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MEMORANDUM

DATE: October 2, 2003

TO: Council Member Schiff, Chair, Zoning & Planning Committee
Members of the Zoning & Planning Committee

FROM: Jason Wittenberg

SUBJECT: 2 & 20 E. 26th St.

Patricia Fitzgerald, on behalf of Master Engineering, has filed an appeal of the city planning commission's decision to only partially approve the following applications for the proposed development located at 2 & 20 E. 26th St.:

- Site plan review (approving 27 units instead of the requested 29 units)
- Conditional use permit (approving 27 units instead of the requested 29 units)
- Variance to reduce the required front yard setback along 1st Ave. S. The commission approved a two-foot setback while the applicant seeks to construct up to the property line.
- Variance to reduce the required minimum lot area. The commission approved a variance to reduce the minimum lot area per dwelling unit from 694 to 591 square feet. The applicant seeks to provide 550 square feet of lot area per dwelling unit.
- Variance to increase the maximum permitted floor area. The commission approved a variance to increase the maximum permitted floor area from 37,993 square feet (2.38 F.A.R., after applicable density bonuses) to 43,420 square feet (2.72 F.A.R.). The applicant seeks 44,674 square feet (2.80 F.A.R.).

The applicant also has requests before the committee to rezone one of the parcels in question and to vacate air rights and subsurface rights above and below the public alley.

(SEE SEPARATE AGENDA ITEM FOR STAFF REPORT)

Minneapolis City Planning Department Report

Zoning Amendment (Rezoning), Conditional Use Permits, Site Plan Review, Variances,
Vacation of Public Right of Way

BZZ – 1259

Vac. #1419

Date: September 8, 2003

Date Application Deemed Complete: July 24, 2003

End of 60 Day Decision Period: September 22, 2003

End of 120 Day Decision Period: On August 28, 2003, staff sent a letter to the applicant extending the decision period to no later than November 21, 2003

Applicant: Master Civil & Construction Engineering

Address Of Property: 2 E. 26th Street and 20 E. 26th Street

Contact Person And Phone: Patricia Fitzgerald, 872-9200

Planning Staff And Phone: Jason Wittenberg, 673-2297

Ward: 6 **Neighborhood Organization:** Whittier Alliance

Existing Zoning: 2 E. 26th Street: C1
 20 E. 26th Street: C2

Proposed Zoning: The applicant proposes to rezone 2 E. 26th Street from the C1 District to the C2 District

Zoning Plate Number: 20

Legal Description of Property Proposed for Rezoning: Lot 6, and the south 14 feet of Lot 7, Block 5, Geo. Galpin's Addition to the City of Minneapolis, according to the recorded plat thereof, and situated in Hennepin County, Minnesota.

Project Name: N/A

Minneapolis City Planning Department Report
BZZ – 1091, Vac. #1419

Proposed Use: Mixed use building with 29 dwelling units bridging over the public alley, approximately 6,000 square feet of commercial space, underground and at-grade parking.

Conditional Use Permits:

- Required for five or more new dwelling units as indicated in Table 548-1 of the zoning code.
- A conditional use permit to increase the maximum permitted height from four stories to five stories. Although the proposed building would meet the overall building height limit of 56 feet, the c.u.p. is needed due to the fact that the proposed first level would be up to 21 feet in height at its highest point, which exceeds the maximum height of a story as defined in section 520.160 of the zoning code.

Site Plan Review: Site plan review is required for any use containing five or more new or additional dwelling units as indicated in Table 530-1 of the zoning code.

Variiances:

- Variance to reduce the required north side yard from five 7 to 0 feet for the proposed ground-level parking garage adjacent to a residence district.
- Variance to reduce the required north side yard from 11 feet to 0 feet for two enclosed stairwells.
- Variance to reduce the required north side yard from 11 feet to 0 feet for residential balconies (including screening structures) atop the ground-level.
- Variance to reduce the required north side yard from 11 feet 4 feet for an approximately 18-foot section of the north residential wall with windows.
- Variance to reduce the required front yard setback along 1st Avenue South from 15 feet to 0 feet for the proposed mixed use building.
- Variance to reduce the required minimum lot area (after applicable density bonuses) from 694 square feet per dwelling unit to 550 square feet per dwelling unit, a variance of approximately 20 percent.
- Variance to increase the maximum floor area from 37,993 square feet (2.38 F.A.R., after applicable density bonuses) to 44,674 square feet (2.80 F.A.R.), a variance of approximately 17.6 percent.

Zoning Code Section Authorizing Proposed Variiances: 525.520(1), (2), (3)

Proposed Vacation of Public Right of Way: The applicant proposes to vacate air rights above and subsurface rights below the public alley.

Responses from Utilities and Affected Property Owners: Utilities were notified of the request in a mailing dated June 20, 2003. Affected property owners were also notified of the proposed vacation. Easements have been requested by Xcel Energy and Qwest. Time Warner Cable has indicated that their approval is conditioned upon “if there is a need for Time Warner to relocate cable we are reimbursed the cost.” The applicant is discussing potential relocation of existing utilities in the affected area.

Previous Actions: N/A

Concurrent Review: Rezoning, conditional use permit, site plan review, variiances alley vacation as noted above.

Minneapolis City Planning Department Report
BZZ – 1259, Vac. #1419

Background: The application was continued from the meeting of August 18, 2003. The applicant proposes to construct a new mixed use development with 29 for-sale dwelling units on the north side of E. 26th Street between Nicollet Avenue and 1st Avenue South. The property is currently occupied by a parking lot (2 E. 26th St.) and a vacant commercial building (20 E. 26th St.).

The applicant proposes 48 off-street parking spaces, 13 at grade level accessory to the commercial use and 35 below grade spaces accessory to the residential use.

The applicant proposes to vacate the air rights above and the subsurface rights below the public alley to construct the building over the alley and construct the below grade parking beneath the alley. At grade level, the alley would remain open to public travel. The Public Works Department has indicated that the minimum clearance above the surface of the alley is 14 feet 6 inches.

The project appears to qualify for two density bonuses; one based on mixed use development and the other for enclosed and underground parking. The applicant is apparently exploring the potential for providing affordable housing that could make the project eligible for the affordable housing density bonus.

The eastern parcel is located in the Washburn-Fair Oaks Historic District. The applicant has appeared before the Heritage Preservation Commission (HPC) for discussion purposes only. The project is still subject to review and approval by the HPC.

The owner of the adjacent commercial property, which houses a recording studio, has expressed concern about construction noise interfering with the operation of that business. The property owner has been informed of City regulations pertaining to this issue, which are found in section 389.70 of the city's noise ordinance.

After the original application was filed and noticed, staff discovered that the first level is too tall to qualify as a single story. A story cannot exceed 14 feet under the definition found in section 520.160 of the zoning code. A conditional use permit has been filed and a revised notice was sent to surrounding property owners alerting them to the additional application.

Note: Please pay close attention to the staff recommendations. Many of the recommendations of approval are recommendations to only partially approve the applicant's requests.

Findings As Required By The Minneapolis Zoning Code for the Rezoning Application:

1. Whether the amendment is consistent with the applicable policies of the comprehensive plan.

The Minneapolis Plan designates the area around 26th and Nicollet as an Activity Center, a destination that attracts large numbers of visitors, workers and residents. The portion of Nicollet Avenue on which the site is located is designated as a Commercial Corridor.

Minneapolis City Planning Department Report
BZZ – 1091, Vac. #1419

Planning staff has identified the following policies of the Minneapolis Plan as being relevant to the request to rezone the property to the C2 District.

Relevant policy: 4.7. Minneapolis will identify and support Activity Centers by preserving the mix and intensity of land uses and enhancing the design features of each area that give it a unique and urban character.

Relevant Implementation Steps:

- Ensure that land use regulations support diverse commercial and residential development types which generate activity all day long and into the evening.
- Discourage automobile services and drive-through facilities from locating in these designated areas.

Staff comment: The above policy and implementation steps offer mixed guidance about the rezoning from C1 to C2. Although the C2 District would allow a wider variety of uses than the C1 District, it would allow commercial uses that are automobile oriented (e.g., automobile convenience facilities, automobile repair facilities) and are not allowed in the current C1 District.

Relevant policy: 9.28. Minneapolis will support development in Commercial Corridors where it enhances the street's character, improves its ability to accommodate automobile traffic and foster pedestrian movement, and expands the range of goods and services offered.

Relevant Implementation Steps:

- Support a mix of uses on commercial corridors—such as retail sales, office, institutional, higher density residential, and clean low-impact light industrial—where compatible with the existing and desired character of the street.

Staff comment: The C2 District allows a wider range of commercial uses than the C1 District. The C2 District is generally recognized as being an appropriate district for Commercial Corridors. The parcel proposed for rezoning is not adjacent to a residential district or use, so the wider range of commercial uses would be less likely to have a negative impact on an adjacent use.

2. Whether the amendment is in the public interest and is not solely for the interest of a single property owner.

Although the rezoning would largely benefit a particular property owner, the zoning change could be considered to be in the public interest to the extent that aspects of the C2 District are supportive of more intensive residential development that would help area businesses thrive and would potentially create more activity, consistent with the Activity Center designation.

- 3. Whether the existing uses of property and the zoning classification of property within the general area of the property in question are compatible with the proposed zoning classification, where the amendment is to change the zoning classification of particular property.**

The property proposed for rezoning is located at the northeast corner of the intersection. Properties at the intersection include the following uses:
Northwest corner: Two-story mixed use building
Southwest corner: Drug store
Southeast corner: Restaurant and banquet center

The site shares a property line with a one-story recording studio.

The other half of the applicant's site, across the public alley to the east, is zoned C2. Further, there is existing C2 zoning directly across the intersection. The proposed C2 District is compatible with the existing zoning classifications and existing uses in the vicinity.

- 4. Whether there are reasonable uses of the property in question permitted under the existing zoning classification, where the amendment is to change the zoning classification of particular property.**

There are reasonable uses for the property under the existing zoning classification. The property in question could accommodate, for example, a variety of residential and commercial uses.

- 5. Whether there has been a change in the character or trend of development in the general area of the property in question, which has taken place since such property was placed in its present zoning classification, where the amendment is to change the zoning classification of particular property.**

The project is located in the heart of Eat Street, a corridor where a variety of ethnic restaurants have appeared in recent years. The more intense residential use allowed in the C2 District is consistent with the intent of the Activity Center designation that was placed in the area at approximately the same time that the site was given a C1 classification in 1999.

Findings As Required By The Minneapolis Zoning Code For A Conditional Use Permit for the Proposed Dwelling Units:

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

- 1. Will not be detrimental to or endanger the public health, safety, comfort or general welfare.**

Minneapolis City Planning Department Report
BZZ – 1091, Vac. #1419

Construction of 29 dwelling units in an Activity Center would not prove detrimental to public health, safety, comfort or welfare. However, the proposed size and placement of the building in question would unduly impede on the enjoyment of the multifamily residential property to the north by building up to or very near the shared property line as well as into the front yard setback.

2. 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.

As proposed, the project would be injurious to the enjoyment of the residential property directly to the north of the site in question (along 1st Avenue) due to the combination of the number of units, setbacks, and height of the proposed structure. The applicant proposes approximately 79 dwelling unit per acre—a very high residential density.

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

The site would be accessed from the existing public alley, which is 12 feet in width. The Public Works Department has reviewed the preliminary plan and has several concerns about the proposed access and circulation pattern, including the following.

