

Community Planning and Economic Development Planning Division Report

Variance and RLS
BZZ-3992 & RLS-52

Date: April 14, 2008

Applicant: Phoenix Lofts Inc. c/o Schafer Richardson, Inc.

Address Of Property: 221 Main Street SE and 224 2nd Street SE

Project Name: Phoenix Lofts

Contact Person And Phone: David Frank – Schafer Richardson 612-359-5844

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

Date Application Deemed Complete: March 13, 2008

End of 60 Day Decision Period: May 12, 2008

Ward: 3 **Neighborhood Organization:** Marcy-Holmes

Existing Zoning: C3A Community Activity Center District

Existing Overlay Districts: MR Mississippi River Critical Area and SH Shoreland Overlay Districts.

Plate Number: 14

Legal Description: Not applicable for this application.

Existing Use: Mixed-use building with 80 dwelling units and 4,400 square feet of first floor retail.

Concurrent Review:

Variance: To reduce the required westerly interior side yard from 15 feet to approximately six inches.

Registered land Survey (RLS): To create separate ownership tracts.

Applicable zoning code provisions: Chapter 525, Article IX Variances and Chapter 598 Subdivisions.

Background: The City Planning Commission approved the following applications to allow a building with 90 dwelling units and first floor retail on Main Street at its meeting of on May 23, 2005, with conditions (BZZ-2324):

Rezoning: From I1 Light Industrial and ILOD to C3A Community Activity Center District.

Conditional Use Permit: To allow 90 dwelling units.

Conditional Use Permit: To increase the height from 2.5 stories to 5 stories in the SH Shoreland Overlay District and from 4 stories to 17 stories in the C3A District.

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Variance: To reduce the required westerly interior side yard from 37 feet to various distances.

Variance: To increase the Maximum allowable Floor Area Ratio from 3.78 to 6.07.

Site Plan Review.

The building is currently under construction. The applicant now proposes to add three windows, one on each floor, on the west side elevation at the north end of the building on the first three floors. This part of the building is within one foot of the property line. A setback is not required for this wall if no windows are present, but if residential windows are added, as the applicant proposes, a setback of five feet plus two feet for each floor above the first, not to exceed 15 feet is required. The applicant is requesting a variance of this provision to allow additional windows. The applicant has applied for a Registered Land Survey (RLS) to create separate ownership tracts within the building.

The original project was approved by the Heritage Preservation Commission on April 12, 2005, and the proposed revision was approved by the HPC on March 25, 2008, subject to conditions (please see attached HPC actions).

The City Attorney has reviewed and approved the final RLS title documents.

As of the writing of this staff report, staff has not received written comments from the neighborhood group, but will forward comments, if any, at the City Planning Commission meeting.

VARIANCE (to reduce the side yard setback)

Findings Required by the Minneapolis Zoning Code:

- 1. The property cannot be put to a reasonable use under the conditions allowed and strict adherence to the regulations of this zoning ordinance would cause undue hardship.**

In general, setbacks are not required for properties in the commercial districts, except where adjacent to residential districts, permitted or conditional residential uses, or for residential uses that contain windows facing an interior side lot line. This structure is bordered on three sides by public streets, so no setbacks are required on the northerly, easterly, and southerly sides of the development. There are no residential developments to the west, but the applicant proposes adding windows on the west elevation on the first three floors where the existing building wall is approximately six inches from the interior property line; therefore, a setback of five feet plus two feet for each additional floor above the first, not to exceed 15 feet, is required. Originally the westerly interior yard had a required setback of 37 feet (17 stories requires $5 + 2(16) + 37$), but this provision of the code was amended late in 2005, so that setbacks would not exceed 15 feet.

The existing building wall is located within one foot of the west property line. It is not possible to move the wall to meet the setback requirement, so it is not possible to allow windows in this wall without a variance. While staff is concerned that the alleged hardship may be self-imposed, it is a reasonable use of the property to allow limited windows along the west side for units in this part 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.**

The circumstances requiring the variance were created by the property owner locating the building wall near the property line; however, the desire for additional windows is prompted by requests from future unit owners.

Staff would not normally recommend approval of adding windows to a wall this close to the property line, because the building code does not allow windows or openings within three feet of the property line. Minneapolis Plan Review (building code review) has been consulted and has informed planning staff that the proposed construction is acceptable as the windows are designed to be fire-rated walls and not typical windows or openings as defined by the building code. Even if the variance is approved, the windows are not allowed unless approved by Plan Review and the granting of this of this variance does not invalidate the building code requirements. If the proposed windows comply with building code requirements, then the proposed variance is a reasonable use of the property.

