

Community Planning and Economic Development Planning Division Report

Conditional Use Permits, Variances, and Site Plan Review
BZZ-3882

Date: December 17, 2007

Applicant: Flour Sack Flats LLC

Address Of Property: 518-520 2nd Street SE

Project Name: Flour Sack Flats Phase II

Contact Person And Phone: Walter Rockenstein – Faegre & Benson 612-766-7208

Planning Staff And Phone: Jim Voll 612-673-3887

Date Application Deemed Complete: November 15, 2007

End of 60 Day Decision Period: January 14, 2008

Ward: 3 Neighborhood Organization: Marcy-Holmes

Existing Zoning: C3A Community Activity Center District and MR Mississippi River Critical Area Overlay District

Proposed Zoning: Not applicable for this application.

Plate Number: 15

Legal Description: Not applicable for this application.

Proposed Use: Multi-story building with 96 dwelling units.

Concurrent Review:

Conditional Use Permit: To allow 96 dwelling units.

Conditional Use Permit: To increase the height from 4 to 13 stories (12 floors) or 145 feet.

Variance: To allow patios to encroach into the required 15 foot side yard setbacks.

Variance: To reduce the minimum lot area per dwelling unit from 295 square feet to 206 square feet per dwelling unit.

Variance: To increase the Maximum allowable Floor Area Ratio from 3.78 to 5.34.

Variance: To reduce the minimum required parking from 96 spaces to 91 spaces.

Site Plan Review.

Appropriate Section(s) of the Zoning Code: Chapter 525, Article VII Conditional Use Permits; Chapter 525, Article IX Variances, specifically Section 525.520(1) “To vary the yard requirements”; Section 525.520(2) “To vary the lot area requirements up to 30 percent...”; Section 525.520(3) “To vary the gross floor area requirements up to 30 percent...”; 525.520(6) “To reduce the applicable off-street parking requirements up to 20 percent...”; and Chapter 530 Site Plan Review.

Background: In 2004, Bluff Street Development originally proposed to build a 65-unit, 8-story building at 520 Second Street SE. This site is in the St. Anthony Falls Historic District and required HPC approval. This development was heard before the HPC on August 10, 2004. At this meeting the HPC limited the height of the building to 4 stories. This was appealed to the Zoning and Planning (Z&P) Committee of the City Council and was before the full City Council on September 24, 2004. The City Council referred this item back to the September 30, 2004 Z&P and the October 8, 2004 full City Council. The City Council, at its meeting of October 8, 2004, granted the applicant’s appeal, with modifications, for a building up to 63 feet (five stories plus a penthouse or a six story building as defined by the zoning code) and limiting the south side of the building to 15 feet from the south property line.

In 2004, after the HPC & City Council action the City Planning Commission approved a rezoning from the I1 Light Industrial District, a conditional use permit for 45 units, a conditional use permit to allow six stories. A floor area ratio variance from 3.24 to 3.25, rear and side yard setbacks, and a variance of the drive aisle standards (BZZ-1956). At this time the project was known as Bluff Street Phase I. Bluff Street Phase II across the street at 521 2nd Street SE was renamed Flour Sack Phase I (it is completed) and this project was renamed Flour Sack Phase II.

Flour Sack Flats Phase II requires a conditional use permit for 96 units, to increase the height to 13 stories (12 floors), and a variance of the side yard setbacks, floor area ratio, minimum lot area, and parking. On June 5, 2007 the Heritage Preservation Commission denied a Certificate of Appropriateness (BZH-25037) for this project and on September 21, 2007 the City Council granted an appeal of this decision.

Please see the attached letter from the Marcy- Holmes neighborhood.

CONDITIONAL USE PERMIT (for 96 residential units)

Findings as required by the Minneapolis Zoning Code:

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.**

The proposed development will replace a small industrial building (now demolished) with a 96 unit residential building. There are non-residential uses on both sides of the project and multi-family residential developments to the north, Flour Sack Flats Phase I, and to the south, Building F (161 units

and 26 stories) and Building G (136 units and 22 stories) of the proposed East Bank Mills (formerly A Mill) project. The design of the building has been deemed appropriate for the historic district and it not out of character with existing and proposed development, especially the East Bank Mills project to the south. With staff recommended conditions of approval the development should not be detrimental to the public health, welfare, comfort, or safety.

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 surrounding area is developed, but there are plans to redevelop various parcels near the site to the south in the future for the East Bank Mills project. In the context of surrounding development, this building should not be detrimental to nearby properties if it complies with applicable HPC and site plan review conditions of approval.

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

Utilities and access are existing and adequate. Public Works and the Fire Department have reviewed the plans for access and circulation and they find the plans acceptable. The final drainage plan is required to be approved by Public Works before and permits may be issued.

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

Access to the parking is on the west side of the building from 2nd Street SE. The majority of the required parking is provided within the building. The zoning code requires 96 parking spaces and the development will provided 90 spaces. Due to the close proximity to downtown, the University of Minnesota, and transit this should be adequate parking. Loading is as determined by conditional use permit. The applicant will provide loading on street in front of the building on a temporary basis as necessary and allowed and subject to Public Works requirements.

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

The Minneapolis Plan designates this area as part of the East Hennepin Activity Center; an area bounded by a triangle created by Central and East Hennepin Avenues and extends eastward along Main Street, including to 6th Avenue SE.