- The curb cut along 1st Avenue must leave at least 20 feet of straight curb from the intersection with 26th Street to allow for safe maneuvering near the intersection.
- There should be more space (i.e., approximately 10 feet) between the alley curb cut and the curb cut for the parking lot and should include a "bull nose" extending all the way to the street that would act as a pedestrian refuge between the curb cuts.
- The median should wrap around to the wall between the at-grade parking garage and the "tunnel" to the underground garage so that access is completely blocked off between the non-residential parking and the alley access. As drawn, vehicles traveling south down the alley could cut into at-grade off-street parking from the alley.
- The three at-grade parking spaces west of the alley will not be allowed due to a lack of maneuvering area and lack of visibility to and from these spaces.
- Vehicles exiting the underground ramp should have the ability to come to a stop on a flat surface (i.e., completely off of the exit ramp) before the front of the vehicle enters the public alley.
- If the vacation is approved, the vertical clearance between the alley and the building should be not less than 14 feet 6 inches. (Note that this is two feet less than is required for skyways spanning public streets.)

The Public Works Department will also review the final plan related to issues such as drainage and utilities.

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

Minneapolis City Planning Department Report
BZZ – 1259, Vac. #1419

Off-street parking would be provided to meet the requirements of the zoning ordinance. See the comments above (finding number three) for concerns related to traffic circulation.

5. Is consistent with the applicable policies of the comprehensive plan.

The conditional use permit to allow 29 dwelling units within the proposed mixed use building is consistent with the relevant provisions of the Activity Center, which calls for relatively intense residential development to contribute to activity and vitality of a mixed use districts.

6. And, does 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 request, relevant variances, and site plan review.

If all land use/zoning applications are approved, including several variances, the proposal will comply with all provisions of the C2 District. The applicant, through a variance to reduce the minimum required amount of lot area per dwelling unit, seeks more units than would be allowed by ordinance (even after the granting of two density bonuses). If the applicant qualifies for a third density bonus by making 20 percent of the units affordable to persons at or below 50 percent of the metropolitan median household income, the site could accommodate 27 units without the granting of a variance to reduce lot area. Thus, staff recommends that the Commission grant a conditional use permit to allow 27 dwelling units rather than the request 29 units.

Findings As Required By The Minneapolis Zoning Code For A Conditional Use Permit to Increase the Maximum Permitted Height:

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

1. Will not be detrimental to or endanger the public health, safety, comfort or general welfare.

Increasing the maximum permitted height would not likely affect public health, safety, or welfare, particularly if the building complies with the overall height limit (in feet) for the district.

2. 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.

The Planning Department believes that the increased height of the first floor would negatively affect the enjoyment of the property to the north if the Commission grants the requested north side yard variance to allow the garage level to be constructed up to the north property line. The variance would place a blank wall of approximately 20 feet in height approximately 10 feet from

Minneapolis City Planning Department Report
BZZ – 1091, Vac. #1419

the south-facing windows of the residential building to the north. This would significantly affect access to light and air for the property.

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

The Public Works Department will also review the final plan related to issues such as drainage and utilities. Increasing the height in the manner proposed would not affect these issues.

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

Increasing the maximum permitted height in the manner proposed would not affect congestion of area streets.

5. Is consistent with the applicable policies of the comprehensive plan.

The comprehensive plan instructs the City to ensure that development is in scale and compatible with nearby residential properties. Staff believes that the proposed height conforms to this principle only if the building wall complies with the required setback, which would help to ensure that the proposed garage level does not impede on the enjoyment of the neighboring property.

6. And, does 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 request, relevant variances, and site plan review.

If all land use/zoning applications are approved, including several variances, the proposal would comply with all provisions of the C2 District. The building would be 56 feet in height, measured from sidewalk level along 1st Avenue South, which is the maximum permitted height allowed in the district.

In addition to the conditional use standards, the city planning commission shall consider, but not be limited to, the following factors when determining the maximum height:

(1) Access to light and air of surrounding properties.

Although the garage level may not affect direct solar access to the windows of the dwellings to the north, the increased height combined with the proposed setback variance would create a dark, narrow area between the two buildings.

(2) Shadowing of residential properties or significant public spaces.

Although a shadow study has not been submitted, it does not appear that the garage level would increase shadowing simply due to the fact that the overall building height is far

greater than the garage level. The proposed building, which would be constructed to the maximum permitted height, would cast substantial shadows on the residential building to the north for much of the year.

(3) The scale and character of surrounding uses.

Staff is concerned that the scale of the building far exceeds other buildings at the intersection of 26th and Nicollet and would also overwhelm the residential building directly to the north of the site. The staff recommendations in this report call for a building that is reduced in floor area and number of dwelling units while providing greater setbacks from the adjacent properties.

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

It does not appear that the building would affect views of features such as landmark buildings or significant open spaces. There are no water bodies in the vicinity.

Required Findings for Major Site Plan Review

- A. The site plan conforms to all applicable standards of Chapter 530, Site Plan Review. (See Section A Below for Evaluation.)**
- 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 Below for Evaluation.)**

Section A: Conformance with Chapter 530 of Zoning Code

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.**

Minneapolis City Planning Department Report
BZZ – 1091, Vac. #1419

- **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.**

Conformance with above requirements:

The building would reinforce the street wall along Nicollet Avenue and along 26th Street. Natural surveillance would be optimized through the use of generous windows in the proposed commercial space. Staff is concerned about the lack of visibility between the at-grade parking facility and the public realm. Pedestrian access would be ideal to the commercial use and to the residential lobby. However, pedestrian access to the accessory parking facility would require that people walk through a drive aisle the entire way to the public sidewalk. The applicant must install a walkway between the parking lot and the public sidewalk to correct this dangerous and inconvenient layout. This should be done by providing a ground level door into the parking garage from the public sidewalk along 26th Street.

The building would be constructed up to the front lot lines along both Nicollet Avenue and 1st Avenue as well as the corner side lot line along 26th Street.

The applicant proposes trees in the public right of way. The applicant must have the Park Board staff review and approve any new trees proposed in the public right of way. Staff recommends that the applicant provide bicycle parking in the right of way (with an encroachment permit). There are existing public streetscape improvements that have been installed adjacent to the property. These improvements shall not be removed without Public Works and Planning having reviewed and approved such removal.

The principal entrances to the building would face the public streets. Staff is recommending that the applicant incorporate an entrance to the accessory parking facility that would not force people to walk in the driveways and drive aisles.

On-site accessory parking facilities would be located entirely within the building at grade level (accessory to the commercial use) and below grade (accessory to the residential use). Signage shall direct patrons of the commercial use to the location of the accessory parking.

The buildings would include a good deal of architectural detail, including soldier coursed brick around the ground level windows and the archway over the public alley. The ground level of the commercial use would include generous windows at ground level. Staff is concerned about the relative lack of

Minneapolis City Planning Department Report
BZZ – 1259, Vac. #1419

visibility into the parking facility. Due to the grade change—the site slopes down to the east—the bottom of the easternmost windows would be over six feet above the sidewalk level.

Architectural elements are emphasized in that the proposed building design attempts to create distinct sections of the building that would reduce its apparent mass.

The primary materials would be a mix of brick and prefinished “classic style” shingles or stucco. The proposed exterior materials are similar and compatible on all sides of the proposed building.

Plain face concrete block cannot be used as a primary exterior building material.

It appears that the building entrances will be emphasized with recessions and an awning. Along Nicollet Avenue, 62 percent of the first floor façade (between two and 10 feet above grade) would feature windows. Along 26th Street, staff calculated the window area based on two distinct sections of the ground floor—the section west of the curb cut and the section east of the curb cut. The section west of the curb cut would have windows covering approximately 64 percent of the first floor façade. The section east of the curb cut, however, would feature 22 percent windows and much of this percentage would not be transparent and would leave a brick wall at eye level for much of the distance. Recognizing the challenges associated with allowing views into and out of the garage area, staff recommends that the commission grant alternative compliance for the window area provided that more windows are provided that allow views into and out of the parking garage. The same holds true for the first floor façade facing 1st Avenue South. Staff recommends that, to deter criminal activity and promote public safety, the bottom edge of the windows into the parking garage shall be no higher than four (4) feet above sidewalk level.

Sloped floors would not be visible from the parking garage. The amount window area allowing views into and out of the parking garage shall be increased and repositioned to allow views at eye level. Staff recommends that not less than 10 percent of this area include transparent windows.

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 snow storage shall be provided unless an acceptable snow removal plan is provided.**
- **Site plans shall minimize the use of impervious surfaces.**

Conformance with above requirements:

Minneapolis City Planning Department Report
BZZ – 1091, Vac. #1419

The building entrances would be immediately adjacent to the public sidewalk. The parking facility accessory to the commercial use does not include safe and convenient pedestrian access. Parking accessory to the commercial use shall be connected to the public sidewalk along 26th Street with a walkway not less than four (4) feet in width.

The applicant is not proposing a transit shelter on the site.

The current circulation pattern includes unacceptable pedestrian-vehicle conflicts at least two points. Patrons would be forced to walk through the drive aisle and driveway to get to the public sidewalk. And pedestrians along 26th Street are not offered adequate refuge between the alley curb cut and the curb cut that accesses the accessory parking garage.

The alley that runs through the site provides access to a number of residential properties north of the site in question. The proposal currently allows an unacceptable level of vehicular access to the public alley. The Public Works Department has indicated that none of the proposed non-residential parking may be accessed from the public alley.

Given that the proposed development does not include an open parking lot, the amount of snow to be removed or stored would be minimal. However, staff is concerned that the configuration does not allow snow to be pushed off of the public alley. This could prove problematic on an alley that is already quite narrow (12 feet).

The site, as proposed, would include no permeable area.

LANDSCAPING AND SCREENING:

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

Conformance with above requirements:

The applicant proposes to build on the entire site and thus there would be no net site area on which to provide landscaping. If proposed setback variances are denied or only partially approved, resulting in the one or more open yards, the applicant must provide a landscape plan that meets the requirements of Chapter 530.

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.**
- **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.**

Conformance with above requirements:

Minneapolis City Planning Department Report
BZZ – 1091, Vac. #1419

The applicant proposes wall-mounted lights along the public streets. Lighting must comply with Chapter 535 of the zoning code, noted below. The parking garage must be adequately lighted.

- 535.590. Lighting.** (a) In general. No use or structure shall be operated or occupied as to create light or glare in such an amount or to such a degree or intensity as to constitute a hazardous condition, or as to unreasonably interfere with the use and enjoyment of property by any person of normal sensitivities, or otherwise as to create a public nuisance.
- (b) Specific standards. All uses shall comply with the following standards except as otherwise provided in this section:
- (1) Lighting fixtures shall be effectively arranged so as not to directly or indirectly cause illumination or glare in excess of one-half (1/2) footcandle measured at the closest property line of any permitted or conditional residential use, and five (5) footcandles measured at the street curb line or nonresidential property line nearest the light source.
 - (2) Lighting fixtures shall not exceed two thousand (2,000) lumens (equivalent to a one hundred fifty (150) watt incandescent bulb) unless of a cutoff type that shields the light source from an observer at the closest property line of any permitted or conditional residential use.
 - (3) Lighting shall not create a sensation of brightness that is substantially greater than ambient lighting conditions as to cause annoyance, discomfort or decreased visual performance or visibility to a person of normal sensitivities when viewed from any permitted or conditional residential use.
 - (4) Lighting shall not create a hazard for vehicular or pedestrian traffic.
 - (5) Lighting of building facades or roofs shall be located, aimed and shielded so that light is directed only onto the facade or roof.

