plan calls for floor-to-floor heights that are shorter than the zoning code maximums of 20 feet for the first story, and 14 feet for every floor above the first. The first floor of the proposed development would be 19 feet in height. The second, third, and fourth floors would be between 11 and 12 feet in height. Staff encourages the applicant to reduce the height of the first floor below 19 feet.

In addition, the plan articulates the importance of “transition areas” between new three- or four-story buildings that are adjacent to single- or two-family structures through the use of vegetative buffers, articulated rear facades, and by stepping back the top floor of the development an additional ten feet from the shared property lines. The nearest single or two-family home would be 70 feet to the west. The first floor building wall is located 10 feet from the property line that is adjacent to the residential district. The second, third, and fourth floors of the proposed development would be stepped back from the first floor building wall by an additional 9 feet in this location. Staff finds that the project meets the intent of the applicable policies in the small area plan.

## **5. Alternative compliance.**

The Planning Commission or zoning administrator may approve alternatives to any site plan review requirement upon finding that the project meets one of three criteria required for [alternative compliance](#). Alternative compliance is requested for the following requirements:

- **Building placement.** The site is located on a reverse corner lot, which requires that both walls abutting the streets be located within eight feet of the property line. The first floor of building is within eight feet of the front property line on Upton Avenue South, but a portion of the building wall along West 43rd Street exceeds eight feet and is located between 8.5 feet and 10.25 feet from the south property line. This item requires alternative compliance. Staff recommends granting alternative compliance to allow a portion of the building to be placed more than eight feet from the property line. The area between the building and public sidewalk contains an easement for a pocket park, and the proposed entrance would require a set of stairs in this location due to the varied grade of the site. In addition, the proposed building design will help to break up the massing of the overall building wall in relation to the public street and sidewalk.
- **Ground floor active functions.** Sixty-seven percent of the building frontage along Upton Avenue South and 100 percent of the building frontage along West 43rd Street contain active functions. As 32 percent of the Upton Avenue South ground floor frontage contains parking, exceeding the 30 percent maximum, alternative compliance is required. Staff recommends granting alternative compliance for this requirement. The property contains two street frontages and the site currently contains one curb cut off of each public street. The building wall is approximately 158 linear feet along Upton Avenue South. The 51-foot wide portion of the Upton Avenue South elevation that contains parking and driveways would be the single access point for all vehicles going to and from the site, and all parking would be provided underground or enclosed within the building to provide a continuous building wall along the street. Due to the applicant’s request to consolidate vehicle traffic on an irregular corner lot, staff finds that it would be practical to grant alternative compliance in this case.

## RECOMMENDATIONS

The Department of Community Planning and Economic Development recommends that the City Planning Commission adopt staff findings for the applications by Jesse Hamer for the property located at 4264 Upton Avenue South:

**A. Conditional Use Permit to increase the maximum permitted height in the CI Neighborhood Commercial District.**

Recommended motion: **Approve** the conditional use permit to increase the maximum allowed height from the permitted 3 stories/42 feet to 4 stories/55 feet, 11 inches, subject to the following conditions:

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.

**B. Variance of the required south interior side yard setback.**

Recommended motion: **Approve** the variance to reduce the south interior side yard setback from 11 feet to 9 feet for the building wall on floors two through four.

**C. Variance of the required west interior side yard setback.**

Recommended motion: **Approve** the variance to reduce the west interior side yard setback from 11 feet to 6.5 to allow the second floor building wall, balconies on the third and fourth floors exceeding 50 square feet, and to 7.5 feet for the third and fourth floor building walls, and from 12 feet to 10 feet for the building wall.

**D. Site Plan Review for a new commercial building.**

Recommended motion: **Approve** the site plan review application for a new, four-story mixed-use building with 29 dwelling units and approximately 6,000 square feet of commercial space, subject to the following conditions:

1. Approval of the final site, landscaping, elevation, and lighting plans by the Department of Community Planning and Economic Development.
2. All site improvements shall be completed by September 8, 2017, unless extended by the Zoning Administrator, or the permit may be revoked for non-compliance.
3. All signs shall comply with Chapter 543 of the zoning code. All signage requires a separate permit from CPED.
4. The applicant shall remove all references to stucco in the proposed porcelain and stucco openings along the ground floor elevations, and the first three feet or more above grade shall be brick instead of porcelain tile.
5. The applicant shall provide additional detail on the individual tenant spaces and accessory parking areas to demonstrate compliance with the applicable parking minimums and maximums in Chapter 541, Off-Street Parking and Loading and section 551.290 of the zoning code.

## ATTACHMENTS

1. PDR report
2. Written description and findings submitted by applicant
3. Zoning map
4. Survey
5. Plans
6. Building elevations - updated
7. Renderings - updated
8. Shadow study - updated
9. Photos
10. Public comments
11. Correspondence from the Linden Hills Neighborhood Council