

- Major Site Plan review for any use containing 5 or more dwelling units.

Applicable zoning code provisions: Chapter 525, Article VII, Conditional Use Permits; Chapter 525 Article IX, Variances, & Chapter 530 Site Plan Review.

Procedural Background: On September 24, 2004, the City Council adopted the recommendation of the Zoning & Planning Committee to deny Continental Property Group’s (“CPG”) appeal of the Planning Commission’s denial of the land use applications required for the proposed Parc Centrale project located at 401, 409, 403, 343 Oak Grove Street and 416 Clifton Avenue. The City Council adopted the following “Findings and Recommendation” supporting its decision:

MINNEAPOLIS CITY COUNCIL 2004 ADOPTED FINDINGS OF FACT

**CITY OF MINNEAPOLIS
CITY COUNCIL
COMMITTEE OF ZONING AND PLANNING**

In re: Appeal of Continental Property Group
from decision of Planning Commission
denying zoning applications for proposed Parc
Centrale development at Oak Grove Street and
Clifton Place

**FINDINGS
AND
RECOMMENDATION**

On August 23, 2004, the City Planning Commission denied the applications of Continental Property Group for zoning approval for a proposed development at Oak Grove Street and Clifton Place to be known as Parc Centrale. The applicant, through its attorney Peter Coyle, filed an appeal of the Planning Commission’s decision with the City Council. The appeal came before the Standing Committee on Zoning and Planning of the Minneapolis City Council for public hearing on Wednesday, September 15, 2004. Having held a public hearing on the appeal, the Committee now makes the following findings:

FINDINGS

1. The applicant is seeking zoning approval for a mixed use building that would include a 21-story (230 feet), 97-unit residential tower with a small café on the ground floor, connected to 7, 3-story townhome units. The proposed location for this development is 343, 401, 403 and

409 Oak Grove Street and 416 Clifton Avenue (the “subject property”). The subject property is zoned OR3 (Institutional Office Residence District). The subject property is also located within the Shoreland Overlay District because it is within 1,000 feet of the ordinary high water mark of Loring Pond. Minneapolis Code of Ordinances (MCO) §541.450.

2. The following zoning permits and approvals are required for the proposed development:
 - a conditional use permit (CUP) to exceed the maximum permitted height allowed for structures in the Shoreland Overlay and OR3 zoning districts (to allow a 21-story/230 foot-tall residential tower);
 - a CUP for a multiple-family dwelling of 5 units or more (to allow 104 residential units);
 - a variance to reduce the required corner side yard setback off of Clifton Place;
 - a variance to reduce the required rear yard off the south property line;
 - major site plan review for a use containing 5 or more dwelling units.

Conditional Use Permit For Increased Height

3. The maximum height generally allowed in the OR3 District for multiple-family dwellings is 6 stories, not to exceed 84 feet. MCO §547.350 and Table 547-5. The height limitation for multiple-family dwellings in the OR Districts may be increased by CUP. MCO §547.110.
4. In order to grant a CUP, the proposal must comply with each of the following standards:
 - (1) The establishment, maintenance or operation of the conditional use will not be detrimental to or endanger the public health, safety, comfort or general welfare.
 - (2) The conditional use will not be injurious to the use and enjoyment of other property in the vicinity and will not impede the normal and orderly development and improvement of surrounding property for uses permitted in the district.
 - (3) Adequate utilities, access roads, drainage, necessary facilities or other measures, have been or will be provided.
 - (4) Adequate measures have been or will be taken to minimize traffic congestion in the public streets.

- (5) The conditional use is consistent with the applicable policies of the comprehensive plan.
- (6) The conditional use shall, in all other respects, conform to the applicable regulations of the district in which it is located.

MCO §525.340 (required findings for conditional use permits).

5. Additionally, in applying these CUP standards to an application to increase the permitted height of a structure, the City shall consider, but not be limited to, the following factors:

- (1) Access to light and air of surrounding properties.
- (2) Shadowing of residential properties or significant public spaces.
- (3) The scale and character of surrounding uses.
- (4) Preservation of views of landmark buildings, significant open spaces or water bodies.

MCO §547.110.