Headlight glare from exiting vehicles would not shine into nearby residential structures.

It does not appear that views of significant buildings would be blocked by the development.

Shadowing of the adjacent residential property would be significant but would be minimized somewhat by the fact that the four story component of the building would be set back 11 feet from the north property line.

Wind currents should not be major concern.

From a crime prevention standpoint, the applicant should improve views into and out of the at-grade parking level and ensure that partially enclosed spaces are adequately lighted. .

The parcel to the east of the public alley is located in the Washburn-Fair Oaks historic district. The applicant has met with the Heritage Preservation Commission and will meet with the Commission again.

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

Minneapolis City Planning Department Report
BZZ – 1259, Vac. #1419

ZONING CODE: The parcel east of the alley is zoned C2. The parcel west of the alley along Nicollet Avenue is zoned C1. The applicant proposes to rezone the west parcel from C1 to C2 in order to increase the number of dwelling units that would be allowed on the property.

Parking and Loading: Without taking advantage of any applicable parking reduction incentives, the applicant would be required to provide one space per dwelling unit (29 spaces). With one retail use at 6,012 square feet, seven off-street parking spaces are required. (Note that the parking requirement for a restaurant use could be higher than this depending on the amount of public space in the restaurant.) Thus, the project requires 36 off-street parking spaces. The applicant proposes 13 spaces for the commercial use and 35 for the residential use for a total of 48 spaces. The Public Works Department has indicated that the three spaces proposed adjacent to the alley are not allowed.

Signs: The applicant proposes signs along 26th Street for the residential use. Detailed signage has not yet been proposed for the commercial use. The applicant must obtain permits for signs and all signs must meet the requirements of chapter 543 of the zoning code.

Maximum Floor Area: The maximum F.A.R. in the C2 District is 1.7. However, the project appears to qualify for density bonuses of 20 percent each for having both enclosed parking and a mix of commercial and residential uses in the building (section 548.130[b] and [c]). The bonuses increase the number of permitted dwelling units by 20 percent and increase the permitted floor area by 20 percent. The parking garage is not included in the calculation of gross floor area as noted in the definition of *Floor area, gross (GFA)* in section 520.160 of the zoning code. Together, the lots have 15,964 square feet of area. The floor area calculations are as follows:

Lot area: 15,964 square feet

Based on this lot area, 17 dwelling units would be allowed without applicable bonuses (15,964 / 900).

Calculation of two bonuses to increase the number of dwelling units by 20 percent:

$$17 \times .20 = 3.4$$

$17 + 3.4 + 3.4 = 23.8 = 23$ units allowed with two density bonuses. The applicant is considering providing affordable housing that would qualify for an additional 20 percent bonus. Adding a third density bonus would bring the allowed number of dwelling units to 27.

Calculation of two bonuses to increase the maximum permitted floor area/F.A.R.:

Lot area: 15,964 square feet

Maximum F.A.R.: 1.7

$$15,964 \times 1.7 = 27,139$$

$$27,138 \times .20 = 5427.8$$

Minneapolis City Planning Department Report
BZZ – 1091, Vac. #1419

$27,138 + 5427.8 + 5427.8 = 37,993$ = maximum permitted floor area with two density bonuses. The applicant is considering providing affordable housing that would qualify for an additional 20 percent bonus. Adding a third density bonus would bring the allowed floor area to 43,420 square feet.

The applicant proposes to construct 44,674 square feet of floor area and thus has requested a variance to increase the amount of floor area from 37,993 square feet (2.38 F.A.R., after applicable density bonuses) to 44,674 square feet (2.80 F.A.R.), a variance of approximately 15 percent. Note that an additional bonus to increase the maximum permitted floor area, although a bonus of 20 percent, would not make the proposed amount of floor area legal since the bonus is calculated as 20 percent of the base permitted floor area rather than 20 percent of the floor area allowed after other applicable bonuses area calculated.

Minimum Lot Area: In the proposed C2 District, 900 square feet of lot area is required for each dwelling unit. The applicant qualifies for the bonuses noted immediately above, which also increase the number of units allowed by 20 percent each. Without bonuses, 17 dwelling units would be allowed if the entire site is zoned C2. With two 20 percent bonuses, the number of allowed units is increased to 23. Thus, with the bonuses, the applicant would be required to provide at least 694 square feet of lot area per dwelling unit while they propose to provide 550 square feet per dwelling unit. A variance has been requested to reduce the minimum lot area.

Height: Building height in the C2 District is four stories or 56 feet, whichever is less. The proposed building would be 56 feet in height but would be five stories in height due to the fact that the proposed first level exceeds the permitted height of a single story. The applicant has filed a conditional use permit to exceed the maximum permitted height.

Yard Requirements: The following setbacks must be provided without a variance:

Front (along 1st Ave.): 15 feet (for the first 40 feet from the residence district to the north)

Front (along Nicollet): No setback required

Interior side (along the north): Five feet plus two feet for every story above the first story for the residential use with windows. For non-residential use on the ground level adjacent to the residence district, a setback of five feet must be provided plus two feet for every story above the first. For non-residential use on the ground level adjacent to the commercial district, no setback is required.

Corner side (along 26th St.): No setback required

Specific Development Standards: None

Hours of Operation: Residential uses are not governed by maximum hours of operation. The commercial use would be limited to the following hours open to the public:

Sunday through Thursday, from 6:00 a.m. to 10:00 p.m.

Friday and Saturday, from 6:00 a.m. to 11:00 p.m.

Dumpster screening: The proposed refuse storage container would be located within the building. Note that no doors may swing into the right of way.

MINNEAPOLIS PLAN: Please see the conditional use permit analysis above.

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

The City Council adopted the *Nicollet Avenue Task Force Report* in 2000. In the section of the report that deals specifically with Grant Street to 29th Street, the report states that, “Multiple opportunities exist for increasing housing density by incorporating commercial/residential mixed use concepts into the overall land use pattern.” Relevant specific policy recommendations include the following:

- Invest in commercial development from Grant to Lake with nodes at Franklin, 26th, and Lake
- Encourage reuse and development of multi-story mixed use buildings

The project is consistent with the relevant recommendations from this adopted plan.

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.**
- Recognizing the challenges associated with allowing views into and out of the garage area, staff recommends that the commission grant alternative compliance for the window area provided that more windows are provided that allow views into and out of the parking garage.
- The applicant proposes no on-site landscaping. If net site area is incorporated into project, landscaping must be included.

Findings Required by the Minneapolis Zoning Code for the Proposed Variances:

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

Minneapolis City Planning Department Report
BZZ – 1091, Vac. #1419

Variance of north side yard from five 7 to 0 feet for the proposed ground-level parking garage adjacent to a residence district: The applicant would have reasonable use of the property while complying with the required north side yard. Constructing the building up to the side lot line adjacent to the residence district appears to be a result of attempting to overbuild the site.

Variance of north side yard from 11 feet to 0 feet for two enclosed stairwells: A project could be designed on the site that does not have the stairwells project out from the building.

Variance of north side yard from 11 feet to 0 feet for residential balconies atop the ground-level: Although the Planning Department does not believe that it is reasonable to construct balconies up to the side lot line of the adjacent residential property, the setback requirement would prevent the applicant from using the rooftop of the ground level parking garage. Since staff is recommending that the parking garage provide the required setback of seven feet from the side property line, staff recommends that the commission allow the applicant to utilize the roof of that structure for residential balconies.

Variance of north side yard from 11 feet 4 feet for approximately 18-foot section of the north residential wall with windows: Providing the required north side yard setback for a residential use with windows does not pose practical difficulties or a hardship related to developing the site. Much of the north side residential wall has been designed to comply with the setback. The only exception is the westernmost 18 feet of the north-facing wall. The plan should be revised so that all of the north wall of the residential building with windows meets the required setback.

Variance of front yard setback along 1st Avenue South from 15 feet to 0 feet for proposed mixed use building: The corner mixed use project could not be developed in a manner consistent with other mixed use and commercial projects in the immediate vicinity without the granting of the variance.

Variance of minimum lot area (after two applicable density bonuses) from 694 square feet per dwelling unit to 550 square feet per dwelling unit: Staff believes that it is reasonable to expect the applicant to comply with the minimum required lot area after eligible bonuses are calculated and after one considers that the applicant could potentially qualify for the affordable housing density bonus. The staff recommendation for this variance recommends that the commission grant only part of the variance to allow for construction of 27 units—the number of units that would be allowed if the applicant qualifies for a third density bonus.

Variance of maximum floor area from 37,993 square feet (2.38 F.A.R., after two applicable density bonuses) to 44,674 square feet (2.80 F.A.R.): Staff believes that it is reasonable to expect the applicant to comply with the minimum required floor area after eligible bonuses are calculated and after one considers that the applicant could potentially qualify for the affordable housing density bonus. The staff recommendation for this variance recommends that the commission grant only part of the variance to allow for construction of 43,420 square feet of lot area (an F.A.R. of 2.72)—the amount of floor area that would be allowed if the applicant qualifies for a third density bonus.

- 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.**

Variance of north side yard from five 7 to 0 feet for the proposed ground-level parking garage adjacent to a residence district: Planning Department staff has not identified unique factors that would justify encroaching into the side yard setback adjacent to the residence district.

Variance of north side yard from 11 feet to 0 feet for two enclosed stairwells: The applicant has created the circumstances which have led to the variance request by designing the building in a manner that features stairwells that project out from the building.

Variance of north side yard from 11 feet to 0 feet for residential balconies atop the ground-level: The project is unique in that there is a non-residential element at ground level that is required to provide less of a north side setback than the residential use above. This creates a relatively unusable space above the ground level garage without the granting of a variance.

Variance of north side yard from 11 feet 4 feet for approximately 18-foot section of the north residential wall with windows: The Planning Department believes that the plan can reasonably be revised to comply with the required setback.

Variance of front yard setback along 1st Avenue South from 15 feet to 0 feet for proposed mixed use building: The fact that the corner property is immediately adjacent to a residence district is not generally applicable to other corner properties in the city.

Variance of minimum lot area (after two applicable density bonuses) from 694 square feet per dwelling unit to 550 square feet per dwelling unit: The Planning Department is recommending that the applicant comply with the number of units that would be allowed should the project comply with a third density bonus. This would allow 27 units compared to the 17 units allowed without any bonuses. Additional units above and beyond 27 would be overbuilding the property on the part of the applicant.

Variance of maximum floor area from 37,993 square feet (2.38 F.A.R., after two applicable density bonuses) to 44,674 square feet (2.80 F.A.R.): The Planning Department is recommending that the applicant comply with the floor area that would be allowed should the project comply with a third density bonus. This would allow 43,420 square feet of floor area compared to the 27,139 square feet allowed without any bonuses. Additional floor area above and beyond 43,420 square feet would be overbuilding the property on the part of the applicant.

- 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.**

Minneapolis City Planning Department Report
BZZ – 1091, Vac. #1419

Variance of north side yard from five 7 to 0 feet for the proposed ground-level parking garage adjacent to a residence district: Constructing a large, blank wall up to or near the side lot line of the adjacent multifamily residential property would have a substantial negative impact on the enjoyment of the property. Adjacent to the neighboring building, it appears that the wall would range from between 18 feet to 20 feet in height (up to a height of about 21 feet at the front property line along 1st Avenue). The proposed parking garage, which would be too tall to meet the definition of a story, would be located approximately 10 to 11 feet from the wall of the existing residential building (according to the applicant's site plan).

