

**Minneapolis Planning and Economic Development Department  
Planning Division**

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**MEMORANDUM**

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DATE: 10/18/04  
TO: Council Member Gary Schiff, Chair of the Zoning and Planning Committee  
FROM: J. Michael Orange, Principal Planner (612-673-2347,  
michael.orange@ci.minneapolis.mn.us)  
SUBJECT: Bookman Project Phase III appeal

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The applicant for the Bookman Project located at 519-521 3<sup>rd</sup> Street North and 526 4<sup>th</sup> Street North appealed the Planning Commission denials (9/27/04) of the Phase III project. The following are the Planning staff responses to the appellant/applicant's "Statement of Reasons for Appeal" (received 10/12/04):

- **Unit increase for the Bookman Stacks building:** The applicant's statement includes the incorrect assumption that the Planning Commission denied the approval of an increase from 43 to 45 units for the Bookman Stacks project (Phase II of the overall project). In fact, the Commission approved this increase at its 9/27/04 hearing.
- **Applicant comment:** The Planning Commission approved Phase II of the project one month after the City Council approved the Downtown East / North Loop Master Plan (DE/NL plan). (The Planning Commission approved the plan before they approved Phase II of the project.) If Phase III is inconsistent, the Phase II plan, with nothing more than an open plaza, should have been judged as inconsistent with the plan as well.

**Staff response:** When the applicant and his development team first met with Planning staff in August 2003, staff told the applicant that the restaurant location was inconsistent with policies and regulations of the Zoning Code, the *Minneapolis Plan*, and the draft DE/NL master plan (which did not change between August and the final approval in November). Rather than respond or initiate a dialogue, the applicant removed the restaurant from the Phase II plans completely yet made commitments based on the assumption that the City would approve it later as a part of Phase III:

- They held the parking ramp construction back 85 ft. from 5<sup>th</sup> Ave. This limited the residential construction on the site to the amount proposed.
- They built the pilings to accommodate a single story of development over a single level of parking.
- They sold units in the Stacks building with the promise that development on the eastern part of the site would be limited to 40 feet in order to preserve the views.

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- **Applicant comment:** DE/NL Master Plan is a planning tool, not a regulatory tool. The DE/NL plan called for the City to modify the Zoning Code to accommodate the policies in the plan. “Until the Zoning Code is adapted and modified, the City does not have the authority to enforce the vision.”

**Staff response:** The Zoning Code requires decision be made based on consistency with the City’s adopted plans and policies.

- **Applicant comment:** Bad soils and high water table limit development on the eastern portion of the site and make it cost prohibitive.

**Staff response:** The architect for the project, James Dayton, testified before the Planning Commission that soil conditions were “less than optimal,” and “fairly mediocre.” The applicant’s statement indicates that the footings needed to be 120 ft. deep to support the single-level underground garage and the single-story restaurant (p. 6), and that footings for development on the eastern portion would also need to be 120 feet (p. 4). This implies that “less than optimal” describes soil conditions for both the eastern and western portions of the site, yet the applicant found it feasible to fully develop the western portion in spite of the soil conditions. Staff have requested the soil report from the applicant. It would be helpful to see the soil correction costs as a percentage of the total PUD development costs. This would help determine if Phase III development consistent with the City’s policies and regulations would truly be cost prohibitive.

- **Applicant comment:** Until the removal of the I-94 access ramp and more redevelopment in the area, there is no market for the level of development called for in the DE/NL plan. The garden serves as a land bank for future development when the market can support it.

**Staff response:** As a norm, Planning staff do not analyze market factors for projects.

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Date: October 18, 2004

TO: Council Member Gary Schiff, Chair of the Zoning and Planning Committee of the City Council

Prepared by: J. Michael Orange, Principal Planner, 612-673-2347

Approved by: Barbara Sporlein, Director, Planning Division \_\_\_\_\_

Subject: Appeal of the Planning Commission's decisions regarding Phase III of the Bookman Project 519-521 3<sup>rd</sup> Street North and 526 4<sup>th</sup> Street North

**RECOMMENDATION:**

- A. Conditional Use Permit:** The City Planning Commission adopted the findings and **denied** the conditional use permit for the planned residential development to allow a 9,300 square foot sit-down restaurant and bar, to allow a sign increase on the Bookman Stacks building from 80 to 92 square feet, and approve an exception to the code to allow the elimination of the required parking for the restaurant.
- B. Variance:** The City Planning Commission adopted the findings and **denied** the application for a fence variance for the Planned Residential Development for the Bookman Project located at 519-521 3<sup>rd</sup> Street North and 526 4<sup>th</sup> Street North.
- C. Site Plan Review:** The City Planning Commission adopted the findings and **denied** the application to amend the site plan review permit for the Planned Residential Development for the Bookman Project located at 519-521 3<sup>rd</sup> Street North and 526 4<sup>th</sup> Street North.
- D. Preliminary Registered Land Survey:** The City Planning Commission adopted the findings and **denied** the application for preliminary Registered Land Survey for the Planned Residential Development for the Bookman Project located at 519-521 3<sup>rd</sup> Street North and 526 4<sup>th</sup> Street North.

**Previous Directives:** None

<b>Financial Impact</b> (Check those that apply)
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<p>X No financial impact - or - Action is within current department budget. (If checked, go directly to Background/Supporting Information) ___ Action requires an appropriation increase to the Capital Budget ___ Action requires an appropriation increase to the Operating Budget ___ Action provides increased revenue for appropriation increase ___ Action requires use of contingency or reserves ___ Other financial impact (Explain): ___ Request provided to the Budget Office when provided to the Committee Coordinator</p>
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<p><b>Community Impact</b> Ward: Neighborhood Notification: City Goals: Comprehensive Plan: Zoning Code: Living Wage/Job Linkage: Other:</p>
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**Background/Supporting Information**

- Exhibit A. Final action of the Planning Commission and hearing minutes
- Exhibit B. Planning Division staff report
- Exhibit C. Preliminary registered land survey
- Exhibit D. Appellant's submittal
- Exhibit E. Staff response to appellant's submittal

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**Department of Community Planning and Economic Development—Planning Division  
Amendment of the Planned Residential Development (conditional use permit), Site Plan  
Review, Variance (fence height), and Preliminary Registered Land Survey  
BZZ-1941**

**Hearing Date:** September 27, 2004

**Address of Property:** 519-521 3<sup>rd</sup> Street North and 526 4<sup>th</sup> Street North

**Date Application Deemed Complete:** 8/27/04

**End of 60-Day Decision Period:** 10/26/04

**Applicant:** Rex II LLC, Steve Frenz, 1 E. 19<sup>th</sup> St., Mpls., MN 55403 (612-872-4444, email: sfrenz@jasapartments.com)

**Contact Person and Phone:** Robert Hunter, James Dayton Design Ltd. 530 N. Third St., Suite 330, Minneapolis, MN 55401 (voice: 612-338-0005, fax: 612-338-0141, email: [rhunter@jddltd.com](mailto:rhunter@jddltd.com))

**Staff Contact Person and Phone:** J. Michael Orange, Principal Planner. Phone: 612-673-2347; facsimile: 673-2728; TDD: 673-2157; e-mail: [michael.orange@ci.minneapolis.mn.us](mailto:michael.orange@ci.minneapolis.mn.us)

**Ward:** 5      **Neighborhood Organization:** North Loop Warehouse District Association

**Existing Zoning:** I2, Medium Industrial District, with the following Overlay Districts:

- Downtown Parking
- Industrial Living

**Proposed Use:** The Bookman Project (Project) is a three-phase, mixed use project being developed as a Planned Residential Development.<sup>1</sup> The subject application is Phase III and includes the following applications:

- A 9,300 sq. ft. sit-down restaurant and bar with a commercial kitchen.
- A new landscaped restaurant garden that will provide access to and outdoor seating for the restaurant where surface parking was originally approved.
- Revisions to the already approved landscaped terrace that will provide green space for and pedestrian access to the completed first phase Bookmen Lofts and the second phase Bookmen Stacks buildings.
- Amend the prior approval for the Bookman Lofts project to allow 45 units instead of the already approved 43 units.

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<sup>1</sup> A Planned Residential Development is a form of a Planned Unit Development (PUD)

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**Prior approvals (Attachment 7 provides the site plans for all three phases):**

- **Bookmen Lofts, Phase I (BZZ-1179 approved 6/2/03):** Rehabilitate the existing Bookmen Building into 57 market rate condominiums (completed). The site included 98 existing surface stalls and 9 stalls that flanked the east side of the building. The application included the following:
  - Conditional Use Permits for the dwelling units, building height, and a surface parking lot in the Downtown Parking Overlay District.
  - Major Site Plan Review.
- **Bookman Stacks, Phase II (BZZ-1369 approved by the Planning Commission 11/3/03):** Construct a new eight-story residential building for 43 market-rate condominiums and an underground parking ramp for 144 vehicles (under construction) as a Planned Residential Development. The original application included a single-story, 10,000 sq. ft. commercial building to be built on 4<sup>th</sup> St. in the middle of the block, and 14 surface stalls at the corner of 4<sup>th</sup> St. and 5<sup>th</sup> Ave. N. Applicant replaced the building and surface parking with a plaza. The application included the following:
  - **Rezoning petition:** To change the zoning classification of 526 4<sup>th</sup> St N to the Industrial Living Overlay District (ILOD), in order to allow Phase II of a Planned Unit Development (approved by the City Council on 11/21/03).
  - **Conditional Use Permit:** To allow a Planned Residential Development for a new structure with 43 dwelling units and a 144-stall underground ramp.
  - **Major Site Plan Review:** To allow a Planned Residential Development with 43 dwelling units and a 144-stall underground ramp.
  - **Storm Water Management Plan:** Public Works has approved a stormwater management plan for the entire site.

