

**Department of Community Planning and Economic Development – Planning Division**  
Conditional Use Permits, Variances and Site Plan Review  
BZZ-2822

**Date:** March 6, 2006

**Applicant:** 38, LLC

**Address of Property:** 3804 Nicollet Avenue

**Project Name:** 38

**Contact Person and Phone:** Chris Kennelly with the Lander Group, (612) 220-2826

**Planning Staff and Phone:** Hilary Watson, (612) 673-2639

**Date Application Deemed Complete:** February 7, 2006

**End of 60-Day Decision Period:** April 9, 2006

**End of 120-Day Decision Period:** Not applicable

**Ward:** 8      **Neighborhood Organization:** Kingfield Neighborhood Association

**Existing Zoning:** C2, Neighborhood Corridor Commercial District

**Proposed Zoning:** Not applicable

**Zoning Plate Number:** 31

**Legal Description:** Not applicable

**Proposed Use:** Mixed-use development including 40 dwelling units and one office tenant and three commercial tenants

**Concurrent Review:**

**Conditional use permit:** for 40 dwelling units

**Conditional use permit:** to increase the height of the building from 4 stories/56 feet to 5 stories/59 feet

**Variance:** to reduce the required number of off-street parking spaces for a food and beverage use from 38 to 4 where one of the provided spaces is a bicycle rack

**Variance:** to reduce the front yard setback along Nicollet Avenue from 20 feet for the first 40 feet to zero feet for the building and the patio

**Variance:** to reduce the interior side yard setback from the required 13 feet to 10 feet for upper balconies, to 8 feet for an area well, to 5 feet for the AC units, to 3 feet for the transformer and to 1 foot for the patio

**Variance:** to reduce the rear yard setback from 13 feet to 12 feet for a portion of the building, to 8 feet for a walkway/ramp including stairs, to 6 feet for a porch and to zero feet for a portion of an alley

**Variance:** to reduce the front yard setback along West 38<sup>th</sup> Street from 13 feet for the first 40 feet to zero feet for the building, to zero feet for a walkway/ramp including stairs and to zero feet for a portion of an alley

**Site plan review**

**Applicable zoning code provisions:** Chapter 525, Article VII, Conditional Use Permits, Chapter 525, Article IX, Variances, specifically Section 525.520(1) “to vary the yard requirements, including permitting obstructions into required yards not allowed by the applicable regulations” and Section 525.520(7) “to reduce the applicable off-street parking requirements up to one hundred (100) percent, provided the proposed use or building serves pedestrian or transit-oriented trade or occupancy, or is located near an off-street parking facility that is available to the customers, occupants, employees and guests of the use” and Chapter 530, Site Plan Review

**Background:** The property located at 3804 Nicollet Avenue was previously occupied by Theisen Vending, an industrial warehouse and office. Although it has been vacant since the summer of 2004, the two-story building still remains. The applicant is proposing to demolish the 1970s portion of the building which is located on the southern portion of the site. The 1920s portion of the building will remain on the site and be renovated into commercial and office space. In addition, the applicant is proposing to construct a new five-story, 40-unit residential building with first floor commercial space and enclosed parking located both at grade and underground. In total there will be one office tenant and three commercial tenants within the building. One of the commercial tenants will be a food and beverage use.

The applicant is seeking a twenty percent density bonus to increase both the maximum number of dwelling units and the floor area ratio by providing affordable housing units within the development. The applicant has partnered with the City of Lakes Community Land Trust to create eight affordable dwelling units within the building. Within the report there is a letter from Jeff Washburne, the Director of the City of Lakes Community Land Trust, stating their involvement and commitment. The applicant also qualifies for the twenty percent density bonuses for enclosed parking and mixed commercial – residential buildings.

The zoning code requires 1.0 parking space per dwelling unit, parking equal to thirty percent of the capacity of persons for food and beverage uses and one parking space per 300 square feet of general retail sales and services space and office space for uses over 4,000 square feet but not less than four spaces per use. The resulting parking requirement for this development is 90 spaces; 40 spaces for the residential component, 38 spaces for the food and beverage use and 12 spaces for the office and other general retail sales and services uses. The applicant is providing 12 bicycle parking spaces as part of the development. Given this the parking requirement for the food and beverage use is reduced by one space and the parking requirement for each of the general retail sales and services uses is reduced by one space.

Within the building there will be a total of 66 parking spaces. The applicant has designated 53 spaces for the residents, four for the office tenant and the remaining nine for the general retail sales and services uses and the food and beverage use. Because there is a deficiency in the number of parking

spaces the applicant has applied for a variance to reduce the parking requirement for the food and beverage use. Additional applications for the development project include a conditional use permit for more than five dwelling units, a conditional use permit to increase the height of the building, setback variances and site plan review.