Variance of north side yard from 11 feet to 0 feet for two enclosed stairwells: Staff does not believe that constructing the stairwells up to or near the side lot line would meet the intent of the ordinance. The stairwell adjacent to the residence district, in particular, would loom over the adjacent residential property in a manner that the zoning code wisely prohibits.

Variance of north side yard from 11 feet to 0 feet for residential balconies atop the ground-level: The setback requirement for balconies recognizes the need for privacy and protection from noise that adjacent property owners should expect. Allowing the balconies to be built up to the north side lot line does not respect this intent. Providing modest setback of seven feet for the balconies, consistent with the setback recommended for the ground level garage, is more likely to meet the intent of the ordinance.

Variance of north side yard from 11 feet 4 feet for approximately 18-foot section of the north residential wall with windows: The regulation is intended to ensure safety of residents and adjacent properties as well as to ensure that residents would have perpetual access to light and air should a commercial project on the adjacent property be constructed up to the shared side property line. Staff does not believe that the proposal meets the intent of the ordinance.

Variance of front yard setback along 1st Avenue South from 15 feet to 0 feet for proposed mixed use building: Projects that are subject to site plan review are supposed to be constructed in a manner that reinforces the street wall. The granting of the variance would support this type of traditional urban form encouraged by both site plan review chapter and the comprehensive plan. Staff would be much more reluctant to support the front yard variance however, if the Commission chooses to grant the variance of the north side yard for the garage level. The combination of the two variances would prove quite intrusive when viewed from the adjacent property.

Variance of minimum lot area (after two applicable density bonuses) from 694 square feet per dwelling unit to 550 square feet per dwelling unit: Any dwelling units beyond what would be allowed by three density bonuses would be overbuilding the site for a property in the C2 District. Staff recommends that the Commission grant a partial variance to 591 square feet per dwelling unit, the square footage that would be required should the applicant qualify for a third density bonus. The proposed lot area per dwelling unit would be more consistent with the regulations of the C3A District. The project's proposed density is approximately 79 dwelling units per acre.

Minneapolis City Planning Department Report
BZZ – 1259, Vac. #1419

Variance of maximum floor area from 37,993 square feet (2.38 F.A.R., after two applicable density bonuses) to 44,674 square feet (2.80 F.A.R.): Any floor area beyond what would be allowed by three density bonuses would be overbuilding the site for a property in the C2 District. Staff recommends that the Commission grant a partial variance to allow 43,420 square feet, the square footage that would be required should the applicant qualify for a third density bonus. The proposed square footage would slightly exceed the floor area allowed even by the regulations of the C3A District, a district that allows much more intense development than the C2 District.

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.

Variance of north side yard from five 7 to 0 feet for the proposed ground-level parking garage adjacent to a residence district: Provided the wall meets the building code, staff does not anticipate that granting the variance would pose direct danger to public safety or welfare.

Variance of north side yard from 11 feet to 0 feet for two enclosed stairwells: Provided the stairwells meets the building code, staff does not anticipate that granting the variance would pose direct danger to public safety or welfare.

Variance of north side yard from 11 feet to 0 feet for residential balconies atop the ground-level: Provided the balconies meets the building code, staff does not anticipate that granting the variance would pose direct danger to public safety or welfare.

Variance of north side yard from 11 feet 4 feet for approximately 18-foot section of the north residential wall with windows: Placing the residential wall with windows approximately four feet from the side lot line would increase the danger of fire spreading to an adjacent building particularly if a taller building should be constructed some day on the adjacent property.

Variance of front yard setback along 1st Avenue South from 15 feet to 0 feet for proposed mixed use building: The proposed setback would be consistent with numerous other traditional corner developments in the surrounding area and in the city and would not prove detrimental to traffic congestion or public safety.

Variance of minimum lot area (after two applicable density bonuses) from 694 square feet per dwelling unit to 550 square feet per dwelling unit: The applicant proposes far more dwelling units than would be allowed in the base zoning district. One result may be an increase in traffic compared to a more modest building. Public safety would not be directly affected in any significant way, however.

Variance of maximum floor area from 37,993 square feet (2.38 F.A.R., after two applicable density bonuses) to 44,674 square feet (2.80 F.A.R.): The applicant proposes far more floor area than would be allowed in the base zoning district. Although the building would be out of scale

Minneapolis City Planning Department Report
BZZ – 1091, Vac. #1419

compared to others at the intersection of 26th and Nicollet, public safety would not be directly affected in any significant way.

Findings for the Proposed Vacation of Public Right of Way: The Planning Department has not received written recommendations from the Public Works Department or the Fire Department as of August 29th. The applicant has not yet provided all of the information necessary (specifically, a precise legal description of the area to be vacated) for the Public Works Department to fully evaluate the request. Staff recommends that the Commission continue the vacation application if a recommendation from Public Works and Fire is not received by the time of the Commission meeting.

CITY PLANNING DEPARTMENT RECOMMENDATIONS:

Recommendation Of The City Planning Department for the Zoning Amendment (Rezoning) Application:

The City Planning Department recommends that the City Planning Commission and City Council adopt the above findings and **approve** the application to rezone the property at 2 East 26th Street from the C1 District to the C2 District.

Recommendation Of The Minneapolis City Planning Department for the Conditional Use Permit for the Proposed Dwelling Units:

The City Planning Department recommends that the City Planning Commission adopt the above findings and **approve** the application for a conditional use permit to allow twenty seven (27) dwelling units in a mixed use building located at 2 & 20 East 26th Street, subject to the following conditions:

1. The project is subject to review and approval by the Heritage Preservation Commission.
2. The project is subject to vacation of air rights above and subsurface rights below the public alley.

Recommendation Of The Minneapolis City Planning Department for the Conditional Use Permit to Increase the Maximum Permitted Height:

The City Planning Department recommends that the City Planning Commission adopt the above findings and **approve** the application to increase the maximum permitted height from four (4) stories to five (5) stories, which would allow the first level to exceed the maximum height of a story, subject to the following conditions:

1. The overall height of the building shall not exceed 56 feet.
2. The garage level shall be set back from the adjacent residence district to the north not less than seven (7) feet.

Recommendation of the City Planning Department for the Site Plan Review Application:

The City Planning Department recommends that the City Planning Commission adopt the above findings and **approve** the site plan review application for twenty seven (27) dwelling units in a mixed use building located at 2 and 20 East 26th Street, subject to the following conditions:

1. Parking accessory to the commercial use shall be connected to the public sidewalk along 26th Street with a walkway not less than four (4) feet in width.
2. Signage shall be installed to indicate the location of parking accessory to the commercial use.
3. Not less than ten (10) percent of the first floor façade of the at-grade parking garage shall allow views into and out of the garage. The bottom edge of the windows into the parking garage shall be no higher than four (4) feet above sidewalk level.
4. The Planning Department and Public Works Department shall review any proposal to remove existing public streetscape improvements (e.g., brick pillars).
5. The applicant shall obtain an encroachment permit for all improvements in the public right of way.
6. The project is subject to review and approval by the Heritage Preservation Commission.
7. The project is subject to vacation of air rights above and subsurface rights below the public alley.
8. The Planning Department shall review and approve the final site plan, landscape plan and building elevations.
9. If improvements required by Site Plan Review exceed two thousand (2000) dollars, the applicant shall submit a performance bond in the amount of 125 percent of the estimated site improvement costs prior to obtaining a building permit for exterior improvements.
10. Site improvements required by Chapter 530 or by the City Planning Commission shall be completed by September 26, 2004, or the permit may be revoked for non-compliance.

Recommendation of the City Planning Department for the of North Side Yard for the Proposed Ground-Level Parking Garage Adjacent to a Residence District:

The City Planning Department recommends that the City Planning Commission adopt the findings above and **deny** the variance to reduce the required north side yard from five 7 to 0 feet for the proposed ground-level parking garage adjacent to a residence district at 2 & 20 E. 26th St.

Recommendation of the City Planning Department for the Variance Application to Reduce the Required North Side Yard from 11 Feet to 0 Feet for Two Enclosed Stairwells:

The City Planning Department recommends that the City Planning Commission adopt the findings above and **deny** the variance to reduce the required north side yard setback from 11 feet to 0 feet for two enclosed stairwells for the proposed mixed use building at 2 & 20 East 26th Street.

Recommendation of the City Planning Department for the Variance Application to Reduce the Required North Side Yard for Residential Balconies (Including Screening Structures) Atop the Ground Level.

Minneapolis City Planning Department Report
BZZ – 1091, Vac. #1419

The City Planning Department recommends that the City Planning Commission adopt the findings above and **approve** the variance to reduce the required north side yard setback from 11 feet to 7 feet for residential balconies (including screening structures) atop the ground level for the proposed mixed use building at 2 & 20 East 26th Street, subject to the following conditions:

1. A more detailed elevation of any proposed railings or balcony screening structures shall be submitted for review and approval by the Planning Department.

Recommendation of the City Planning Department for the Variance Application to Reduce the Required North Side Yard for an Approximately 18-Foot Section of the North Residential Wall With Windows:

The City Planning Department recommends that the City Planning Commission adopt the findings above and **deny** the variance to reduce the required north side yard setback from 11 feet 4 feet for an approximately 18-foot section of the north residential wall with windows for the proposed mixed use building at 2 & 20 East 26th Street.

Recommendation of the City Planning Department for the Variance Application to Reduce the Required Front Yard Setback Along 1st Avenue South:

The City Planning Department recommends that the City Planning Commission adopt the findings above and **approve** the variance to reduce the required front yard setback along 1st Avenue South from 15 feet to 0 feet for the proposed mixed use building at 2 & 20 East 26th Street, subject to the following conditions:

1. The garage level shall be set back from the adjacent residence district to the north not less than seven (7) feet.

Recommendation of the City Planning Department for the Variance Application to Reduce the Minimum Lot Area:

The City Planning Department recommends that the City Planning Commission adopt the findings above and **approve** the variance to reduce the minimum lot area per dwelling unit from 694 square feet (after applicable density bonuses) to 591 square feet for the proposed mixed use building at 2 & 20 East 26th Street.

Recommendation of the City Planning Department for the Variance Application to Increase the Maximum Permitted Floor Area:

The City Planning Department recommends that the City Planning Commission adopt the findings above and **approve** the variance to increase the maximum floor area from 37,993 square feet (2.38 F.A.R., after applicable density bonuses) to 43,420 square feet (2.72 F.A.R.) for the proposed mixed use building at 2 & 20 East 26th Street.

Minneapolis City Planning Department Report
BZZ – 1259, Vac. #1419

Recommendation of the City Planning Department for the Alley Vacation:

The City Planning Department recommends that the City Planning Commission and the City Council accept the above findings and **continue** the vacation to the meeting of September 22, 2003.

**Excerpt from the
Monday, September 8, 2003
CITY PLANNING COMMISSION
MINUTES
317 City Hall
Minneapolis, MN 55415
4:30 p.m.**

12. 26th Street East (BZZ-1259) (Ord 6)

2 East 26th Street and 20 East 26th Street (Jason Wittenberg) *This item was continued from the August 18, 2003 meeting.*

A. Rezoning

Application by Master Civil & Construction Engineering to rezone 2 East 26th Street from the C1 District to the C2 District.