**Concurrent Review, Bookman Stacks Restaurant:**

**A. Conditional Use Permit:** To amend the existing Planned Residential Development as follows:

1. Allow a 9,300 sq. ft. sit-down restaurant and bar with a commercial kitchen, and a new landscaped restaurant garden that will provide access to and outdoor seating for the restaurant where surface parking was originally approved.
2. Allow revisions to the already approved landscaped terrace that will provide green space for and pedestrian access to the completed first phase Bookmen Lofts and the second phase Bookmen Stacks buildings.
3. Amend the prior approval for the Bookman Lofts project to allow 45 units instead of the already approved 43 units. The change will not substantially affect the already approved elevations and site plan for the Bookman Stacks building, only the floor plans.
4. Seek the approval of the following exceptions to the Zoning Code:
  - a. In a Planned Unit Development (PUD), there may be more than one principal residential structure located on a lot, which is in contrast to the Code restriction of one primary structure per zoning lot outside of PUDs. This PUD will include two residential buildings and a separate restaurant building.

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- b. Approve an exception to the requirements in the Zoning Code to allow a sign for the Bookman Stacks building. The Code restricts the sign to 80 sq. ft. The proposal is for a projecting two-sided sign with an effective area of 92 sq. ft. on each side. (The sign will also need an encroachment permit.)
  - c. Approve an exception to the requirements in the Zoning Code to allow the elimination of the required parking for the restaurant. With 122 seats, the Code requires the provision of 23 stalls while none will be provided.
- B. Site Plan Review:** To amend the existing site plan review approval as follows:
1. Allow a 9,300 sq. ft. sit-down restaurant and bar with a commercial kitchen.
  2. Allow a new landscaped restaurant garden that will provide access to and outdoor seating for the restaurant where surface parking was originally approved.
  3. Allow revisions to the already approved landscaped terrace that will provide green space for and pedestrian access to the completed first phase Bookmen Lofts and the second phase Bookmen Stacks buildings.
- C. Variance for fence height:** The Code at 535.420 (1) limits fences to 3 ft. in height and allows an increase to 4 ft. if the fence is less than 60% opaque. The proposal includes an opaque wall that ranges from 6-10 ft. in height on 4<sup>th</sup> St. and 5<sup>th</sup> Ave. respectively.
- D. Preliminary Registered Land Survey**

**Applicable zoning code provisions:**

- **Amendment of Conditional Use Permit for the Planned Residential Unit:** Per Article II of Chapter 527, Planned Residential Units are conditional uses.
- **Site Plan Review:** Chapter 530 requires site plan review for developments over 20,000 sq. ft.
- **Variance for fence height:** Chapter 535.420 (1).
- **Preliminary Registered Land Survey:** Chapter 598.

**Review by the Preliminary Plan Review Committee of City Staff:** 7/14/04

**Neighborhood review:** The applicant sent a letter of notification on August 19 to the North Loop Warehouse District Association; however, Planning staff have yet to receive any comments from the group.

**Background:** The site occupies three quarters of the block bounded by 3<sup>rd</sup> St N, 5<sup>th</sup> Ave N, 4<sup>th</sup> St N, and 6<sup>th</sup> Ave N. The Caribou Building, which is not a part of the project, occupies the corner site at 3rd. and 5<sup>th</sup> Ave. N. The Bookmen Lofts building (Phase I of the project) occupies the north corner of the block, and the Phase II Bookman Stacks building and underground parking ramp is under construction on the remainder of the block.

The following chart summarizes the three phases of the project:

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		Phase II*		
	Phase I	Original	Approved	Phase III
CPC Approvals	6/2/2003	continued at 10/20/03	11/3/2003**	pending 9/27/03
Rezoning to ILOD			11/21/2003	
Residential Uses (market-rate condo units):				
Lofts (rehab)	57			
Stacks (new)		43	43	pending revision to 45
Commercial building (sq. ft.)		10,000	0	9,300
Restaurant seats		0		122
Parking requirement		20		37
Total parking provided	118	167	153	153
Surface (for visitors to residents)	9	9	9	9
Underground (reserved for residential)	0	144	144	144
Stalls per dwelling unit	1.7	1.5	1.5	1.5
Surface	98 (temporary)	14	0	0
*	Application included the third building on the site with commercial as the proposed use. (In the Phase II application the building is a restaurant). Prior to the CPC hearing, the applicant removed the building and replaced it with a landscaped courtyard.			
**	Approval was as a Planned Residential Development			

**Historic review:**

- **Historic districts:** The northern half of the site with the existing Bookmen Lofts building is within the nationally designated Minneapolis Warehouse Historic District. The rest of the site is adjacent to this district. The entire site is outside of the locally designated Minneapolis Warehouse Historic District.
- **Bookmen Lofts:** The Minneapolis Heritage Preservation Commission (HPC) staff reviewed the Bookmen Lofts project and concluded that, since the project involves no change to the existing building, no review of Phase I was needed.
- **Bookmen Stacks and restaurant buildings:** Since the block is outside of the locally designated Minneapolis Warehouse Historic District, review by the staff of the Minneapolis Heritage Preservation Commission (HPC) is not warranted.

**Summary of key issues:**

1. *Minneapolis Plan* and Zoning Code require the restaurant be located at the corner of 4<sup>th</sup> St and 5<sup>th</sup> Ave.
2. *Downtown East Master North Loop Master Plan*, consistent with the *Minneapolis Plan*, calls for increased density on the site with mixed uses involving commercial, office, and residential with 5-13 floors and street-front retail along 5<sup>th</sup> Ave. N.

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3. The Zoning Code limits fences to 3 ft. in height in front yards and allows an increase to 4 ft. if the fence is less than 60% opaque. The proposal for the restaurant garden area includes an opaque wall that ranges from 6-10 ft. in height on 4<sup>th</sup> St. and 5<sup>th</sup> Ave. respectively. This wall violates the Zoning Code, CEPTD principles, and *Minneapolis Plan* policies.
4. The Zoning Code requires the principle entrance front on a street. The restaurant entrance does not and access is via a gated entrance that fronts on the restaurant garden area.

**A. Findings as Required By the Minneapolis Zoning Code for the Conditional Use Permit for the Planned Residential Development**

The Minneapolis City Planning Department has analyzed the application and from the findings below concludes that the establishment, maintenance, or operation of the proposed conditional use:

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.**

**Restaurant use and garden:** The uses in the area include residential, industrial, warehousing, and commercial. The proposed restaurant use will not be detrimental to or endanger the public health, safety, comfort or general welfare and is compatible with surrounding uses and with the other uses in the area. City staff serving on the Preliminary Plan Review committee reviewed the project on 7/14/04 and made no substantive changes to the project.

**Expansion of Bookman Stacks from 43 to 45 units and revision to terrace:** The two additional units and the revisions to the terrace design will not be detrimental to or endanger the public health, safety, comfort or general welfare and they are compatible with surrounding uses and with the other uses in the area.

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 or orderly development and improvement of surrounding property for uses permitted in the district.**

**Restaurant use and garden:** The restaurant and garden will not adversely impact the redevelopment of the area. It will add a restaurant use in an appropriate area of the City.

**Expansion of Bookman Stacks from 43 to 45 units and revision to terrace:** The two additional units will not have any substantive effect upon other uses in the area. The terrace is a site amenity.

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

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The entire Bookman Project includes adequate utility service and drainage. Public Works has approved a stormwater management plan for the site. Over 81% of the net site is landscaped with a green roof, hardscape and greenscape. The project includes two underground retention tanks already installed to the east of the Lofts building, a 15,600 sq. ft. green roof, a 7,400 sq. ft. garden area, and 6,000 additional sq. ft. of landscaping. All of the stormwater falling on the site will either be treated by landscaping in the garden area and the green roof, or by the retention tanks.

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

**Restaurant use and garden:** The Zoning Code requires 37 stalls for the proposed 133-seat restaurant. Pursuant to Section 527.120, the Planning Commission may approve exceptions to the zoning regulations applicable to the zoning district in which the planned unit development is located upon finding that the planned unit development includes adequate site amenities to address any adverse effects of the exception. Chapter 527.180 specifies the following considerations in the case of parking and loading exceptions:

- Nature and uses of the population served.
- Actual parking and loading demand.
- Potential for shared parking and loading.
- Alternative forms of transportation.

The applicant stated the following: “The restaurant will serve primarily the residents of the Bookmen Lofts and Bookmen Stacks, the neighboring residential and commercial uses, and their visitors. To the extent patrons of the restaurant do drive to the site, on-site parking at the Bookmen Lofts and Stacks and the Ford Building will provide parking for visitors of residents and tenants of those buildings and existing on-street and commercial parking lots will provide sufficient parking during the peak evening and weekend hours for the restaurant.”