As part of the development the Public Works Department has requested that the applicant increase the width of the public alley by an additional six feet for that portion of the alley adjacent to the subject property. Two feet of the widened alley will be located on what is public right-of-way and the remaining four feet will be located on the applicant's property. Public Works requested that the alley be widened because the applicant is proposing to have an access point into the underground parking area off of the alley which is steeply sloped. The portion of the alley that will be constructed on the applicant's property is to be constructed of a material that looks different than the rest of the alley as no alley easement dedication will be granted to the City of Minneapolis.

**CONDITIONAL USE PERMIT** - for 40 dwelling units

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

The Department of Community Planning and Economic Development – 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, comfort or general welfare.**

The Planning Division does not believe that a 40-unit, for-sale condominium development would be detrimental to or endanger the public health, safety, comfort or general welfare. The additional residential units would help support the commercial uses in the designated Neighborhood Commercial Node and the principles and policies outlined in *The Minneapolis Plan* as they relate to Community Corridors.

**2. Will not be injurious to the use and enjoyment of other property in the vicinity and will not impede the normal or orderly development and improvement of surrounding property for uses permitted in the district.**

The Planning Division does not believe that a 40-unit, for-sale condominium development would be injurious to the use and enjoyment of other property in the area. Utilizing the site for a 40-unit, for-sale condominium development would provide additional opportunities for housing within the neighborhood. A development such as this would increase the property's value, contribute to the building of the city's infrastructure and contribute to the city's tax base.

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

The applicant will be working 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 to ensure that all procedures are followed in order to comply with city and other applicable requirements. As for vehicular access, the site has been designed with two access points leading into the site. One access point is off of West 38<sup>th</sup> Street and the other is off of the alley. The access point off of the alley will be for residents of the building only.

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

The residential portion of the development has a parking requirement of 40 spaces. The applicant proposes to have 53 parking spaces for the residents of the building; 12 of them will be located at grade and accessed off of West 38<sup>th</sup> Street and the remaining 41 will be located underground and accessed off of the alley.

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

The site is designated as retail - commercial in the comprehensive plan. This site is located on the southwest corner of West 38<sup>th</sup> Street and Nicollet Avenue. Both of these streets are designated Community Corridors. In addition, the site is located at a designated Neighborhood Commercial Node. According to the principles and policies outlined in *The Minneapolis Plan*, the following apply to this proposal:

- Support the development of residential dwellings of appropriate form and density (Policy 9.5)
- Coordinate land use and transportation planning on designated Community Corridors through attention to the mix and intensity of land uses, the pedestrian character and residential livability of the streets, and the type of transit service provided on these streets (Policy 9.27).
- Support a mix of uses on Commercial Corridors – such as retail sales, office, institutional, higher density residential, and clean low-impact light industrial – where compatible with the existing and desired character of the street (Implementation Step for Policy 9.27).

The Planning Division believes that the proposed development is in conformance with the policies of *The Minneapolis Plan*. Community Corridors and Neighborhood Commercial Nodes support the development of higher density housing.

**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, the variances and the site plan review this development will be in conformance with the applicable regulations of the zoning code.

**CONDITIONAL USE PERMIT** - to increase the height of the building from 4 stories/56 feet to 5 stories/59 feet

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

The Department of Community Planning and Economic Development – 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, comfort or general welfare.**

The height requirement in the C2 zoning district is 4 stories or 56 feet, whichever is less. The Planning Division does not believe that increasing the height of the building from 4 stories/56 feet to 5 stories/59 feet would be detrimental to or endanger the public health, safety, comfort or general welfare as the building has been designed with varying heights and incorporates several setbacks to reduce the impact on the surrounding properties.

**2. Will not be injurious to the use and enjoyment of other property in the vicinity and will not impede the normal or orderly development and improvement of surrounding property for uses permitted in the district.**

The Planning Division does not believe that increasing the height of the building from 4 stories/56 feet to 5 stories/59 feet would be injurious to the use and enjoyment of other property in the area. Although the building will be five stories, the overall height in feet is only three feet taller than what is allowed as of right in the C2 zoning district.

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

Increasing the height of the building will have no impact on utilities, access roads or drainage.

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

Increasing the height of the building will have no impact on traffic congestion in the public streets.