6. The maximum height generally allowed for structures in the Shoreland Overlay District is 2.5 stories or 35 feet, whichever is less. MCO §551.480. The height limitation in the Shoreland Overlay District may also be increased by CUP, where the proposed use meets the general standards for issuance of a CUP (see standards in ¶4 above). In applying the CUP to an application to increase the permitted height of a structure in the Shoreland Overlay District, the City shall consider the factors described in ¶5 above, and the following criteria specific to the Shoreland Overlay District:

- (1) The prevention of soil erosion or other possible pollution of public waters, both during and after construction.
- (2) Limiting the visibility of structures and other development from protected waters.
- (3) The suitability of the protected water to safely accommodate the types, uses and numbers of watercraft that the development may generate.

MCO §§551.480 – 551.490.

7. The subject property is located on Loring Hill, which rises up from the southerly shore of Loring Pond and the surrounding Loring Park. The Loring Park neighborhood consists of buildings that are variable in scale and architectural style. Many are older and historical in character. Materials submitted by the applicant indicate that 106 out of 112 buildings located in the general vicinity of the proposed project, more specifically south and east of Loring Pond and within 1000 feet of the ordinary high water mark, are under 84 feet in height. Two buildings are 85 feet tall and there are four buildings that are taller than 135 feet.
8. The buildings constructed to heights greater than 135 feet were all constructed prior to the City's 1999 comprehensive revision of the Zoning Code. Prior to 1999, the Zoning Code regulated building height by floor area ratio (FAR). FAR does not directly limit building height as it may be met via a variety of building heights and shapes. The 1999 code revisions imposed height limits in the OR3 and most other zoning districts that can only be exceeded if the standards for a CUP are met. The Shoreland Overlay District height limits predated the 1999 Zoning Code revision; however, they postdated the construction of the taller buildings in the Loring Park area.
9. The three other multiple-family housing developments identified as having applied for zoning approval in recent years in this area of the Loring Park neighborhood were approved at heights of 7 stories or less.
10. Although the proposed 230-foot Parc Centrale project tower would be within a block of two of the existing buildings over 135 feet (the two, 210-foot towers of Summit House condominiums built under different zoning regulations), another tower would be inconsistent with the scale and character of the area which is comprised of buildings that are predominantly less than 84 feet in height.

11. The shadow survey submitted by the applicant shows the impacts of shadowing by a 20-story tower in May. It is evident that there will be negative impacts on neighboring residential and commercial properties from shadowing due to the scale of the proposed tower building and the overall massing on site. It is reasonable to conclude that the impacts in winter on adjacent properties would be even more significant.
12. A 230-foot tower will substantially interfere with views from the properties above the subject property to Loring Park, a significant public open space, and to Loring Pond. It will also block and diminish views of the historic churches on Loring Hill to the west of the subject property.
13. As viewed from Loring Park and the shores of Loring Pond, the proposed tower would be a predominant feature of the landscape on Loring Hill. This would be inconsistent with the intent of the Shoreland Overlay height regulations that the visibility of structures and other development from protected waters be limited.
14. The proposed project would be detrimental to the public comfort and general welfare because of the shadowing of adjacent properties. While shadowing would also occur with a building that meets the 6-story limit of the OR3 District, the impacts from shadows from a 21-story building on surrounding residential, commercial and historic properties are significantly greater.
15. The proposed project would be injurious to the use and enjoyment of other property in the vicinity and would impede the normal and orderly development and improvement of surrounding property for uses permitted in the district because it is so greatly out of scale and character with the surrounding area, because it will interfere with views of the historic landscape and structures on Loring Hill and views of and from Loring Park and Pond, and because of the shadowing impacts. While any building constructed over the 2.5 story and 6

story height limits of the applicable zoning districts will have some impact on neighboring properties, the impacts of adding a 21-story building in this location are excessive.

Construction of a 21-story tower on Loring Hill would be contrary to the predominant historic character and trend of development in the area. Approval of the proposed project would likely encourage similar out-of-scale development and impede development compatible with the character of the area and the purpose of the City's height regulations.

16. The proposed project is inconsistent with the following applicable policies of the City's comprehensive plan that relate to the form, character and design of residential development because the height and scale of the project is incompatible with the existing development and character of the surrounding area:

- Minneapolis will support the development of residential dwellings of appropriate form and density. Minneapolis Plan, Policy 9.5.
- Minneapolis will maintain and strengthen the character of the city's various residential areas. Minneapolis Plan, Policy 9.8.
- Ensure that new residential development contributes to the sense of neighborhoods through appropriate site planning and architectural design. Minneapolis Downtown 2010, Downtown Living Policy 5.

