

Department of Community Planning and Economic Development – Planning Division  
BZZ - 5319

**Department of Community Planning and Economic Development – Planning Division**  
Appeal of the Decision of the Zoning Administrator  
BZZ-5319

**Date:** January 19, 2012

**Applicant:** Tower Lofts Association, c/o Gittleman Management

**Address of Property:** 700 Washington Avenue North

**Project Name:** Appeal of the ZA determination

**Contact Person and Phone:** Andy Gittleman, (952) 277-2700

**Planning Staff and Phone:** Jacob Steen, (612) 673-2264/Steve Poor (612) 673-5837

**Date Application Deemed Complete:** September 12, 2011

**End of 60 Day Decision Period:** November 14, 2011

**End of 120 Day Decision Period:** On October 25, 2011, staff sent a letter to the applicant extending the City's decision period for an additional 60 days, to January 10, 2012. On November 10, 2011, staff received a letter from the applicant granting an additional extension to March 1, 2012. Again, on December 8, 2011, staff received a letter from the applicant granting an additional extension to April 1, 2012.

**Ward:** 7      **Neighborhood Organization:** North Loop Neighborhood Association

**Existing Zoning:** B4N Downtown Neighborhood District and DP Downtown Parking Overlay District

**Zoning Plate Number:** 19

**Legal Description:** Not applicable for this application

**Proposed Use:** Multiple Family Dwelling

**Appeal of the decision of the Zoning Administrator:** Determination that permanently locking of the pedestrian gate at 700 Washington Avenue North is in violation of the terms of the approved planned unit development for application BZZ-1647.

**525.170. Appeals of decisions of the zoning administrator.** All findings and decisions of the zoning administrator, planning director or other official involved in the administration or the enforcement of this zoning ordinance shall be final subject to appeal to the board of adjustment, except as otherwise provided by this zoning ordinance. Appeals may be initiated by any affected person by filing the appeal with the zoning

administrator on a form approved by the zoning administrator. All appeals shall be filed within ten (10) calendar days of the date of the decision. Timely filing of an appeal shall stay all proceedings in the action appealed, unless the zoning administrator certifies to the board of adjustment, with service of a copy to the applicant, that a stay would cause imminent peril to life or property, in which case the proceedings shall not be stayed. The board of adjustment shall hold a public hearing on each complete application for an appeal as provided in section 525.150. All findings and decisions of the board of adjustment concerning appeals shall be final, subject to appeal to the city council as specified in section 525.180.

**Background and Analysis:** The applicant was granted a continuance from the October 27, 2011, and the December 15, 2011, Zoning Board of Adjustment hearings to allow for sufficient time for staff to work with the applicant in resolving the issue.

On April 8, 2004, the Minneapolis City Planning Commission approved a conditional use permit for a planned unit development (PUD) for the properties at 700 Washington Avenue North and 701 2<sup>nd</sup> Street North. In approving the PUD, the City Planning Commission adopted the Planning Department staff report, which included findings of fact, recommendation to approve, and all documents/attachments referenced therein. The action of the City Planning Commission was not appealed and constituted the final and effective decision of the City.

The adopted staff report states that “a pedestrian walkway will be provided through the site as an amenity” for the PUD. A PUD allows a developer to obtain flexibility with regard to applicable zoning regulations only by providing certain site amenities. These amenities are intended to benefit the public as a trade-off for the flexibility achieved in the otherwise applicable regulation. Hence, the staff report references a “pedestrian walkway” not a resident walkway. In this manner and in order to obtain the desired density for Tower Lofts, the developer proposed and the City approved an increase in allowed density through the provision of the pedestrian walkway public amenity. In addition, even in situations where regulatory flexibility is not requested by the developer, a PUD is intended to “obtain a high quality of development which incorporates high levels of amenities...and which meets public objectives for protection and preservation of natural and historic features.” Note that the Tower Lofts project was also granted alternative compliance from the landscaping requirements of Chapter 530, Site Plan Review. Much of the landscaping of the overall planned unit development would be provided in the second phase, currently proposed by a different developer.

Furthermore, because the pedestrian walkway was part of the original approved site plan and an amenity offered by the developer, the removal of the walkway would constitute a “major change” to the approved site plan and require an amendment to the original approvals. Section 527.90 specifies that “[t]he elimination of any amenity, or substitution of any amenity that is not substantially similar to an approved amenity . . . shall require an amendment to the planned unit development by the city planning commission.” Sections 525.360 and 530.100 contain similar language requiring an amendment to the conditional use permit for anything other than “minor changes in the placement and size of the improvements.”

