

Department of Community Planning and Economic Development – Planning Division
Conditional Use Permits, Variances, Site Plan Review and Right-of-Way Vacation
BZZ-5420 and Vac-1596

Date: February 6, 2012

Applicant: Mark Dwyer with Linden Hills Redevelopment, LLC

Addresses of Property: 4242, 4246, 4246 ½, 4250 and 4264 Upton Avenue South

Project Name: Linden Corner

Contact Person and Phone: Carol Lansing with Faegre & Benson, (612) 766-7005

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

Date Application Deemed Complete: December 14, 2011

End of 60-Day Decision Period: On January 9, 2012, the City of Minneapolis received a citizen petition forwarded from the Minnesota Environmental Quality Board (EQB) requesting the preparation of an Environmental Assessment Worksheet (EAW). The submittal of a citizen petition suspends the 60-day clock. The actions of the Minneapolis City Council from their meeting held on January 27, 2012, become official on February 6, 2012. In total the 60-day clock was suspended for 27 days. Given this, the end of the 60-day decision period ends on March 10, 2012.

End of 120-Day Decision Period: Not applicable for this application

Ward: 13 **Neighborhood Organization:** Linden Hills Neighborhood Council

Existing Zoning: C1, Neighborhood Commercial District, R4, Multiple-family District and LH Linden Hills Overlay District

Proposed Zoning: Not applicable for this application

Zoning Plate Number: 29

Legal Description: Not applicable for this application

Proposed Use: Mixed-use building including 40 dwelling units and 11,227 square feet of ground floor commercial space

Concurrent Review:

Conditional use permit: for a multiple-family dwelling with 40 dwelling units. *This application has been returned.*

Conditional use permit: to increase the height of the building from 3 stories/42 feet to 5 stories/59 feet.

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Variance: of the LH Linden Hills Overlay District to allow the building to be located more than 8 feet from the front and/or corner side property lines adjacent to Upton Avenue South and West 43rd Street.

Variance: to allow bicycle racks and a vehicle height limiter (an overhead bar with columns) in the required front yard setback along Upton Avenue South.

Site plan review: for a mixed-use building.

Vac-1596: right-of-way vacation for a trapezoidal area adjacent to 4264 Upton Avenue South.

Applicable zoning code provisions: Chapter 525, Article VII, Conditional Use Permits, Chapter 525, Article IX, Variances, specifically Section 525.520(20) “to vary the standards of any overlay district...” and Section 525.520(1) “to vary the yard requirements, including permitting obstructions into required yards not allowed by the applicable regulations”, and Chapter 530 Site Plan Review.

Background: The site is located on the northwest corner of the intersection of Upton Avenue South and West 43rd Street in the Linden Hills Neighborhood in Southwest Minneapolis. The site is comprised of five separate parcels of land; 4242, 4246, 4246 ½, 4250 and 4264 Upton Avenue South. The property located at 4250 Upton is occupied by a two-story office building; 4264 Upton is occupied by Famous Dave’s restaurant and the remaining properties are occupied by surface parking lots. The applicant is proposing to construct a mixed-use building including 40 dwelling units and 11,227 square feet of ground floor commercial space on the site.

The proposed development would be a five-story building with two levels of below ground parking. The 11,227 square feet of ground floor commercial space is proposed to be broken up into eight individual tenant spaces. One space will be designated for a 108-seat restaurant, six spaces will be designated for retail tenants and one space will be designated for an office tenant. The unit mix includes 13 one-bedrooms, 17 two-bedrooms, eight three-bedrooms and two penthouse units. The development would also include a 12-space surface parking area, a patio area and an open yard area for the residents.

There will be a total of 135 parking spaces on the site. Of the 135 spaces, 123 will be located in two levels of below ground parking and 12 will be located towards the back of the building outside. The parking requirement for the residential portion of the development is 40 spaces. The 60 spaces located on the lowest level of the parking garage will be reserved for the residents of the building. The remaining 63 enclosed parking spaces and the 12 surface parking spaces will be reserved for the commercial portion of the development. The parking requirement for the commercial portion of the development is 47 spaces. The applicant is also proposing to honor existing parking agreements for 25 spaces within the building after the development is complete. There will also be bicycle parking spaces provided within the building for the residents and outside of the building for guests and retail customers.

The applicant has completed a Travel Demand Management Plan (TDMP). The plan found that all intersections included within the study area will operate acceptably at Level of Service B or better in the weekday a.m. and p.m. peak hours with the addition of the development traffic and that there is adequate parking being provided on the site.

The entire development site is subject to the C1 zoning regulations, although the landlocked parcel located at 4242 Upton Avenue South is zoned R4, Multiple-family District, pursuant to Section 535.210, Lots containing two or more zoning classifications.

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On December 16, 2011, the Minneapolis City Council adopted a text amendment making multiple-family residential developments a permitted use in all base zoning districts. Given this, no conditional use permit is required to allow 40 dwelling units on the property. Staff is recommending that this application be returned.

A conditional use permit to increase the height of the building from the permitted three stories or 42 feet to five stories or 59 feet, a variance of the Linden Hills Overlay District to allow the building to be setback more than eight feet from both Upton Avenue South and West 43rd Street, a variance to allow bicycle racks and a vehicle height limiter (an overhead bar with columns) in the required front yard setback along Upton Avenue South, and site plan review are required.

The other application that is required for this development is a vacation of a trapezoidal piece of right-of-way that is located directly on the corner of Upton Avenue South and West 43rd Street. The right-of-way area is currently used as a public gathering spot. The applicant is proposing to create a public gathering spot in the boulevard along Upton Avenue South just north of West 43rd Street.

