

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

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MEMORANDUM

DATE: September 28, 2004

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

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

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

SUBJECT: Planning Commission decisions of September 27, 2004

The following actions were taken by the Planning Commission on September 27, 2004. As you know, the Planning Commission's decisions on items other than rezonings, text amendments, vacations, 40 Acre studies and comprehensive plan amendments are final subject to a ten calendar day appeal period before permits can be issued:

ATTENDANCE

President Martin, Vice President Hohmann, G. Johnson, Krause, Krueger, Kummer, LaShomb, and Schiff – 8

INTRODUCTION TO PUBLIC HEARING

PUBLIC HEARING

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

The attached report summarizes the actions taken at the City Planning Commission meeting held on September 27, 2004. The findings and

recommendations are respectfully submitted for the consideration of your Committee.

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

3. Text Amendment (Zoning Code Chapter 551, Ward: Citywide) (Steve Weckman)

A. Text Amendment: The amendment would amend Chapter 551 Overlay Districts, Article VII, Floodplain Overlay Districts. The amendment is required by the Federal Emergency Management Agency (FEMA) to remain eligible for the National Flood Insurance Program (NPIF).

Action: The City Planning Commission recommended that the City Council **approve** the text amendment.

Commission President Martin opened the public hearing.

No one requested to speak to the item.

Commission President Martin closed the public hearing.

Commissioner Schiff moved approval (LaShomb seconded).

The motion carried 6 – 0.

15. Colin Powell (BZZ-393, Ward 8), 2901 - 2927 Clinton Avenue South; and 2900-2930 4th Avenue South (Lonnie Nichols).

A. Rezoning: Application by Urban Ventures Leadership Foundation for a rezoning of 2921-23, 2925, and 2927 Clinton Avenue South from an R2B (low density, two-family residential) to an I-1 (light industrial) district.

Action: The City Planning Commission recommended that the City Council adopt the findings and **approve** the application to rezone three parcels (2921-23, 2925, and 2927 Clinton Avenue South) from R2B to I-1 (light industrial).

Commission President Martin opened the public hearing.

No one requested to speak to the item.

Commission President Martin closed the public hearing.

Commissioner Schiff moved approval (LaShomb seconded).

The motion carried 6 – 0.

REPORT
of the
CITY PLANNING COMMISSION
of the City of Minneapolis

The Minneapolis City Planning Commission, at its meeting on September 13, 2004, took action to **submit the attached comment** on the following items:

**Excerpt from the
September 14, 2004
CITY PLANNING COMMISSION
MINUTES**

**10. Boutrous Lander Cluster (BZZ-1892, Ward 13), 4251 Vincent Avenue South
(Fred Neet)**

A. Rezoning: Application by Michael Lander to rezone the property at 4251 Vincent Avenue South from R1 to R3.

Action: The City Planning Commission **continued** the application to rezone 4251 Vincent Avenue South from R1 to R3 to the September 27, 2004 meeting.

Commission President Martin: Before you launch in, let me just see...Is there anyone here who wishes to speak to item number 10? [show of hands] You do want to talk about this. OK.

Staff Fred Neet: With your permission, Madame Chair, I'll be brief. And indulge me, if additional information is required, please let me know either from the audience or from the Commission. You're familiar with this site. This is the Lander site that is zoned R1, he wants to rezone to R3 for a cluster development to support three dwelling units on the property. There were two variances in the previous application, there are now 4 because the site plan has changed. The applicant originally proposed this site plan with a new single-family home, carriage house stays the same place, the new single-family home aligned along the north lot line affecting the neighbor to the north more than anything. Here is the new site plan which triggers the new application and unless additional information is required, I'll leave you with that, Madame Chair.

Staff Neil Anderson: Commissioners, the applicant has asked that this item be continued a cycle until September 27th and has given us something in writing to that effect, so I just wanted to lay that out before you took any testimony.