The Public Works and Planning staff have reviewed the project for traffic impacts and agree essentially with the applicant’s statement. Most of the users of the restaurant will likely live or work within walking distance of the restaurant. For those who drive to the site, most will do so in the evening after the normal business day. One block to the south are tens of thousands of parking stalls, many of which will be available during the dinner hour. As regards alternative forms of transportation, the site is only 1 ½ blocks away from excellent transit service along Washington Ave. and the extension of the Cedar Lake Bicycle path is planned for the railroad corridor one block south of the site.

**Expansion of Bookman Stacks from 43 to 45 units and revision to terrace:**

The Project includes 1.5 stalls per unit for the two residential buildings counting the two additional units for the Bookman Stacks building. Neither the additional

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units nor the changes to the landscaping of the terrace will affect transportation issues.

**5. The conditional use is consistent with the applicable policies of the comprehensive plan (underlining added).**

**a. The Minneapolis Comprehensive Plan (adopted by the City Council in 2000):**

**Policy 2.8: Minneapolis will develop the existing economic base by emphasizing business retention and expansion.**

**Implementation Steps (selected steps, emphasis added):**

- Promote business start-ups, retentions and attractions. Foster a healthy business environment by encouraging access to the resources and information necessary for successful operation.

**Policy 3.1: Minneapolis has adopted Downtown 2010 as a component of the City's Comprehensive Plan and envisions downtown Minneapolis in the year 2010 as one of the nation's finest urban centers; a place of prosperity, civilization and civic pride that will serve as the center for the metropolitan area, the state and surrounding region.**

**Implementation Steps (selected):**

- Develop residential areas into neighborhoods that offer a variety of housing types and affordability levels, as well as traditional urban neighborhood qualities and experiences.

**Policy 4.1: Minneapolis will continue to provide a wide range of goods and services for city residents, to promote employment opportunities, to encourage the use and adaptive reuse of existing commercial buildings, and to maintain and improve compatibility with surrounding areas.**

**Implementation Steps (selected):**

- Plan, implement and monitor projects and programs that encourage and support the city's neighborhood commercial areas.
- Encourage the economic vitality of the city's commercial districts while maintaining compatibility with the surrounding areas.

**Policy 4.9: Minneapolis will grow by increasing its supply of housing.**

**Implementation Steps (selected):**

- Support the development of new medium- and high-density housing in appropriate locations throughout the City.

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- Support the development of infill housing on vacant lots. Use partnerships and incentives to reduce city subsidy level and duration of vacancy.

**Policy 4.16: Minneapolis will encourage both a density and mix of land uses in TSAs that both support ridership for transit as well as benefit from its users.**

**Implementation Steps (selected):**

- Concentrate highest densities and mixed-use development nearest the transit station and/or along Commercial Corridors, Community Corridors and/or streets served by local bus transit.
- Support the development of new housing types in the TSA, including town homes, mansion apartments, garden apartments, granny flats/carriage houses, and multi-family residential buildings.

**Policy 7.5: Minneapolis will protect and sustain its water resources.**

**Implementation Steps (selected steps, emphasis added):**

- Encourage practices that result in either reduced overall amounts of impervious surfaces, or disconnect impervious surfaces and allow water to be slowed or detained in vegetated areas where it will do no harm to homes or property.

**Policy 9.1: Minneapolis will support the development of residential dwellings of appropriate form and density.**

**Implementation Steps (selected):**

- Promote the development of well designed moderate density residential dwellings adjacent to one or more of the following land use features: Growth Centers, Commercial Corridors, Community Corridors and Activity Centers.

**Policy 9.6: Minneapolis will work with private and other public sector partners to invest in new development that is attractive, functional and adds value to the physical environment.**

**Implementation Steps (selected steps, emphasis added):**

- Promote the use of progressive design guidelines and street-oriented building alignments to maximize compatibility with surrounding neighborhoods.
- Curb the inefficient use of land by regulating maximum and minimum height, setbacks, build-to lines and parking through master planning methods and zoning code regulations.

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- Provide setbacks, build-to lines and landscaping standards in commercial and industrial districts that are appropriate to the impacts on neighboring uses.

**Policy 9.10: Minneapolis will support efforts that recognize both the increased visibility and importance of corner properties and the role of gateways in enhancing traditional neighborhood character.**

**Implementation Steps (selected steps, emphasis added):**

- Require site plan review of new development or major additions to new structures (other than single family homes) on corner properties.

**b. Other Plans and Goals:**

**(1) “Minneapolis Warehouse Preservation Action Plan” (adopted by the City Council in 2000)**

The “Plan Area” for the Action Plan includes the subject site. The plan includes the following policies that apply to all properties within the Plan Area, including the subject project (Attachment 6):

- Encourage high quality design, architectural diversity, and the use of high quality materials that reinforce the historic character and integrity of the Warehouse Historic District and the St. Anthony Falls Historic District.
- Maximize pedestrian activity through interactive building design, and enhanced streetscape and parking lot design.

**(2) “Downtown East / North Loop Master Plan” (adopted by the City Council 10/03)**

This plan calls for mixed-use office, commercial, and residential in medium height buildings (5-13-story buildings). The plan stresses the importance of street-level retail at critical intersections and streets, and designates 5<sup>th</sup> Ave. N. as being an important street for retail from 4<sup>th</sup> St. to Washington Ave. Like the Zoning Code and the *Minneapolis Plan*, the Master Plan requires buildings to be located up to the street (pp. 17-18 and & 38). The plan includes a theoretical project (“Springboard Project” on p. 152) for the subject site to illustrate the plan’s central concepts for this area (Attachment 5). This concept shows the reuse of the existing buildings, and a new mixed-use, 8-story building that covers the southern half of the block with a commercial base and retail frontage along 5<sup>th</sup> Ave., and residential above. The concept recognizes the impediment to development posed by the adjacent

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freeway access ramp as well as the dramatic views of downtown that are available.

**c. Consistency of the restaurant building and garden with the City's plans and policies:**

1. The *Minneapolis Plan* designates downtown as the City's premier Growth Center. Policy 3.1 in the plan addresses the residential neighborhoods that fringe the downtown including the North Loop area within which the site is located. Policies 2.8, 4.1, and 9.6 in the *Minneapolis Plan* encourage business startups and commercial success. The "Downtown East/North Loop Master Plan" provides geographic specificity for the North Loop neighborhood and designates 5<sup>th</sup> Ave. N. as an important street for street-front retail uses. The site is only 1 ½ blocks away from excellent transit service along Washington Ave., which is important for commercial success and is consistent with the City's "Transit First" policies (Policies 8.5 and 8.6). As such, the restaurant use is consistent with the above-cited applicable policies, however, its location 85 feet back from the 5<sup>th</sup> Ave. street front is inconsistent.
2. The project includes the redevelopment of what was a surface parking lot. The location of the resident parking in an underground ramp is consistent with the *Minneapolis Plan* policies and the Zoning Code.
3. Adding the extensive landscaping and restaurant plaza will improve stormwater management on the site consistent with Policy 7.7 and the City's Stormwater Management Ordinance. The large green roof will be an important contribution to the City.
4. The third phase of the project replaced a surface parking lot with an open plaza for restaurant users. This is an improvement considering that the site is located within the Downtown Parking Overlay District which has as its purpose to "protect the unique character of the downtown area" and to restrict the "establishment or expansion of surface parking lots" (Chapter 551.730). As stated herein, Planning and Public Works staff believe existing parking in the area will be adequate to meet demand. This change is also consistent with Policy 7.5 which requires the minimization of impervious surfaces.
5. The "Downtown East / North Loop Master Plan" calls for mixed-use office, commercial, and residential in medium height buildings (5-13-story buildings) on the entire southern half of the site with retail along 5<sup>th</sup> Ave. The project gets this half right. It includes an 8-story residential building on the southwest quarter of the site but

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only a single-story restaurant that is set back 85 feet from the 5<sup>th</sup> Ave. property line. *Minneapolis Plan* Policy 4.9 also encourage medium and high-density housing on vacant lots and at “appropriate locations,” and this is just such an appropriate location being within the Downtown Growth Area and being specifically designated as such by the “Downtown East/North Loop Master Plan.” The maximum floor area ratio (FAR) for the I2 zoning district is 2.7 (which also can be increased by permit). In contrast, the restaurant portion of the site (21,510 sq. ft.) has an FAR of only 0.4, which equals one-sixth of the allowable FAR. Therefore, the project under-develops the site and squanders valuable land and development opportunities.

6. *Minneapolis Plan* Policy 4.16 encourages highest densities, mixed-use development, and multi-family residential uses near transit stations. Although there is no transit station nearby currently, the site is two blocks from the site of the proposed Union Station (4<sup>th</sup> Ave. N. and 5<sup>th</sup> St. N.) that will link LRT, commuter rail, and buses. A single-story use sited on a quarter block and set back from the commercial street is inconsistent with this policy.

Policy 9.12 calls for design that follows traditional urban form. The restaurant is appropriately up to the street on 4<sup>th</sup> St. but is set back 85 feet from the Fifth Ave. property line, which is inconsistent with Policies 9.6 and 9.15 and with the Zoning Code (Section 530.100). Policy 9.10 emphasizes the importance of new developments on corners and at gateways.

The applicant has argued that the presence of the adjacent I-94 viaduct, a parking garage across the street, and a grade change make an up-to-the-street building less desirable than as proposed. However, Planning staff believe that none of these factors are significant impediments to complying with the City’s policies and Zoning Code. As regards grading, the site is flat along the 4<sup>th</sup> St. side and it drops four feet along 5<sup>th</sup> Ave. to the parking garage entrance. This could accommodate building entrances anywhere on 4<sup>th</sup> St. and also a corner entrance.