There has been extensive review of this development at the neighborhood level. The Planning Division has received over 1,000 e-mails and/or letters from individuals living in Linden Hills and from outside of the neighborhood. Given the volume of correspondence for this project the Planning Division has not reprinted public comments but will make them available at the City Planning Commission meeting.

On January 9, 2012, the City of Minneapolis received a citizen petition forwarded from the Minnesota Environmental Quality Board (EQB) requesting the preparation of an Environmental Assessment Worksheet (EAW). At their meeting on January 27, 2012, the Minneapolis City Council denied the request for the preparation of an EAW for the following seven reasons:

1. This “Findings” document and related documentation were prepared in compliance with the procedures of the Minnesota Environmental Policy Act and Minnesota Rules, Parts 4410.1000 to 4410.1700.
2. The project does not meet any of the mandatory EAW thresholds contained in Minn. Rules 4410.4300.
3. If the individual components (residential/commercial) of this mixed-used project were proposed standing alone, both would be exempt from environmental review pursuant to Minn. Rules 4410.4600.
4. The proposed project lies outside the boundaries of the Shoreland Overlay District. Minneapolis Code of Ordinances § 551.450. The project will be located over 1,000 feet from the ordinary highwater mark of Lake Harriet.
5. The petitioners failed to meet their burden of proof that the project may have the potential for significant environmental effects. Although there are many arguments presented, they are largely anecdotal and unsupported by compelling evidence.
6. The City of Minneapolis makes the finding that the petition for an EAW for the Linden Corner project on the property located at 4242, 4246, 4246 ½, 4250 and 4264 Upton Avenue South is denied.
7. The City of Minneapolis City Council shall adopt the proposed Findings of Fact and Record of Decision document.

CONDITIONAL USE PERMIT: to increase the height of the building from 3 stories/42 feet to 5 stories/59 feet

Findings as Required by the Minneapolis Zoning Code:

The Community Planning and Economic Development Department – Planning Division has analyzed the application and from the findings above concludes that:

1. The establishment, maintenance, or operation of the conditional use will not be detrimental to or endanger the public health, safety, comfort or general welfare.

The height limitation in the C1 zoning district is two and a half stories or 35 feet. However, when a development qualifies for the mixed commercial-residential buildings density bonus the height limitation increases to three stories or 42 feet. This development qualifies for the mixed-use density bonus as there are residential units located above the ground floor, which is more than 50 percent occupied by commercial uses.

The Planning Division does not believe that increasing the height of the building would be detrimental to or endanger the public health, safety, comfort or general welfare as long as the development complies with all applicable building codes and life safety ordinances as well as Public Works Department standards.

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

The height of buildings in the surrounding area range between one and seven stories. The residential building to the north is three stories in height, there are four story buildings located towards the northeast and east sides of the site, there is a four story building located near the southeast corner of Upton Avenue South and West 43rd Street and there is a seven story building located one block south of the site on the northwest corner of Upton Avenue South and West 44th Street. Zoning classifications in the surrounding area support as-of-right building heights of four and six stories (R4, R5, R6, OR3 and C2). Only those properties located at or within a few parcels of the intersection of Upton Avenue South and West 44th Street are zoned C1, which has a building height limitation of two and a half stories or 35 feet. However, when a development qualifies for the mixed commercial-residential buildings density bonus the height limitation in the C1 zoning district increases to three stories or 42 feet. If the parcels located in the R4, R5, R6, OR3 and C2 were redeveloped to their permitted building heights the parcels located at the intersection of Upton Avenue South and West 43rd Street would be located in the middle of a valley.

The subject site is separated by streets from the properties located to the west and south. An accessory parking lot for the adjacent residential building to the north and a proposed green space on the northwest corner of the site separate the proposed building and the adjacent residential building. The distance between the proposed building and the adjacent residential building to the north ranges between 63 and 73 feet. The proposed building will meet the west interior side yard setback requirement of 14 feet.

And, according to the City's GIS system, the single-family homes located to the west of the site are located more than 60 feet away from the shared interior property line.

The fourth and fifth levels of the building have been setback on the east, south and west sides from the base of the building. The fourth level of the building is pulled back 13 feet along the east side, 13 feet along the south side and ten feet along the west side. The fifth level of the building is pulled back 13 feet along the east side, 22 feet along the south side and ten feet along the west side.

For the reasons mentioned above the Planning Division does not believe that increasing the height of the building will 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.

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 taken 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. The number of units is permitted and the TDMP found that all intersections included within the study area will operate acceptably at Level of Service B or better in the weekday a.m. and p.m. peak hours with the addition of the development traffic and that there is adequate parking being provided on the site.

5. The conditional use is consistent with the applicable policies of the comprehensive plan.

The development site is located on the northwest corner of Upton Avenue South and West 43rd Street. The site is located in a designated Neighborhood Commercial Node in *The Minneapolis Plan for Sustainable Growth*. The future land use map in *The Minneapolis Plan for Sustainable Growth* designates the site as Mixed Use. According to the principles and policies outlined in *The Minneapolis Plan for Sustainable Growth*, the following apply to this proposal:

- Ensure appropriate transitions between uses with different size, scale, and intensity (Land Use Policy 1.2).
- Promote quality design in new development, as well as building orientation, scale, massing, buffering, and setbacks that are appropriate with the context of the surrounding area (Land Use Policy Implementation Step 1.2.1).
- Promote growth and encourage overall city vitality by directing new commercial and mixed use development to designated corridors and districts (Land Use Policy 1.5).
- Preserve the stability and diversity of the city's neighborhoods while allowing for increased density in order to attract and retain long-term residents and businesses (Land Use Policy 1.8).
- Promote a range of housing types and residential densities, with highest density development concentrated in and along appropriate land use features (Land Use Policy Implementation Step 1.8.1).