President Martin: We've had a lot of public hearing about this one, so I will reopen the public hearing and let the gentleman speak, but it's likely that we will in fact continue this.

Dick Bone (4214 Vincent Avenue South): Since the last meeting with you folks, several of us went out and we got in excess of 125 signatures in opposition to changing this from R1 to R3 in the Linden Hills area, neighbors of Mr. Hohmann's and the rest of us. Also since that time, some of the ladies went out and made a note of all the rentals that were available and they got 29 listings in one morning and this did not include multiple listings in apartment houses. So there are rentals available in the Linden Hills area. We also had numerous letters which we've submitted to Barret Lane and his secretary or administrative assistant Julia Blount. So our opposition remains, in fact it probably has gained adherence of changing R1 to R3. Thank you.

President Martin: Thank you. Anybody else wishing to speak to item number 10?

Patrick Burns (attorney for Mr. Lander). Unfortunately, Mr. Lander was not able to attend this evening and we have requested the continuance to September 27th because we have not had an opportunity to fully review the staff report's findings. We got that on Saturday and I didn't have a chance to look at it until the weekend, so that's...The brevet in my letter didn't go into that, but that's the substance of the request.

President Martin: Thank you. Anyone else?

Carol White (4217 Vincent Avenue South): When I tell people where I live and they say, oh, Linden Hills, that really nice neighborhood in Minneapolis, our concern is that we keep our nice neighborhood in Minneapolis. I don't know if you'll be able to see this [graphic illustration]... It's a cartoon. And I think this is probably what the Lander site will probably look like when he's finished with it and we would like to keep our neighborhood in a less dense area. It has been that way for quite a number of years and I don't think that the City's original plan was to increase density along the corridor of Vincent or of 43rd, although I know there are plans to increase the density along other corridors. This is what we have zoning ordinances to protect us against and the fact that he needs not only a rezoning, but also a conditional use, also four separate variances. I think this is some indication that maybe this is a little bit more outside of our zoning ordinance than we want our neighborhood to be.

President Martin: Actually, Ms. White, you wouldn't believe how many times we have applications that have rezonings, conditional use permits, multiple variances... This is not beyond the pale of what we deal with at all.

Commissioner Krause: Madame Chair, I just wanted to ask if that material could be submitted into the public record. Just give it to the secretary.

President Martin: Thanks, Mr. Krause. Anyone else? OK, I'm going to close the public hearing and Commissioners, the recommendation is according to the letter we have a request to continue.

Commissioner LaShomb: So moved (Krause seconded).

The motion carried 7 – 0.

**Excerpt from the
September 27, 2004
CITY PLANNING COMMISSION
MINUTES**

**18. Boutrous Lander Cluster (BZZ-1892, Ward 13), 4251 Vincent Avenue South
(Fred Neet) This item was continued from the September 13, 2004 meeting.**

A. Rezoning: Application by Michael Lander to rezone the property at 4251 Vincent Avenue South from R1 to R3.

Action: Notwithstanding staff recommendation, the City Planning Commission recommended that the City Council **approve** the application to rezone 4251 Vincent Avenue South from R1 to R3.

Staff Fred Neet presented the staff report.

Commissioner Schiff: Mr. Neet, we don't see a lot of cluster development applications. Can you give us an example of some cluster developments that have been approved and constructed in the last five years, and what's the intent and purpose of the cluster development application?

Staff Neet: I cannot answer the first question because I've only been with development services...my second stint with it in the last year. I don't recall very many of them. But I went through the zoning code pretty thoroughly I believe the first purpose is to encourage open space and to increase the amount of open space, and secondly, to make sure that the open space that is there, to the extent practicable, is available to all residents on the lot. So it's reducing some requirements but there are some others that still have to be...