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

The site is designated as retail - commercial in the comprehensive plan. This site is located on the southwest corner of West 38<sup>th</sup> Street and Nicollet Avenue. Both of these streets are designated Community Corridors. In addition, the site is located at a designated Neighborhood Commercial Node. According to the principles and polices outlined in *The Minneapolis Plan*, the following apply to this proposal:

- Encourage new development to use human scale design features and incorporate sunlight, privacy, and view elements into building and site designs (Policy 9.16).
- Encourage the design of all new buildings to fulfill light, privacy and view requirements for the subject building as well as for adjacent buildings (Implementation Step for Policy 9.16).

The Planning Division believes that the height of the proposed development is in conformance with the policies of *The Minneapolis Plan*. The building has been designed with several setbacks. Along West 38<sup>th</sup> Street the height of the building is three stories and along Nicollet Avenue the building is two stories. From the street the building will have the same character as the other buildings at the intersection of West 38<sup>th</sup> Street and Nicollet Avenue.

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

**In addition to the conditional use permit standards, the 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 should have a minimal impact on the amount of light and air that the surrounding properties receive. The buildings to the west and northwest of the site are residential and the buildings to the north and northeast of the site are mixed-use commercial - residential. All of these buildings are separated from the site by either a public alley or a public street. In addition, except for a very small portion of the northwest corner of the building the building itself is meeting the required setbacks in the C2 zoning district for a five-story building. Again, please note that although the building will be five stories, the overall height in feet is only three feet taller than what is allowed as of right in the C2 zoning district.

**2. Shadowing of residential properties or significant public spaces.**

According to the shadow study that was submitted by the applicant the residential buildings to the west, northwest and northeast will be shadowed by this building at some time during the year. However, according to the study the shadows that are cast are not significantly greater than those cast by a building that were to measure 56 feet in height which is what would be allowed as of right by the zoning code.

**3. The scale and character of surrounding uses.**

The height of surrounding buildings range between one and three stories and although the proposed building will be two stories taller than other existing buildings in the area the building has been designed to maintain the character of the surrounding buildings along the street edge by concentrating the taller portions of the building to the southwest corner of the site.

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

There are no landmark buildings, significant open spaces or water bodies near that site that will be obstructed by the proposed building.

**VARIANCE** - to reduce the required number of off-street parking spaces for a food and beverage use from 38 to 4 where one of the provided spaces is a bicycle rack

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

- 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.**

**Parking reduction:** The applicant is seeking a variance to reduce the required number of off-street parking spaces for a food and beverage use from 38 to 4 where one of the provided spaces is a bicycle rack. There will be three commercial spaces in the building; one will be a food and beverage use and the other two will be general retail sales and services uses. There will also be one office space in the building. The combined parking requirement for all of these uses is 50 spaces. The applicant is providing 13 parking spaces and 12 bicycle parking spaces as part of the development. By providing this many bicycle parking spaces the parking requirement is reduced by three spaces.

Additional parking spaces cannot be provided on the site. Because the 1920s portion of the building will be renovated as part of this development the amount of parking spaces that can be located underground is limited due to the footprint of the building. If the 1920s portion of the building were to be removed an additional 13 vehicles could be accommodated on site.

- 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.**

**Parking reduction:** This site is unique in that the amount of parking spaces that can be accommodated on the site is limited by the location of the existing building that will be renovated and incorporated into the design of the development.

The site is located on the southwest corner of West 38<sup>th</sup> Street and Nicollet Avenue. *The Minneapolis Plan* designates both of these streets as Community Corridors and this intersection as a Neighborhood Commercial Node. Pedestrian-oriented development and small-scale retail sales and commercial services are encouraged at this location. In addition, both streets adjacent to the site are serviced by buses.

- 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.**

**Parking reduction:** The Planning Division does not believe that the parking variance will alter the essential character of the neighborhood as the proposed use is intended to cater to those who are already living or working in the area.

- 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.**

**Parking reduction:** The Planning Division believes that the granting of the variance would likely have little impact on congestion of area streets or fire safety, nor would the proposed variance be detrimental to welfare or public safety. Although the parking requirement is not being met the use is intended to cater to those who are already living or working in the area.

**VARIANCE** - to reduce the front yard setback along Nicollet Avenue from 20 feet for the first 40 feet to zero feet for the building and the patio

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

**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.**

**Front yard setback:** The applicant is seeking a variance to reduce the front yard setback along Nicollet Avenue from 20 feet for the first 40 feet to zero feet for the building and the patio. The applicant has indicated that the existing 1920s portion of the building that will be renovated as part of this development is located at the front property line along Nicollet Avenue and that the building addition is being constructed in a way that maintains a similar setback. As for the patio, the applicant has indicated that in order to provide an outdoor seating area for the food and beverage use a patio was designed to be located on the south side of the building.