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- Preserve and enhance a system of Neighborhood Commercial Nodes that includes a mix of housing, neighborhood-serving retail, and community uses (Land Use Policy 1.11).
- Encourage a height of at least two stories for new buildings in Neighborhood Commercial Nodes, in keeping with neighborhood character (Land Use Policy Implementation Step 1.11.4).
- Encourage the development of medium- to high-density housing where appropriate within the boundaries of Neighborhood Commercial Nodes, preferably in mixed use buildings with commercial uses on the ground floor (Land Use Policy Implementation Step 1.11.5).
- New multi-family development or renovation should be designed in terms of traditional urban building form with pedestrian scale design features at the street level (Urban Design Policy 10.6).
- Design buildings to fulfill light, privacy, and view requirements for the subject building as well as for adjacent properties by building within required setbacks (Urban Design Policy Implementation Step 10.6.1).
- Provide appropriate physical transition and separation using green space, setbacks or orientation, stepped down height, or ornamental fencing to improve the compatibility between higher density and lower density residential uses (Urban Design Policy Implementation Step 10.6.3).

While staff is recommending a slight reduction in the overall building height, the Planning Division believes that the proposed height of the building is in conformance with the above policies of *The Minneapolis Plan for Sustainable Growth*. The proposed building location would comply with the yard requirements where adjacent to existing residential uses, the upper two levels of the building will be set back from the base of the building on three sides and the area between the building and the adjacent properties will be screened and landscaped.

6. The conditional use shall, in all other respects, conform to the applicable regulations of the district in which it is located.

With the approval of the conditional use permit, variances, site plan review and right-of-way vacation applications this development will meet the applicable regulations of the C1, Neighborhood Commercial District.

ADDITIONAL STANDARDS TO INCREASE MAXIMUM HEIGHT

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 development should not impede access to light and air that the surrounding properties receive. The proposed building is meeting the setbacks along the north and west property lines which are shared with other residential properties. All other surrounding properties are separated from the site by public streets.

2. Shadowing of residential properties, significant public spaces, or existing solar energy systems.

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A shadow study showing the proposed development's impacts at 9 am and 4:30 pm on June 21st, at 9 am, 12 noon and 4 pm on September 23rd and at 10 am, 12 noon and 3 pm on December 21st are included in the staff report. The shadow study indicates that there will be minimal shadowing cast on the residential properties located on the north and west sides of the development site during June, September and December. The applicant also submitted a shadow study for the same times of the day and at the same times of the year for a building that is 42 feet in height but located at the minimum setbacks. The Planning Division believes that the shadowing impacts of this second design - a 42-foot-tall building locate at its minimum setbacks - are greater as the building would be located closer to the adjacent residential properties.

There are two existing solar energy panel systems in the area. One is on a commercial building located at 2813 West 43rd Street. The proposed development will have no impact on this system. The other solar energy panel system is located at 4231 Vincent Avenue South. The applicant submitted a detailed shadow study that looks at how the proposed development would impact the solar energy panel system located at 4231 Vincent Avenue South. The study concludes that some portion of the solar energy panel system will be shadowed between November 10th and February 1st. The longest that the solar energy panel system will be in a shadow during any given day is one hour and ten minutes. Thus, the building would not have a substantial impact on the functionality of the system.

The zoning code limits the height of a story to 14 feet in height. In the past many conditional use permits to increase the height of a building from four stories to five stories have been approved. In most cases the overall height of the five story building was 56 feet. The height of the proposed building is 59 feet. In an effort to further limit shadowing of adjacent properties the Planning Division is recommending that the height of the proposed building be limited to 56 feet.

3. The scale and character of surrounding uses.

The height of buildings in the surrounding area range between one and seven stories. The residential building to the north is three stories in height, there are four story buildings located towards the northeast and east sides of the site, there is a four story building located near the southeast corner of Upton Avenue South and West 43rd Street and there is a seven story building located one block south of the site on the northwest corner of Upton Avenue South and West 44th Street. A context study has been included as an attachment to the staff report.

The character of the buildings in the neighborhood is varied. Most of the commercial buildings and many of the single-family homes were built in the early 1900's while many of the multiple-family dwellings were built in the middle of the 20th Century. There are however several infill buildings that have been built in the last ten years.

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

The proposed development will not block views of landmark buildings, significant open spaces, or bodies of water.

VARIANCE - of the LH Linden Hills Overlay District to allow the building to be located more than 8 feet from the front and/or corner side property lines adjacent to Upton Avenue South and West 43rd Street

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

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

Linden Hills Overlay District standard: The applicant is seeking a variance of the LH Linden Hills Overlay District to allow the building to be located more than 8 feet from the front and/or corner side property lines adjacent to Upton Avenue South and West 43rd Street. The majority of the building wall along Upton Avenue South is located within eight feet of the front property line. The portions of the building that are setback farther than eight feet are near the main entrance to the building and near the corner of the building which has been pulled back from the corner similar to other buildings at the intersection. The corner of the building has also been pulled back from the property line in order to provide enough room for an accessible route to the building entrance at the corner. The entire building wall along West 43rd Street is located more than eight feet from the front property line. The building has been setback along this side of the building to provide room for an outdoor dining space associated with a restaurant tenant that is planned for the corner, ground floor commercial tenant space. The farthest the building is setback along Upton Avenue South is 12 feet at the main building entrance and the farthest the building is setback along West 43rd Street is 14 feet at the patio location. The Planning Division believes that practical difficulties exist in complying with the ordinance because of circumstances unique to the property.

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

Linden Hills Overlay District standard: The Planning Division believes that the applicant proposes to use the property in a reasonable manner that will be in keeping with the spirit and intent of the ordinance and the comprehensive plan. The purpose of the LH Linden Hills Overlay District is to preserve and promote the pedestrian character of the Linden Hills commercial district. Although the applicant is proposing to set the building back more than eight feet in some locations along the street sides of the development the design of the site promotes the pedestrian character of the area by creating active outdoor spaces.