17. Comprehensive plan policies and zoning ordinances that promote expanded housing opportunities and residential development of moderate and high density are achievable on this site with development models that do not include constructing a 21-story tower.

Conditional Use Permit For A 104-Unit Multiple Family Dwelling

18. The proposed density of the project (104 units on this .85 acre site) is not inappropriate. However, as discussed above, the scale and design of the proposed structure does not comply with CUP standards 1, 2 and 5. The proposed multiple family dwelling also fails to comply with CUP standard 6 because it does not conform to the applicable height regulations of the zoning districts in which the project site is located.

19. City planning goals do not call for maximizing the density of residential construction in all areas or on all sites within the City, or in disregard of other applicable regulations, including height limits.

Yard Variances

20. The applicant applied for a variance to reduce the corner side yard setback along Clifton Place from the required 48 feet to 16 feet for the proposed building and 4 feet for a proposed patio area. The applicant also applied for a variance to reduce the rear setback from the required 45 feet to 19 feet for the proposed building and 8 feet for a proposed patio area.
21. In order to obtain a variance, the proposal must comply with each of the following requirements:
- (1) The property cannot be put to a reasonable use under the conditions allowed by the official controls and strict adherence to the regulations of this zoning ordinance would cause undue hardship.
 - (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.
 - (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.
 - (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.

MCO §525.500.

22. The proposed use of the site is unreasonable with respect to the scale and character of surrounding uses. The required corner side yard in the OR Districts is $(8 + 2X)$ feet, where X = the number of stories above the first floor. MCO §547.160 and Table 547-2. The required rear yard in the OR Districts is $(5 + 2X)$ feet. *Id.* Because the amount of setback required depends upon the height of the building, a building constructed at a lower height would

require smaller setbacks. Reduction of these required setbacks from 48 feet to 16 feet for the corner side yard and from 45 feet to 19 feet for the rear yard of a 21-story building is unreasonable. Compliance with the applicable setback requirements for a 21-story building on this .85 acre site would not cause undue hardship.

23. The requirement for 48 and 45-foot yard setbacks is a circumstance created by the applicant because of the choice to propose a 21-story building with connected townhomes on the site.
24. The granting of the variance is not in keeping with the spirit and intent of the ordinance, which is to substantially increase the setbacks for very tall buildings in order to mitigate the impact on pedestrians and neighboring properties.
25. Variance of the rear yard setback to 19 feet for the proposed tower would be injurious to the use and enjoyment of the single family residence that is located only 32 feet to the south at the nearest point to the proposed tower wall.

Site Plan Review

26. One of the required findings for site plan approval is that the site plan conforms to all applicable regulations of the zoning ordinance and is consistent with the applicable policies of the comprehensive plan. As discussed above, the proposed 21-story tower and townhome project does not conform to applicable zoning ordinances for height, multiple-family development, and required yards.
27. Denial of the required CUPs for this project makes the proposed site plan moot. Site plans can only be reviewed based on an approved development plan.

RECOMMENDATION

Therefore, based upon the above findings and the full record of decision, the Committee recommends that the City Council adopt these findings, deny the appeal of Continental Property Group and uphold

the decision of the Planning Commission to deny the requested conditional use permits, variances, and site plan review.

Legal Background:

On March 27, 2007, CPG sued the City alleging that the City Council's decision was arbitrary and capricious and violated CPG's equal protection rights. Following trial, on September 16, 2009, Hennepin County District Court Judge Stephen Aldrich found that the City violated CPG's procedural due process rights, CPG was entitled to damages and attorney's fees, and dismissed CPG's other claims. The Court found that the City Council relied on certain undisclosed communications and evidence in making its decision as itemized in the Order. Both CPG and the City appealed this decision. A copy of the Order is attached hereto as Attachment 1.

On May 3, 2011, the Minnesota Court of Appeals reversed the District Court's decision that the City violated CPG's procedural due process rights, reversed the award of damages and attorney's fees, affirmed the district court's dismissal of the equal protection and substantive due process claims, but held that the City's decision denying the proposed Parc Centrale project was arbitrary and capricious under Minn. Stat. § 462.361 because the hearing was "unfair" due to the participation of a "biased councilmember." A copy of this decision is attached hereto as Attachment 2.