The Minneapolis Plan defines Activity Centers as follows:

- Activity Centers generally have a diversity of uses that draw traffic from citywide and regional destinations, but do not generally support automobile uses.
- Activity Centers are complimented by medium and high density residential uses, and also accommodate retail and commercial services, entertainment uses, educational campuses, or other large-scale cultural or public facilities.
- Activity Centers have a traditional urban form (building siting and massing).
- Activity Centers have a significant pedestrian and transit orientation, as service and features of these areas are already good.

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- Activity Centers have uses that are active all day long and into the evening.
- A mix of uses occurs within structures and within the larger boundaries of Activity Centers.
- Activity Centers have a unique urban character that distinguishes them from other commercial areas because of the mix and complementary type of uses as well as the traffic the area generates.

Activity Centers are destinations that attract large numbers of visitors, workers, and residents. They include a concentration of activities throughout the day and into the evening including high pedestrian, automobile, and transit traffic, and a mix of uses located that result in a well-defined sense of place.

The Minneapolis Plan has the following goal and relevant implementation steps for Activity Centers:

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.

Implementation Steps

Ensure that land use regulations support diverse commercial and residential development types which generate activity all day long and into the evening.

Promote the incorporation of residential uses within the same structure as other commercial uses.

Preserve traditional urban form in buildings where it currently exists, and encourage new development to relate to traditional siting and massing, where it is already established.

Discourage automobile services and drive-through facilities from locating in these designated areas.

Develop parking facilities and management strategies that accommodate high customer demand, promote shared facilities and minimize visual impact and adverse effects on pedestrian and sidewalk traffic.

Ensure that regulations balance the transition between high traffic land uses and adjoining residential areas.

Require that buildings in Activity Center districts incorporate a pedestrian orientation at the street edge.

Apply street design criteria that incorporates a pedestrian orientation and accommodates a variety of traffic (pedestrian, cyclist, transit, automobile).

The Minneapolis Plan has the following relevant policies and implementation steps from the housing chapter:

4.9 Minneapolis will grow by increasing its supply of housing.

Implementation Steps

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

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

4.10 Minneapolis will increase its housing that is affordable to low and moderate income households.

Implementation Steps

Provide regulatory incentives for affordable housing development.

Foster partnerships with housing developers, financial institutions, faith communities and others to extend the City's capacity to create affordable housing.

Support mechanisms such as community land trusts and housing cooperatives to create long term affordable housing.

4.11 Minneapolis will improve the availability of housing options for its residents.

Implementation Steps

Increase the variety of housing styles and affordability levels available to prospective buyers and renters.

Provide and maintain moderate and high-density residential areas.

Promote mixed-income housing development that offers a range of dwelling unit sizes and levels of affordability.

Diversify the location distribution of affordable housing in order to allay the historic patterns of concentration of poverty that characterizes some neighborhoods.

It is the opinion of staff that the proposed development is in conformance with the above noted goals of the comprehensive plan.

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

The proposal will conform with the applicable regulations of the C3A District upon the approval of the conditional use permits, variances, and site plan review.

CONDITIONAL USE PERMIT (from 4 stories to 13 stories (12 floors) or 145 feet

Findings as required by the Minneapolis Zoning Code:

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.

The height of structures or buildings are measured as the vertical distance from the natural grade either at the curb level or at a point ten (10) feet away from the front center of the structure or building, whichever is closer, to the top of the highest point of the structure, or to the top of the highest point of the roof on a flat or shed roof, the deck line on a mansard roof, or the average distance between the eaves and the ridge level for gable, hip, and gambrel roofs.

A story is measured as that portion of a building included between the upper surface of any floor and the upper surface of the floor next above, or fourteen (14) feet, whichever is less, except that the topmost story shall be that portion of a building included between the upper surface of the topmost floor and the ceiling or roof above. If the finished floor level directly above a basement, cellar or unused under floor space is more than six (6) feet above grade, for more than fifty (50) percent of the total perimeter, or is more than twelve (12) feet above grade at any point, such basement, cellar, or unused under floor space shall be considered a story.

Measured from 2nd Street SE the height of the building is 13 stories (12 floors) and 145 feet. The C3A District limits the height of multiple-family dwellings to four stories, or 56 feet, whichever is less. A conditional use permit is necessary for the entire building to exceed four stories. The proposed development will replace a small office building with a 96 unit residential building. The height of the building has been reviewed by the City Council, as an appeal of the HPC, and has been found to be compatible with the surrounding historic 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 surrounding area is developed, but there are plans to redevelop various parcels near the site in the future. The City Council, on appeal of the HPC, found this height to be compatible with the surrounding historic district. Two large building have been approved, but not yet constructed, to the south as apart of the East Bank Mills project; one is 26 stories and the other is 24 stories. This building height should not be out of character with this development and should not be detrimental to surrounding properties.

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

Utilities and access are existing and adequate. Public Works and the Fire Department have reviewed the plans for access and circulation and they find the plans acceptable. The final drainage plan is required to be approved by Public Works before and permits may be issued.

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

Access to the parking is on the west side of the building from 2nd Street SE. The majority of the required parking is provided within the building. The zoning code requires 96 parking spaces and the development will provided 90 spaces. Due to the close proximity to downtown, the University, and transit this should be adequate parking.