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

Linden Hills Overlay District standard: The Planning Division believes that the granting of the variance will not alter the essential character of the locality or be injurious to the use or enjoyment of other property in the vicinity. The existing building located at 4264 Upton Avenue South is setback

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approximately 60 feet from Upton Avenue South and approximately 30 feet from West 43rd Street. In terms of supporting a pedestrian-oriented character and urban form, the proposed building placement will be a vast improvement compared to what is currently on the site. Where the building is setback more than eight feet from the property lines the spaces are being used as additional sidewalk width and outdoor dining.

VARIANCE - to allow bicycle racks and a vehicle height limiter (an overhead bar with columns) in the required front yard setback along Upton Avenue South

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

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

Front yard setback along Upton Avenue South: The applicant is seeking a variance to allow bicycle racks and a vehicle height limiter (an overhead bar with columns) in the required front yard setback along Upton Avenue South. The front yard setback in the C1 zoning district is zero feet except for the first 40 feet of the property south of the north interior property line along Upton Avenue South the setback is 15 feet. No portion of the building is located in the required front yard setback. The applicant has indicated that the bicycle racks are proposed to be located in the front yard setback so as to make them accessible for those biking to the area. If they were located in back of the building people may not know that they are there and would therefore not use them. The vehicle height limiter is proposed to be located in the front yard setback so as to alert drivers to the fact that the driveway through the site is one-way and that vehicles over a certain height and weight are not allowed to enter the site since the driveway is being constructed over a below ground parking garage. The Planning Division believes that practical difficulties exist in complying with the ordinance because of circumstances unique to the property.

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

Front yard setback along Upton Avenue South: The Planning Division believes that the applicant proposes to use the property in a reasonable manner that will be in keeping with the spirit and intent of the ordinance and the comprehensive plan. The intent of having yard controls is to provide for the orderly development and use of land and to minimize conflicts between adjacent land uses by regulating the dimension and use of yards in order to provide adequate light, air, open space and separation of uses. The bicycle racks and vehicle height limiter will not diminish light, air or open space for the adjacent residential property. Located between the proposed bicycle racks and vehicle height limiter and the adjacent residential building is a retaining wall and decorative fence, a permitted driveway and an accessory parking lot for the adjacent residential building.

3. The proposed variance will not alter the essential character of the locality or be injurious to the use or enjoyment of other property in the vicinity. If granted, the proposed variance will not

be detrimental to the health, safety, or welfare of the general public or of those utilizing the property or nearby properties.

Front yard setback along Upton Avenue South: The Planning Division believes that the granting of the variance will not alter the essential character of the locality or be injurious to the use or enjoyment of other property in the vicinity. The bicycle racks are tucked into the northeast corner of the building. The proposed retaining wall and decorative fence located along the north property line will provide some screening of them. As for the vehicle height limiter it is 13 feet in height and located near the front property line. The Planning Division is recommending that the vehicle height limiter be constructed out of materials that match the character of the development. The Planning Division is also recommending that landscape materials be planted in the area between the north edge of the driveway and the north property line in order to provide additional screening of the bicycle racks and the vehicle height limiter.

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 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, windows, and active functions:**
 - **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.**
 - 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.**
 - g. **In multiple tenant buildings, each individual ground level tenant space that faces a public street, public sidewalk, public pathway, or on-site parking lot shall comply with the minimum window requirements of this section.**

- **Minimum window area shall be measured as indicated in section 530.120 of the zoning code.**
- **Ground floor active functions: Except for industrial uses in Table 550-1, Principal Industrial Uses in the Industrial Districts, the first floor or ground level of buildings shall be designed to accommodate active functions by ensuring that parking, loading, storage, or mechanical equipment rooms are limited to no more than thirty (30) percent of the linear building frontage along each wall facing 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. In addition to compliance with minimum window requirements, principal and accessory parking garages shall comply with provisions requiring active functions on the ground floor. In the downtown districts, the more restrictive parking garage provisions of Chapter 549, Downtown Districts, shall apply.**

PLANNING DIVISION RESPONSE:

- The building reinforces the street wall, facilitates pedestrian access and maximizes natural surveillance. The building is set close to the front property lines, there are entrances at street level that can be accessed by residents, guests, employees and customers and there are large windows on all sides of the building that maximize the opportunities for people to observe adjacent spaces and the public sidewalks.
- The site is located on a reverse corner lot, which requires that both walls abutting the streets be located within eight feet of the property line except where a greater yard is required by the zoning ordinance. The front yard setback in the C1 zoning district is zero feet except for the first 40 feet of the property south of the north interior property line along Upton Avenue South the setback is 15 feet. Portions of the building wall along Upton Avenue South are located more than eight feet from the front property line and the entire building wall along West 43rd Street is located more than eight feet from the front property line. Please see the alternative compliance section for further analysis.
- The area between the building and the property lines will be used for additional sidewalk space and an outdoor dining space. Outdoor dining is allowed provided it is located more than 20 feet from an adjacent residence or office residence district boundary or from a ground floor permitted or conditional residential use.
- The principal entrance to the building is oriented towards Upton Avenue South. In addition, each of the individual commercial tenant spaces has an entrance facing either Upton Avenue South or West 43rd Street.
- All of the proposed parking is located below ground or towards the back of the building.
- The exterior materials of the building will include stone, brick, metal and composite siding. The sides and rear of the building are similar to and compatible with the front of the building.
- The building wall along Upton Avenue South is approximately 236 feet in length. The applicant has used a variety of materials, recesses in the building wall, bay windows, a cornice at the third level and different size window openings to break the facade up into smaller sections.
- No portion of the building is over 25 feet in length and void of windows, entries, recesses or projections, or other architectural elements.