Motion: The City Planning Commission recommended that the City Council adopt the findings and **approve** the application to rezone the property at 2 East 26th Street from the C1 District to the C2 District.

B. Conditional Use Permit

Application by Master Civil & Construction Engineering for a conditional use permit to allow twenty nine (29) dwelling units in a mixed use building located at 2 & 20 East 26th Street.

Motion: The City Planning Commission adopted the findings and **approved** the application for a conditional use permit to allow twenty seven (27) dwelling units in a mixed use building located at 2 & 20 East 26th Street, subject to the following conditions:

3. The project is subject to review and approval by the Heritage Preservation Commission.
4. The project is subject to vacation of air rights above and subsurface rights below the public alley.
5. Any number of units above 24 (up to a maximum of 27) be affordable at 50% MMI.

C. Conditional Use Permit

Application by Master Civil & Construction Engineering for a conditional use permit to increase the maximum permitted height for a mixed use building located at 2 & 20 East 26th Street.

Motion: The City Planning Commission adopted the findings and **approved** the application to increase the maximum permitted height from four (4) stories to five (5) stories, which would allow the first level to exceed the maximum height of a story, subject to the following conditions:

3. The overall height of the building shall not exceed 56 feet.

D. Major Site Plan Review

Application by Master Civil & Construction Engineering for a site plan review at 2 East 26th Street and 20 East 26th Street.

Motion: The City Planning Commission adopted the findings and **approved** the site plan review application for twenty seven (27) dwelling units in a mixed use building located at 2 and 20 East 26th Street, subject to the following conditions:

Minneapolis City Planning Department Report
BZZ – 1259, Vac. #1419

1. Parking accessory to the commercial use shall be connected to the public sidewalk along 26th Street with a walkway not less than four (4) feet in width.
2. Signage shall be installed to indicate the location of parking accessory to the commercial use.
3. Not less than ten (10) percent of the first floor façade of the at-grade parking garage shall allow views into and out of the garage. The bottom edge of the windows into the parking garage shall be no higher than four (4) feet above sidewalk level.
4. The Planning Department and Public Works Department shall review any proposal to remove existing public streetscape improvements (e.g., brick pillars).
5. The applicant shall obtain an encroachment permit for all improvements in the public right of way.
6. The project is subject to review and approval by the Heritage Preservation Commission.
7. The project is subject to vacation of air rights above and subsurface rights below the public alley.
8. The Planning Department shall review and approve the final site plan, landscape plan and building elevations.
9. If improvements required by Site Plan Review exceed two thousand (2000) dollars, the applicant shall submit a performance bond in the amount of 125 percent of the estimated site improvement costs prior to obtaining a building permit for exterior improvements.
10. Site improvements required by Chapter 530 or by the City Planning Commission shall be completed by September 26, 2004, or the permit may be revoked for non-compliance.
11. Applicant will work with artists (MCAD, et al) to complete intention of public art with scrim on 26th Street or work with staff.

E. Variance

Application by Master Civil & Construction Engineering for a variance to reduce the required north side yard from five 7 to 0 feet for the proposed ground-level parking garage adjacent to a residence district at 2 & 20 E. 26th St.

Motion: Notwithstanding the Planning Department's recommendation, the City Planning Commission **approved** the variance to reduce the required north side yard from five 7 to 0 feet for the proposed ground-level parking garage adjacent to a residence district at 2 & 20 E. 26th St based on the hardship created by the zoning code requirements for parking that if the variance is not granted parking requirements would not be met.

F. Variance

Application by Master Civil & Construction Engineering for a variance at 2 East 26th Street and 20 East 26th Street to reduce the required north side yard from 11 feet to 5 feet for two enclosed stairwells.

Motion: The City Planning Commission adopted the findings and **denied** the variance to reduce the required north side yard setback from 11 feet to 5 feet for two enclosed stairwells for the proposed mixed use building at 2 & 20 East 26th Street.

G. Variance

Application by Master Civil & Construction Engineering for a variance at 2 East 26th Street and 20 East 26th Street to reduce the required north side yard for residential balconies (including screening structures) atop the ground-level.

Minneapolis City Planning Department Report
BZZ – 1091, Vac. #1419

Motion: The City Planning Commission adopted the findings and **approved** the variance to reduce the required north side yard setback from 11 feet to 7 feet for residential balconies (including screening structures) atop the ground level for the proposed mixed use building at 2 & 20 East 26th Street, subject to the following conditions:

2. A more detailed elevation of any proposed railings or balcony screening structures shall be submitted for review and approval by the Planning Department.

H. Variance

Application by Master Civil & Construction Engineering for a variance to reduce the required north side yard for an approximately 18-foot section of the north residential wall with windows:

Motion: Notwithstanding the Planning Department's recommendation, the City Planning Commission **approved** the variance to reduce the required north side yard setback from 11 feet 4 feet for an approximately 18-foot section of the north residential wall with windows for the proposed mixed use building at 2 & 20 East 26th Street with the following condition:

1. That the variance be only for windows on the 4th floor.

I. Variance

Application by Master Civil & Construction Engineering for a variance at 2 East 26th Street and 20 East 26th Street to reduce the required front yard setback along 1st Avenue South.

Motion: The City Planning Commission adopted the findings and **approved** the variance to reduce the required front yard setback along 1st Avenue South from 15 feet to 2 feet for the proposed mixed use building at 2 & 20 East 26th Street, subject to the following conditions:

J. Variance

Application by Master Civil & Construction Engineering for a variance at 2 East 26th Street and 20 East 26th Street to reduce the required minimum lot area.

Motion: The City Planning Commission adopted the findings and **approved** the variance to reduce the minimum lot area per dwelling unit from 694 square feet (after applicable density bonuses) to 591 square feet for the proposed mixed use building at 2 & 20 East 26th Street.

K. Variance

Application by Master Civil & Construction Engineering for a Variance at 2 East 26th Street and 20 East 26th Street to increase the maximum permitted floor area.

Motion: The City Planning Commission adopted the findings and **approved** the variance to increase the maximum floor area from 37,993 square feet (2.38 F.A.R., after applicable density bonuses) to 43,420 square feet (2.72 F.A.R.) for the proposed mixed use building at 2 & 20 East 26th Street.

L. Vacation

Application by Master Civil & Construction Engineering for a vacation to vacate air rights above and subsurface rights below the public alley at 2 East 26th Street and 20 East 26th Street.

Motion: The City Planning Commission recommended that the City Council accept the findings and **approve** the vacation based on the final sign-off by Public Works.

Staff: This is an application filed by Master Civil and Construction Engineering for various applications to allow a new mixed-use building with 29 condominium units at 2 and 20 East 26th Street.

Minneapolis City Planning Department Report
BZZ – 1259, Vac. #1419

The site is located on the north side of 26th Street between Nicollet and 1st Avenues in the Whittier neighborhood. The zoning of the two parcels—the eastern parcel has C-2 zoning, the western parcel has C-1 zoning. Immediately to the north is a multi-family residential building in a residence district. Immediately to the north of this parcel is a recording studio in a commercial district. The Eastern parcel is located in the Washburn Fair Oaks historic district. The applicant has met with the Heritage Preservation Commission. Typically, we like HPC to act on an application before it reaches the Planning Commission, but that did not happen in this case. So, as you can see, some of the recommendations are subject to HPC approval.

There is Site Plan Review and a conditional use permit required for the proposed 29 units. There is a conditional use permit that has been filed to increase the maximum permitted height. There are variances of the North side yard setback, there's a variance of the front yard setback along 1st Avenue. There's a variance to reduce the minimum required lot area. A variance to increase maximum permitted floor area, and there is a vacation of the public alley—a vacation of the air rights above and the sub-surface rights below the public alley.

The proposed vacation would allow the building to bridge over the public alley and allow underground parking for the residential use. The underground parking would extend below the public alley. The applicant proposes about 6,000 square feet of commercial space, fronting along Nicollet and 26th at the Western end of the site. The principle residential entrance would be located off of 26th Street. In terms of vehicle access, this is the public alley that would continue to run through the site. The applicant proposes a driveway right next to the alley off of 26th Street. Traffic would continue to the at-grade enclosed parking for the commercial use. Public Works has noted that they will require that the non-residential traffic be completely closed off from the public alley and that there should be some sort of refuge for pedestrians. Vehicles would park in angled parking and would exit out on to 1st Avenue. Also, Public Works has noted that the three parking spaces that would use the alley for maneuvering in this location would not be allowed and actually these parking spaces would not provide the maneuvering that the zoning code would allow either.

As you can see on the Site Plan, the applicant proposes to develop very close to, or up to, all property lines. There is no net site area, and therefore, no proposed landscaping. The roof plan helps to understand the project a little better. Here you can see the project bridging over the public alley. The applicant proposes to develop the ground level up to the property lines and then the setback which would be above the ground level would include some balconies for the residential uses. There would be a common balcony on the top floor.

I mentioned the conditional use permit earlier which is to increase the maximum permitted height. Actually, the building itself would comply with the limitation on the number of feet allowed for the building. That would be measured from the frontage along 1st Avenue and to the highest point that would be 56 feet which is the maximum allowed in the district.

Our problem, however, is that the first level, or much of the first level exceeds the maximum height allowed in the definition of a story, so essentially, we have to say that it's more than a story. At the highest point, from the lowest grade is approximately 21 feet. The applicant is dealing with a Public Works requirement that would require a minimum of 14 feet, 6 inches between the alley grade and the bridge over the alley, so essentially keeping this level even with the clearance required by Public Works pushes that greater than our definition of a single story.

Commission President Martin: And we don't penalize them because that's being done to them, they're not asking for it?

Staff Wittenberg: We do require the Conditional use permit to increase the maximum permitted height, and we have to call this a 5-story building. Another impact associated with that is that rather than having a 5-foot setback there, from that residence district, it would have a 7-foot required setback

The building would be a mix of brick and either stucco or a metal that I believe the applicant will likely describe in further detail. This would be the Nicollet Avenue elevation and the 1st Avenue elevation with the egress from the grade level parking garage. Just to give you a sense of the proximity between the proposed structure and the adjacent residential use, which staff is concerned about: This wall, according to the survey, sits approximately a foot off of the property line. So that ground level would range up to 21 feet at the far East end.

I believe you have in your packets the fact that the neighborhood group and business association, have both supported the project. I think it may be the least confusing, given all the variances, if I go through the recommendations and perhaps point

Minneapolis City Planning Department Report
BZZ – 1091, Vac. #1419

out the areas that we're talking about for each of those applications. The rezoning, as I mentioned is for this parcel, to bring the C-2 district to the corner to match the parcel that's on the East.

The conditional use permit, the applicant has requested 29 dwelling units and staff is recommending approval of 27 dwelling units. How we arrived at 27 dwelling units is as follows: The applicant appears to qualify for two density bonuses under the current proposal, they qualify for the enclosed parking bonus and the mixed use bonus. Both of those density bonuses each increase the amount of units and increase the amount of floor area allowed by 20 %. Should the applicant also qualify for a bonus for affordable housing, my calculations indicate that would get them up to 27 units and my understanding is that the applicant is potentially pursuing that affordable housing option.

President Martin: How many units if they don't?

Staff Wittenberg: If they don't qualify for the affordable housing bonus? I believe that gets them back to about 24 if I am not mistaken.

What staff is trying to avoid is the situation where the Commission approves, say 24 dwelling units and then the applicant ends up qualifying for that additional bonus. It would be a difficult situation.

President Martin: So if we had language that said up to 27? Or just allow the 27?