Linda Koutsky (4247 Vincent Ave S) [off microphone comment] ...and I'm sorry we're all having to revisit this again. This was turned down by the City Council back several months ago. And all Lander has done is rotate 1 building 90 degrees and resubmitted. I still think that three houses on one City lot is two too many and if we're in such a need

for housing in this town, we should come up with guidelines for developers to really increase the housing instead of just cramming three houses on to one City lot.

John Herman (representing Michael Lander): I represent Michael Lander on this matter, but I see that Mr. Lander is actually not here yet and I'm wondering if it would be possible to lay it over for a few moments until he's here, or I could speak now and address this because I think the Commission has heard the arguments on this from the client before and maybe it could be moved forward. I think it's going to end up at the Council again because it's a rezoning matter in any event.

Commissioner Schiff: Thank you, Mr. Herman for saying that and I will repeat for everyone in the audience, the Planning Commission is advisory on rezonings. So we hold the public hearing and send a recommendation forward to the Council. What I'm going to recommend to my colleagues here on the Planning Commission is that we send it forward, we hold off on the other applications, the variances and we send the rezoning forward so that the Zoning and Planning Committee can take it up this Thursday and if your client isn't here by the time we're done today I will certainly open the record again on Thursday and allow him to speak to my committee at that time. But I would encourage you to go ahead and speak now to us.

John Herman: Madame Chair, members of the commission, the previous speaker is correct, this matter was before the Planning Commission previously and the Planning Commission recommended unanimously that the Council adopt the zoning change here and allow the project to go forward. The project has changed in a material aspect in that previously the project was located predominantly on the boundary adjacent to the neighbor's R1 property and it's been moved now so that it's adjacent to the commercial property on the south which I think is quite material in that it changes completely the open space and shadow relationship between the two properties. I'd like to actually address; however, two other aspects of the application which I think are particularly relevant to the Commission's decision with respect to this matter. The first of these is that I think Minneapolis frequently faces issues where it has projects which are intermediary in zoning nature, would reflect a good transitional use between what will undoubtedly ultimately happen on the adjacent commercial property and this single-family neighborhood of R1 houses. But it doesn't have a very good mechanism historically in dealing with it. About four or five years ago, I approached the then commission, maybe it was even six years ago and suggested the idea of accepting in these cases restrictive covenants by the owner as a device to ensure that the product that you get comports with the nature of the proposal made and that someone doesn't attain the rezoning and then subsequently propose and be entitled to do something different. And that's what Mr. Lander has proposed here, completely eliminating the fear that there could be a much higher, more dense development of this particular property. I think this is a good technique, the Planning Commission in that previous time thought it was a good idea as well and actually voted in that case to utilize it although it never came to pass. And I think what we want to make clear to you is we would condition the rezoning on providing that restrictive covenant and we would have no objection to all of the zoning