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- At least 40 percent of the first or ground floor and at least 10 percent of the upper floors of the building that face a public street, public sidewalk, public pathway, or on-site parking lot are required to be windows. The window requirement pertains to the Upton Avenue South and West 43rd Street sides of the building. Please note that the minimum window calculation for the first floor of the building is measured between two and ten feet above the finished level of the first floor. The analysis of the project's compliance with these requirements follows:
 - Upton Avenue South: the percentage of windows on the first floor is 46 percent and the percentage of windows on floors two through five exceeds ten percent.
 - West 43rd Street: the percentage of windows on the first floor is 50 percent and the percentage of windows on floors two through five exceeds ten percent.
- The windows are vertical in nature and are evenly distributed along the building walls.
- One hundred percent of the building frontage along both Upton Avenue South and West 43rd Street contain active functions.
- The principal roof line of the building will be flat. The majority of the commercial buildings and the multiple-family buildings in the area have flat roofs and the majority of the single-family homes in the area have pitched roofs.

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 DIVISION RESPONSE:

- All of the principal entrances leading into and out of the building are connected to the public sidewalk either directly or via a walkway.
- No transit shelters are proposed as part of this development.
- All of the proposed parking is located below ground or towards the back of the building.
- There are no public alleys adjacent to the site.
- There is no maximum impervious surface requirement in the C1 zoning district. According to the materials submitted by the applicant 88 percent of the site will be impervious. Currently 96 percent of the site is impervious.

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 DIVISION 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 entire site is 37,832 square feet. The footprint of the buildings is 20,904 square feet. When you subtract the footprint from the lot size the resulting number is 16,928 square feet. Twenty percent of this number is 3,386 square feet. According to the information that was submitted there is approximately 4,499 square feet of landscaping on the site or approximately 27 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 seven and 34 respectively. The applicant is providing a total of six canopy trees and 49 shrubs on the site. In addition, the applicant is proposing to provide a total of five ornamental trees, eight evergreen trees and a variety of perennials on the site. The applicant is also proposing to plant canopy trees and other landscape materials in the right-of-way along both Upton Avenue South and West 43rd Street. Please see the alternative compliance section for further analysis.
- The applicant is proposing to construct a retaining wall along the north edge of the property with a decorative fence on top of it. Where the property line jogs to the north and then back west again the applicant is proposing to construct a four-foot high solid wood fence. And along the west property line the applicant is proposing to construct a six-foot high solid wood fence. The rear portion of the residential building to the north is located approximately seven feet from the north interior property

line. In order to allow residents views into the proposed green space in the northwest corner of the site the Planning Division is recommending that instead of the proposed four-foot high solid wood fence that it be a four-foot high decorative fence that matches the decorative fence on top of the retaining wall.

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.**

PLANNING DIVISION RESPONSE:

- There are 12 parking spaces located towards the back of the building. The parking lot runoff is proposed to drain towards two catch basins in the parking lot.
- There are no important elements of the city near the site that will be obstructed by the proposed building.
- A shadow study showing the proposed development's impacts at 9 am and 4:30 pm on June 21st, at 9 am, 12 noon and 4 pm on September 23rd and at 10 am, 12 noon and 3 pm on December 21st are included in the staff report. The shadow study indicates that there will be minimal shadowing cast on the residential properties located on the north and west sides of the development site during June, September and December. The applicant also submitted a shadow study for the same times of the day and at the same times of the year for a building that is 42 feet in height but located at the minimum setbacks. The Planning Division believes that the shadowing impacts of this second design - a 42-foot-tall building locate at its minimum setbacks - are greater as the building would be located closer to the adjacent residential properties. There are two existing solar energy panel systems in the area. One is on a commercial building located at 2813 West 43rd Street. The proposed development will have no impact on this system. The other solar energy panel system is located at 4231 Vincent Avenue South. The applicant submitted a detailed shadow study that looks at how the proposed development would impact the solar energy panel system located at 4231

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Vincent Avenue South. The study concludes that some portion of the solar energy panel system will be shadowed between November 10th and February 1st. The longest that the solar energy panel system will be in a shadow during any given day is one hour and ten minutes. Thus, the building would not have a substantial impact on the functionality of the system. The zoning code limits the height of a story to 14 feet in height. In the past many conditional use permits to increase the height of a building from four stories to five stories have been approved. In most cases the overall height of the five story building was 56 feet. The height of the proposed building is 59 feet. In an effort to further limit shadowing of adjacent properties the Planning Division is recommending that the height of the proposed building be limited to 56 feet.

- This building should have minimal wind effects on the surrounding area.
- The site plan complies with crime prevention design elements as the building entrances are located up to the front property lines, there are windows where people can see in and out along all levels of the building and there are lights located near all of the entrances and throughout the grounds.
- 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:** Multiple-family dwellings of five or more units are a permitted use in the C1 zoning district. General retail sales and services uses, restaurants and offices are also a permitted use in the C1 zoning district.

- **Off-Street Parking and Loading:**

Minimum automobile parking requirement: The minimum parking requirement for the development is 132 spaces. There will be a total of 135 parking spaces provided on the site, as shown within the table below.

Maximum automobile parking requirement: There is no maximum parking requirement for residential uses. The maximum parking requirement for the commercial portion of the development is 81 spaces. The LH Linden Hills Overlay District limits the maximum number of accessory parking spaces for nonresidential uses to 150 percent of the minimum required parking spaces. The minimum parking requirement for the commercial portion of the development is 47 spaces. So the maximum parking requirement for the nonresidential uses is 71 spaces. There will be a total of 135 parking spaces provided on the site, as shown within the table below.