Therefore, the Court of Appeals remanded the matter to the City Council for "a new hearing and decision."

Factual Background: The applicant, Continental Property Group, proposes to construct a mixed use 21-story 97 unit residential tower, with 3-story 7 unit townhomes and a 900 square foot commercial space (café). The property is currently a bituminous surface 90-car parking lot located at the corner of Clifton Place and Oak Grove Street. The applicant has proposed 239 parking spaces for the residents, guests and office tenants for the building located at 430 Oak Grove Street in a partially underground parking ramp. Due to the slope on site and the design of the proposed structure a portion of the 1st level of the parking garage is located above grade. The subject properties are zoned OR3, however the property is subject to the Shoreland Overlay District standards as the parcels are located within 1000 feet of the ordinary high water mark of Loring Pond. As such the site is subject to a height restriction of 2.5 stories or 35 feet. Access to the trash and loading dock is enclosed in the partially underground ramp.

The proposed tower base and townhomes are located adjacent to a courtyard area at the southeast portion of the site. A stepped terrace and semi-public building amenities are located along the Clifton Place façade. The overall site is projected to be over 50% green space, which is inclusive of the proposed green roofs on the townhomes.

The site is located within a Downtown Parking (DP) Overlay District. The DP Overlay District is established to preserve significant and useful buildings and to protect the unique character of the downtown area and the mixed-use neighborhoods by restricting the establishment or expansion of surface parking lots. The DP Overlay District is not applicable for this application.

The Citizens For A Loring Park Community has written a letter that does not oppose or support the proposed development. The letter is attached for reference. There are numerous other letters and

emails in opposition to the project as well as a few letters and emails in support. Additionally, Staff has been provided with a copy of a neighborhood petition that includes 640 signatures opposing the project. Of those, 510 are from Precinct 5 of Ward 7 (the precinct the proposed tower is slated for) and another 130 are from neighboring precincts. Further summary information is provided in the petition packet which has been attached to the staff report. All correspondence received by Staff has been attached for consideration.

CITY PLANNING STAFF ANALYSIS AND PROPOSED FINDINGS FOR NEW HEARING

CONDITIONAL USE PERMIT - to increase the height of the proposed building from the permitted 2.5 stories/35 feet to 21 stories/230 feet

Findings as Required by the Minneapolis Zoning Code:

The Community Planning and Economic Development Department – Planning Division has analyzed the application and from the findings above concludes that the establishment, maintenance, or operation of the proposed conditional use:

1. Will be detrimental to or endanger the public health, safety, morals, comfort or general welfare.

Based on the submitted shadow survey, it is evident that there will be impacts on adjacent properties due to the scale of the proposed tower building and the overall massing on site. While it is likely that any building constructed over a height of the allowable 2.5 stories may have some impact on adjacent properties, the height of the proposed building and overall massing on site would cast shadows and limit access to light and air of surrounding properties which could be detrimental to the comfort and general welfare of those properties, especially those properties located to the north and northeast of the proposed tower.

2. Will be injurious to the use and enjoyment of other property in the vicinity and will impede the normal or orderly development and improvement of surrounding property for uses permitted in the district.

Staff believes that increasing the height of the building could be injurious to the use and enjoyment of surrounding property and could impede the normal development of the surrounding area. Although there are buildings located within the neighborhood that are over six stories, most of those developments were constructed under a different zoning ordinance at least 25-30 years ago (Summit Towers for example). The context of the neighborhood is clearly buildings that are 3 to 6 stories with a few scattered throughout the neighborhood that exceed those height limitations. The use and enjoyment of surrounding properties will be impacted by the shadowing and overall massing of the building which is inconsistent with the scale and character of surrounding uses.

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

Staff would expect that increasing the allowable height of the building would have minimal impacts on utilities and drainage. The access roads would be subject to additional traffic due to the proposed

residential density. Residents of the neighborhood have voiced concern over the impacts of the development as the area contains a high level of vehicular activity (as well as pedestrian and bicycle activity). The applicant would be required to work closely with the Public Works Department, the Plan Review Section of the Inspections Department and the various utility companies during the duration of the development should the plan be approved. This would be required to ensure that all procedures are followed in order to comply with city and other applicable requirements.