Staff Wittenberg: My reasoning is that since we allow that kind of density through the bonuses, that it's sort of implied that that density is not necessarily harmful in the district, so I'm recommending that they qualify or that they're approved for the 27 even if they don't qualifying for that bonus.

Commissioner Schiff: Jason, in the calculation for the square footage, did you include the part that spans over the alley.

Staff Wittenberg: No Commissioner Schiff, essentially the public alley would still run through the site at grade, so we could not count that area as actual lot area.

Commissioner Schiff: We couldn't count the second and third stories, which are living spaces as they proposed it?

Staff Wittenberg: We count those as floor area, because they would be physical floor area, but since they would not own the land, essentially that's public right of way, we can't include adjacent public right of way in the calculation of lot area.

As part of the conditional use permit, of course, we're recommending that that be subject to HPC approval as well as approval of the vacation. Obviously the vacation is crucial to the project as proposed.

Next, the conditional use permit to increase height from four stories to five stories. Again, there would be physically four floors, but the first level exceeds the maximum number of feet allowed for a story. We're recommending approval of that subject to the overall building not exceeding 56 feet and that North setback be met to meet the 7-feet required from that residence district.

In terms of the site plan review, again, staff recommending approval of 27 units rather than the requested 29. Some of the things that we are conditioning this recommendation on is that there be some kind of sidewalk connection between these parking spaces and the public sidewalk so that people don't have to compete with vehicles in the drive aisle. That there be some kind of indication that this is parking that's available for the commercial use (some sort of signage) that directs people to that so they know that's not just parking for the residential units. We are recommending some changes to the façades to allow some more visibility in and out of that parking area, primarily for crime prevention, but also certainly for aesthetic reasons. Again HPC approval, vacation, the standard conditions to round out the site plan review application.

The seven variances that have been requested. Staff is recommending denial of the variance to reduce the setback along the residence district to the North. This was a point that I believe I had made with the applicant when I first met with them months ago about this project is that the Planning Department would be unlikely to support a variance along that residential property line to the North. As the Commission is aware, it's quite rare for us to recommend approval of a variance right up to a residential property line. Certainly it is some consolation that the applicant would be meeting the setback for the taller

Minneapolis City Planning Department Report
BZZ – 1259, Vac. #1419

portion of the building, but staff is quite concerned about the size of that wall right up to the residential property line. Staff is recommending denial of the setback variances from 11 feet to 0 feet for the two stairwells, with the same idea that those stairwells should meet the setbacks to not be intrusive for the adjacent properties.

For the balconies that would be on top of the proposed ground level, staff is recommending that those be approved to seven feet to match the recommendation on the variance for the first level. My understanding from a discussion with the applicant today is that we can eliminate the need for a variance here, H, the need for this variance was due to the fact that the applicant was proposing windows in this wall, that creates the need for an 11 foot setback. My understanding is that the applicant will eliminate windows from that approximately 18 foot section which would then require no setback essentially for that wall.

President Martin: So we delete H, or return?

Staff Wittenberg: I would verify that with the applicant, but that's my understanding. Staff is recommending approval of the variance to reduce the front yard setback along 1st, but again, this is conditioned on meeting that North side setback. Staff is concerned about the cumulative effect of both those variances. We are not as concerned about the variance along 1st should this meet that North side setback.

Finally, staff is recommending partial approval of the variances both to reduce the required lot area and increase the maximum floor area allowed on the property and, again, those figures that we arrived at on the recommendation assume that the applicant will qualify for the affordable housing density bonus and would allow that amount of floor area and that number of units.

In terms of the alley vacation, staff had not heard from the Public Works department until late last week. I did receive word from a Public Works staff that they have forwarded to the Public Works Director a recommendation to approve the vacation, however, I have not received that written recommendation from the Public Works Director. I tried contacting the Public Works Director today, but I have not received that recommendation. I did hear from the Fire Department today and they are recommending that it be approved subject to this area being posted as a fire lane.

Just one final point, that sort of gets to our concern on the scope of the project. This is a comparison of some of the residential projects that I have reviewed [refers to overhead] and these are only the projects I have looked at outside the downtown districts. As you can see, the applicant's proposal of 79 dwelling units per acre is quite high compared to many of the multi-family projects that we've seen come through our process, however, staff's concern about the number of units is not necessarily as great as our concern about the overall bulk of the building itself.

President Martin: Any questions for Jason at this moment? Commissioner Hohmann?

Commissioner Hohmann: Jason, based on the two bonuses, I think they qualify for 23 units and you're recommending 27. I'm just wondering if they get the 27, what's the incentive to do the affordable?

Staff Wittenberg: That's a good question Commissioner Hohmann, they may have little incentive then to do the affordable housing bonus.

President Martin: Thanks Jason. This is a public hearing. Are there those who wish to speak to item number 12? Please come forward.

Jeff Washburne: My name is Jeff Washburne, and I'm the director of the City of Lakes Community Land Trust and I just want to support this project in its entirety and that we would work with Master in creating the affordable units. I guess I applaud Master in seeking the funding for additional affordability, to make these units more affordable as well as seeking some creative ways to bring them in the land trust. It's a very great way to bring affordable units now into an area that is only going to increase in cost and price moving forward and not necessarily knowing the technical aspects of the setbacks, from what I understand, this is going to limit the affordability of those units, if not entirely delete them and I just wanted to come forward to pledge our support for this project and look at a way to also make this much a mixed income project.

Commissioner Schiff: Thank you Mr. Washburne, for being here. Can you clarify, what's the rate that you're counting as affordable for these units?

Minneapolis City Planning Department Report
BZZ – 1091, Vac. #1419

Jeff Washburne: For these units, we were seeking funding that would bring them down to 50 % of median.

Commissioner Schiff: And how much gap financing are you applying for Hennepin County in order to meet that goal?

Jeff Washburne: I believe it was approximately \$60,000 per unit, 60 to 65 thousand per unit to make them affordable.

Commissioner Schiff: And do you have a letter of intent from Master and Civil Engineering, or are you waiting to see if Hennepin County funds this in order to decide if you're going ahead with this?

Jeff Washburne: We are waiting for a response from Hennepin County. We have pledged our support. There are some technical aspects as it relates to the land trust as well that we need iron out to really make sure this project can move forward from a land trust perspective. A lot of it is hinging, but it also, again in support of Master, aside from making these units affordable, there's no real incentive to go after these funds and they took it upon themselves to go for it and make this happen.

Commissioner Schiff: Great. When are you hoping to hear from Hennepin County?

Jeff Washburne: I believe it's November or December of this year.

Commissioner Schiff: Thanks.

Don Gerberding: Good evening, I'm Don Gerberding, I'm with Master Civil and Construction Engineering, and I live at 2416 West 24th Street in Minneapolis. I wanted to talk tonight about our company. We are an engineering construction firm. We're located in the Whittier neighborhood and we're here today to talk about a vacant, blighted, graffiti'ed parcel at the node of 26th and Nicollet. It's been vacant for a decade.

President Martin: You're not talking about the Black Forest?

Don Gerberding: I'm talking about the parcel..

President Martin: I know, I'm teasing...it's not all blighted there.

Don Gerberding: But anyhow, today is part of a 6-month design period where we've worked with the sellers who are the owners of the Black Forest and the neighborhood to evolve a design that both the neighborhood and the property owners embrace. The concept is to have a project that's housing and retail, with a boldly urban design, and we do want to preserve the character of the neighborhood. The Whittier neighborhood, it's important to them in the design to have home ownership. Whittier is 89% rental. With that, comes the opportunity to work with the land trust to have five units affordable up to 50%. So we think it's a nice blend of home ownership and an opportunity to give homeownership to people in a quality project at a reduced price. Maxfield Research says that the absorption of this will be almost immediate. The proposed design also brings a strong connection to Nicollet Avenue on the retail component, but it also provides a bit of connectivity to what we're striving for over the old artist's quarters from the MIA, from the Children's Theater and also the MCAD campus. That's where we expect the affordability - people who are either students or staff at what we call the arts community in Whittier.

The challenges of this site are really boiled down to the parcel is split into an East portion and a West portion divided by a City alley. The reason the two parcels have not been developed to date is that the East parcel is a unique size and shape. The West parcel is a normal city lot in its size, but the East parcel is much narrower. Therefore the challenge comes to how to bring forward a thoughtful design to use the East parcel to its highest and best use. So in reviewing the zoning code and designing the building, we looked first and foremost at meeting the parking requirement. This area is critically short on parking and despite the challenging size and shape, we developed a design that includes underground parking (which is safe and secure for the homeowners), as well as street-grade parking which satisfies zoning requirements for the retail component. There is no other parking available. So the variance request today, and I think this is what is the prevailing logic, you know the logic behind the variance request is the result of some unique hardship pertaining to the project. Because of the smaller size of the East parcel, the project cannot move forward, and it cannot move forward, without variance considerations.

Minneapolis City Planning Department Report
BZZ – 1259, Vac. #1419

In the logic behind the City's zoning code as we all know is for the protection of the surrounding property owners as well as for the good of the City. The goal of our design team was to create a building that was not visually obtrusive to any neighbor, either their sense of space or their light, so the prose design does achieve this sensitivity and is evidenced by written support of the adjacent property owner next to the smaller parcel-the North property owner where the variances are requested. In short, the project is thoughtfully designed, it incorporates the necessary compromises often necessary in an urban in-fill project. The design does not violate the intent of the code, nor does it intrude on our neighbors. We think it's an appropriate design, we think it is a design and a project that's going to define that intersection for the next 40 years. Thank you very much.

Ted Redmond: Hello, my name is Ted Redmond with BKV Group Architects, the architect for the project. Just wanted to clarify a few of our variances. BKV Group is located at 222 North 2nd Street, and I actually live in the neighborhood about two blocks away from this site. First wanted to address the variance for the stairwell projections and we've been looking at making modifications to the design. We can pull those stairs back to some degree. The stairs are set up based on the way the parking layout is required to work on the lower levels-just in order to get clearance for parking. So we don't feel we can pull it back a full 11 feet, but we are willing and able to work to create some sort of a compromise, perhaps pulling back to 4 or 5 feet, is what we would like to propose.

The second variance that I would like to request is the recommended variance for the residential balconies. We are more than happy to accept the staff recommendation to pull back to 7 foot setbacks. The third variance that I'd like to speak to is the denial of the variance for the windows on the North side for an approximate 18 foot section. That is on this Northwest corner of the building on the fourth floor and again this is in fact a variance that we're more than happy to work with. We can either remove that window or pull that wall plane back to the full 11 feet so that denial is something that we can work with the City. The fourth variance that I'd like to speak to would be the recommendation to reduce the front yard setback along 1st Avenue. Staff is recommending the variance be granted, however, there was a condition which tied that in to the 7 foot setback for the parking and we would ask that condition be removed from that approval which really ties into the last variance that I'd like to speak to which is the granddaddy of them all from our perspective and that is the parking variance.

As Don was alluding to, this site is a very challenging site to develop, it is because of the narrowness of the Eastern site. It is only 56 feet from North to South which is actually 10 feet shallower than what a typical residential development would use. It's also shallower than what a traditional double-aisle parking lot would actually use. What really drives our layout is in doing everything we can to meet the parking requirements for both the residential units, as well as the commercial property. In order to meet both requirements, requires a two-way ramp to access that below-grade parking. That ramp itself is about 24 feet wide. Now when we take that 24 foot wide ramp plus the parking stall on one side, and a 12-foot drive aisle for angled parking, that actually meets that full 56-foot width. So in other words, just to gain access to the lower level while still providing commercial parking, we need every foot of that narrow width. We did look at alternative layouts, layouts which would flip the ramp to other locations, layouts which would access the ramp off of 1st Avenue, et cetera, and there is no other layout which allows us to meet the parking requirements for both the residential units as well as the commercial. So because of that, we would request that the variance for the North yard setback be granted so that we can meet all of the parking requirements.