	City Requirements	
	Minimum	Maximum
Residential Uses		
Condos (40 units)	40 (1 stall per unit)	n/a
Stalls Provided for Residential Uses: 60		

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On-Site Commercial Uses		
Restaurant (108 seats; 3,338 SF)	36 (1stall per 3 seats)	44 (1 stall per 75 sq ft)
Retail Between 1,000 & 4,000 SF (3 units)	12 (min. of 4 stalls per use)	18 (150% of minimum)
Retail Less Than 1,000 sq ft (3 units)	0	13 (1/200 sq ft per use)
Office (1,858 sq ft)	4 (min. of 4 stalls per use)	6 (150% of minimum)
Requirement Before Incentive	52	81
Bicycle Incentive Reduction	-5	n/a
Total Requirement for Commercial Uses	47	81
Stalls Provided for Commercial Uses: 50		
Easement Uses		
Stalls Provided Per Easement: 25		
Total Stalls Required Per Code and Easement 132		
Total Stalls Provided 135		

Bicycle Parking: The bicycle parking requirement for a multiple-family dwelling of five or more units is one space per two dwelling units. The bicycle parking requirement for the residential portion of the development is 20. Not less than 90 percent of the required bicycle parking spaces shall meet the standards for long-term bicycle parking. Required long-term bicycle parking spaces shall be located in enclosed and secured or supervised areas providing protection from theft, vandalism and weather and shall be accessible to intended users. Required long-term bicycle parking for residential uses shall not be located within dwelling units or within deck or patio areas accessory to dwelling units.

The bicycle parking requirement for general retail sales and services uses, restaurants and offices is three spaces per use. Uses that are less than 1,000 square feet are exempt from the bicycle parking requirement. There are a total of five commercial spaces over 1,000 square feet in the building so the total bicycle parking requirement for the commercial portion of the building is 15 spaces. However, the applicant is taking advantage of the bicycle incentive to reduce the automobile parking requirement by five spaces so the bicycle parking requirement is 20 spaces. Not less than 50 percent, or two spaces, of the required bicycle parking spaces for the office portion of the development shall meet the standards for long-term bicycle parking.

The applicant is proposing to have ten bicycle racks (each one accommodates two bicycles) located outside in the northeast corner of the building. Since there needs to be at least two bicycle parking spaces provided indoors for the office portion of the development the Planning Division is recommending that there be at least one bicycle rack (each one accommodates two bicycles) provided in the commercial level of the parking garage for customers and employees. The applicant is also proposing to have 20 bicycle racks (accommodates one bicycle) located in the residential

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level of the parking garage for the residents. The Planning Division believes that the demand for residential bicycle parking will be at least one bicycle parking space per unit so the Planning Division encourages the applicant to provide at least 40 bicycle racks (each one accommodates one bicycle) in the residential level of the parking garage for the residents.

Loading: None of the uses within the development have a loading space requirement. However, an adequate shipping and receiving facility that is accessible by motor vehicle and located off of an adjacent alley, service drive or open space on the same zoning lot is required to be provided. There is a designated shipping and receiving area provided towards the northwest corner of the building.

The LH Linden Hills Overlay District requires that all commercial deliveries and shipments of products, merchandise or supplies conform to existing road and truck use restrictions on residential streets, and are encouraged to be provided by use of straight trucks or smaller vehicles and not semi-tractor trailers.

- **Maximum Floor Area:** The maximum FAR in the C1 zoning district is 1.7. Section 548.130 allows a 20 percent density bonus for enclosed parking and for mixed commercial-residential buildings. This development qualifies for both of the density bonuses which, when calculated, would result in a maximum FAR of 2.38. The lot in question is 37,832 square feet in area. The applicant proposes a total of 89,803 square feet of gross floor area, an FAR of 2.37.
- **Building Height:** The height limitation in the C1 zoning district is two and a half stories or 35 feet. However, when a development qualifies for the mixed commercial-residential buildings density bonus the height limitation increases to three stories or 42 feet. This development qualifies for the mixed-use density bonus as there are residential units located above the ground floor which is more than 50 percent occupied by commercial uses. The applicant is requesting a conditional use permit to increase the height of the building from 3 stories/42 feet to 5 stories/59 feet.
- **Minimum Lot Area:** The minimum lot area per dwelling unit in the C1 zoning district is 700 square feet. With 40 dwelling units on a lot of 37,832 square feet, the applicant proposes 945 square feet of lot area per dwelling unit.
- **Dwelling Units per Acre:** The site is 37,832 square feet or .87 acres in size. There are 46 dwelling units per acre proposed on the site.
- **Yard Requirements:** The front yard setback along Upton Avenue South and West 43rd Street is zero feet except for the first 40 feet of the property south of the north interior property line along Upton Avenue South the setback is 15 feet. The north interior setback is $5+2x$, where x equals the number of stories above the first floor. The resulting setback for a five story building is 13 feet. The west rear interior setback is $6+2x$, where x equals the number of stories above the first floor. The resulting setback for a five story building is 14 feet. The building meets all of the setback requirements.
- **Specific Development Standards:** There are no specific development standards for residential uses, general retail sales and services uses or office uses. Restaurants are subject to specific development standards:

Restaurant, sit down.

- Where alcoholic beverages are served, not less than sixth (60) percent of the total gross sales revenue shall be from the sale of food and beverages not containing alcohol, and the use shall comply with the requirements of Title 14, Liquor and Beer, of the Minneapolis Code of Ordinances and Chapter 4 of the Minneapolis City Charter.
- 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.
- **Signs:** Signs are subject to the requirements of Chapter 543 of the Zoning Code. In the C1 zoning district one can have one-and-a-half square feet of signage for every one foot of primary building wall. However, if 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 45 square feet in size. Projecting signs are limited to 16 square feet in size. The height limitation for both wall signs and projecting signs is 14 feet. Freestanding signs are limited to 54 square feet and can be no taller than eight feet. The zoning code also limits the number of freestanding signs on a zoning lot to one. The applicant is not proposing any signage at this time.
- **Refuse storage:** There will be trash and recycling rooms located on the first floor of the building.
- **Lighting:** The lighting plan showing footcandles that was submitted as part of the application materials conforms to the requirements of Chapter 535, Regulations of General Applicability.