In addition to the building code requirements, the main reason for the variance is to preserve access to light and air for the units in the subject property, rather than those of adjacent properties. The adjacent parcel to the west will have a setback from the property line, because it is adjacent to a residential use (the Phoenix), so this issue is less of a concern.

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

The intent of the ordinance is to provide a setback for elevations with windows along interior property lines to comply with building code requirements for fire protection and to provide access to light and air for the units on the subject property. Any future development on the parcel to the west will have a setback from the property line, because it is adjacent to a residential use (the Phoenix), and the construction will meet building code requirements; therefore, granting the variance should not circumvent the intent of the ordinance.

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

The proposed variance should have no effect on congestion in the public streets. Adequate parking is provided. The variance should not endanger public health or safety or increase the danger of fire, as the construction will be fire-rated per the building code requirements.

REGISTERD LAND SURVEY

Required Findings:

- 1. The subdivision is in conformance with the land subdivision regulations including the requirements applicable regulations of the zoning ordinance, and policies of the comprehensive plan.**

The configuration of the RLS tracts, as proposed by the applicant, does not meet the lot frontage and lot area requirements of the code for Tract B on the ground level. Tracts on the ground level are subject to the same requirements as platted lots. The solution to this technical problem is to record an agreement that if the site is ever redeveloped for a different use, then the tracts on the ground floor will be replatted into lots or tracts that meet the requirements of the zoning ordinance. With the recommended conditions of approval, the RLS is in conformance with the subdivision regulations, zoning code, and comprehensive plan.

- 2. The subdivision will not be injurious to the use and enjoyment of other property in the immediate vicinity, nor be detrimental to present and potential surrounding land uses, nor add substantially to congestion in the public streets.**

The purpose of the RLS is to delineate ownership and location of various tracts on the site. This shall have no impact on surrounding properties.

- 3. All land intended for building sites can be used safely without endangering the residents or users of the subdivision or the surrounding area because of flooding, erosion, high water table, soil conditions, improper drainage, steep slopes, rock formations, utility easements, or other hazard.**

The building is under construction and almost fully developed. The site does not pose the above hazards.

- 4. The lot arrangement is such that there will be no foreseeable difficulties, for reasons of topography or other conditions, in securing building permits and in providing driveway access to buildings on such lots from an approved street. Each lot created through subdivision is suitable in its natural state for the proposed use with minimal alteration.**

Site and construction plans have been approved and the building is under construction. Access is existing and adequate.

- 5. The subdivision makes adequate provision for stormwater runoff, and temporary and permanent erosion control in accordance with the rules, regulations and standards of the city**

engineer and the requirements of these land subdivision regulations. To the extent practicable, the amount of stormwater runoff from the site after development will not exceed the amount occurring prior to development.

Site and construction plans have been approved and the building is under construction. The applicable erosion and stormwater management plans were approved with the final site plan and building permits for the project.

RECOMMENDATIONS:

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

The Community Planning and Economic Development Department – Planning Division recommends that the City Planning Commission **approve** the variance application to reduce the interior (westerly) side yard setbacks from 15 feet to approximately six inches to allow windows on the first three floors for property located at 221 Main Street SE and 224 2nd Street SE, subject to the following condition:

- 1) Compliance with the Heritage Preservation Commission conditions of approval and compliance with all applicable conditions of approval from the previous Planning Commission action for file BZZ-2324.

Recommendation of the Community Planning and Economic Development Department – Planning Division for the variance to reduce the Registered Land Survey:

The Community Planning and Economic Development Department – Planning Division recommends that the City Planning Commission **approve** the preliminary and final Registered Land Survey application for property located at 221 Main Street SE and 224 2nd Street SE, subject to the following conditions:

- 1) A document that states that if the site is redeveloped, then the site will be replatted, if necessary, to create new tracts or lots that are in compliance with the requirements of the zoning code and subdivision ordinance shall be recorded with Hennepin County before the signed RLS will be released for recording with Hennepin County.

Attachments:

- 1) Statements from the applicant.
- 2) HPC Actions.
- 3) Statements from the applicant.
- 4) Zoning map.
- 5) Site plan, elevations, and RLS.
- 6) Aerials and photos.