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

Measures have been provided in regard to minimizing traffic congestion from a parking perspective as the applicant would be providing 239 parking spaces in a 4-story partially underground ramp. The provided parking will accommodate the existing surface parking for the office building located at 430 Oak Grove Street, all resident parking and some visitor parking for the proposed development. The impacts on overall traffic congestion in terms of vehicular trips generated have not been analyzed by the developer as far as Staff is aware.

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

According to the *Minneapolis Plan and Minneapolis Downtown 2010 Plan*, this property is located in a downtown neighborhood area as found on the concept plan map. According to the Principles and Policies outlined in *Downtown 2010 Plan*, the following apply to this proposal:

- Downtown Living Policy 5: The *2010 Plan* says that Minneapolis should “Ensure that new residential development contributes to the sense of neighborhoods through appropriate site planning and architectural design.”

This development is proposed to be a 21-story residential tower as well as a 3-story townhome and small commercial space composed of brick and opaque panels. Planning Staff believes that the proposal is not in conformance with the block face scale and character and as such does not believe that site has been appropriately designed.

According to the principles and policies outlined in *The Minneapolis Plan for Sustainable Growth*, the following apply to this proposal:

Land Use Policy 1.1 of *The Minneapolis Plan for Sustainable Growth* states, “Establish land use regulations to achieve the highest possible development standards, enhance the environment, protect public health, support a vital mix of land uses, and promote flexible approaches to carry out the comprehensive plan.” This policy includes the following applicable implementation step: (1.1.5) “Ensure that land use regulations continue to promote development that is compatible with nearby properties, neighborhood character, and natural features; minimizes pedestrian and vehicular conflict; promotes street life and activity; reinforces public spaces; and visually enhances development.”

Land Use Policy 1.2 of *The Minneapolis Plan for Sustainable Growth* states, “Ensure appropriate transitions between uses with different size, scale, and intensity.” This policy includes the following applicable implementation step: (1.2.1) “Promote quality design in new development, as well as building orientation, scale, massing, buffering, and setbacks that are appropriate with the context of the surrounding area.”

Urban Design Policy 10.1 of *The Minneapolis Plan for Sustainable Growth* states: “Promote building designs and heights that enhance and complement the image and form of the Downtown skyline, provide transition to the edges of Downtown and protect the scale and quality in areas of distinctive physical or historical character.” This policy includes the following applicable implementation step: (10.1.2) “Building placement should preserve and enhance public view corridors that focus attention on natural or built features, such as landmark buildings, significant open spaces or water bodies.”

Urban Design Policy 10.5 of *The Minneapolis Plan for Sustainable Growth* states, “Support the development of multi-family residential dwellings of appropriate form and scale.”

The Planning Division believes that the proposed development is not in conformance with the above listed policies of *The Minneapolis Plan for Sustainable Growth*.

6. And, does in all other respects conform to the applicable regulations of the district in which it is located.

With the approval of the conditional use permits, variances and the major site plan review this development would be in conformance with the applicable regulations of the zoning code.

ADDITIONAL STANDARDS TO INCREASE MAXIMUM HEIGHT

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.

Increasing the height of the proposed building will have an impact on the amount of light and air that surrounding properties receive. The properties that will be impacted the most appear to be those to the northeast and due north of the proposed site.

2. Shadowing of residential properties or significant public spaces.

The shadow study that was submitted as part of this application indicates that there will be shadowing cast on adjacent residential properties. The attached computer-generated shadowing diagrams indicate that the majority of the shadowing in the morning will be located on the Lyon building shifting north across Oak Grove Street through the afternoon. The shadow study has been included as an attachment to the staff report.

3. The scale and character of surrounding uses.

The scale of the buildings in this area of the Loring Park neighborhood are varied. There are taller buildings located within the neighborhood however, the majority of the buildings are older, historical buildings and are typically between two and six stories in height. The architectural style of the surrounding properties also vary. Staff has analyzed the proposed application and has determined that application is not compatible with the block face scale and character.

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

The proposed development will impact adjacent views and possibly those of landmark buildings.

CONDITIONAL USE PERMIT – to allow a total of 104 dwelling units

Findings as Required by the Minneapolis Zoning Code:

The Community Planning and Economic Development Department – Planning Division 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, morals, comfort or general welfare.