In the adopted conditional use permit findings, the staff report states that the Travel Demand Management Plan (TDMP) is required as a part of the final site plan to address parking and traffic concerns. The TDMP includes detailed descriptions of the pedestrian walkway amenity. The walkway is referenced on page 6 of the TDMP in a section titled “Proposed Site Characteristics.” The developer promoted the anticipated benefits of the walkway in the first paragraph on page 11 in a section titled “Pedestrian, Bicycle and Transit Characteristics” where the text states that “[f]or pedestrians, this is an *excellent amenity*” (emphasis added). The text goes on to state that “[a]s more condominiums and urban lofts are developed . . . the pedestrian walkway is expected to provide a contribution to the community and provide support towards the City of Minneapolis transportation goals.” The walkway is again touted on page 30 where the walkway is said to provide “both Tower Loft pedestrians and neighboring community pedestrian[s] with another alternative.” The TDMP was signed by “Tower Lofts Management,” approved by the City, and is a binding agreement.

**Appeal:** The appellant filed an appeal of the decision of the zoning administrator on September 9, 2011, regarding the determination that permanently locking the pedestrian gate at 700 Washington Avenue North is in violation of the terms of the approved planned unit development for land use application BZZ-1647. The appellant states the following reasons for appeal:

- *Lack of Easement:* The appellant asserts that because Tower Lofts owns the pedestrian walkway and because there is no easement granting pedestrian access of the walkway to the public, that maintaining public access is not required. Therefore, the appellant argues that Tower Lofts is entitled to restrict access to the walkway by closing the gate across the walkway, when it chooses, for the extent of time that it chooses.
- *No Public Access in PUD Approvals:* The appellant asserts that in the Tower Lofts PUD approvals, the Planning Commission does not explicitly mention the walkway. Furthermore, they argue that while the staff report states that “pedestrian access will be provided through the site as an amenity,” it does not say that it will be for the benefit of anyone except Tower Lofts residents. Thus, the appellant argues that there is no requirement to maintain open access for the public.
- *TDMP is not an Additional Condition:* The appellant argues that the TDMP was required to address “parking and traffic concerns” and does not state that it is intended to address pedestrian access. Additionally, since the TDMP was not signed by Tower Loft, LLLP, but rather “Tower Lofts Management,” the appellant argues that it is not binding on the Tower Lofts Association.

**Findings:**

1. The purpose of a PUD as stated in the Minneapolis Code of Ordinances section 527.10 is to “provide for flexibility in the use of land and the placement and size of buildings in order to better utilize the special features of sites and to obtain a higher quality of development that incorporates high levels of amenities.” The adopted staff report states that “a pedestrian walkway will be provided through the site as an amenity.” Thus, the walkway is required and a condition of the original approvals.

2. The pedestrian walkway is both an amenity per the PUD and part of the original approved site plan per BZZ-1647. As such, eliminating access to the pedestrian walkway is not permitted per sections 525.360, 527.90, and 530.100.
3. The zoning administrator, in consultation with the City Attorney’s office has determined that an easement is not required given the land use approvals. The pedestrian walkway was a required public-benefit PUD amenity that was recognized in the adopted staff report and TDMP. Locking or restricting access to the pedestrian walkway amenity is a violation of the terms of the original project approvals.
4. The staff report states that the TDMP is required as part of the final site plan approval to address “parking and traffic concerns.” This is a broad description and the text of the TDMP clearly states that the document includes the documentation of “existing and proposed conditions with respect to transit, parking, bicycle and pedestrian facilities.” This is evidenced by the section of the TDMP titled “Pedestrian, Bicycle and Transit Characteristics,” which includes a thorough description of the manner in which the pedestrian walkway will “contribute to the community.” Thus, the pedestrian walkway as addressed in the TDMP is a relevant and required condition to the approvals under BZZ-1647.

## **RECOMMENDATIONS**

### **Recommendation of the Department of Community Planning and Economic Development – Planning Division for the appeal of the decision of the zoning administrator:**

The Department of Community Planning and Economic Development – Planning Division recommends that the Board of Adjustment adopt the above findings and **deny** the appeal of the decision of the zoning administrator’s determination that permanently restricting public access to the pedestrian walkway at 700 Washington Avenue North is in violation of the terms of the approved planned unit development for land use application BZZ-1647.

### **Attachments:**

- 1) Statement of reason for the appeal submitted by the applicant
- 2) Original Staff Report for BZZ-1647 (April 8, 2004)
- 3) Original approved site plan & floor plans
- 4) Relevant text from the adopted TDMP (April 23, 2004)
- 5) Zoning map

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