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

While the comprehensive plan does not indicate appropriate heights for specific sites, there are several policies in Chapter 9, City Form, that refer to traditional urban form and building form and context especially regarding how buildings relate to their surroundings. This building height should not be out of character with the surrounding area if it complies with HPC and site plan review conditions of approval.

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

The proposal will conform with the applicable regulations of the C3A District upon the approval of the conditional use permits, setback variances, and site plan review.

In addition to the conditional use standards contained in Chapter 525 and this article, the city planning commission shall consider, but not be limited to, the following factors when determining maximum height:

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

The increase in height will not prevent access to light and air for surrounding properties. The building is recessed on the east and west sides, which will allow access to light and air and does not exceed the required setback along the street frontage. It will shadow properties to the north, but they would be shadowed by the proposed East Bank Mills project and the already approved six story project on this site.

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

There are no residential properties adjacent to the site. It will shadow properties to the north, but they would be shadowed by the proposed East Bank Mills project and the already approved six story project on this site. The applicant has not submitted a shadow study.

(3) The scale and character of surrounding uses.

There are or will be buildings of greater height in the immediate area, including the Phoenix (under construction) to the west and the East Bank Mills (proposed) to the west and south. The City Council has found the building to be in character with the surrounding historic district.

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

The building will not significantly block views of landmark buildings to the west. It will block views of the river and downtown from the north, but not significantly more than it would if it were limited to four stories. It will affect views of the red tile elevator from the east, but the City Council, on appeal of the HPC, did not find that this height would be detrimental to surrounding historic properties.

EAW/EIS and height issues: An EIS was completed for the adjacent property to the south for the East Bank Mills development. The Environmental Impact Statement (EIS) is a disclosure document that is intended to be used to inform regulatory decisions. It is made up of several documents including, but not limited to, the Environment Assessment Worksheet (EAW), the Draft EIS (DEIS), and the Final EIS (FEIS). One issue that was identified in the East Bank Mills DEIS is that the taller buildings of the East Bank Mills project, especially F and G, may be at risk for exposing residents to noise levels and air pollution at the upper floors (see pages 59, 61-63 of the EAW, 20-23 of the DEIS, and page 14 of the Findings of Fact for EAW for the East bank Mills development). Staff is concerned that this may apply to the upper floors for the Flour Sack Flats Phase II building as well.

The source of the majority of noise is from the University of Minnesota Steam Plant stacks across 6th Avenue and Main Street from the site. Noise is generated as the gasses leave the stacks. Noise levels at the development will increase as the height of the buildings approach and exceed the height of the stacks (140 feet). This effect is discussed beginning on page 59 of the EAW. Under Minnesota state law it is the City's responsibility to make sure that residents are not exposed to noise levels that exceed state

standards. To discharge the City’s responsibility under state law and to accommodate future possible increases in noise resulting from potential increasing production at the steam plant, as allowed under its air quality permit from the Minnesota Pollution Control Agency, staff is recommending that a condition of approval be added that addresses noise issues and to assure compliance with state statutes. Staff recommends that any portion of any building that has an exposure greater than L50 50dBA shall be subject to the following conditions:

- (1) The building is constructed in such a way that the exterior to interior sound level attenuation is at least 40 dB(A);
- (2) The building has year-round climate control; and
- (3) The building has no areas or accommodations, including balconies, that are intended for outdoor activities.

This will require that the applicant provide a study that verifies the sound level exposure for the new buildings and provide a plan for how the new construction will comply with the conditions before building permits may be issued.

To assist the University of Minnesota’s efforts to avoid any potential air pollution exposure issues (as outlined on pages 20-23 of the DEIS and page 14 of the Findings of Fact for EAW for the East Bank Mills development) and their impact on residents, staff recommends that air intakes into the buildings be located so as to minimize pollutant ingestion into the building HVAC systems. This will require that the applicant provide a study that verifies the pollution impacts for the building and provide a plan for how the new construction will comply with the standards before building permits may be issued.

VARIANCE (to reduce the side yard setbacks to allow patio encroachments)

Findings Required by the Minneapolis Zoning Code:

- 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.**

In general, no setbacks are not required for properties in the commercial districts, except where adjacent to residential districts and for residential uses that contain windows facing an interior side lot line. This structure is bordered on the north by a public street, so no setback is required on that side. The site meets the 15 foot south side setback where it borders a proposed residential use. There are no residential developments to the east and west, but this is a residential structure with windows facing the interior yards, so a setback of five feet plus two feet for each additional floor above the first is required, not to exceed 15 feet. Both yards have a setback of 15 feet for the tower above the parking and the tower meets this requirement, but the patios for the third floor units that open onto the roof of the parking structure encroach into the setback. If the patios were reduced to 50 square feet in area they would be allowed encroachments.

The site has a significant grade change from north to south and an irregular property line on the westerly

side. The lower parking levels are not subject to the setback and encroach into the setback 10 feet. The tower meets the 15 foot setback requirement. The setback is intended to provide access to light and air for the residential tower, so it is a hardship to apply this same standard to the rooftop patios. The variance will allow a reasonable use of the property.

- 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.**

The design of the building has a taller tower with windows that creates a setback requirement for the part of the building with windows to preserve access to light and air for that part of the building. This is a condition that is not generally applicable to other properties and is created by the zoning code.