The requirement to bring the building up to the street is an anchoring principal of urban design in the *Minneapolis Plan*, the “Downtown East/North Loop Master Plan,” and the Zoning Code. Buildings that frame the streetscape and help define the street-wall are prevalent in the City, especially in historic areas and in the area of the site.

7. The policies in the “Minneapolis Warehouse Preservation Action Plan” and the “Downtown East/North Loop Master Plan” are

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consistent with the staff position described above. These plans stress the importance of street-level retail, vibrant pedestrian streets, and having buildings located up to the street. The siting of the restaurant is inconsistent with these plans.

8. The applicant will participate in the applicable energy efficiency programs from the utilities consistent with the City's Energy Plan and the "Minneapolis-Saint Paul Urban CO<sub>2</sub> Reduction Plan."
9. The project is within the jurisdiction of the Middle Mississippi River Watershed Management Organization. As stated above, Public Works has approved a stormwater management plan for the site. Over 81% of the net site is landscaped with a green roof, hardscape and greenscape, and all stormwater will be treated prior to release to the City's system.

**d. Consistency of the additional two units and the revised terrace design with the City's plans and policies:** Adding residential units to the existing residential building is consistent with the relevant policies of the City as are the revisions to the terrace design.

- 6. And, the conditional use shall, in all other respects conform to the applicable regulations of the district in which it is located upon approval of this conditional use permit, the rezoning, and site plan review.**

The following section describes three exceptions to the Zoning Code that will need to be approved by the Planning Commission.

**Exceptions to Zoning Ordinance Standards:** Chapter 527, Planned Unit Development authorizes the City Planning Commission to approve exceptions to the zoning regulations that are applicable to the zoning district in which the development is located. This may be done only upon finding that the Planned Unit Development includes adequate site amenities to address any adverse effects of the exception.

- **Third structure on the zoning lot:** In a Planned Unit Development, there may be more than one principal residential structure located on a lot. Prior approvals have allowed the development of two residential buildings. This phase includes the third building, the subject restaurant. The Zoning Code at 527.190 defines the purpose of a Planned Residential Development ". . . to encourage a higher quality residential development that provides a greater variety of housing types and costs and additional site amenities than otherwise might occur under the strict application of the zoning regulations. The regulations are intended to encourage innovation in housing design in order to meet the housing needs of the city's diverse population, to promote the efficient use of land, and to protect the natural environment" (emphasis added). Due to the above-described inconsistencies of the proposed restaurant building with the City's adopted policies and the Zoning Code, Planning staff

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conclude that the third phase does not include sufficient on-site amenities to warrant this exception to the Zoning Code per Chapter 527.130.

- **Sign for the Bookman Stacks building:** The Code restricts the sign to 80 sq. ft. The proposal is for a projecting two-sided sign with an effective area of 92 sq. ft. on each side. (The sign will also need an encroachment permit.) Planning staff have reviewed the proposed sign and conclude that it's open letter design, vertical placement, minimal projection, and appropriate height and scale establish a reasonable bases for the Planning Commission to approve this exception to the Zoning Code per 537.170.
- **Elimination of the required parking for the restaurant:** With 122 seats (refer to the floor plans in Attachment 3), the Code requires the provision of 23 stalls while none will be provided. The above analysis for Finding #4 for the conditional use permit establishes reasonable bases for the Planning Commission to approve this exception to the Zoning Code per 537.180.

**In addition to the conditional use permit standards contained in Chapter 525, Administration and Enforcement, before approval of a planned unit development the city planning commission also shall find:**

- (1) **That the planned unit development complies with all of the requirements and the intent and purpose of this chapter. In making such determination, the following shall be given primary consideration:**
  - a. **The character of the uses in the proposed planned unit development, including in the case of a planned residential development the variety of housing types and their relationship to other site elements and to surrounding development.**

Refer to the response to Findings # 1-5 in the above analysis for the conditional use permit and the prior response regarding the exception to the Zoning Code to allow a third building on the site.
  - b. **The traffic generation characteristics of the proposed planned unit development in relation to street capacity, provision of vehicle access, parking and loading areas, pedestrian access and availability of transit alternatives.**

Refer to the response to Findings # 4 in the above analysis for the conditional use permit.
  - c. **The site amenities of the proposed planned unit development, including the location and functions of open space and the preservation or restoration of the natural environment or historic features.**

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There are no remaining natural features on the site and this third phase does not include any historic preservation. Although the proposed open space for the restaurant is of high quality, it is reserved for the users of the restaurant, and the proposed opaque wall will limit the public appreciation of it to the portions of the trees that extend above the wall. The restaurant open space will also separate the restaurant from the 5<sup>th</sup> Ave. street front.

- d. The appearance and compatibility of individual buildings and parking areas in the proposed planned unit development to other site elements and to surrounding development, including but not limited to building scale and massing, microclimate effects of the development, and protection of views and corridors.**

The response to Findings # 1-5 in the above analysis for the conditional use permit address these issues.

- e. The relation of the proposed planned unit development to existing and proposed public facilities, including but not limited to provision for stormwater runoff and storage, and temporary and permanent erosion control.**

The response to Findings # 1-5 in the above analysis for the conditional use permit address these issues. As stated above, the project is within the jurisdiction of the Middle Mississippi River Watershed Management Organization. The project has an approved Stormwater Management Plan.

- (2) That the planned unit development complies with all of the applicable requirements contained in Chapter 598, Land Subdivision Regulations.**

The analysis for the preliminary Registered Land Survey precedes the Recommendations section of this report.

**B. Fence Variance**

**Findings as Required by the Minneapolis Zoning Code:**

The Board of Adjustment and Planning Commission shall not vary the regulations of the zoning code, unless it makes each of the following findings based upon the evidence presented to it in each specific case:

- 1. The property cannot be put to a reasonable use under the conditions allowed by the official controls and strict adherence to the regulations of this zoning ordinance would cause undue hardship.**

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The Zoning Code limits fences to 3 ft. in height in front yards and allows an increase to 4 ft. if the fence is less than 60% opaque. The project has front yards on both 4<sup>th</sup> St. and 5<sup>th</sup> Ave. The proposal for the restaurant garden area includes an opaque wall that ranges from 6-10 ft. in height on 4<sup>th</sup> St. and 5<sup>th</sup> Ave. respectively. The applicant's statement follows:

“The restaurant garden is surrounded by a solid fence, constructed of the same metal panels that face the Bookmen Stacks building. The solid walls create a sheltered urban garden inside, mitigate the harsh effects of the elevated highway to the south of the site, the truck traffic on Fifth Avenue North on the east, and the commercial parking lot further to the east. The solid fence also evokes the industrial history of the area. The solid fence is inconsistent with Site Plan Review standards and, although the fence is six feet tall measured from the surface level of the garden inside the fence, as the sidewalk slopes down from Fourth Street North to Third Street North, the height exceeds 6 feet. Exceptions to these two standards are appropriate here because of the need to create a quiet oasis inside the walls. Adverse effects of the fence are mitigated by (1) the plantings inside the walls, which will over-hang the fences, and (2) the parking and loading adjacent to and across from the fence, which will provide lighting and activity for surveillance and security.

“The fact that a six foot high fence is a reasonable use is evidenced by the fact that the code permits six foot high fences. The fence height is reasonable in this instance because of the need for screening from the elevated highway to the south of the site and the street-level views of a parking lot to the east. The fence exceeds 6 feet on the sidewalk side of the fence because the sidewalk slopes down from Fourth Street. Strict adherence to the zoning ordinance would prevent the applicant from installing a fence that maintains a 6 foot screen inside the fence all the way around a level patio.”

This is new construction. There are no substantial site constraints to prevent the applicant from creating a screen using a decorative fence (preferably wrought iron) and landscaping that is less than 60% opaque and not higher than four feet. Such a screen, in addition to the other landscaping in the garden area, can accomplish the stated purpose of defining private space while still providing “eyes on the street” and not creating a “gated community” effect that shuts out the rest of the neighborhood. A retaining wall along 5<sup>th</sup> Ave. can accommodate the change in the grade of the sidewalk. To state the obvious, the problem with the wall disappears if the restaurant were sited up to the property line on 5<sup>th</sup> Ave. consistent with City policy and regulations.

- 2. The circumstances are unique to the parcel of land for which the variance is sought and have not been created by any persons presently having an interest in the property. Economic considerations alone shall not constitute an undue hardship if reasonable use for the property exists under the terms of the ordinance.**

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The applicant's statement follows: "The conditions on which this variance is based are (1) the elevated highway to the south of the site, (2) the truck traffic and parking lot to the east of the site and (3) the sloping sidewalk. The hardship is attributable to the specific spatial and site planning requirements of the project and the spatial limitations of the site. This combination of factors is unique to the site."

The variance would be for the benefit of the applicant only and to the detriment of the surrounding neighborhood due to the "gated community" effect described above. The circumstances are created by the applicant with the siting of the building contrary to the applicable City policies and regulations.

- 3. The granting of the variance will be in keeping with the spirit and intent of the ordinance and will not alter the essential character of the locality or be injurious to the use or enjoyment of other property in the vicinity.**

The applicant's statement follows: "The granting of the variance is in keeping with the spirit and intent of the Industrial Living Overlay District, which was created to allow and encourage redevelopment of underutilized industrial property for residential use. The variance will allow the applicant to create a green retreat in the middle of a harsh industrial environment, which will make the area more livable for the residents of the Bookmen Lofts and Stacks and other residential projects in the area."