improvements being so conditioned. These covenants are used commonly in other jurisdictions in Minnesota, they're used commonly in other jurisdictions in other parts of the country and they're an excellent technique to ensure that you get what you bargained for – when they're offered up in this fashion as a developer's suggestion as a way to mitigate these sorts of in-between projects. The second thing that I would say is that I think this is a very unusual case in that it does, in fact, pose for you very directly the injunction of state law that the zoning must follow the comprehensive plan. In a lot of the suburban cases, we have comprehensive plans that are actually more predictable and more directive than the Minneapolis Comprehensive Plan. They will have an area of property and they will say in their plan, 'We currently have this zoned ag-preserve, but our comp plan is to do 14-18 units of townhouses here with a PUD zoning category to ensure the nature of the development'. Minneapolis chose, whether wisely or not wisely to have a slightly less predictive comprehensive plan, but surely that can't be interpreted as meaning that the comprehensive plan has no predictive or directive responsibility. In this particular case, the comprehensive plan explicitly calls out the corner of 43rd and Sheridan as the center of a node around which gradual densification should be encouraged and this property is literally adjacent to a far denser commercial category that's going to ultimately be surrounded on two of its sides by that more dense development which I think is inevitable in this location and it represents a logical place to make an orderly transition from that to single family. The concept wasn't to fall off a cliff at the edge of these zones, but was to have an orderly transition and to encourage densification. The Commission in its last recommendation saw that wisdom and in fact saw that legal mandate and I think that there are few cases in the City where you could point to that would actually be clearer. You have a very explicit comp plan noting of this specific intersection as the center of the node and you have a very modestly denser at the appropriate scale and character for the transition proposal. So I think that it's one where the rezoning is actually both predictable and directed by the comprehensive plan. Within your packet there's an extensive discussion of the comprehensive plan provisions that was provided by Mr. Lander's real estate lawyer and I think that that indicates the nature of these comp-plan sections and how they would relate to it. I would only say with respect to the staff report that it was a little disturbing that the staff report not only has quite a bit of difference from the previous staff report, which seemed more neutral, but also that the staff report fails to bring to your attention clearly in this go-around the nature of this node and its specific identification in the comprehensive plan as a location for densification. I know the Commission is facing this issue repeatedly, both in terms of rezonings and in terms of conditional use permits as the City fortuitously has this period of favorable economic climate for densification, but in terms of scale, character and responsiveness, I think this is a fairly straightforward case and one that warrants your support. And I don't know if Mr. Lander has come yet, but if he hasn't, I'd be happy to answer questions. I think all of you know that he intends to live in the house himself and that his concept here was to provide a number of types of units, but also to maintain the street frontage on Vincent so as to maintain the intact character of the area.

President Martin: Mr. Herman, I assume that the provision of a deed restriction would be something that you would be happy to provide?

John Herman: We would be happy to provide that before we get to the Zoning and Planning Committee.

Commissioner LaShomb: Mr. Herman, can you comment on what the impact would be on the denial of the variance relating to the distance between the deck of the guest house and the carriage house? How does that affect the projects?

John Herman: Madame Chair, I'm sorry, I'm not sure I can actually respond to that as effectively as Mr. Lander. I think that he viewed this... as you know, he is both a leader personally in new urbanism and in addition to being a developer has his own small architectural and land planning shop. And I think he feels that it's desirable from the point of view of the design of the project, but I think the variance is probably not fatal if the Commission were not to grant that in the overall scheme of things.

Commissioner LaShomb: OK, and then Mr. Anderson, I noticed that the end of the 60-day decision period is October 2nd which is Saturday, so does that mean that we could lay part of this over or are we going to work the clock out?

Staff Neil Anderson: Well actually as you can see the 120-day period is over December first so we have plenty of time if the Commission desires to lay everything over but the rezoning tonight.

President Martin: Is there anyone else who wishes to speak to item number 18?

Christy Kipples (not on sign-in sheet, 4206 Vincent Ave S): What I have to say is very short. We are neither developers nor lawyers. We're neighbors. Neighbors who have lived anywhere from a handful of years to 10 years as we have, to someone who has been on that block for 50 years. We don't expect that our neighborhood will go unchanged, but we don't understand why one individual can benefit at the expense of the livability of the neighbors on that street, on Vincent and on 43rd. So I hope that you will consider all of our interests.

President Martin closed the public hearing.

Commissioner LaShomb: Madame President, I'm going to move the approval of the rezoning so it can go to the City Council and I'm not going to put any conditions on it because I'm unclear about the legal status of those special conditions (Krause seconded).

President Martin: We can't actually add a condition to a rezoning.

Commissioner LaShomb: So I'm going to move it forward and if that issue comes up in Zoning and Planning, I guess they can have the City Attorney decide how to work those things out. But I think we've done this once before and I don't think anything has

fundamentally changed and so then I would, if that passes, I would just lay the other items on the table until the City Council makes a decision on the zoning.