Staff does not generally believe that 104 units of for-sale condominiums would be detrimental to or endanger the public health, safety, morals or general welfare. However, the design of the proposed development in its proposed configuration could negatively impact the public's general comfort and/or welfare. This is due to the proposed scale and massing of the development. The scale of the development is incompatible with the neighborhood. While the proposal is under the allowable density for the site and there is the potential that 104 units (or more) could be constructed on site that Planning Staff and the neighborhood could support, Staff is not able to recommend approval of a specific number of residential units without benefit of a site plan that fits in with the scale and character of the surrounding neighborhood. The neighborhood is concerned with the impact that an additional 100 or more new residential units would have on an already densely populated area. It is reasonable to consider that a development that fits into the scale and character of the area could add a stabilizing element to the neighborhood. Additional residential units that are compatible with the neighborhood would strengthen the owner-occupied base.

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.

Staff does not believe generally that 104 dwelling units will be injurious to the use and enjoyment of surrounding property nor will it impede the normal development of the surrounding area. Utilizing the site for an appropriately scaled 104-unit for-sale condominium development would provide additional opportunities for housing within the neighborhood. Adjacent uses include a mixture of different housing developments, small commercial uses and offices. However, as Staff has reiterated, the scale and character of the development would need to be analyzed within the context of a modified plan before a specific number of units could be recommended for approval. Staff has a policy not to recommend approval of such large densities without seeing an overall development plan that would work for the site.

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

The applicant would be required to work closely with the Public Works Department, the Plan Review Section of the Inspections Department and the various utility companies during the duration of the development should the applications be approved. This would be required to ensure that all procedures are followed in order to comply with city and other applicable requirements.

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

In the OR3 zoning district, residential uses must provide parking for ninety percent of the total number of dwelling units in the building. The residential parking requirement for this development is 93 spaces. The existing office building requires 90 parking spaces. The total required for the proposed development is 163 parking spaces. The applicant is providing a total of 239 parking spaces in a four-story predominantly underground parking garage located on the site. The applicant is also proposing bike storage facilities in the parking garage as well as bike racks outside of the proposed building. Residents, guests and office workers will access the parking garage off of Oak Grove Street.

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

See the above listed response to finding #5 in the conditional use permit application.

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.

With the approval of the conditional use permits, variances and the major site plan review this development would be in conformance with the applicable regulations of the zoning code.

VARIANCE – to reduce the corner side yard setback along Clifton Place from the required 48 feet to 16 feet for the proposed building and 4 feet for the proposed patio area.

Findings as Required by the Minneapolis Zoning Code for the Variance:

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

Corner side yard setback: Staff does not believe that there are any specific circumstances unique to the subject parcel other than the property having a corner side setback requirement. If the property only had frontage along Oak Grove Street it would still be subject to an interior side setback requirement of 45 feet. The setback requirements are determined based on the overall height of the proposed project. The ordinance requires that a corner side setback in the OR3 district be calculated by utilizing the equation $8+2X$ where X = number of stories above the first floor. It is Staff's position that a building constructed to a lesser height is a reasonable use of the property.

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

Corner side yard setback: The applicant is seeking a variance to reduce the corner side yard setback along Clifton Place from the required 48 feet to 4 feet. The proposed tower building wall would be located at approximately 16 feet from the front property line at the closest point and the proposed patio area is located at approximately 4 feet at the closest point from the property line. Patios in excess of 50 square feet must attain a variance in order to be a permitted obstruction.

Planning Staff believes that the proposed use of the site is unreasonable with respect to the scale and character of surrounding uses. Because the height of the building triggers the setback requirement, Staff believes that a reasonable development could be constructed on the property that would meet required setbacks. A building constructed to a smaller scale would require less of a setback variance off of Clifton Place. The OR3 zoning does not entitle the applicant to construct a 21-story residential tower on the site. Development proposals conforming to the applicable district regulations would not seem to pose practical difficulties.

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

Corner side yard setback: The granting of the setback variance may not significantly affect the essential character of the area given that there are several buildings within the vicinity which are constructed up to or very near their property lines. However, the variance of yard coupled with the impact of a 21-story building could alter the essential character of the area.

Staff believes that the granting of the variance would likely have little impact on congestion of area streets or fire safety, nor would the proposed setback be detrimental to welfare or public safety. All of the required parking is being accommodated on site in an underground parking ramp. The parking that is provided would also alleviate general neighborhood parking issues as there is excess parking available for visitors to the area in the ramp.