Refer to the responses to the prior findings.

- 4. The proposed variance will not substantially increase the congestion of the public streets, or increase the danger of fire, or be detrimental to the public welfare or endanger the public safety.**

The applicant's statement follows: "The variance from fence height requirements do not implicate congestion of the public streets, the danger of fire, public welfare or the public safety."

The creation of a 6-10-ft. wall around the restaurant violates Crime Prevention Through Environmental Design (CPTED) principles. The Police Department recommends wrought iron fencing with a maximum height of 4 ft. to avoid a "fortress feeling" and to allow "eyes on the street" to increase public safety. Planning staff agree.

**C. Findings as Required By the Minneapolis Zoning Code for Site Plan Review**

- a. The site plan conforms to all applicable standards of Chapter 530, Site Plan Review. (See Section A below for evaluation.)

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- b. The site plan conforms to all applicable regulations of the zoning ordinance and is consistent with applicable policies of the comprehensive plan (See Section B below for evaluation).
- c. The site plan is consistent with applicable development plans or development objectives adopted by the City Council (See Section C for evaluation).

**Section A: Conformance with Chapter 530 of Zoning Code, Site Plan Review:**

**BUILDING PLACEMENT AND FAÇADE:**

- **Placement of the building shall reinforce the street wall, maximize natural surveillance and visibility, and facilitate pedestrian access and circulation.**
- **First floor of the building shall be located not more than eight (8) feet from the front lot line (except in C3S District or where a greater yard is required by the zoning ordinance). If located on corner lot, the building wall abutting each street shall be subject to this requirement.**
- **The area between the building and the lot line shall include amenities.**
- **The building shall be oriented so that at least one (1) principal entrance faces the public street.**
- **Except in the C3S District, on-site accessory parking facilities shall be located to the rear or interior of the site, within the principal building served, or entirely below grade.**
- **For new construction, the building façade shall provide architectural detail and shall contain windows at the ground level or first floor.**
- **In larger buildings, architectural elements shall be emphasized.**
- **The exterior materials and appearance of the rear and side walls of any building shall be similar to and compatible with the front of the building.**
- **The use of plain face concrete block as an exterior material shall be prohibited where visible from a public street or a residence or office residence district.**
- **Entrances and windows:**
- **Residential uses shall be subject to section 530.110 (b) (1).**
- **Nonresidential uses shall be subject to section 530.110 (b) (2).**
- **Parking Garages: The exterior design shall ensure that sloped floors do not dominate the appearance of the façade and that vehicles are screened from view. At least thirty (30) percent of the first floor façade that faces a public street or sidewalk shall be occupied by commercial uses, or shall be designed with architectural detail or windows, including display windows, that create visual interest.**

**Planning Division Evaluation of Building Placement and Façade Requirements:**

- Inconsistent with the Code, the restaurant will be separated from 5<sup>th</sup> Ave. N. by an 85-ft. wide garden area to be enclosed within a 6-ft.-high opaque wall. The distance and the wall will eliminate the possibility of “eyes on the street.”
- Although the area between the lot line on 5<sup>th</sup> Ave. includes the landscaped garden amenity, the opaque wall that would sit on top of the retaining wall will create a near total visual barrier that would grow from 6 ft. at the corner of 4<sup>th</sup> St. and 5<sup>th</sup> Ave. to 10 ft. at the midpoint of the 5<sup>th</sup> Ave. side.
- Inconsistent with the Code, the principal entrance for the restaurant does not front on the street and access to it will be via a gated wall and the garden area.

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- The primary exterior material consists of metal wall panels, also used on the residential building. Building materials are compatible for all sides of the building.
- Glass:
  - North elevation: zero glass. The Code does not require glass on this facade but the burgeoning redevelopment of the North Loop neighborhood will ensure the existing Caribou Building site to the north of the project site will likely be redeveloped. As proposed, the restaurant will present a blank wall to any new development on the Caribou site.
  - West elevation:  $320/2,574 = 12\%$ . Again, the Code does not require glass on this facade but, the restaurant as proposed would present a façade to the Bookman Stacks building and the terrace users that is predominantly blank.
- The building conforms to the walkways and sidewalk requirements. Lighting is provided in these areas.
- The proposed design of the terrace and garden minimizes impervious surfaces. As stated above, Public Works has approved a stormwater management plan for the site that includes the treatment prior to release of 100% of the stormwater on the site. All parking is contained below grade and therefore does not add to the impervious surface area.
- Snow will be removed from the site.

**Access and Circulation:**

- **Clear and well-lighted walkways of at least four (4) feet in width shall connect building entrances to the adjacent public sidewalk and to any parking facilities located on the site.**
- **Transit shelters shall be well lighted, weather protected and shall be placed in locations that promote security.**
- **Vehicular access and circulation shall be designed to minimize conflicts with pedestrian traffic and surrounding residential uses.**
- **Traffic shall be directed to minimize impact upon residential properties and shall be subject to section 530.140 (b).**
- **Areas for on-site snow storage are provided.**
- **Site plans shall minimize the use of impervious surfaces.**

**Planning Division Evaluation of Access and Circulation:**

- All vehicular access and circulation issues were addressed in the approvals of the prior two phases of the development.
- Pedestrian access to the restaurant is via a gated walkway through a well-lit garden area. Pedestrian access to the two residential buildings is via the terrace plaza.
- The plan minimizes the impervious surfaces and includes a green roof plaza on top of the parking garage and a garden area.
- All areas of the site not used for buildings or parking are landscaped.

**Landscaping and Screening:**

- **The composition and location of landscaped areas shall complement the scale of the development and its surroundings.**

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- **Not less than twenty (20) percent of the site not occupied by buildings shall be landscaped as specified in section 530.150 (a).**
- **Where a landscaped yard is required, such requirement shall be landscaped as specified in section 530.150 (b).**
- **Required screening shall be six (6) feet in height, unless otherwise specified, except in required front yards where such screening shall be three (3) feet in height.**
- **Required screening shall be at least ninety-five (95) percent opaque throughout the year. Screening shall be satisfied by one or a combination of the following:**
  - **A decorative fence.**
  - **A masonry wall.**
  - **A hedge.**
- **Parking and loading facilities located along a public street, public sidewalk or public pathway shall comply with section 530.160 (b).**
- **Parking and loading facilities abutting a residence or office residence district or abutting a permitted or conditional residential use shall comply with section 530.160 (c).**
- **The corners of parking lots shall be landscaped as specified for a required landscaped yard. Such spaces may include architectural features such as benches, kiosks, or bicycle parking.**
- **Parking lots containing more than two hundred (200) parking spaces: an additional landscaped area not less than one hundred-fifty (150) square feet shall be provided for each twenty-five (25) parking spaces or fraction thereof, and shall be landscaped as specified for a required landscaped yard.**
- **All parking lots and driveways shall be defined by a six (6) inch by six (6) inch continuous concrete curb positioned two (2) feet from the boundary of the parking lot, except where the parking lot perimeter is designed to provide on-site retention and filtration of stormwater. In such case the use of wheel stops or discontinuous curbing is permissible. The two (2) feet between the face of the curb and any parking lot boundary shall not be landscaped with plant material, but instead shall be covered with mulch or rock, or be paved.**
- **All other areas not governed by sections 530.150, 530.160 and 530.170 and not occupied by buildings, parking and loading facilities or driveways, shall be covered with turf grass, native grasses or other perennial flowering plants, vines, mulch, shrubs or trees.**
- **Installation and maintenance of all landscape materials shall comply with the standards outlined in section 530.220.**
- **The city planning commission may approve the substitution or reduction of landscaped plant materials, landscaped area or other landscaping or screening standards, subject to section 530.60, as provided in section 530.230.**

**Planning Division Evaluation of Landscaping and Screening:**

- **Over 81% of the net site is landscaped with either greenscape or hardscape, or a green roof.**
- **All areas not covered by buildings, driveways or parking are landscaped.**

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**Additional Standards:**

- **Lighting shall comply with the requirements of Chapter 535 and Chapter 541. A lighting diagram may be required.**
- **Parking and loading facilities and all other areas upon which vehicles may be located shall be screened to avoid headlights shining onto residential properties.**
- **Site plans shall minimize the blocking of views of important elements of the city.**
- **Buildings shall be located and arranged to minimize shadowing on public spaces and adjacent properties.**
- **Buildings shall be located and arranged to minimize the generation of wind currents at ground level.**
- **Site plans shall include crime prevention design elements as specified in section 530.260: The Police Division has reviewed the plans.**
- **Site plans shall include the rehabilitation and integration of locally designated historic structures or structures that have been determined to be eligible to be locally designated. Where rehabilitation is not feasible, the development shall include the reuse of significant features of historic buildings.**

**Planning Division Evaluation of the Additional Standards:**

- The proposed lighting plan is for metal halide bulbs enclosed in fixtures that provide full cut-offs.
- The underground parking eliminates most concerns regarding the screening of headlights.
- The view to the southeast towards the downtown skyline is particularly dramatic. The restaurant as proposed would have minimal impact on the views from the two residential buildings on the site and from other buildings in the area.
- There are no issues regarding the casting of significant shadows and pedestrian-level winds.
- Since the block is outside of the locally designated Minneapolis Warehouse Historic District, review by the staff of the Minneapolis Heritage Preservation Commission (HPC) is not warranted.
- The creation of a 6-10-ft. wall around the restaurant violates Crime Prevention Through Environmental Design (CPTED) principles. The Police Department recommends wrought iron fencing with a maximum height of 4 ft. to avoid a “fortress feeling” and to allow “eyes on the street” to increase public safety. Planning staff agree.