**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.**

**Front yard setback:** The circumstances are unique to warrant the granting of the variance to allow the building to be constructed with a zero-foot setback as the existing building is located at the front property line. However, the Planning Division does not believe that the circumstances are unique to warrant the granting of the variance to allow a patio to be constructed in the required front yard setback. The applicant could apply for a sidewalk use permit through the Minneapolis Licensing Department and provide seating in front of the building.

**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.**

**Front yard setback:** The Planning Division believes that the granting of the variance to allow the building to be constructed with a zero-foot setback would be in keeping with the spirit and intent of the ordinance as constructing the addition in line with the existing building will reinforce the building wall along the street. A zero-foot building setback is common on the other four corners of the 38<sup>th</sup> Street and Nicollet Avenue intersection. However, the Planning Division does not believe that the granting of the variance to allow the patio to be constructed with a zero-foot setback would be keeping with the spirit and intent of the ordinance. The adjacent property to the south is residential. A patio for a food and beverage use would most likely cause noise and generate trash.

**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.**

**Front yard setback:** The Planning Division believes that the granting of the variance would likely have little impact on congestion of area streets or fire safety, nor would the proposed variance be detrimental to welfare or public safety.

**VARIANCE** - to reduce the interior side yard setback from the required 13 feet to 10 feet for upper balconies, to 8 feet for an area well, to 5 feet for the AC units, to 3 feet for the transformer and to 1 foot for the patio

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

**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.**

**Interior side yard setback:** It has been determined that the proposed balconies meet the requirements of the permitted obstruction table and therefore a variance is not needed to allow this specific element of the design. The applicant is seeking a variance to reduce the interior side yard setback from the required 13 feet to 8 feet for an area well, to 5 feet for the AC units, to 3 feet for the transformer and to 1 foot for the patio. The applicant has indicated that in order to construct the building up to the front property lines along both Nicollet Avenue and West 38<sup>th</sup> Street the building's mechanical elements needed to be located in the interior side yard. There is a 12-foot grade change between the front half of the property and the back half of the property. The adjacent residential building to the south is located on the front half of the property and its accessory surface parking area is located on the back half of the property. Of the mechanical elements located in the interior side yard setback the AC units and the transformer would be located on the back half of the property and the area well would be located on the front half of the property. The area well would be flush with the ground. The applicant is proposing to screen all of these elements from the adjacent residential property with landscaping. As for the patio, the applicant has indicated that in order to provide an outdoor seating area for the food and beverage use a patio was designed to be located on the south side of the building.

**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.**

**Interior side yard setback:** The circumstances are unique to warrant the granting of the variance to allow the mechanical elements to be located in the required interior side yard setback as the policies of *The Minneapolis Plan* would call for the building to be constructed up to the front property lines. However, the Planning Division does not believe that the circumstances are unique to warrant the granting of the variance to allow a patio to be constructed in the required interior side yard setback. The

applicant could apply for a sidewalk use permit through the Minneapolis Licensing Department and provide seating in front of the building.

**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.**

**Interior side yard setback:** The Planning Division believes that the granting of the variance to allow the mechanical elements to be located in the required interior side yard setback would be in keeping with the spirit and intent of the ordinance as they will be screened from the adjacent residential property with landscaping. In addition, the AC units and the transformer will not be located immediately adjacent to the residential building on the adjacent lot. However, the Planning Division does not believe that the granting of the variance to allow the patio to be constructed with a one-foot setback would be keeping with the spirit and intent of the ordinance. The adjacent property to the south is residential. A patio for a food and beverage use would most likely cause noise and generate trash.

**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.**

**Interior side yard setback:** The Planning Division believes that the granting of the variance would likely have little impact on congestion of area streets or fire safety, nor would the proposed variance be detrimental to welfare or public safety.

**VARIANCE** - to reduce the rear yard setback from 13 feet to 12 feet for a portion of the building, to 8 feet for a walkway/ramp including stairs, to 6 feet for a porch and to zero feet for a portion of an alley

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

**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.**

**Rear yard setback:** The applicant is seeking a variance to reduce the rear yard setback from 13 feet to 12 feet for a portion of the building, to 8 feet for a walkway/ramp including stairs, to 6 feet for a porch and to zero feet for a portion of an alley. The applicant has indicated that the rear property line is not perfectly straight. Because of this a small portion of the building is located in the required rear yard setback. If the building were to be pulled out of the rear yard setback then the dimensions of the parking spaces and drive aisle would not meet the minimum dimensions as required by the zoning code. There is a dwelling unit located on the alley side of the building. The dwelling unit is accessed off of West 38<sup>th</sup> Street by an elevated walkway/ramp which includes stairs. Because of the grade changes on the site the stairs are located more than four feet above grade. If not for the stairs being more than four feet above grade this element would meet the requirements of the permitted obstructions table and would not need a variance. To accentuate the entry to the dwelling unit along the alley a porch with an open trellis system was designed. The porch encroaches only six feet into the required yard as is permitted for

single and two-family dwellings but is larger than 50 square feet. The widening of the alley is at the request of the Public Works Department because of the grade change in the alley.