VARIANCE –to reduce the rear setback from the required 45 feet to 19 feet for the proposed building and 8 feet for the proposed patio area for properties located at 343, 401, 403 and 409 Oak Grove Street and 416 Clifton Avenue.

Findings as Required by the Minneapolis Zoning Code for the Variance:

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

Rear yard setback: The unique circumstances for this property would be the irregularity of the rear property line and potentially the slope of the existing site, however, as previously mentioned the

setback requirements are determined based on the overall height of the proposed project. The ordinance requires that the rear setback in the OR3 district be calculated by utilizing the equation $5+2X$ where X = number of stories above the first floor. It is Staff's position that a building constructed to a lesser scale is a reasonable use of the property.

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

Rear yard setback: The applicant is seeking a variance to reduce the rear yard setback from the required 45 feet to 8 feet. The proposed tower building wall would be located at approximately 19 feet from the rear property line at the closest point and the proposed patio area is located at approximately 8 feet at the closest point from the property line. Patios in excess of 50 square feet must attain a variance in order to be a permitted obstruction. The rear property line is very irregular meaning that the setback varies, however, the most restrictive setback is the one utilized for calculation purposes under these circumstances.

Planning Staff believes that the proposed use of the site is unreasonable with respect to the scale and character of surrounding uses. Because the height of the building triggers the setback requirement, Staff believes that a reasonable development could be constructed on the property that would meet required setbacks. A building constructed to a smaller height or scale would require less of a setback variance. The zoning does not entitle the applicant to construct a 21-story residential tower on the site. Development proposals conforming to the applicable district regulations would not seem to pose practical difficulties.

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

Rear yard setback: The granting of the setback variance would affect the essential character of the area given that the adjacent impacted neighbor to the south is a single family residential structure. At the closest point the proposed building is located approximately 32 feet from the tower wall. Thus, the granting of the variance would have the potential to alter the essential character and be injurious to the use or enjoyment of other property in the vicinity.

Staff believes that the granting of the variance would likely have little impact on congestion of area streets or fire safety, nor would the proposed setback be detrimental to welfare or public safety.

SITE PLAN REVIEW

Findings as Required by the Minneapolis Zoning Code:

**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 FACADE

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

The proposed placement of the tower portion of the new building will be approximately 15 feet from the property line along Oak Grove Street, 18 feet off of Clifton Place and 20 feet off of the rear property line. The connected 3-story townhome units will be located approximately 9 feet off the interior side yard. The townhomes are able to meet all applicable setback requirements, however, Staff is concerned with the layout of the proposed townhomes as the first floor is only an entry with no actual living space. It is Staff's opinion that the layout will not activate the street. Additionally the façade treatments on the proposed townhome units don't appear to be compatible with the surrounding neighborhood. The proposed tower portion of the building will have an approximate 900 square foot café located on the corner of Clifton Place and Oak Grove Street. The cafe and the residential lobby have their own secured entrances. The small commercial space seems perfunctory as it may not be enough to encourage or active the corner/sidewalk/plaza area. Between the building and both Clifton Place and Oak Grove Street there is proposed landscaping, walkways and a relatively large plaza adjacent to Oak Grove Street. The large plaza adjacent to Oak Grove Street is located within the required 15 foot setback and will need to be modified to include landscaping to break up the hardscape appearance.

The exterior materials of the proposed building include brick, opaque panels and unspecified window treatments. The percentage of windows required for the commercial space on the corner of Clifton Place and Oak Grove Street is over the required thirty percent according to the elevations. The elevation of the proposed building meets the 20% requirement along Oak Grove Street; however, the entrance to the parking ramp is a very prominent feature on the façade due to the parking ramp not being entirely located underground. The overall design of the structure does not appear to be entirely sensitive to the topography. The doors to the parking ramp appear to dominate the façade. The 20% window requirement along Clifton Place is not being met based on the proposed elevations. If the Planning Commission were to approve the site plan, the applicant would need to include additional windows along the stepped plaza to meet the requirement. As currently proposed (excluding that portion of the façade in which the café would occupy as that portion is subject to the 30% requirement) the façade appears to have approximately 13.5% windows and doors. Staff is concerned with the stepped plaza as it could potentially be inactive, underused and a possibly dangerous area.

The applicant is providing a total of 239 parking spaces in a four-story partially underground parking garage located on the site. Due to the existing grade and design of the building, a portion of the top level of the garage is located above the surface of the ground.