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

The intent of the ordinance is to provide a setback for facades with windows along interior yard setback where a building could be built along the property line on an adjacent parcel. This is to meet building code requirements for fire protection and to prevent a situation where a building would be built on the adjacent parcel blocking the windows. The tower part of the building with windows will be setback 15 feet from the east and west property lines. This will allow access to light and air for these units and therefore should not circumvent the intent of the ordinance.

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

The proposed variance should have no effect on congestion in the public streets. Adequate parking is provided. The variance should not endanger public health or safety or increase the danger of fire.

VARIANCE (to reduce the minimum required lot area from 295 to 206 square feet)

Findings Required by the Minneapolis Zoning Code:

- 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.**

The C3A District requires 400 square feet of lot area per dwelling unit. The lot is 19,790 square feet so this will allow 49 units as of right. With a 20 percent bonus for enclosed parking and a 20 percent bonus for affordable housing the applicant is allowed another 18 units. This reduces the effective lot area per dwelling unit to 295 square feet. The applicant is requesting that this be varied the maximum 30 percent to 206 square feet. If the height and bulk of the building are deemed appropriate, then requiring the

applicant to reduce the number of units would only reduce the site density, not the size of the building. The smaller unit size allows the applicant to provide more affordable units. This is a reasonable use of the property.

- 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.**

The site is unique for several reasons. There are several large buildings in the area that make a larger residential building less out of character regarding height, bulk, and mass. It has access to amenities, such as the Mississippi River, the Stone Arch Bridge, and Downtown that make it suitable for higher density residential development. These are conditions that are not generally applicable to other properties in the city.

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

The intent of the ordinance is to set a reasonable limit on the amount density requirements can be varied. The area has been rezoned as appropriate for residential development and is in an activity center. The building size and bulk is not out of character with the area. Granting a thirty percent variance to allow additional density in an area that has been zoned for higher density residential development, when the scale of the building will not be out of character with other approved and built development in the area, should not circumvent the intent of the ordinance.

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

The proposed variance should have no effect on congestion in the public streets. Adequate parking is provided. The variance should not endanger public health or safety or increase the danger of fire.

VARIANCE (to increase the maximum allowable FAR from 3.78 to 5.34)

Findings Required by the Minneapolis Zoning Code:

- 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.**

The floor area ratio (FAR) is the gross floor area of the building divided by the area of the zoning lot. Gross floor area does not include space devoted to accessory off-street parking or loading facilities, including aisles, ramps and maneuvering space. The total square footage of the building including the parking is 146,917 square feet. The gross floor area of the building that does not include the parking area is approximately 105,443 square feet. The size of the zoning lot is 19,750 square feet. Therefore,

the FAR is approximately 5.34. The C3A District allows a base FAR of 2.7. A 20 percent density bonus for enclosed parking and a 20 percent bonus for affordable housing increases the allowable FAR to 3.24 or a maximum of 74,807 square feet. The applicant is requesting variance to 105,443 or an FAR of 5.34; an increase of 70 percent. If the variance were denied the building would have to be reduced in size by 30,636 square feet to meet the 3.78 FAR. Approval of the variance would allow the building to be built to a height deemed appropriate and in character with the surrounding area by the City Council as a part of a HPC appeal and that is similar to the large buildings approved adjacent to and south of the site. This is a reasonable use of the property.

- 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.**

This site is square, so in this sense it is not unique, but there is a grade change on the site that mitigates the bulk of the building from 2nd Street SE. The height of the building has been deemed by the City Council to be of an appropriate scale to the historic district. There have been other large building approved in the area with FAR variances. The Phoenix was granted a variance to a FAR of 6.07; the East Bank Mills development to a FAR of 5.0; and the Stone Arch Apartments to a FAR of 3.2. This pattern of development is not generally applicable throughout the city.

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

The intent of the ordinance is to set the parameters for the size of buildings, while allowing the developer some flexibility in the design of the building, and to ensure that the new structure is compatible with surrounding structures. While staff has concern over the size of the variance, in the context of other projects in the area granting the variance should not violate the intent of the ordinance or alter the essential character of the area. The City Council has determined that the size of the building is appropriate for the historic 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.**

The proposed variance should have no effect on congestion in the public streets. Adequate parking is provided. The variance should not endanger public health or safety or increase the danger of fire.

VARIANCE(to reduce the minimum required parking from 96 to 91 spaces)

Findings Required by the Minneapolis Zoning Code:

- 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.**

The zoning code requires one space per each dwelling unit. The applicant is providing 90 spaces and is receiving one credit for a bike rack with at least four spaces. A variance is necessary for the other five spaces. The site has close proximity to transit, downtown, bike paths, and the University of Minnesota, so it should be possible to have some tenants who do not own vehicles. It can be a hardship to strictly apply zoning regulations to unique circumstance or developments that would favor reducing dependence on automobiles where there are adequate alternatives. This is a reasonable use of the property.

- 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.**

The development will have provide parking for the majority of the uses, bicycle parking, and is located near downtown, transit routes, bike trails, and the University of Minnesota. This is a circumstance that is not generally applicable everywhere in the City.