**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.**

**Rear yard setback:** The circumstances as described above are unique and warrant the granting of the variance to allow the building to be constructed within the rear yard setback in order to accommodate for parking spaces and a drive aisle that meet the minimum dimensions as required by the zoning code. The circumstances are also unique to warrant the granting of the variance to allow the walkway/ramp including stairs and the alley to be located within the required rear yard setback for if the site were flat the walkway/ramp including stairs would not need a variance and the Public Works department would not request that the alley be widened. As for the porch, although it is larger than 50 square feet it only projects six feet into the required yard.

**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.**

**Rear yard setback:** The Planning Division believes that the granting of the variance to allow the building, walkway/ramp including stairs, porch and alley to be located in the required rear yard setback would be in keeping with the spirit and intent of the ordinance. The majority of the building will be located at the required setback with only small elements encroaching into the required yard. By providing a dwelling unit with its primary view over the public alley added security will be built into the site.

**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.**

**Rear yard setback:** The Planning Division believes that the granting of the variance would likely have little impact on congestion of area streets or fire safety, nor would the proposed variance be detrimental to welfare or public safety.

**VARIANCE** - to reduce the front yard setback along West 38<sup>th</sup> Street from 13 feet for the first 40 feet to zero feet for the building, to zero feet for a walkway/ramp including stairs and to zero feet for a portion of an alley

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

**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.**

**Front yard setback:** The applicant is seeking a variance to reduce the front yard setback along West 38<sup>th</sup> Street from 13 feet for the first 40 feet to zero feet for the building, to zero feet for a walkway/ramp including stairs and to zero feet for a portion of an alley. The applicant had indicated that the existing 1920s portion of the building that will be renovated as part of this development is located at the front property line along West 38<sup>th</sup> Street and that the building addition is being constructed in a way that maintains a similar setback. There is a dwelling unit located on the alley side of the building. The dwelling unit is accessed off of West 38<sup>th</sup> Street by an elevated walkway/ramp which includes stairs. Because of the grade changes on the site the stairs are located more than four feet above grade. If not for the stairs being more than four feet above grade this element would meet the requirements of the permitted obstructions table and would not need a variance. The widening of the alley is at the request of the Public Works Department because of the grade change in the alley.

**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.**

**Front yard setback:** The circumstances are unique to warrant the granting of the variance to allow the building to be constructed with a zero-foot setback as the existing building is located at the front property line. In addition, the circumstances are also unique to warrant the granting of the variance to allow the walkway/ramp including stairs and the alley to be located within the required front yard setback for if the site were flat the walkway/ramp including stairs would not need a variance and the Public Works department would not request that the alley be widened.

**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.**

**Front yard setback:** The Planning Division believes that the granting of the variance would be in keeping with the spirit and intent of the ordinance. Constructing the addition in line with the existing building will reinforce the building wall along the street. A zero-foot setback is common on the other four corners of the West 38<sup>th</sup> Street and Nicollet Avenue intersection. By providing a dwelling unit with its primary view over the public alley added security will be built into the site.

**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.**

**Front yard setback:** The Planning Division believes that the granting of the variance would likely have little impact on congestion of area streets or fire safety, nor would the proposed variance 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 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 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. 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.**

**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.**

**• 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 530.120 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.**

**PLANNING DEPARTMENT RESPONSE:**

**• This development reinforces the street wall, facilitates pedestrian access and maximizes natural surveillance. The building is set close to the property lines. There are entrances and exits at street level and there are large windows where people can see in and out along all levels of the building.**

**• The site is located on a corner lot which requires that both walls abutting the streets be located within eight feet of the property line. The building is located at the front property line along both West 38<sup>th</sup> Street and Nicollet Avenue.**

**• The principal residential entrance is located off of Nicollet Avenue whereas the entrances for the office and commercial tenants within the building are located along both West 38<sup>th</sup> Street and Nicollet Avenue.**

**• All of the on-site parking associated with this development is located within the building.**

**• The exterior materials of the building include brick, metal, stucco and cement based siding.**

**• The exterior materials and appearance of the rear and side walls of the building are similar to and compatible with the front of the building.**