**Section B: Conformance with All Applicable Zoning Code Provisions and Consistency with the Comprehensive Plan**

**ZONING CODE:**

**Hours of Operation:** Hours businesses can be open to the public in the I2 District are 6:00 a.m. to 10:00 p.m. Sunday through Thursday and 6:00 a.m. through 11:00 p.m. Friday and Saturday.

The applicant has been informed of the allowable hours.

**Dumpster screening:** Section 535.80. Refuse storage containers shall be enclosed on all four (4) sides by screening compatible with the principal structure not less than two (2) feet higher than

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the refuse container or shall be otherwise effectively screened from the street, adjacent residential uses located in a residence or office residence district and adjacent permitted or conditional residential uses.

Trash will be enclosed inside the restaurant.

**Signage:** All new signage is required to meet the requirements of the Zoning Code and permits are required from the Zoning Office.

The applicant has not provided a signage plan, but is aware that all new signage is required to meet the standards of the code.

***MINNEAPOLIS PLAN:***

Refer to the above response to Finding # 4 for the Conditional Use Permit.

**Section C: Conformance with Applicable Development Plans or Objectives Adopted by the City Council**

Refer to the above response to Finding # 4 for the Conditional Use Permit.

**Alternative Compliance: The Planning Commission may approve alternatives to any major site plan review requirement upon finding any of the following:**

- **The alternative meets the intent of the site plan chapter and the site plan includes amenities or improvements that address any adverse effects of the alternative. Site amenities may include but are not limited to additional open space, additional landscaping and screening, transit facilities, bicycle facilities, preservation of natural resources, restoration of previously damaged natural environment, rehabilitation of existing structures that have been locally designated or have been determined to be eligible to be locally designated as historic structures, and design which is similar in form, scale and materials to existing structures on the site and to surrounding development.**
- **Strict adherence to the requirements is impractical because of site location or conditions and the proposed alternative meets the intent of this chapter.**
- **The proposed alternative is consistent with applicable development plans or development objectives adopted by the city council and meets the intent of this chapter.**

**Planning Division Analysis Regarding Alternative Compliance:**

- The site is not in compliance with the Code in the following ways:
  1. *Minneapolis Plan* and Zoning Code require the restaurant be located at the corner of 4<sup>th</sup> St and 5<sup>th</sup> Ave.
  2. *Downtown East Master North Loop Master Plan*, consistent with the *Minneapolis Plan*, calls for increased density on the site with mixed uses involving commercial, office, and residential with 5-13 floors and street-front retail along 5<sup>th</sup> Ave. N.

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3. The Zoning Code limits fences to 3 ft. in height in front yards and allows an increase to 4 ft. if the fence is less than 60% opaque. The proposal for the restaurant garden area includes an opaque wall that ranges from 6-10 ft. in height on 4<sup>th</sup> St. and 5<sup>th</sup> Ave. respectively. This wall violates the Zoning Code, Crime Prevention Through Environmental Design (CPTED) principles, and *Minneapolis Plan* policies.
  4. The Zoning Code requires the principle entrance front on a street. The restaurant entrance does not and access is via a gated entrance that fronts on the restaurant garden area.
- Site amenities include the following:
    - Innovative stormwater management plan including a green roof and retention tanks.
    - The landscaping of 81% of the net site.
    - Underground parking.
    - Garden area for the users of the restaurant.
    - Rehabilitation of a building with possible historic significance.
  - Planning staff agree that the above site amenities cannot adequately mitigate the fundamental problems associated with the siting the building 85 feet from the 5<sup>th</sup> Ave. property line. The applicant stated that the proposed placement of the restaurant avoided poor soil conditions along the east (5<sup>th</sup> Ave.) edge of the site and that the project saved money by doing so. With the restaurant building proposed to be built on top of the eastern edge of the underground parking garage, both structures will be able to share some of the footings and therefore save money. However, Planning staff believe the incremental costs involved with complying with the building placement provisions of the Zoning Code and with the associated policies of the *Minneapolis Plan* and the “Downtown East / North Loop Master Plan” would not constitute a significant percentage of project overall costs, especially over the long run. As such, Planning staff conclude that approval of the project as proposed by means of alternative compliance is not consistent with the applicable development plans or development objectives adopted by the City, and such approval does not meet the intent of this chapter.

**D. Preliminary Registered Land Survey**

**Findings as Required by the Minneapolis Zoning Code:**

1. **Subdivision is in conformance with the land subdivision regulations including the requirements of section 598.80 relating to protection of natural resources, applicable regulations of the Zoning Code, and policies of the Comprehensive Plan.**

There are no surviving natural features on the site. The preliminary Registered Land Survey (RLS) conforms to all applicable land subdivision regulations with the following exception: The RLS is configured to allow the restaurant building to be sited 85 ft. from the 5<sup>th</sup> Ave. property line. Since this building placement is inconsistent with the applicable policies of the *Minneapolis Plan*, the “Downtown East / North Loop Master Plan,” and the regulations of the Zoning Code, the RLS that would help implement the

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project is also not in conformance with the applicable City plans and regulations (refer to the above analysis for additional details).

- 2. Subdivision will not be injurious to the use and enjoyment of other property in the immediate vicinity, nor be detrimental to present and potential surrounding land uses, nor add substantially to congestion in the public streets.**

Although the RLS itself will not be injurious to the use and enjoyment of other property, it enables a project that may have deleterious effects.

- 3. All land intended for building sites can be used safely without endangering the residents or uses of the subdivision and the surrounding area by peril from floods, erosion, high water table, severe soil conditions, improper drainage, steep slopes, utility easements, rock formations, or other hazard.**

The RLS poses no hazards as regards floods, erosion, high water table, severe soil conditions, improper drainage, steep slopes, utility easements, rock formations, or other hazard.

- 4. The lot arrangement is such that there will be no foreseeable difficulties, for reasons of topography or other conditions, in securing building permits and in providing driveway access to buildings on such lots from an approved street. Each lot created through subdivision is suitable in its natural state for the proposed use with minimal alteration.**

The RLS creates lots that would allow the issuance of building permits, curb cuts, and any needed encroachment permits.

- 5. The subdivision makes adequate provision for storm or surface water runoff, and temporary and permanent erosion control. The storm water drainage system shall be separate and independent of any sanitary sewer system. All plans shall be designed in accordance with rules, regulations and standards of the city engineer. Facilities intended to be dedicated to the City shall be located in perpetual, unobstructed easements of a width determined to be adequate and necessary by the city engineer. To the extent practicable, the amount of stormwater runoff from the site after development does not exceed the amount occurring prior to development.**

As stated above, the City Engineer has approved the stormwater management plan for the entire project. All of the stormwater on the site will be treated prior to release to the City system.

## **RECOMMENDATIONS**

- A. Conditional Use Permit:** The Community Planning and Economic Development—Planning Division recommends that the City Planning Commission adopt the above findings and **deny** the application to amend the conditional use permit for the Planned

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Residential Development for the Bookman Project located at 519-521 3<sup>rd</sup> Street North and 526 4<sup>th</sup> Street North:

- B. Fence Variance:** The Community Planning and Economic Development—Planning Division recommends that the City Planning Commission adopt the above findings and **deny** the application for a fence variance for the Planned Residential Development for the Bookman Project located at 519-521 3<sup>rd</sup> Street North and 526 4<sup>th</sup> Street North.
- C. Site Plan Review:** The Community Planning and Economic Development—Planning Division recommends that the City Planning Commission adopt the above findings and **deny** the application to amend the site plan review permit for the Planned Residential Development for the Bookman Project located at 519-521 3<sup>rd</sup> Street North and 526 4<sup>th</sup> Street North.
- D. Preliminary Registered Land Survey:** The Community Planning and Economic Development—Planning Division recommends that the City Planning Commission adopt the above findings and **deny** the application for preliminary Registered Land Survey for the Planned Residential Development for the Bookman Project located at 519-521 3<sup>rd</sup> Street North and 526 4<sup>th</sup> Street North.

**ATTACHMENTS**

- 1) Site and zoning map.
- 2) Aerial photos
- 3) Site plan, floor plans, elevations, landscaping, and lighting plans
- 4) Information from the applicant
- 5) Excerpts from the “Warehouse Preservation Action Plan”
- 6) Excerpts from the “Downtown East / North Loop Master Plan”
- 7) Site plans from all three phases
- 8) Photos of the model, site, and surrounding area
- 9) Preliminary Registered Land Survey

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**Excerpt from the  
CITY PLANNING COMMISSION  
MINUTES**

**Minneapolis Community Planning & Economic Development (CPED) Planning Division**

350 South Fifth Street, Room 210

Minneapolis, MN 55415-1385

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MEMORANDUM

DATE: October 19, 2004

TO: Blake Graham, Manager, Community Planning & Economic Development - Planning Division; Phil Schliesman, Licenses

FROM: Neil Anderson, Supervisor, Community Planning & Economic Development - Planning Division, Development Services

CC: Barbara Sporlein, Director, Community Planning & Economic Development Planning Division

SUBJECT: Planning Commission decisions of September 27, 2004

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The following actions were taken by the Planning Commission on September 27, 2004. 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:

**ATTENDANCE**

President Martin, Vice President Hohmann, G. Johnson, Krause, Krueger, Kummer, LaShomb, and Schiff  
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**INTRODUCTION TO PUBLIC HEARING**

**PUBLIC HEARING**

REPORT  
of the

**CITY PLANNING COMMISSION  
of the City of Minneapolis**

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The attached report summarizes the actions taken at the City Planning Commission meeting held on September 27, 2004. The findings and recommendations are respectfully submitted for the consideration of your Committee.