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

The intent of the ordinance is to provide reasonable parking requirements for specific uses. The variance is small and there are alternatives to the automobile in the area. The units are smaller and while the applicant has not determined the number of bedrooms, the units are proposed to be studios, one bedroom, or two bedroom units. While the project is close to the University of Minnesota the 0.5 parking spaces per bedroom standard often applied to student housing may be less applicable for this development as it will not be rental; however assuming all of the units have two bedrooms and assuming a parking standard of 0.5 per bedroom this site would still have adequate parking ($96 * 2 = 192 * 0.5 = 96$ spaces). This variance will not circumvent the intent of the ordinance.

- 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.**

It is not anticipated the variance will add congestion to the streets as it is a small reduction of five spaces and there is the possibility to utilize alternatives to automobiles for building tenants. Granting the variance should not be detrimental to the public welfare or safety.

SITE PLAN REVIEW

Required Findings for Site Plan Review

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

- B. The site plan conforms to all applicable regulations of the zoning ordinance and is consistent with applicable policies of the comprehensive plan and applicable small area plans adopted by the city council. (See Section B Below for Evaluation.)**

Section A: Conformance with Chapter 530 of Zoning Code

BUILDING PLACEMENT AND DESIGN:

- 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. In the case of a corner lot, the principal entrance shall face the front lot line.
- 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 walls shall provide architectural detail and shall contain windows as required by Chapter 530 in order to create visual interest and to increase security of adjacent outdoor spaces by maximizing natural surveillance and visibility.
- In larger buildings, architectural elements, including recesses or projections, windows and entries, shall be emphasized to divide the building into smaller identifiable sections.
- Blank, uninterrupted walls that do not include windows, entries, recesses or projections, or other architectural elements, shall not exceed twenty five (25) feet in length.
- Exterior materials shall be durable, including but not limited to masonry, brick, stone, stucco, wood, metal, and glass.
- 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 fronting along a public street, public sidewalk, public pathway, or adjacent to a residence or office residence district.
- Entrances and windows:
 - Residential uses:

Principal entrances shall be clearly defined and emphasized through the use of architectural features such as porches and roofs or other details that express the importance of the entrance. Multiple entrances shall be encouraged. Twenty (20) percent of the walls on the first floor and ten (10) percent of the walls on each floor above the first that face a public street, public sidewalk, public pathway, or on-site parking lot, shall be windows as follows:

 - a. Windows shall be vertical in proportion.
 - b. Windows shall be distributed in a more or less even manner.
 - Nonresidential uses:

Principal entrances shall be clearly defined and emphasized through the use of architectural features such as roofs or other details that express the importance of the entrance. Multiple entrances shall be encouraged. Thirty (30) percent of the walls on the first floor and ten (10) percent of the walls on each floor above the first that face a public street, public sidewalk, public pathway, or on-site parking lot, shall be windows as follows:

 - a. Windows shall be vertical in proportion.

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- b. **Windows shall be distributed in a more or less even manner.**
- c. **The bottom of any window used to satisfy the ground floor window requirement may not be more than four (4) feet above the adjacent grade.**
- d. **First floor or ground floor windows shall have clear or lightly tinted glass with a visible light transmittance ratio of 0.6 or higher.**
- e. **First floor or ground floor windows shall allow views into and out of the building at eye level. Shelving, mechanical equipment or other similar fixtures shall not block views into and out of the building in the area between four (4) and seven (7) feet above the adjacent grade. However, window area in excess of the minimum required area shall not be required to allow views into and out of the building.**
- f. **Industrial uses in Table 550-1, Principal Industrial Uses in the Industrial Districts, may provide less than thirty (30) percent windows on the walls that face an on-site parking lot, provided the parking lot is not located between the building and a public street, public sidewalk or public pathway.**

Minimum window area shall be measured as indicated in section 530.20 of the zoning code.

- **The form and pitch of roof lines shall be similar to surrounding buildings.**
- **Parking Garages: The exterior design shall ensure that sloped floors do not dominate the appearance of the walls and that vehicles are screened from view. At least thirty (30) percent of the first floor building wall that faces a public street, public sidewalk or public pathway shall be occupied by active uses, or shall be designed with architectural detail or windows, including display windows, that create visual interest.**

The building is up to the property line on 2nd Street SE and the area between the building and the public sidewalk will be landscaped. The principal entrance opens onto the public sidewalk on 2nd Street SE

Parking is located within the structure.

The exterior materials are durable and are made of cement panels, brick, metal, and glass. Changes in material may require review before the City Planning Commission. The new building walls will contain architectural detail including two types of brick, varied window designs, an articulated elevations and roof line, and recesses and projections.

There are no blank walls without a change in material for lengths of more than 25 feet with the exception of the second floor on the front elevation and the northerly end of the west elevation on the first three floors. Staff recommends alternative compliance for both areas. On the front elevation there is significant architectural detail on all floors and the brick wall on the one floor can be considered a design element or architectural detail itself. On the west elevation the blank part of the wall will be blocked by an adjacent structure.

Residential uses are required to provide 20 percent windows on the first floor and 10 percent windows on the second floor of facades facing a public street or on-site parking lot, for the new construction. The north façade of the residential structure facing 2nd Street SE provides 96 percent on the first floor and 86 percent on the floors above, with the exception of the 2nd floor. Staff recommends granting alternative compliance as the elevation greatly exceeds the window requirement on all other floors and this will mitigate any negative effect the lack of windows on the second floor will cause.