- Portions of the basement level and the first floor of the south building wall contain areas where there are blank, uninterrupted walls over 25 feet in length that are void of windows, entries, recesses or projections, or other architectural elements. In order to break up these areas of the building the Planning Division is recommending that architectural detailing be added as required by Section 530.120.
- At least 30 percent of the first floor and at least 10 percent of the upper floors of the building walls facing West 38<sup>th</sup> Street and Nicollet Avenue are required to be windows. The analysis of the project's compliance with these requirements follows:
  - West 38<sup>th</sup> Street: the percentage of windows on the first floor of the building is 34 percent. All of the upper floors of the building have more than 10 percent windows.
  - Nicollet Avenue: the percentage of windows on the first floor of the building is 58 percent. All of the upper floors of the building have more than 10 percent windows.
- The windows in the building are vertical in nature and are evenly distributed along the building walls.
- For non-residential uses, the zoning code requires that at least 30 percent of the windows allow views into and out of the building and be free of shelving, mechanical equipment or other similar fixtures that block views. The Planning Division is recommending that the applicant comply with this requirement.
- The roof line of the building is proposed to be flat, similar to roof lines of other commercial buildings in the area.

**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.**

**PLANNING DEPARTMENT RESPONSE:**

- All of the entrances are directly connected to the public sidewalks along West 38<sup>th</sup> Street and Nicollet Avenue.
- There is an existing transit stop located on West 38<sup>th</sup> Street. As part of this development the bus shelter will be relocated so it is closer to the intersection of West 38<sup>th</sup> Street and Nicollet Avenue.
- All of the on-site parking associated with this development is located within the building. As for vehicular access, the site has been designed with two access points leading into the site. One access point is off of West 38<sup>th</sup> Street and the other is off of the alley. The access point off of the alley will be for residents of the building only.
- There is no maximum impervious surface requirement in the C2 zoning district. Twenty percent of the site, minus the building, is required to be green space. According to the applicant's landscaping plan 65 percent of the site not occupied by the building is green space.

**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.

**PLANNING DEPARTMENT RESPONSE:**

- The zoning code requires that at least 20 percent of the site not occupied by the building be landscaped. The lot area of the site is 22,921 square feet. The footprint of the building is 18,781 square feet. When you subtract the footprint from the lot size the resulting number is 4,140 square feet. Twenty percent of this number is 828 square feet. The applicant has approximately 2,700 square feet of open space on the site, or 65 percent of the site not occupied by the building.
- The zoning code requires at least 1 canopy tree for each 500 square feet of required green space and at least 1 shrub for each 100 square feet of required green space be planted on the site. The tree and shrub requirement for this site is 2 and 8 respectfully. The applicant is providing a total of 7 canopy trees and 38 shrubs on the site. The applicant is also providing ornamental trees and perennials on the site.

**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.**
- **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.**
- **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.**

**PLANNING DEPARTMENT RESPONSE:**

- The majority of the site is covered by the building. Stormwater runoff will be drained to an underground stormwater treatment system and the remainder will be directed towards the green space on the south side of the site.
- A lighting plan showing footcandles was not submitted as part of the application materials. The Planning Division is recommending that the applicant submit a lighting plan so staff can verify that the lighting levels comply with the requirements of Chapter 535.
- This building should not block views of important elements in the city.
- This building should cast minimal shadows on surrounding properties. According to the shadow study that was submitted by the applicant the residential buildings to the west, northwest and northeast will be shadowed by this building at some time during the year. However, according to the study the shadows that are cast are not significantly greater than those cast by a building that were to measure 56 feet in height which is what would be allowed as of right by the zoning code.
- The building has been designed with varying heights and incorporates several setbacks. Given this, ground level winds should be minimized along both West 38<sup>th</sup> Street and Nicollet Avenue.
- The Crime Prevention Specialist has reviewed and approved the project in regards to crime prevention design elements.
- This site is neither historically designated nor located in a historic district.

**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:**

- **Use:** Residential uses over five dwelling units require a conditional use permit in the C2 zoning district.
- **Off-Street Parking and Loading:** The zoning code requires 1.0 parking space per dwelling unit, parking equal to thirty percent of the capacity of persons for food and beverage uses and one parking space per 300 square feet of general retail sales and services space and office space for uses over 4,000 square feet but not less than four spaces per use. The resulting parking requirement for this development is 90 spaces; 40 spaces for the residential component, 38 spaces for the food and beverage use and 12 spaces for the office and other general retail sales and services uses. The applicant is providing 12 bicycle parking spaces as part of the development. Given this the parking requirement for the food and beverage use is reduced by one space and the parking requirement for each of the general retail sales and services uses is reduced by one space.