Commissioner Hohmann: I support the project as well. If this project was proposed for anywhere further up the block or up the street on Vincent, it would be a totally different type of a deal. I think the transitional zoning is appropriate in this locale, this particular property has got C1 property on two sides of it. The adjacent property to the north has C1 property on the east side as well. I think it is appropriate for transitional zoning – the R3 from the R1 to separate it from the C. The commercial property, that commercial property in the future there's no telling what that property could be. All we know for certain is that it is commercial property and it could be rebuilt in any number of fashions. If this property was located elsewhere in the neighborhood, we'd have a difficulty with it because it would be considered spot zoning, in this instance it is not spot zoning, so I support the project.

Commissioner MacKenzie: My question is somewhat rhetorical and somewhat actual, which is why would we not take up the conditional use permit applications at this point? I understand the rezoning will eventually be decided by the Zoning and Planning Committee, but is there any harm to considering the conditional use permit?

President Martin: That was Commissioner LaShomb's view, if other people feel differently, they can do other things. Neil?

Staff Anderson: Actually, in response to Commissioner MacKenzie, it would not do any harm to go forward. I think the conditions on the other applications say subject to the rezoning going from R1 to R3.

Commissioner Schiff: I was suggesting that the conditional use permit and the variances not be acted on today simply because if we want to start getting into site plan and describing as we did last time how tall the building is, where the placement is, if we think it's appropriate and getting into a detailed conversation about site plan issues.

President Martin: We don't have a site plan.

Commissioner Schiff: Well, we have site plan issues pertaining to the variances that are before us and rather than getting into those issues now in a detailed conversation that might not be relevant if indeed this rezoning is again denied by the full Council that we not worry about the neighbors getting into the appeal process, the public notification for an appeal but that we simply send the rezoning forward, the Council can act on the rezoning, and then the rest of these applications are not relevant anymore if that doesn't pass.

President Martin: Commissioner Schiff, I guess I would like to weigh in on this and say I think we have a responsibility as a Commission quite separate from the responsibility that the City Council has and I think that if the Commission thinks that it's a reasonable

project and if the Commission thinks that the applications are reasonable, we should say so.

Commissioner Hohmann: I'd just as soon take a look at all of them.

Commissioner LaShomb: Well, I wasn't making a motion that we lay those on the table, I was making a motion we approve the rezoning. I feel some red on my knuckles on the other issues, so I'm going to shut up on those and move on the rezoning.

President Martin: So is there any further discussion of the rezoning motion?
Commissioner Schiff.

Commissioner Schiff: Thank you Madame Chair. Sorry about the technical difficulties, Doug Kress from Council Member Goodman's office is helping me print out an e-mail I received from the Fire Marshall which I want to make available to everybody and enter into the record. The staff report says that the Fire Department noted response time to the new single-family home would be slightly increased and that's about the only reference under the CUP needed for cluster development and again, all these applications are relevant so I'm speaking to it now when we talk about the rezoning and that's the finding that it will not endanger the public health, safety, morals or general welfare. This e-mail from Mr. Hordyk, Douglas Hordyk says the plan has severe implications for EMS services. One, the addressing would become confusing; two, access to the rear property has not been defined and cannot be guaranteed as through an alley, it would be extremely difficult tactically to provide fire service. Proximity to the residence to each other would violate the building code for opening requirements of unprotected buildings. I believe water service would also be a problem. He goes on and on, but basically it's a little different than what's in the staff report is what I got directly from the Fire Department as far as health, safety and general welfare, so I won't be supporting this given this kind of strong information I'm getting from City staff.

President Martin: So the motion on the floor is to approve the rezoning. All those in favor of that motion please signify by saying aye.

The motion carried 4 – 3 (Schiff, G. Johnson and Kummer opposed).

Commissioner MacKenzie: I guess there are actually a few questions then regarding the...perhaps not so much the conditional use permits, but maybe the variances and perhaps they should be addressed as a bundle so we can decide how to proceed. First off, there's one variance that staff recommends denial and that's the distance between the new guest house and the carriage house. I know that Mr. Lander isn't here at the moment, but maybe that is something that should be discussed. I'd like to also perhaps raise the issue of these restrictive covenants and either we put in some conditional language in our conditional use permit approval – that's probably the best place for it. Something to the effect of...