The principal entrance is clearly defined at the front of the building with a canopy.

The parking garage is not visible along the front elevation as it is lined with active spaces or is behind

the brick wall on the second floor. On the other elevations that applicant has varied the materials to prevent sloped floors from dominating. The elevations have received HPC approval.

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 530.150 (b) related to alley access.**
- **Site plans shall minimize the use of impervious surfaces.**

The entrance to the building opens onto the public sidewalk on 2nd Street SE.

There are no integrated transit shelters on site.

Vehicular access and circulation has been designed to minimize conflict with residential properties. There is no alley adjacent to the site.

Public Works and the Fire Department have reviewed the site plan for access and circulation and find them acceptable.

The site has been designed to minimize impervious surfaces and all areas that are not covered by buildings, pedestrian access, and paved areas necessary for parking, loading, and the associated maneuvering are pervious surfaces used for landscaping and stormwater management. It will also have landscaping on the roof of the parking structure.

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, including all required landscaped yards, shall be landscaped as specified in section 530.160 (a).**
- **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.**
- **Except as otherwise provided, 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 530.170 (b), including providing landscape yards along a public street, public sidewalk or public pathway and abutting or across an alley from a residence or office residence district, or any permitted or conditional residential use.**
- **The corners of parking lots where rows of parking spaces leave areas unavailable for parking or vehicular circulation shall be landscaped as specified for a required landscaped yard. Such spaces may include architectural features such as benches, kiosks or bicycle parking.**
- **In parking lots of ten (10) spaces or more, no parking space shall be located more than fifty (50) feet from the**

center of an on-site deciduous tree. Tree islands located within the interior of a parking lot shall have a minimum width of seven (7) feet in any direction.

- All other areas not governed by sections 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 530.210.
- 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 530.80, as provided in section 530.220.

The site plan shows over 100 percent landscaping. The lot area is 19,790 square feet and the footprint of the building is 14,807 square feet. This leaves 4,983 square feet, of which 20 percent (997 square feet) is required to be landscaped. The applicant is providing approximately 7,018 square feet of landscaped area on site.

The development is required to provide 2 trees and 10 shrubs. The site plan shows zero trees and approximately 210 shrubs at ground level and 141 on the roof top of the parking. Staff recommends granting alternative compliance for the required trees as there is no place on site where a tree could grow at the north, east, and west sides, and plant a tree on the south side would block the views in the historic rail corridor. The applicant has provided boulevard trees, an extensive amount of shrubs, and roof top planting on top of the parking garage as an amenity in lieu of the trees.

There are no parking areas that are required to be screened. All other areas not occupied by buildings, walks, plazas, parking, loading, and associated drives are landscaped.

ADDITIONAL STANDARDS:

- All parking lots and driveways shall be designed with wheel stops or discontinuous curbing to provide on-site retention and filtration of stormwater. Where on-site retention and filtration is not practical, the parking lot shall be defined by six (6) inch by six (6) inch continuous concrete curb.
- To the extent practical, site plans shall minimize the blocking of views of important elements of the city.
- To the extent practical, buildings shall be located and arranged to minimize shadowing on public spaces and adjacent properties.
- To the extent practical, 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 related to:
 - Natural surveillance and visibility
 - Lighting levels
 - Territorial reinforcement and space delineation
 - Natural access control
- To the extent practical, 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.

There are no surface parking areas. Curbing is provided along the access drive to control drainage.

The building will partially block some views of the historic Red Tile Elevator to the west from properties to the east, but no more than the approved East Bank Mills project to the south. It will block some views and of the river for properties to the north, but no more than if the building were limited to

four stories.

It should not significantly generate wind currents at ground level. The applicant is encouraged, but not required, to step the upper stories of the tower back from 2nd Street SE to break up wind currents at ground level.

The plan meets the CPTED guidelines. The site is designed with landscaping, fencing, and architectural features to delineate space and control access while allowing views into and out of the site. There are gates on the east and west sides to control access in the areas between adjacent buildings. Staff recommends that proper lighting be provided and that the landscaping follow the three-foot seven-foot rule to allow proper views into and out of the site.

There are no historic structures on the site.

Section B: Conformance with All Applicable Zoning Code Provisions and Consistency with the Comprehensive Plan and Applicable Small Area Plans Adopted by the City Council

ZONING CODE: The proposed use is a conditional use in the C3A District.

Off-Street Parking and Loading: The zoning code requires 96 parking spaces. One space per dwelling unit is required and the project provided 90 spaces. The applicant is providing a bike rack of five spaces and is requesting a variance for the remaining five spaces. Staff is recommending approval of the variance. Two handicapped van accessible spaces are required and two are provided. Loading is as determined by conditional use permit. The applicant will provide loading on street in front of the building on a temporary basis as necessary and allowed and subject to Public Works requirements.

Maximum Floor Area: The maximum FAR in the C3A District is 2.7 and with two density bonuses of 20 percent the allowable FAR is 3.78. The lot in question is 19,790 square feet in area. The applicant proposes 105,443 square feet of gross floor area, an FAR of 5.38. The applicant has applied for a variance to increase the maximum allowable Far and staff is recommending approval of the variance.