Within the building there will be a total of 66 parking spaces. The applicant has designated 53 spaces for the residents, four for the office tenant and the remaining nine for the general retail sales and services uses and the food and beverage use. Because there is a deficiency in the number of parking spaces the applicant has applied for a variance to reduce the parking requirement for the food and beverage use.

- **Maximum Floor Area:** The maximum FAR in the C2 zoning district is 1.7. Section 548.130 allows a 20 percent density bonus for enclosed parking, mixed commercial-residential buildings and affordable housing. This development qualifies for all three density bonuses which, when calculated, would result in a permitted FAR of 2.72. The lot in question is 22,921 square feet in area. The applicant proposes a total of 58,459 square feet of gross floor area, an FAR of 2.55.
- **Building Height:** Building height in the C2 zoning district is limited to 4 stories or 56 feet, whichever is less. The applicant is proposing a 5-story building or approximately 59 feet. The applicant has applied for a conditional use permit to increase the height of the building.
- **Minimum Lot Area:** The minimum lot area per dwelling unit in the C2 zoning district is 900 square feet. Section 548.130 allows a 20 percent density bonus for enclosed parking, mixed commercial-residential buildings and affordable housing. This development qualifies for all three density bonus which, when calculated, would result in a permitted minimum lot area per dwelling unit of 573 square feet. With 40 proposed dwelling units on a lot of 22,921 square feet, the applicant proposes 573 square feet of lot area per dwelling unit.
- **Yard Requirements:** This development is located in the C2 zoning district. The front yard setback along Nicollet Avenue is 20 feet for the first 40 feet north of the south property line. The interior side yard and rear yard setback requirements for this development are 5+2x, where x equals the number of stories above the first floor. The resulting setback along these two sides of the building is

13 feet. The front yard setback along West 38<sup>th</sup> Street is 13 feet for the first 40 feet east of the west property line. The applicant has applied to vary all four of the required setbacks.

- **Specific Development Standards:** There are no specific development standards for residential uses or offices. Food and beverage uses are subject to Chapter 536, Specific Development Standards. The specific development standard for this use is: the premises, all adjacent streets, sidewalks and alleys, and all sidewalks and alleys within one hundred (100) feet shall be inspected regularly for purposes of removing any litter found thereon.
- **Hours of Operation:** Residential uses are not subject to hours of operation. The hours of operation for the C2 District are Sunday through Thursday, 6 am to 10 pm and Friday and Saturday, 6 am to 11 pm. Please note that the zoning code regulates hours of operation that a business is open to the public. The applicant has indicated that the commercial tenants within the building will comply with the hours of operation.
- **Signs:** Signs are subject to the requirements of Chapter 543 of the Zoning Code. In the C2 zoning district one can have one-and-a-half square feet of signage for every one foot of primary building wall unless there is a freestanding sign on the zoning lot then there can only be one square foot of signage for every one foot of primary building wall.

Wall signs are limited to 180 square feet in size and projecting signs are limited to 16 square feet in size and shall not project outward from the building by more than four feet. The maximum height for both wall signs and projecting signs is 24 feet and wall signs are not permitted to extend above the roofline of the building. Freestanding signs are limited to 80 square feet and can be no taller than 25 feet. Finally, if there is a freestanding sign on the site than there shall not be any projecting signs on the building.

The applicant is not proposing to have any freestanding signs on the site. Given the width of the building the applicant could have up to 158 square feet of signage on the Nicollet Avenue side of the building and up to 266 square feet of signage on the West 38<sup>th</sup> Street side of the building. The applicant is proposing to have a variety of signs on the building including wall signs, projecting signs and awning signs. All signs are required to have a sign permit.

Please note that there is an existing billboard on the roof of the 1920's portion of the building that will remain. A lease for the billboard was recently signed by the property owner.

- **Refuse storage:** The applicant is proposing to have a trash room located on the first floor of the building in the parking area.

**MINNEAPOLIS PLAN:**

The site is designated as retail - commercial in the comprehensive plan. This site is located on the southwest corner of West 38<sup>th</sup> Street and Nicollet Avenue. Both of these streets are designated Community Corridors. In addition, the site is located at a designated Neighborhood Commercial Node. According to the principles and policies outlined in *The Minneapolis Plan*, the following apply to this proposal:

- Promote the use of progressive design guidelines and street-oriented building alignments to maximize compatibility with surrounding neighborhoods (Implementation Step for Policy 9.6).
- Maintain and strengthen the character of the city’s various residential areas (Policy 9.8).
- Infill development standards must reflect the setbacks, orientation, pattern, materials, height and scale of surrounding dwellings (Implementation Step for Policy 9.8)
- Support urban design standards that emphasize a traditional urban form in commercial areas (Policy 9.11).
- Orient new buildings to the street to foster safe and successful commercial nodes and corridors (Implementation Step for Policy 9.11).