The Minneapolis City Planning Commission, at its meeting on September 27, 2004, took action to **submit the attached comment** on the following items:

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From the Department of Community Planning & Economic Development**

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**13. Bookmen Stacks Phase III (BZZ-1941, Ward 5), 526 4th St. N., and 519 – 521 3rd St. N (Michael Orange)**

**A. Conditional Use Permit (Planned Unit Development):** Application by Steve Frenz, President of Rex II, LLC, to revise the existing planned unit development (PUD) approval with Phase III of the Bookmen Stacks project at 526 4th St. N., and 519 – 521 3rd St. N (on the site of the Bookmen Building).

**Recommended Motion:** The Community Planning and Economic Development—Planning Division recommends that the City Planning Commission adopt the findings and **deny** the application to amend the conditional use permit for the Planned Residential Development for the Bookman Project located at 519-521 3<sup>rd</sup> Street North and 526 4<sup>th</sup> Street North:

**B. Variance:** Application by Steve Frenz, President of Rex II, LLC, for a variance for fence height for the property at 526 4th St. N., and 519 – 521 3rd St. N.

**Recommended Motion:** The Community Planning and Economic Development—Planning Division recommends that the City Planning Commission adopt the findings and **deny** the application for a fence variance for the Planned Residential Development for the Bookman Project located at 519-521 3<sup>rd</sup> Street North and 526 4<sup>th</sup> Street North.

**C. Site Plan Review:** Application by Steve Frenz, President of Rex II, LLC, for site plan review for the property at 526 4th St. N., and 519 – 521 3rd St. N.

**Recommended Motion:** The Community Planning and Economic Development—Planning Division recommends that the City Planning Commission adopt the findings and **deny** the application to amend the site plan review permit for the Planned Residential Development for the Bookman Project located at 519-521 3<sup>rd</sup> Street North and 526 4<sup>th</sup> Street North.

**D. Preliminary Registered Land Survey:** Application by Steve Frenz, President of Rex II, LLC, for a preliminary registered land survey for the property at 526 4th St. N., and 519 – 521 3rd St. N.

**Recommended Motion:** The Community Planning and Economic Development—Planning Division recommends that the City Planning Commission adopt the findings and **deny** the application for preliminary Registered Land Survey for the Planned Residential Development for the Bookman Project located at 519-521 3<sup>rd</sup> Street North and 526 4<sup>th</sup> Street North.

Staff Michael Orange presented the staff report.

President Martin: Definitely have the feeling you don't want this to happen here. Thanks Michael. Ok, any questions? No? Alright.

President Martin opened the public hearing.

Jim Dayton (575 N. Ferndale Rd.): My firm, James Dayton Design, is the lead design architect for the Bookmen campus, all three phases of the development. I have some materials to hand out. I appreciate the opportunity to address for you this project and the concerns that Michael outlined. I think the beginning of this conversation as to be the premise that we, as architects, deal with building code and zoning on a daily basis. That is what we do as professionals. Also, something like the Master Plan and

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the North Loop Master Plan, those are exciting elements for us to work with and we are pleased that something like that exists for the City of Minneapolis. The issue before us is not that we are trying to get around those issues or that we don't work within them, because of course we do, but as architects and professional designers we also have to take into account very specific site considerations, very technical concerns with the specific sites we are working with as well as the economic constraints and market forces that our clients bring to our projects as well. We present this project to you as a way of indicating how we are working within the zoning code and addressing the issues that are contained within that document and showing you the ways in which I think we have evolved this design over time and developed it. The overall three part that Michael referenced, the original Bookmen building is now occupied. There are 57 individual condominiums. The second phase, which is called Bookmen Stacks, which is currently under construction – this is the restaurant proponent that we are proposing as a one story commercial element as the third part of the project. The history of this development is that we were given this original configuration, the existing five story Bookmen warehouse and a surface parking lot as a part of the purchase of the site by the developer. In the course of the development of the first phase of the project, it became clear to us that we were going to need to add some parking. We developed an idea that going one level underground parking on this back lot and connecting the tunnel to the basement of Bookmen would not only provide the necessary parking for Bookmen Lofts phase one, but would also give us an opportunity to develop a second phase over the top of the underground ramp. As we started looking at that massing and that idea and exploring the underground conditions there, it became very clear to us that at the corner of 5th Avenue North and 4<sup>th</sup> Street North is a very less than optimum subsurface condition. We have trapped water, we have very loose soils that are unsuitable for building without extreme corrective measures and very deep footings. As it is, we went down 120 feet under the parking garage to get to some form of bedrock with all kinds of piles. We were over the old ancient Bassett Creek which still has water under ground so we really have a less than perfect setting there. The corner of 6<sup>th</sup> Avenue North and 4<sup>th</sup> Street North does get better. In the development of the Stacks project, we took what might have been a 4 story massing for phase two and we applied for the conditional use permit and were allowed to go from 4 to 8 stories on Bookmen Stacks which currently being built. The understanding was that the foundations and limited parking garage that we were building would become the foundation for the final phase which is a one story restaurant on the eastern edge of our existing foundation. The garage has been completed. The foundations exist to that point. The idea would be that we would compliment and supplement the neighborhood and this development by doing two open green spaces. One as a common area for both of the residential buildings as well as leaving alone the corner of 5<sup>th</sup> Avenue North and 4<sup>th</sup> Street North with its fairly mediocre soil and actually turning that into a landscaped component for the restaurant itself specifically. That's why you see that one story, the idea being a one story restaurant or at one point it was simply a commercial space, low elevation, protected views for the residents, as well as providing a real destination amenity for the neighborhood, being a restaurant. As you look some of the images of the model, some of the critical points are that we have to deal with economic concerns as well as technical concerns when we are dealing a client who is interested in developing a successful development. The economic factors are a little harder to quantify, but they are very important. With all due respect to the Master Plan, I think that at this point in time at this particular location, an 11 story commercial office tower would be a very difficult proposal. Perhaps not in light of the Master Plan, but certainly financing and banks and finding tenants in this environment is not as likely a proposition as doing a successful residential development. Our goal then is to find a use and something that we could put on that particular site. I think a smaller scale development and a restaurant is a good use of that corner, of that particular site. My office is across the street and I know the neighborhood very well and I think that both the residents and people working in the north warehouse district would be excited about a restaurant coming into that corner. As you look through some of our other images you will see some of our other responses which are in direct address to the zoning code. Economically speaking, we weren't capable of putting something on the corner because of that lousy soil so we did it with a wall and some landscape components instead. We are defining the street and the spirit of the zoning code is appropriate and I think we are responding to that by giving the streets some definition and

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making an attractive part to the sidewalk. We're using materials that are complimentary to the Stacks building. We are bringing some natural landscape to this part of town. This existing condition at 5<sup>th</sup> Avenue North, looking at the Caribou building specifically, as well as the overall character of that 5<sup>th</sup> Avenue part of the site... it's a difficult site with that dip in the middle we have a grade change and no matter what we put there, whether the building was on the corner or not, we're going to have a 10 foot wall there. There's quite a significant grade change. A lower wall, with landscape behind it, is in some ways a better solution for that particular street corner. In light of the Master Plan, that 5<sup>th</sup> Avenue North, I hope is a retail spur filled with people and shops. At the moment it's not, it's a loading dock street full of trucks and vehicles. There are broken sidewalks. There are parking lots and empty corners. I think this structure is very reasonable and a highly responsible design solution for some of the complexities that the site presented to us.

Commissioner Mackenzie: I heard you mention the figure "11 story tower" and I am assuming that building height number came from an understanding of where the economic realities were in terms of setting footings in that poor at the corner and making something feasible from a development perspective.

Jim Dayton: Actually, the 11 story tower comes directly from the North Loop Master Plan and this is one of the jumpstart sites.

Commissioner Mackenzie: So that reference isn't necessarily related to the economic feasibility of setting footings such that a building of sufficient height could be built and still be marketable or profitable for the development interest.

Jim Dayton: Right. That figure came from a Master Plan, not from any studies that I have done. With the right economic caveats, you could put a tower there of some kind. To be able to do a one story building presented a lot more affordable foundation package than an 11 story tower would.

Commissioner Mackenzie: I raised the question because effectively, by setting the beautiful restaurant garden that you have designed on that corner, you will preclude future change from happening – at least you will push it out to a longer timeframe – and that's why I asked if we had a sense of what sized tower had to be on the corner for it be economically feasible. We can understand the two futures we would be trading off, a current day condition as you have laid it out with design futures you have described or another residential tower. Secondly, half way through your package in your computer rendering, you have two images for the proposed design for 5<sup>th</sup> Avenue North. You say, and you're quite right, that today 5<sup>th</sup> Avenue is a street of loading docks, broken up sidewalks and poor relationships between buildings and sidewalks and I understand that you were dealing with your conditions and economic constraints, but it appears to me that what we have is a fairly sizeable entry into the parking garage on 5<sup>th</sup> Avenue and a 10 foot wall overshadowing any pedestrians walking along the street. Though I appreciate that you say the current conditions are not good... unfortunately, I don't see the beauty of your space really transiting to the street edge there. I would say, that for me, is a failing of the site plan as it is today.