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.**

All building entrances are connected to public sidewalks with walkways of at least four feet in width. The applicant has indicated that snow will be removed from the site. Staff is not concerned with impervious surfaces on site as the areas of the site not occupied by the proposed building are almost entirely landscaped. Approximately 22,000 square feet are proposed to be landscaped. The Public Works Department has preliminarily reviewed the vehicular access and circulation plan. Modifications would likely be required upon circulation of plans through the Public Works Department during the formal review and approval process. The applicant would continue to work with Public Works should the plan be approved.

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.

The applicant has proposed and provided adequate quantities of landscaping materials on the site. The overall open space on site is approximately 22,000 square feet which is the majority of the area not occupied by buildings.

The applicant is proposing a masonry privacy wall that varies in height depending on the location around the perimeter of the courtyard. The applicant proposes the masonry fence to the rear of the proposed building and along the interior side in order to define public versus private space. Staff would require that the applicant provide a detail of the privacy wall for Staff review should the Planning Commission recommend approval of the site plan.

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.**

A lighting plan was not submitted as part of the application. Staff would recommend that should the Planning Commission approve the proposed site plan that a lighting plan showing foot candles be submitted before final plans are approved.

The shadow study that was submitted as part of this application indicates that there will be shadows cast on adjacent residential properties at different times throughout the day. That shadow study has been attached for reference.

To ensure the welfare of the residents of the development and the residents of the area the Crime Prevention Specialist has asked that proper lighting be installed above all entrances and that security measures be taken to ensure the safety of those utilizing the landscaped courtyard.

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

ZONING CODE

With the approval of the conditional use permits, variances and the major site plan review this development will be in conformance with the applicable regulations of the zoning code. Please see the above listed response to finding #5 in the conditional use permit application.

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

Staff is unaware of any conflict between the proposal and any development plan or objective adopted by the city council.

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.

Alternative compliance would be required for this development proposal as in its current layout the applicant is unable to meet the 20% window requirement along Clifton Place. Staff would require that the applicant modify that façade should the Planning Commission recommend approval of the site plan. The appearance of the stepped façade along Clifton Place is more or less creatively hidden service spaces that could potentially be under utilized, inactive and possibly dangerous. Additionally, Staff would require that the patio area adjacent to Oak Grove Street be modified to include planters or additional landscaping.

RECOMMENDATIONS:

Recommendation of the Community Planning and Economic Development Department – Planning Division for the conditional use permit:

The Community Planning and Economic Development Department – Planning Division recommends that the City Council adopt the above findings and **deny** the conditional use permit application to increase the height of the building from the permitted 2.5 stories/35 feet to 21 stories/230 feet for the properties located at 343, 401, 403 and 409 Oak Grove Street and 416 Clifton Avenue.

Recommendation of the Community Planning and Economic Development Department – Planning Division for the conditional use permit:

The Community Planning and Economic Development Department – Planning Division recommends that the City Council adopt the above findings and **deny** the conditional use permit to allow 104 dwelling units for the properties located at 343, 401, 403 and 409 Oak Grove Street and 416 Clifton Avenue.

Recommendation of the Community Planning and Economic Development Department – Planning Division for the variance:

The Community Planning and Economic Development Department – Planning Division recommends that the City Council adopt the findings above and **deny** the variance to reduce the corner side yard setback along Clifton Place from the required 48 feet to 4 feet for the properties located at 343, 401, 403 and 409 Oak Grove Street and 416 Clifton Avenue.

Recommendation of the Community Planning and Economic Development Department – Planning Division for the variance:

The Department of Community Planning and Economic Development - Planning Division recommends that the City Council adopt the findings above and **deny** the variance to reduce the rear setback from the required 45 feet to 8 feet for the properties located at 343, 401, 403 and 409 Oak Grove Street and 416 Clifton Avenue.

Recommendation of the Community Planning and Economic Development Department – Planning Division for the site plan review:

The Community Planning and Economic Development Department – Planning Division recommends that the City Council adopt the above findings and **deny** the site plan review for a 104 unit residential building located at 343, 401, 403 and 409 Oak Grove Street and 416 Clifton Avenue.

Attachments:

1. Copy of the Hennepin County Court decision
2. Copy of the MN Court of Appeals decision

Attachments - 2004 Record:

3. Statement of use
2. Findings
3. Correspondence
4. Zoning map
5. Plans
6. Photos