Commissioner Schiff: Mr. Redmond, two questions: The variance on the North wall for the 18 foot section to allow the North residential wall with windows. Which rooms would be affected if you withdraw that variance, do we end up with bedrooms with one window instead of two? How many units and how many rooms are affected?

Ted Redmond: Madame Chair, Commissioner Schiff, actually happens, this unit has an open to below area and a bedroom or den area - that is the space which currently has windows, both along Nicollet as well as facing North. I don't think that we would want to eliminate that window but what we can do is take this wall and pull it backwards about 7 feet such that it is within that 11 foot setback. So what we would propose is that we wouldn't eliminate windows, but we would make the units slightly smaller.

Commissioner Schiff: Thanks for that clarification. And I think you stated that one of the variances you would be comfortable going to 4 or 5 feet, that's the North lot variance, and is that for E?

Ted Redmond: That was for the two stair towers. I glazed over that wanting to reference it to the parking, but those stair towers actually are located where they are we have been studying that in the last week since the staff recommendation came

Minneapolis City Planning Department Report
BZZ – 1091, Vac. #1419

out, and we do believe we can make that a little bit shorter, we believe we can hit about 4 or 5 feet setback, but we believe the full 11 feet is difficult to meet without affecting the parking below.

Commissioner Schiff: OK, if I can just clarify with nods from Jason, is that E? Or is that relevant?

Staff Wittenberg: F.

Patricia Fitzgerald: Good afternoon Commissioners, I'm Patricia Fitzgerald and I'm with Master Engineering. I wanted to speak directly to the density issue and the conditional use permit for 29 units. I know that it seems that this project is dense, but I just want to place the density in context. Across the street there is a 7-story apartment building that has 48 units. There are many apartment buildings in the area, mixed-use buildings, so it is a fairly dense neighborhood. The neighborhood has supported our project because it is ownership housing, and they feel it is appropriately dense for the area. And then, as Jeff Washburne alluded to, what is driving our need to do 29 units of housing is really the affordability issue. Our goal of creating a project here that's going to have long term viability, it's going to appeal to artists because of its location near MIA and our goal of creating 5 units of affordable at 50% of metro median income, we have to strike a balance to make the project viable. We're providing a lot of underground parking, it's a very nicely designed building. So 29 units makes it work. 27 would be very difficult for us to make any of the units affordable. Also, I understand staff's concern about the density, but I just wanted to give our interpretation of the math on the site, the idea is if you do count the alley square footage in our calculations for the number of units, with 3 density bonuses. The top lines show the square footage of the parcels. The 2 and the 20 East 26th Street, and then the third row shows the square footage of the alley so that if you use the square footage of the alley to calculate our total site square footage, and then apply 3 – 20% bonuses, that would be including the affordable housing bonus, by our math you do come up with 29 units as buildable on site. And then similarly, for the floor area ratio, that would allow us to build a 45,000 square foot building and we're asking to build a little less than 45,000 square feet. So we have requested a vacation of the subsurface rights of the alley and the air rights, and as I understand it, Public Works is supportive of that. We will allow public access into and out of the alley, so Jason Wittenberg is correct in that, but if you do count that square footage, then we feel like we do meet the zoning requirements.

Steven Weiss: Madame Chair, my name is Steven Weiss, and I own the building that's directly adjacent to the proposed development at 2543 Nicollet. It's North and West of the development. I guess I just have a couple of issues and I know that if I say that I would disapprove of this that I'm trying to scale a fairly high wall when there's affordable housing. My building is a recording studio and it has been for about 50 years of continuous operation (I haven't been there that long), but it's a very sensitive sight to construction noise for very obvious reasons and during the presentation, the West property hasn't really been addressed and no one has really addressed me or tried to discuss this matter with me – all of the concern has been toward the residential property and not the commercial property, so I would say that I'm in disapproval of the variances. My understanding is that all the variances have to have a grievance or a hardship that would go with them [and] it would seem to be that the only hardship or grievance here would be that the size of the property and the scale of the development don't fit. Mr. Gerberding did address the issue of critical parking in the area and despite the fact that that is a private lot, it's used very often, continuously, daily as a public lot, and the City, in approving this development would remove 25 spaces of parking that are at many times full. It hasn't been discussed what would become of the people who use that parking on a daily basis, if the City would provide for that or what would take place during the construction of the development because they're talking about doing it essentially from corner to corner, whereas the construction material, the construction equipment, the mechanized equipment-where is all that going to be during the project? So it just seems that there are a number of issues that haven't really been addressed.

President Martin: Thank you.

Tom Berthiaume: Commissioners, my name is Tom Berthiaume, address 210 West Grant, Minneapolis, and I chair the Nicollet Avenue Business Association. During the 90's we started efforts along Nicollet Avenue starting with streetscape, putting in 225 new trees and streetlights-we've been trying to lay the ground for some new development along this part of the City that has had some struggles, had some serious crime issues, continues to have some serious crime issues. We have been trying to encourage developers that we'll have some courage and some creativity to come down here and do business on Nicollet Avenue, and try to fill in some of these gaps that have come about during the last 50 years. We've seen mostly demolition during the last 50 years. We're starting to see some progress, some good re-use of existing buildings, but we have not seen any new construction in this stretch of Nicollet since I've been there the last 12 years. Zero. So, to see a developer come forward at this time, to take on a difficult lot, to take on a challenge like this, with courage and creativity, to come up

Minneapolis City Planning Department Report
BZZ – 1259, Vac. #1419

with a good intensive use, good urban design, good solutions to parking, we certainly want to applaud that. We hope the Planning Commission can come forward and show some flexibility-this is in our mind a really terrific design. This is not a quick and dirty strip mall, which could have been. This is a real quality, multi-story building, quality materials, good looking, and they have worked very closely with the neighborhood, so we hope that their courage and creativity will be met with some flexibility from the City.

President Martin: Thank you. Anybody else? I'm going to close the public hearing. Commissioner LaShomb?

Commissioner LaShomb: I'll move staff recommendation on 12-A, the rezoning. (Commissioner Krause seconded)
The motion carried 7-0.

Commissioner LaShomb: I'm a little confused about 27 or 29, I'm not getting the point on that issue, so which is it?

Staff Wittenberg: Commissioner LaShomb, the applicant has requested 29 dwelling units, staff is recommending approval of 27 dwelling units, which is the number they would be allowed should they qualify for the two bonuses and if they do qualify for the affordable housing bonus. So staff's recommendation is that you approve 27 units.

Commissioner LaShomb: Well if we allowed them to go to 29, what would be the problem from your perspective?

Staff Wittenberg: The problem is essentially that even after two density bonuses of 20% each, they still are proposing more units. So essentially, for lack of a better phrase, they're blowing the regulations out of the water.

Commissioner LaShomb: OK, then Madame President, I will move the staff recommendation on 12-B (MacKenzie seconded).

Commissioner Krause: Madame Chair, I want to add a condition to that that any of the units above 24 be affordable. I heard the developer say affordable at 50%, that's acceptable, that would be the condition. And then I have a further comment on the issue of 27 versus 29-isn't that really a question of whether or not we count as lot area that space above the alley?

President Martin: That was the claim, yes.

Staff Wittenberg: Commissioner, yes that was raised, but to us, that's no question. That's an open and shut case. Public right of way cannot be counted toward lot area.

Commissioner Krause: In your testimony, you said public right of way that's adjacent, I believe that was the word you used, as opposed to over, so I'm not saying that I disagree with the staff recommendation, I'm just pointing out that is the difference between 27 and 29 and it is policy not to include as adjacent right of way in the lot area, but this is a somewhat different situation where you're talking about air rights over public right of way.

Staff Wittenberg: Well, the right of way itself would be at grade. I am perhaps just not understanding your point fully. Obviously you wouldn't include non-adjacent right of way in someone's lot area.

Commissioner Krause: Right. That's not a point that we need to try to figure out right now.

Commissioner MacKenzie: I just want to reiterate that I don't think that it's appropriate for us to count the right of way in any calculations of density because even in a situation where we would be dealing with air rights, usually either the public right of way is retained, if it's a public owner at-grade and the air rights are traded, or it's an owner who owns the at-grade and they trade their air rights for development. So I just want to reiterate my support for the staff motion that we calculate the FAR and the density for the development based on the land controlled by the applicant and not by the public right of way.

Commissioner Schiff: Question for Jason. The developer as you can tell is entitled to up to 27 units?

Staff Wittenberg: Should they qualify for 3 density bonuses. Right now, we can verify that they are qualified for 2 of those density bonuses.

Minneapolis City Planning Department Report
BZZ – 1091, Vac. #1419

Commissioner Schiff: And that brings them up to 24?

Staff Wittenberg: I believe it's 23 actually, yes.

Commissioner Schiff: Commissioner Krause included language that said units above 24 must be affordable—is that basically saying the same thing as the zoning code, in order to qualify for that 3rd variance?

Staff Wittenberg: Actually no, that would be a significantly lower standard, I believe because to qualify for that bonus, 20% of the units would have to qualify for that affordability standard .

Commissioner Schiff: So how many units would that be? 3.4. The base. The same number we used for the other.

Staff Wittenberg: Mr. I guess we'd need to see the interpretation on that, but I believe that 20% of the final number of units would likely have to be affordable.

Commissioner Schiff: Mr. Anderson can clarify?

Staff Anderson: I'm sorry but I can't respond to that, I don't know whether it's before or after.

Commissioner Schiff: I believe we count the same, the 3.4, the same number we use for the 20% for the mixed use and the underground parking, and then the same 20% that when we created this bonus that we weren't changing the rules for when we added the other bonuses.

Commissioner Schiff: Mr. Certainly that would be the bonus that you would receive is that you would get the additional 3 units, but I don't have experience with this particular density bonus and I'm just not sure how 20% of what is in order to get the bonus.

Commissioner Schiff: Right. Nobody has used it yet. But I think it's of the base, so I think it would be 3.4 which would mean that , round to 3, so 24 units would then be consistent—you're saying that units 25, 26 and 27 must be affordable? Right? OK.

Commissioner Krause: Just on this point, I agree with Commissioner MacKenzie that we should never count right of way, but we're actually being asked. I'm suggesting that at some point there's a policy discussion we should have about that portion of the right of way that isn't the surface.

Commissioner Schiff: I have a question for the applicant. I don't think the Planning Commission is buying your argument, as well as you made it, for the math on the 29 units instead of 27, so if this Commission only approves 27 units, which two will you get rid of, and is there an opportunity for additional setbacks or will you make the existing units larger?

Patricia Fitzgerald: Doing fewer units means that the development costs need to be shared among fewer units so the prices have to rise. We can certainly look at making some units larger and seeing if we can afford to have those price points rise, but I think it's going to make those lower end units, it's going to be very challenging to keep those as low as we had applied for the affordable housing incentive funds, so it's possible that we would lose at least two of the affordable units. It would make sense that all of them would rise.