Building Height: Building height in the C3A District is limited to four stories or 56 feet, whichever is less and the proposed structure will be 13 stories (12 floors), or 145 feet. A conditional use permit is required to allow the increase in height and staff is recommending approval of the CUP.

Minimum Lot Area: The C3A District requires not less than 400 square feet of lot area per dwelling unit. With 96 proposed dwelling units on a lot of 19,790 square feet, and with two 20 percent density bonuses, the applicant proposes 206 square feet of lot area per dwelling unit. The applicant is requesting a variance to reduce the minimum lot area per dwelling unit and staff is recommending approval of the variance.

Dwelling Units Per Acre: The applicant proposes 211 dwelling units per acre.

Yard Requirements: In general, setbacks are not required for properties in the commercial districts, except where adjacent to residential districts and for residential uses that contain windows facing an

interior side lot line. This structure is bordered on the north by a public street, so no setback is required on that side. The site meets the 15 foot south side rear setback where it borders a proposed residential use. There are no residential developments to the east and west, but this is a residential structure with windows facing the east and west interior yards, so a setback of five feet plus two feet for each additional floor above the first is required, not to exceed 15 feet. Both yards have a setback of 15 feet for the tower above the parking and the tower meets this requirement, but the patios for the third floor units that open onto the roof of the parking structure encroach into the setback. If the patios were reduced to 50 square feet in area they would be allowed encroachments. The applicant is requesting a variance to allow the patio encroachments and staff is recommending approval of the variances.

Specific Development Standards: No specific development standards are applicable for this project.

Hours of Operation: Not applicable for a residential building.

Signs: Signs are subject to 531 and 543 of the Zoning Code. All new signs are required to meet the requirements of Chapter 543 of the zoning code and permits are required from the Zoning Office. The preliminary sign plan meets all code requirements. The applicant is aware that signs require zoning office approval and permits.

Refuse storage: Section 535.80. Refuse storage containers shall be enclosed on all four (4) sides by screening compatible with the principal structure not less than two (2) feet higher than the refuse container or shall be otherwise effectively screened from the street, adjacent residential uses located in a residence or office residence district and adjacent permitted or conditional residential uses. Trash is stored inside the building, but if dumpsters are utilized in the future they are required to be screened to the standards of the zoning code.

Lighting: The lighting will comply with Chapters 535 and 541 including the following standards:

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 shielded and arranged so as not to shine directly on any residential property. Lighting fixtures not of a cutoff type shall not exceed two thousand (2,000) lumens (equivalent to a one hundred fifty (150) watt incandescent bulb).
- (2) No exterior light source located on a nonresidential property shall be visible from 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 from any permitted or conditional residential use.
- (4) Lighting shall not 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.

(5) Lighting shall not create a hazard for vehicular or pedestrian traffic.

(6) Lighting of building facades or roofs shall be located, aimed and shielded so that light is directed only onto the facade or roof.

MINNEAPOLIS PLAN: Please see finding number 5 under the conditional use permit sections of this report.

SMALL AREA PLANS ADOPTED BY COUNCIL: *The Master Plan for the Marcy-Holmes Neighborhood* was approved by the City Planning Commission on November 17, 2003 and by the City Council on December 29, 2003. The plan has the following relevant policies and information:

The plan supports mixed use developments including multi-family housing for the industrial properties on the river side of University Avenue (see pages 1-2, 1-3, 4-1, and 4-3). Sixth Avenue SE is designated as a Gateway Corridor that is intended to be more landscaped and pedestrian friendly (see page 5-7). Chapter eight outlines various design guidelines including appropriate landscaping, rooflines, and building materials. The plan indicates that height limits in this area should be per the zoning code and may be relaxed in certain cases (see pages 4-2 and 8-6). In general, the plan calls for building heights to gradually increase from University Avenue to Main Street not to exceed the Red Tile Elevator.

The plan states the following about parking, “the neighborhood strongly supports...student housing developments...to have 0.5 parking spaces for each bed proposed in a development. The neighborhood has unique challenges with respect to the new type of apartment buildings with four or more bedrooms per apartment compared to the old model of one and two bedroom apartments. These new apartments have far more people living in them, sometimes two or more people per bedroom, than old apartments and require more parking (page 7-4).” The development is not being marketed as student housing and the units are smaller. The applicant has not determined the number of bedrooms, but the units are proposed to be studios, one bedroom, or two bedroom units. Assuming all of the units have two bedrooms and assuming a parking standard of 0.5 per bedroom this site would still have adequate parking ($96 * 2 = 192 * 0.5 = 96$ spaces).

It is the staff opinion that the proposed development, with the recommended conditions of approval, is in conformance with the *Master Plan for the Marcy-Holmes Neighborhood*. There is correspondence from the neighborhood group attached to this report that makes additional recommendations beyond those

This site is in the MR Mississippi River Critical Area Overlay District. *The Mississippi River Critical Area Plan* was approved by the City Council on June 16, 2006. The plan states that “the City will follow the land use guidelines of *The Minneapolis Plan* except where modified by small area plans...” Development in the Urban Diversified District should have a high degree of visual compatibility with

the river and should not block or impact key scenic views. Walls of tall buildings should be avoided and accessibility points through the river corridor development should be designed (page 25). Fifty percent of the first 150 feet of a private development facing the riverfront should be open space to avoid a solid wall of buildings (page 27). It is the opinion of staff that with the staff recommendations the proposed site plan is in conformance with these goals. Further, the building is setback a significant distance from the river and has other approved taller development between it and the river.