Jim Dayton: Is it appropriate to address that specifically? I think that's a very good point. As we developed this entire block, trying to find a point at which we could enter the garage, the alley space, or middle of the block on 5<sup>th</sup> Avenue, was the most appropriate place for us to enter the parking garage. Third Street North, the old façade of Bookmen is there and it's a very beautiful façade and it's being restored to its original condition. Around the corner, we're doing a new Stacks building which is also its new building, but it addresses the street and I think it's appropriate for the neighborhood. The 4<sup>th</sup> Street North elevation has a relatively flat landscape and we are creating the two gardens there. The 5<sup>th</sup> Avenue North side was already filled with parking garages and loading docks and all that kind of accessory use so we thought it was most appropriate to put the garage there. We went through this discussion when we did the garage and we realized that this isn't a very pedestrian friendly street as it exists.

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President Martin: Thank you. Others that wish to speak to item 13.

Steve Frenz (Applicant) (5541 Portland Ave.): The Bookmen site has been a real joy the last couple years. As Jim mentioned, the site has posed a significant number of challenges. The garbage incinerator was a concern that the realtors believed we would not be able to overcome, but have in a very fine fashion. Highway 94 access, which borders the south end of the site, is an extremely large challenge and does produce a significant amount of noise. With that, we do have some height limitations. One of them is the grate conditions and the fact that we had to pile to 115 and it would be further at this end of the site. The ramp that is in existence has piling in place to not just support the ramp at that end, but a commercial building which was in place over those piles. To further pile would completely uneconomic at this point. The other height constraint that is here is the existing condo owners have a deeded constraint on this end of the site that nothing can be built there over 45 feet. That's a constraint we're forced to live within. Had we gone in the onset and requested that we could put a tower that would cover the entire block, that is something we may have been able to accomplish, but the charge that was given to Mr. Dayton was to provide a desirable place to live and not just merely a site where we would inventory people without providing them a view. There really are fabulous views from that site. We have taken advantage of that and made sure that the existing building and the new building provide as many views of downtown as possible. This further development of the site protects those views and doesn't alter what our residents have paid for. You pointed out the separation, that's an important element I believe, the separation of the outdoor seating, because it does provide a buffer from our residents who have balconies facing the plaza. The restaurant comes up 20 feet or so and then you have seating on the other side so it does provide a buffer there which we think is an important element. This is a completely non-subsidized development that we have taken efforts to provide some things that are responsible in an urban environment. One is green space. It's a very "green friendly" space. We've provided a third floor common roof deck for all residents. On the Stacks building we provided a 9 foot floor common deck which will allow them to appreciate the views as well some landscaping and some outdoor space. There are two items that are not mentioned in the agenda that are in the report. One is going from 33 to 45 units and the other is the signage on the Stacks. Both of which were recommended to be approved by staff, but I didn't know if that was missed or not in the agenda. I wanted to make sure that gets accounted for. The issue of the wall, I can see that a transparent fence would serve us better, as well as the corner better, and as an amendment we would be willing to entertain if we could provide a 60% transparent fence as required. That is something we could take as a friendly amendment. I would like to see that, I guess, if that was an issue that is going to hold us up. The ancillary space that we have taken efforts to develop here are not costless, they are not profit motives. This is a large park in the center. This restaurant is of significant cost and is not going to provide a tremendous benefit to this development, but rather it's going to complete what we are attempting to provide our buyers with here. That is an urban environment or neighborhood that will allow them to enjoy downtown living as much as possible. I would request that you find it in your power to override staffs recommendation and allow the completion of the unique, green-friendly, and architecturally significant urban development.

Commissioner LaShomb: There's an agreement with existing condo owners about the height on that site? I assume when this project was originally proposed that there was understanding about the height of three phases, so who offered those agreements when there should have been an agreement with the City about how that site was going to be developed and what is that agreement and what's the force of it?

Jim Dayton: The condo documents that our buyers have, have the height limitations on the site of 45 feet. That is a result of their need as buyers.

President Martin: Commissioner LaShomb's question is "who put that there?"

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Jim Dayton: Our attorney put it there, but it was a market force. We would not have sold the units we've sold without protecting the views they were buying.

Commissioner LaShomb: I'm surprised that now you're coming back and saying the City should enforce an agreement that the City never participated in. When the three phases were proposed originally, people should have understood that you shouldn't be writing agreements with owners of property that said that they are going to have unrestricted access to downtown views based on some agreement that you didn't make with City when this was approved originally.

President Martin: Others that wish to speak item 13?

President Martin closed public hearing.

Commissioner Krause: Mr. Orange's analysis of the comprehensive plan was very useful. However, there are some unique characteristics to this site. Proximity to that elevated freeway ramp is a primary one. It almost operates like a dead-end area. The fact that we have gone through this with a PUD suggests to me that we should take some flexibility to how we approach the project. I'm not as troubled by not having the building built at a greater density at the street corner. In fact, I think our concern about having buildings set back is that they are not behind a parking lot. This is going to more active green space because it's going to be outdoor seating for a restaurant. In that sense, I think it does help to improve the pedestrian character and reinforce the streetscape that's there. I don't like the wall. I'm going to move the approval of the conditional use permit. The number of units, from 43 to 45, that's acceptable to me and the signage from 80 square feet to 92.

Staff Orange: The planning staff had no issue with either of three exceptions to the code. Oh sorry, two out of the three. The sign was ok. The 43 to 45 units was ok. The third one was the building placement.

Commissioner Krause: This doesn't include the reduction in the required parking...that's a subsequent action.

Staff Orange: That is one of the exceptions that staff is accepting.

President Martin: Second?

Commissioner Schiff: Michael Orange did a phenomenal job with his analysis and with the North Loop Master plan being so new. I'm worried that we put all this time and effort into comprehensive planning and we seek so many meetings with neighborhood residents and then it comes to this point and we're reviewing an actual development and then it goes through even though it's nothing remotely similar to what was in the comprehensive plan or the small area plan. We're having another application coming up in a few minutes where we are going to be asked to decide whether or not it's similar with the comprehensive plan. So, in order to hold my vote similar I am going to vote against this and encourage a restaurant in this site that's part of mixed use development that really develops the kind of densities that we want to see in this part of our downtown area.

President Martin: Commissioner Hohmann.

Commissioner Hohmann: I'd like to commend Michael too. I can understand Commissioner Krause's argument with the green space close to the corner with a less intrusive wall there. However, I don't think that there will be people out in that area a lot of the time in the evening during much of the year. For that reason, I support staff recommendation.

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President Martin: Motion on the floor is to approve the CUP. All in favor? Opposed?

Commissioner LaShomb: I move the staff recommendation on the CUP.

President Martin: Second? Commissioner Schiff?

Commissioner Schiff: Is there a way we can split this out so we approve the CUP for the housing that was requested?

Staff Anderson: Commissioner Schiff, you can do that. You can approve and deny what you want to out of that application.

Commissioner Schiff: I would suggest that if the housing is pretty much all built and if this is about the number of units in it, the developer needs some assurance to move forward, I would suggest a substitute motion to partially grant the CUP as it relates to housing and deny the CUP as it relates to the commercial use. Does that work Mr. Anderson?

Staff Anderson: Yes.

President Martin: You are offering a substitute motion to split the PUD and approve the housing portion only?

Commissioner Schiff: The CUP as it relates to the increased number of housing units on the site.

President Martin: That's considered a friendly amendment.

Commissioner Hohmann: Does that meet the approval of the developer? That might put restrictions on...

President Martin: We're not going to negotiate with the developer on the floor here. It either goes or it doesn't go.

Commissioner Hohmann: But if we approve just part of the development it might be putting restrictions on the development overall.

President: Well it may fail. It's a substitute motion, we'll see how it goes.

Commissioner Schiff: The intent here is to give the developer the flexibility he seeks to put the number of units he thinks makes the project economically feasible. He doesn't have to subdivide the unit and provide that many units if he doesn't want to, but that allows the densities that are consistent with Comp Plan in this area.

President Martin: That was considered a friendly amendment so we are now voting on that piece of it or the whole thing? The first motion is the substitute motion which is to increase the number of housing units available on the site. All in favor? Opposed?

Motion carried 6-1. Hohmann nay.

Commissioner LaShomb's original motion to deny the rest of the CUP that's not related the number of housing units on the site. All in favor of that motion? Opposed?

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Motion carried 6-1. Krause nay.

[Tape unclear]

President Martin: You're moving the staff recommendation for the variance, the site plan and the RLS, which is to deny all of them.

Commissioner Schiff: I would like to vote for a couple of these, but not necessarily for the fence.

President Martin: So we're back to the variance. There's a second for that? Discussion? All in favor?

Motion carries 7-0.

Commissioner LaShomb moved the site plan review. (Mackenzie seconded)

President Martin: Second? Discussion?

Motion carried 6-1.

Commissioner LaShomb moved the staff recommendation for the preliminary RLS.

President Martin: Second? All in favor?

Commissioner Schiff nay. Motion carried 6-1.