MINNEAPOLIS PLAN:

The development site is located on the northwest corner of Upton Avenue South and West 43rd Street. The site is located in a designated Neighborhood Commercial Node in *The Minneapolis Plan for Sustainable Growth*. The future land use map in *The Minneapolis Plan for Sustainable Growth* designates the site as Mixed Use. According to the principles and policies outlined in *The Minneapolis Plan for Sustainable Growth*, the following apply to this proposal:

- Support the development of residential dwellings that are of high quality design and compatible with surrounding development (Urban Design Policy 10.4).
- Maintain and strengthen the architectural character of the city's various residential neighborhoods (Urban Design Policy Implementation Step 10.4.1).
- Support the development of multi-family residential dwellings of appropriate form and scale (Urban Design Policy 10.5).
- Smaller-scale, multi-family residential development is more appropriate along Community Corridors and Neighborhood Commercial Nodes (Urban Design Policy Implementation Step 10.5.1).
- New multi-family development or renovation should be designed in terms of traditional urban building form with pedestrian scale design features at the street level (Urban Design Policy 10.6).
- Design buildings to fulfill light, privacy, and view requirements for the subject building as well as for adjacent properties by building within required setbacks (Urban Design Policy Implementation Step 10.6.1).

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- Provide appropriate physical transition and separation using green space, setbacks or orientation, stepped down height, or ornamental fencing to improve the compatibility between higher density and lower density residential uses (Urban Design Policy Implementation Step 10.6.3).
- Orient buildings and building entrances to the street with pedestrian amenities like wider sidewalks and green spaces (Urban Design Policy Implementation Step 10.6.4).
- Street-level building walls should include an adequate distribution of windows and architectural features in order to create visual interest at the pedestrian level (Urban Design Policy Implementation Step 10.6.5).
- Encourage development that provides functional and attractive gathering spaces (Urban Design Policy 10.14).
- Wherever possible, restore and maintain the traditional street and sidewalk grid as part of new development (Urban Design Policy 10.15).
- Design streets and sidewalks to ensure safety, pedestrian comfort and aesthetic appeal (Urban Design Policy 10.16).
- Encourage wider sidewalks in commercial nodes, activity centers, along community and commercial corridors and in growth centers such as Downtown and the University of Minnesota (Urban Design Policy Implementation Step 10.16.1).
- Provide streetscape amenities, including street furniture, trees, and landscaping, that buffer pedestrians from auto traffic, parking areas, and winter elements (Urban Design Policy Implementation Step 10.16.2).
- Integrate placement of street furniture and fixtures, including landscaping and lighting, to serve a function and not obstruct pedestrian pathways and pedestrian flows elements (Urban Design Policy Implementation Step 10.16.3).
- Employ pedestrian-friendly features along streets, including street trees and landscaped boulevards that add interest and beauty while also managing storm water, appropriate lane widths, raised intersections, and high-visibility crosswalks elements (Urban Design Policy Implementation Step 10.16.4).
- Reduce the visual impact of automobile parking facilities (Urban Design Policy 10.18).

The Planning Division believes that the proposed development is in conformance with the above policies of *The Minneapolis Plan for Sustainable Growth*.

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:

- **The first floor of the building shall be located not more than eight feet from the front lot line. If located on corner lot, the building wall abutting each street shall be subject to this requirement.** Portions of the building wall along Upton Avenue South are located more than eight feet from the front property line and the entire building wall along West 43rd Street is located more than eight feet from the front property line. The portions of the building along Upton Avenue South that are setback farther than eight feet are near the main entrance to the building and near the corner of the building which has been pulled back from the corner similar to other buildings at the intersection. The corner of the building has also been pulled back from the property line in order to provide enough room for an accessible route to the building entrance at the corner. The entire building wall along West 43rd Street is located more than eight feet from the front property line. The building has been setback along this side of the building to provide room for an outdoor dining space associated with a restaurant tenant that is planned for the corner, ground floor commercial tenant space. The farthest the building is setback along Upton Avenue South is 12 feet at the main building entrance and the farthest the building is setback along West 43rd Street is 14 feet at the patio location. The Planning Division believes that the proposed development meets the intent of *The Minneapolis Plan for Sustainable Growth* and Chapter 530, Site Plan Review and is therefore recommending that the City Planning Commission grant alternative compliance to allow portions of the building wall along Upton Avenue South to be located more than eight feet from the front property line and to allow the entire building wall along West 43rd Street to be located more than eight feet from the front property line.
- **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 seven and 34 respectively. The applicant is providing a total of six canopy trees and 49 shrubs on the site. In addition, the applicant is proposing to provide a total of five ornamental trees, eight evergreen trees and a variety of perennials on the site. The applicant is also proposing to plant canopy trees and other landscape materials in the right-of-way along both Upton Avenue South and West 43rd Street. Please see the alternative compliance section for further analysis. The Planning Division believes that the mixture of canopy trees, ornamental trees and evergreen trees on the property will provide visual interest throughout the year as the seasons change. The Planning Division believes that the proposed development meets the intent of *The Minneapolis Plan for Sustainable Growth* and Chapter 530, Site Plan Review and is therefore recommending that the City Planning Commission grant alternative compliance to allow less than the required amount of canopy trees on the property.

VACATION (Vac1596) – Petition to vacate a portion of a street easement at the northwest corner of the intersection of West 43rd Street and Upton Avenue South, acquired by the City of Minneapolis and currently used as a “pocket park”.