Alternative Compliance. The Planning Commission may approve alternatives to any 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, green roof, decorative pavers, ornamental metal fencing, architectural enhancements, 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.**

▪ **Number of trees.**

The development is required to provide 2 trees and 10 shrubs. The site plan shows zero trees and approximately 210 shrubs at ground level and 141 on the roof top of the parking. Staff recommends granting alternative compliance for the required trees as there is no place on site where a tree could grow at the north, east, and west sides, and plant a tree on the south side would block the views in the historic rail corridor. The applicant has provided boulevard trees, an extensive amount of shrubs, and roof top planting on top of the parking garage as an amenity in lieu of the trees.

▪ **Blank walls.**

There are no blank walls without a change in material for lengths of more than 25 feet with the exception of the second floor on the front elevation and the northerly end of the west elevation on the first three floors. Staff recommends alternative compliance for both areas. On the front elevation there is significant architectural detail on all floors and the brick wall on the one floor can be considered a design element or architectural detail itself. On the west elevation the blank part of the wall will be blocked by an adjacent structure.

▪ **Window requirement.**

Residential uses are required to provide 20 percent windows on the first floor and 10 percent windows on the second floor of facades facing a public street or on-site parking lot, for the new construction. The north façade of the residential structure facing 2nd Street SE provides 96 percent on the first floor and 86 percent on the floors above, with the exception of the 2nd floor. Staff recommends granting alternative compliance as the elevation greatly exceeds the window requirement on all other floors and this will mitigate any negative effect the lack of windows on the second floor will cause.

RECOMMENDATIONS:

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

The Community Planning and Economic Development Department – Planning Division recommends that the City Planning Commission **approve** the conditional use permit application for 96 dwelling units for property located at 518-520 2nd Street SE subject to the following condition:

- 1) The conditional use permit shall be recorded with Hennepin County as required by Minn. Stat. 462.3595, subd. 4 before building permits may be issued or before the use or activity requiring a conditional use permit may commence. Unless extended by the zoning administrator, the conditional use permit shall expire if it is not recorded within one year of approval.
- 2) The applicant shall record the instrument or document approved by staff guaranteeing that at least 19 units meet the definition of affordable housing in the zoning code for at least 15 years, before permits may be issued.

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

The Community Planning and Economic Development Department – Planning Division recommends that the City Planning Commission **approve** the conditional use permit application to increase the height from 4 stories, or 56 feet to 13 stories (12 floors), or 145 feet for property located at 518-520 2nd Street SE subject to the following condition:

- 1) The conditional use permit shall be recorded with Hennepin County as required by Minn. Stat. 462.3595, subd. 4 before building permits may be issued or before the use or activity requiring a conditional use permit may commence. Unless extended by the zoning administrator, the conditional use permit shall expire if it is not recorded within one year of approval.
- 2) The applicant provide a study that verifies the sound level exposure and air pollution impacts for the building and provide a plan for how the new construction will comply with the conditions and standards before building permits may be issued.

Recommendation of the Community Planning and Economic Development Department – Planning Division for the variance to reduce the side yard setbacks:

The Community Planning and Economic Development Department – Planning Division recommends that the City Planning Commission **approve** the variance application to reduce the interior east and west side yard setbacks to allow patio encroachments on the roof of the parking structure for property located at 518-520 2nd Street SE.

Recommendation of the Community Planning and Economic Development Department – Planning Division for the variance to decrease the minimum lot area per dwelling unit:

The Community Planning and Economic Development Department – Planning Division recommends that the City Planning Commission **approve** the variance application to decrease the minimum lot area from 295 square feet to 206 square feet per dwelling unit for property located at 518-520 2nd Street SE.

Recommendation of the Community Planning and Economic Development Department – Planning Division for the variance to increase the floor area ratio:

The Community Planning and Economic Development Department – Planning Division recommends that the City Planning Commission **approve** the variance application to increase the maximum allowable floor area ratio from 3.78 to 5.34 for property located at 518-520 2nd Street SE.

Recommendation of the Community Planning and Economic Development Department – Planning Division for the variance to decrease the required parking:

The Community Planning and Economic Development Department – Planning Division recommends that the City Planning Commission **approve** the variance application to decrease the minimum required parking from 96 spaces to 91 spaces for property located at 518-520 2nd Street SE.

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

The Community Planning and Economic Development - Planning Division recommends that the City Planning Commission adopt the above findings and **approve** the site plan review application for a mixed use 96 unit residential building located at 518-520 2nd Street SE; subject to the following conditions:

1. CPED Planning staff review and approval of the final elevations and site and landscaping plans.

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2. All site improvements shall be completed by December 17, 2008, unless extended by the Zoning Administrator, or the permit may be revoked for noncompliance.
3. Compliance with the HPC conditions of approval (as approved by the City Council on appeal).
4. Compliance with the applicable standards of the MR Mississippi River Overlay District.

Attachments:

- 1) HPC letter.
- 2) Statements from the applicant.
- 3) Zoning map.
- 4) Site plan, floor plan, and elevations.
- 5) Photos.