President Martin: It's actually condition two on the conditional use permit.

Commissioner MacKenzie: OK, so it's there. This new information about fire, life, safety certainly causes some concern. I don't really see too much quantifiable information that we can work with, so I'm not sure if my colleagues have any inclinations. Perhaps it's that this staff person from Fire have a chance to talk with the applicant.

Commissioner LaShomb: Well my kind of reaction to it I take EMS services seriously (as you get older, you always do). But my problem is if this memo were used as Minneapolis public policy, that means you couldn't build any carriage houses on any property in the City of Minneapolis because the Fire Department would be confused. We also wouldn't have built light rail because that slows down EMS service. You know, Commissioner Schiff, it maybe is a problem, but frankly this is the kind of stuff that we're going to be tossing it around, we'd better just simply say 'we're not going to allow carriage houses behind houses because it's going to confuse the fireman or the police'. If that's the case, I guess the City ought to pass an ordinance that simply says no more carriage houses, no more duplicate addresses on buildings because it's going to confuse public safety. I think the memo is kind of incendiary and not very valuable frankly.

Commissioner Schiff: Well, I will pass on that you think our City staff is being incendiary. From the Fire Department. I'm sure that was meant as humor. However, we do employ our professional employees to give us their professional opinion and Mr. Hordyk did review this when he was a member of the committee that reviews these applications before they get to us. Let me refresh a little on the North Phillips Overlay District which is the only carriage house overlay district in the City of Minneapolis – we require those structures to have alley access. I do believe that is written into the purpose of that district. So this is not analogous to a carriage house overlay district. If it was a carriage house overlay district, it would not meet our basic standards. So, again, there's a reason apparently why we have a conditional use permit in the R1 district, in the R1A district, which is why I asked that question – what's the purpose of having a CUP for cluster development in the R1 and the R1A? So, apparently there's some circumstances in which we foresee this to be possible, but with this particular layout and these particular concerns from the professionals whose job it is to keep these things in mind, I can't see voting for this today. And I think it's completely unfair and off the point that the Fire Department would be against light rail transit, I mean come on Commissioner, don't you have anything better to argue than that?

President Martin: OK, we're not going to get into name calling debates here.
Commissioner Krause.

Commissioner Krause: Well, Madame Chair, I'm a little confused by this issue too because first of all, this e-mail came through at 11:30 this morning. Is the process not working that we wouldn't get these Fire Department comments in a more timely manner? I mean we've had this project, this is the second time through. And I'm not particularly

impressed with the professionalism [sic] of the language in this either. If this is meant to be the official comment, I mean, the last couple of sentences here say, 'It has been my experience that CPED has never met a variance it didn't like. Can they ever say no?'. That doesn't strike me as a particularly professional comment on a project.

President Martin: OK, do we have a motion on any of this stuff yet? I think not. OK. Does anyone care to make a motion?

Commissioner LaShomb: Madame Chair, I'm going to move the Conditional Use Permit (Krause seconded).

President Martin: Discussion of the CUP that we haven't already had. All those in favor of that motion please signify by saying aye.

The motion carried 4 – 3 (Schiff, G. Johnson and Kummer opposed).

Commissioner LaShomb: Madame President, I'll move the variance, staff recommendations on the variances, C through F (Krause seconded).

President Martin: OK, discussion of those. All those in favor of that motion please signify by saying aye.

The motion carried 4 – 3 (Schiff, G. Johnson and Kummer opposed).

President Martin: Neil.

Staff Anderson: Commissioners, I would just like to let the public know that since the Commission has acted on the CUP's and the variances that there is an appeal opportunity for people if they are not in favor of the decision that the Planning Commission made, there is a 10-day appeal. I just wanted to make that announcement to the folks out in the audience.