The Planning Division believes that the proposed development is in conformance with the policies of *The Minneapolis Plan*. The development is traditional in its siting on the property, has large storefront windows along the street frontages and has access doors into the individual uses at the street.

**ALTERNATIVE COMPLIANCE:**

- **The Planning Commission or zoning administrator 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.**

**PLANNING DEPARTMENT RESPONSE:**

- Alternative compliance is not necessary for this development.

**RECOMMENDATIONS**

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

The Department of Community Planning and Economic Development – Planning Division recommends that the City Planning Commission adopt the above findings and **approve** the conditional use permit application for 40 dwelling units located at 3804 Nicollet Avenue.

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

The Department of Community Planning and Economic Development – Planning Division recommends that the City Planning Commission adopt the above findings and **approve** the conditional use permit application to increase the height of the building from 4 stories/56 feet to 5 stories/59 feet located at 3804 Nicollet Avenue.

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

The Department of Community Planning and Economic Development – Planning Division recommends that the City Planning Commission adopt the above findings and **approve** the variance application to reduce the required number of off-street parking spaces for a food and beverage use from 38 to 4 where one of the provided spaces is a bicycle rack located at 3804 Nicollet Avenue.

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

The Department of Community Planning and Economic Development – Planning Division recommends that the City Planning Commission adopt the above findings and **approve** the variance application to reduce the front yard setback along Nicollet Avenue from 20 feet for the first 40 feet to zero feet for the building and **deny** the variance application to reduce the front yard setback along Nicollet Avenue from 20 feet for the first 40 feet to zero feet for the patio located at 3804 Nicollet Avenue.

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

The Department of Community Planning and Economic Development – Planning Division recommends that the City Planning Commission adopt the above findings and **approve** the variance application to reduce the interior side yard setback from the required 13 feet to 8 feet for an area well, to 5 feet for the AC units and to 3 feet for the transformer and **deny** the variance application to reduce the interior side yard setback from the required 13 feet to 1 foot for the patio located at 3804 Nicollet Avenue.

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

The Department of Community Planning and Economic Development – Planning Division recommends that the City Planning Commission adopt the above findings and **approve** the variance application to reduce the rear yard setback from 13 feet to 12 feet for a portion of the building, to 8 feet for a

Department of Community Planning and Economic Development – Planning Division  
BZZ-2822

walkway/ramp including stairs, to 6 feet for a porch and to zero feet for a portion of an alley located at 3804 Nicollet Avenue.

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

The Department of Community Planning and Economic Development – Planning Division recommends that the City Planning Commission adopt the above findings and **approve** the variance application to reduce the front yard setback along West 38<sup>th</sup> Street from 13 feet for the first 40 feet to zero feet for the building, to zero feet for a walkway/ramp including stairs and to zero feet for a portion of an alley located at 3804 Nicollet Avenue.

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

The Department of Community Planning and Economic Development – Planning Division recommends that the City Planning Commission adopt the above findings and **approve** the site plan review for the property located at 3804 Nicollet Avenue subject to the following conditions:

1. Architectural detailing shall be added to those portions of the basement level and the first floor of the south building wall to help break up the blank walls over 25 feet in length as required by Section 530.120.
2. Thirty percent of the commercial windows shall allow views into and out of the building and be free of shelving, mechanical equipment or other similar fixtures that block views as required per section 530.120.
3. The applicant shall submit a lighting plan that complies with the lighting level requirements of Chapter 535.
4. Approval of the final site, elevation and landscaping plans by the Department of Community Planning and Economic Development – Planning Division.
5. All site improvements shall be completed by March 6, 2007, unless extended by the Zoning Administrator, or the permit may be revoked for non-compliance.

**Attachments:**

1. Statement of proposed use
2. Affordable housing statement
3. January 23, 2006, letter from the City of Lake Community Land Trust in regard to affordable housing
4. Conditional use permit and variance findings and setback diagrams
5. January 19, 2006. and January 23, 2006, letters to Council Member Glidden and the Kingfield Neighborhood Association
6. Preliminary Development Review notes from the meeting held on August 3, 2005
7. Zoning Map
8. Civil plans, site plan, floor plans and elevations
9. Aerial photograph of the area and photographs of the site