Commissioner Schiff: But you'd keep the same floor plan, however, and just rearrange the walls within and the size of the units, because I'm particularly looking at the setback on 1st Avenue, 26th and 1st, and how your building comes out adjacent to the West than the adjacent parking building, and trying to see if there's any room to give a little bit more of a setback on 1st Avenue.

Patricia Fitzgerald: Most of the setbacks on 1st Avenue are required for the parking at first floor, so we'd have to give up a lot of the parking if we move anything back.

Commissioner Schiff: Are all those first floor parking spaces compact or do we have requirements for how wide they must be?

Minneapolis City Planning Department Report
BZZ – 1259, Vac. #1419

Patricia Fitzgerald: Some of them are compact on the ground floor. Actually, they're not currently compact. One is compact.

Commissioner Schiff: So I guess I'll look for clarification from Mr. Wittenberg if those spaces can be squeezed down at all in order to get just a little bit more of a setback on 1st Avenue.

Staff Wittenberg: My understanding was that three of the proposed spaces at grade were going to be compact. I thought that was the latest plan. Right now, based on the amount of retail space and one tenant, the applicant I believe would be required to provide seven off-street parking spaces for the commercial use, so I believe they could do that while still pulling back the building somewhat. For example if you were to lose parallel parking space number one and parking space number three, it appears to me you would still meet the parking requirement while allowing for a greater setback.

Commissioner Schiff: OK, well, that's variance "I", so we can talk about that when we get to "I".

President Martin: OK, so the motion that's before us is to approve the staff recommendation with an additional condition that any units above 24 be affordable at 50 % of metro median...

Commissioner Krause: Up to a maximum of 27.

The motion carried 7-0.

Commissioner LaShomb: I'll move 12-C (MacKenzie seconded)

The motion carried 7-0.

Commissioner Schiff: The plan for the scrim and the artwork on the South 26th Street side, that wasn't addressed during the public hearing, and it's not referenced at all in the site plan. From what I understand with a previous conversation I had when I called the applicant and he told me that you're planning to do some innovative public art utilizing a scrim technique using light, if people are familiar with scrim from theater light that shines in front of it makes it a solid wall, light from the back makes it see through, so there'll be some kind of images projected on a scrim, or painted on a scrim.

President Martin: Kind of like the Guthrie building.

Commissioner Schiff: No, that's etching. Totally different. So anyway, I just want to see some sort of reference to that in the site plan, so that we know we're moving towards that rather than a solid wall, I just want to get some language that says the applicant will work with some organizations, some artists, I think you had some ideas in mind in order to complete your public art component. So who are you working with on that?

Patricia Fitzgerald: Well, it's conceptual at this point, but we had talked about working with Intermedia Arts or possibly MCAD to do the public art piece.

Commissioner Schiff: OK, and in your own words how would you describe that because the site plan requirements makes you have to block the parking and you're not planning to do a solid wall, so how can we incorporate this into the site plan language?

Patricia Fitzgerald: Well I definitely liked the language about some visibility in and out of the structure for safety reasons, so we agree with that, and then if we can possibly have language about working in a way to do some art as part of that, that would be nice too. We haven't looked too far down the road at the different cost and durability of the materials, so if we could have a little bit of latitude that would be nice.

Commissioner Schiff: Move to approve the site plan with the addition of number 11, that the applicant will work with arts organizations or artist to complete the intention of public art and a scrim on 26th Street. If that is not possible, either the technology or the collaboration, that you'll check back with staff to make sure that you're meeting our goals for hidden parking. My particular concern is that we're maintaining some openness for public safety and for good pedestrian level street design goals (Krause seconded).

Minneapolis City Planning Department Report
BZZ – 1091, Vac. #1419

The motion carried 7-0.

President Martin: That gets us up to the variances.

Commissioner Krause: Madame Chair, I will move the staff recommendation, but I do have a question. What exactly is the number of parking spaces we're losing? We had the discussion a few minutes ago about compact spaces, Jason, is there a number we know?

Staff Wittenberg: Commissioner Krause, should the applicant comply with the staff recommendation on E, they're essentially going to have to go back to the drawing board to a large degree for that East parcel, so it's difficult to say exactly how many spaces they're going to come up with.

President Martin: Jason, could you clarify where those spaces are please, there seems to be some confusion about that.

Staff Wittenberg: We're looking for a 7-foot setback, which doesn't immediately get rid of parking spaces. And they do have the minimum drive aisle. So essentially this is going to be in for a complete redesign in some fashion, should the applicant comply with the 7-foot setback on the North.

Commissioner Krause: Madame Chair, were there 8 spaces there?

Staff Wittenberg: They're proposing 10 including these two here.

Commissioner Krause: And we believe that the requirement for the commercial would be seven?

Staff Wittenberg: Based on the 6,000 square foot retail area and no restaurants, yes, that's correct.

Commissioner Krause: This is kind of the heart of the restaurant district, if it's a restaurant then we're cooked. I think I'm going to withdraw my motion and see if someone else wants to make it.

Commissioner Schiff: If I could clarify, the applicant is wanting us to approve E, and their compromise is to move F from 11 to 5 feet, is that correct? So that you still have the width necessary in the drive aisle and the parking spaces to allow the off-street parking but you do get a little more setback from the apartment building at the higher level, so I think that's a pretty good compromise. I'll move E, against the staff recommendation, to approve and then I'll follow that up with a compromise on F (Krause seconded).

President Martin: We need some findings.

Commissioner Schiff: I'd use the model of the other findings for the other variances we've granted. It's our first one.

Commissioner Krause: Madame Chair, I would also say that given the nature of the retail activity on this stretch of Nicollet at the moment, that we should be anticipating the possibility of a possible restaurant use and we still don't get there even with that, so I would be reluctant to lose that parking in this area given the constraints on parking.

Commissioner Young: I'm concerned about that we're not taking into account the high transiency of this neighborhood. I realize not for this specific project, but having lived in Whittier, with the parking problems of Whittier, so many people do other things besides take cars, these are students, MCAD students, even possibly being able to afford buying these units and I guess it seems that to lose a parking space or two is not like the end of the world.

Commissioner Schiff: Madame Chair, in response to what Commissioner Krause said, actually, I would actively discourage a restaurant space on this corner. And I think the applicant is looking for non-restaurant lease space as well because restaurants have additional requirements of stacking of air vents that mess with the flow of the building and additional impacts on the residential units, but also, the goal of Nicollet Avenue is not to make it, I mean it's called Eat Street for marketing purposes, but we don't literally want it to be nothing but restaurants. We want a well-rounded community with a mixture of uses and I think the last thing Nicollet or Lake Street needs right now is one more restaurant selling \$7 martinis. I think the hardship for the variance is that we're creating a catch 22 if we don't grant the necessary requirements on the drive aisle and the setback,

Minneapolis City Planning Department Report
BZZ – 1259, Vac. #1419

the applicant is going to come forward with additional variances for parking, so I think the hardship is created by the zoning code and we need to provide this minimal parking setback to meet the parking requirements that the code requires.

Commissioner MacKenzie: I just wanted to speak in favor of the staff recommendation, I do feel that building to this density will effectively overbuild the site and cause undue impacts on the adjacent properties, so while there certainly is a hardship to build to this scale and intensity, with the parcel dimensions they have, to my mind, it's not worth overturning the staff recommendation for this variance.

Commissioner LaShomb: Well Commissioner Schiff, I just want to know when the martinis went up to \$7.

President Martin: the motion that's before us is to overturn the staff recommendation and approve the variance on the North side yard from 7 feet to zero feet.

The motion carried 4-3.

Staff Wittenberg: President Martin, you may want to revisit C then, the motion that you adopted calls for a 7 foot setback for the garage level.

Commissioner Schiff: Madame Chair, move to reconsider C (Krause seconded), and make a motion to approve C, minus condition 2.

The motion carried 4-3.

Commissioner Schiff: Madame Chair, I would like to move approval of item F, with the north side yard setback from 11 feet to 5 feet for two enclosed stairwells, for the proposed mixed-use building at 2nd and East 26th Street. I think this accommodates a little bit more air space for the residential (MacKenzie seconded).

The motion carried 7-0.

Commissioner Schiff: For balconies, I'll move staff recommendation (Krueger seconded).

The motion carried 7-0.

President Martin: What do we need to do with this one? H is being returned, is that correct?

Commissioner Schiff: I have a question, can the applicant clarify what's the result of you withdrawing H? Right now you're building right up to the property line and to the adjacent buildings, so by withdrawing this, there's going to be a small little skinny gap in between the two buildings.

Ted Redmond: If I may just quickly clarify, this variance is actually for the floors which have windows on the North side, this is the elevation of the building from Nicollet Avenue as you can see along the Northern edge, that wall is along the property. There are no windows on those floors for that section looking North. It is at the top floor, where we step back and introduce a window at that location and what we're proposing to do to meet staff recommendation is that this line would come back to make sure that we hit that 11-foot setback.

Commissioner Schiff: And then you'll be left with a building that's not symmetrical.

Ted Redmond: Architecturally, I think we can handle that, we can make that work.

Commissioner Schiff: OK, I'd rather see the symmetry, but because I don't know who you're affecting, I'd rather keep the variance on the table frankly, because I think it makes a better looking building.

President Martin: Is that a motion?

Commissioner Schiff: Yes.

Minneapolis City Planning Department Report
BZZ – 1091, Vac. #1419

President Martin: So your motion is to...?

Commissioner Schiff: Approve the variance, North residential wall with windows (Krause seconded).

Commissioner Krause: I agree that this isn't a problem if the windows are on the fourth floor only, but it doesn't really say that, so as long as we included a condition that says that the windows would not be, I think the problem comes in if the windows are on the first, second, third floors, isn't that generally the case? So if we could add a condition that we grant it, but only for windows on the fourth floor.

The motion carried 7-0.

Commissioner Schiff: Madame Chair, on item I, I'm just a little uncomfortable with how the building projects on 1st Avenue overshadowing the adjacent building, particularly because it's that garage door that greets the pedestrian. Like to see a little more space between the garage door where cars exit and the side walk, so I want to approve a side yard variance, not from 15 to zero as staff is recommending, but from 15 down to 2 feet for a setback (Krause seconded).

Commissioner MacKenzie: Madame Chair, we have to pay attention then to that condition about the garage level setback at 7 feet, given that we did not uphold that staff recommendation, I just want us all to be aware of that, that we have to strike that condition.

The motion carried 7-0.

Commissioner Schiff: Madame Chair, question, is the math still applicable since we've only approved 27 units, I guess it's a question for Mr. Wittenberg. I guess it would be, because that was the original staff recommendation.

Staff Wittenberg: Correct, these recommendations are based on 24 units.

Commissioner Schiff: Move approval (MacKenzie seconded).

Staff Wittenberg: Sorry, I believe I said 24 units, it's 27 units.

Commissioner LaShomb: I'll move K for staff recommendation (Krause seconded).

The motion carried 7-0.

Commissioner Schiff: I'm going to move approval. We've got verbal communication from Public Works staff that they've recommended approval of this and all we're waiting for is the final written letter from Public Works.

Staff Wittenberg: That's correct, the staff has recommended that the Public Works Director officially sign off, and that's what we have not received is a final signoff.

Commissioner Schiff: I'm going to move approval based on the final sign-off received from the Public Works Director.

The motion carried 7-0

President Martin: Ms. Fitzgerald and Mr. Redmond, see what you can do to make the construction less onerous and cumbersome for somebody who's trying to run a business right next door? Thank you.