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Development Plan: The applicant intends to use the area to be vacated as sidewalk, increased sidewalk width and for a portion of the building. The “pocket park” is a valued amenity in the neighborhood. The applicant is proposing to create a new pocket park in the boulevard space located along Upton Avenue South just north West 43rd Street along Upton Avenue South. The specific design of the proposed pocket park, as shown on the plans, is for illustration purposes. The specific elements, materials and layout would need to be discussed in more detail with Public Works.

The original vacation application requested to vacate the entire easement area which includes a portion of the public sidewalk. Since the original vacation application was submitted the applicant has met with Public Works staff to discuss their concerns. Based on this meeting the applicant has revised the vacation application to exclude the land that is needed for street and sidewalk use. Revised drawings are provided as an attachment to this report. The Public Works Department has indicated that from a technical standpoint the revised vacation request meets the requirements for street and sidewalk use at the corner of West 43rd Street and Upton Avenue South. They are, however, not making a judgment on whether or not the proposed pocket park is a suitable replacement for the existing pocket park. They have indicated, though, that with the right elements, materials and layout, the proposed pocket park would be allowed. Any and all elements located in the right-of-way would require an encroachment permit.

Responses from Utilities and Affected Property Owners: Of the utility companies that have responded none have requested an easement.

Findings: The Public Works Department recognizes a present and future need to retain a portion of this parcel for street and sidewalk use. The revised vacation request excludes the land that is needed for street and sidewalk use. The Public Works Department has indicated that from a technical standpoint the revised vacation request meets the requirements for street and sidewalk use at the corner of West 43rd Street and Upton Avenue South.

The Community Planning and Economic Development Department – Planning Division agrees that public right-of-way should typically be preserved. The Planning Division believes that the proposed pocket park is an acceptable substitute for the existing pocket park. However, if this vacation is approved and the development project does not happen, the public amenity space will be lost. Therefore, the Planning Division is recommending that the current property owner provide an easement to the City of Minneapolis for the area that will be vacated so there is no interruption in the pocket park amenity. The Community Planning and Economic Development Department – Planning Division recommends that the revised vacation petition be approved.

RECOMMENDATIONS:

Recommendation of the Community Planning and Economic Development Department - Planning Division for the Conditional Use Permit:

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The Community Planning and Economic Development Department - Planning Division recommends that the conditional use permit for a multiple-family dwelling with 40 dwelling units located at 4242, 4246, 4246 ½, 4250 and 4264 Upton Avenue South be **returned** to the applicant.

Recommendation of the Community Planning and Economic Development Department - Planning Division for the Conditional Use Permit:

The Community Planning and Economic Development Department - Planning Division recommends that the City Planning Commission adopt the findings above and **deny** the conditional use permit to increase the height of the building from 3 stories/42 feet to 5 stories/59 feet and in lieu of **approve** the conditional use permit to increase the height of the building from 3 stories/42 feet to 5 stories/56 feet 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 height of the proposed building shall be limited to 56 feet.
3. The fourth and fifth levels of the building shall be setback as shown on the plans.

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 of the LH Linden Hills Overlay District to allow the building to be located more than 8 feet from the front and/or corner side property lines adjacent to Upton Avenue South and West 43rd Street located at 4242, 4246, 4246 ½, 4250 and 4264 Upton Avenue South.

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 to allow bicycle racks and a vehicle height limiter (an overhead bar with columns) in the required front yard setback along Upton Avenue South located at 4242, 4246, 4246 ½, 4250 and 4264 Upton Avenue South subject to the following conditions:

1. The vehicle height limiter shall be constructed out of materials that match the character of the development.

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2. Landscape materials shall be planted in the area between the north edge of the driveway and the north property line in order to provide additional screening of the bicycle racks and the vehicle height limiter.

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

The Community Planning and Economic Development Department - Planning Division recommends that the City Planning Commission adopt the above findings and **approve** the site plan review application for the property located at 4242, 4246, 4246 ½, 4250 and 4264 Upton Avenue South subject to the following conditions:

1. Approval of the final site, elevation, landscaping and lighting plans by the Department of Community Planning and Economic Development – Planning Division.
2. All site improvements shall be completed by February 24, 2013, unless extended by the Zoning Administrator, or the permit may be revoked for non-compliance.
3. The proposed four-foot high solid wood fence located along the north side of the property shall be a four-foot high decorative fence that matches the decorative fence on top of the retaining wall.
4. There shall be at least one bicycle rack (accommodates two bicycles) provided in the commercial level of the parking garage.
5. The applicant is encouraged to provide at least 40 bicycle racks (each one accommodates one bicycle) in the residential level of the parking garage.

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

The Department of Community Planning and Economic Development – Planning Division recommends that the City Planning Commission and the City Council accept the above findings and **approve** the application to vacate the trapezoidal area adjacent to 4264 Upton Avenue South subject to the following condition:

1. The current property owner shall provide an easement to the City of Minneapolis for the area that will be vacated so there is no interruption in the pocket park amenity. The easement shall be terminated if building permits have been issued for the development project.

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Attachments:

1. Preliminary Development Review report from July 27, 2011, meeting
2. LH Linden Hills Overlay District standards
3. Statement of proposed use and description of the project
4. Information about the Design Review & Input Groups (RINGs)
5. Conditional use permit findings and shadow studies
6. Variance findings
7. Vacation information
8. Historic review letters
9. November 30, 2011, letter to Council Member Hodges and Linden Hills Neighborhood Council
10. Travel Demand Management Plan
11. Zoning map
12. Civil plans, landscape plans, architectural plans
13. Context renderings and sections drawings of the area
14. Photos of the site and the surrounding area
15. Comment letters