

**APPLICATION FOR APPEAL**

Department of Planning and Economic Development
Zoning Section
1400 City Hall Annex
25 West Fourth Street
Saint Paul, MN 55102-1634
(651) 266-6589

RECEIVED**JAN 19 2018**

By: City of St Paul DSI

18-021629-CC

Zoning Office Use Only

File #: 17-206385-SR

Fee: 462

Tentative Hearing Date:

2.7.18

APPELLANT

Name Historic Merriam Park Neighborhoods c/o Mohrman, Kaardal & Erickson Email kaardal@mklaw.com
Address 150 South Fifth Street, Suite 3100
City Minneapolis St. MN Zip 55402 Daytime Phone 612-341-1074

**PROPERTY
LOCATION**

Zoning File Name Marshall & Moore Apartments/1973-1977 Marshall Apartments
Address / Location 1973-1977 Marshall Avenue, Saint Paul, Minnesota 55104

TYPE OF APPEAL: Application is hereby made for an appeal to the:

Planning Commission, under provision of Chapter 61, Section 701, Paragraph c of the Zoning Code, of a decision made by the Planning Administrator or Zoning Administrator

OR



City Council, under provision of Chapter 61, Section 702, Paragraph a of the Zoning Code, of a decision made by the Planning Commission

Date of decision: January 12, 2018 File Number: 17-206-385

GROUND FORS FOR APPEAL: Explain why you feel there has been an error in any requirement, permit, decision or refusal made by an administrative official, or an error in fact, procedure or finding made by the Planning Commission.

Please see attached letter.

Attach additional sheets if necessary

ATTORNEY FOR
Appellant's Signature

Date

1/19/2018

City Agent

MOHRMAN, KAARDAL & ERICKSON, P.A.

ATTORNEYS AND COUNSELORS AT LAW

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January 19, 2018

Via Hand Delivery

Address on Application for Appeal Form:

Department of Planning & Economic Development
Zoning Section
City of Saint Paul
1400 City Hall Annex
25 West Fourth Street
Saint Paul, MN 55102-1534

PED Requested Delivery to:

Mr. Yaya Diatta
Zoning Administrator
City of Saint Paul
Department of Safety & Inspections
375 Jackson Street, Suite 220
Saint Paul, MN 55101-1806

Re: Appeal of Planning Commission Decision (File No. 17-206-385)

Property Location: 1973-1977 Marshall Avenue, Saint Paul

To Whom It May Concern:

This letter, its attachments, and the enclosed Application for Appeal, serve as formal notice that, in accordance with the Section 61.702 of the Saint Paul Zoning Code (the "Code"), Historic Merriam Park Neighborhoods, an unincorporated association of Merriam Park residents and the Church of St. Mark, St. Paul ("HMPN"), formally appeals the January 12, 2018 site plan approval of the Saint Paul Planning Commission ("Planning Commission") for the above-referenced planning file (the "Project").

Because (a) the application for Project site plan review (the "Application") submitted by MCR Property Holdings, LLC (the "Applicant") did not meet the requirements of an exemption from Interim Ordinance 17-54; and (b) the Project does not comply with the requirements of the Code, the approval of the site plan ("Site Plan") that was granted by the Planning Commission should be overturned by the City Council and a complete, updated application for the Project should be required.

The basis for this appeal is as follows:

The Findings and Decisions issued on January 4, 2018, as Zoning Committee recommendations to Planning Commission, which served as the January 12, 2018 Planning Commission decision to approve the Application, File No. 17-206-385 contain significant errors, including the following:

- 1. The Application was filed with the City on October 18, 2017. The Application was incomplete and defective because the Application did not include “sufficient detail to demonstrate compliance with the provisions of this [St. Paul] code,” as required by Code § 61.402(b)(3). In addition, the Application failed to request several major variances, which are required in order for the Project to proceed.**
- 2. The Application was not “duly submitted to the City in proper form,” as required for an exemption from Ordinance 17-54, “Approving an interim ordinance [development and demolition moratorium] pursuant to Minn. Stat. § 462.355, Subd.4 pending the completion of the West Marshall Study Area, specifically between Wilder and Wheeler”:**
 - a. Ordinance 17-54 was approved unanimously by the City Council on October 25, 2017;
 - b. As expressly stated by City staff, and expressly acknowledged by the Applicant, during the November 7, 2017, Site Plan Review meeting, the Developer would not be permitted to apply for any variances, conditional use permits, or entitlement changes for the Project.
 - c. Accordingly, the Project must strictly comply with all applicable St. Paul Code and other regulations, in light of the Ordinance 17-54 moratorium, now in effect.
 - d. The Project was significantly redesigned by December 28, 2017, and is now substantially different from the original Application:
 - i. The Project’s revised December 28, 2017, Site Plan Review application should be treated functionally as an entirely new Site Plan Review application, barred by Ordinance 17-54;
 - e. The Project, as currently designed, still requires at least 11 major, and unapplied for, variances and violates City and state law in a number of respects, so the Project’s revised Site Plan Review application should have been denied by the Planning Commission. Its decision was not factually substantiated.
 - f. The Applicant failed to request these major variances.
 - g. City staff, the City’s Zoning Committee of the Planning Commission, and the City’s Planning Commission all overlooked these violations of zoning and other code, which resulted in errors in both finding and fact (reference Zoning Committee Staff Report, Section H, Finding No. 2).
 - h. Section 1 of interim Ordinance 17-54, was not fully considered by City staff and the Planning Commission when it made its decision, as the ordinance states, “While redevelopment interest is welcome, redevelopment that is not consistent with the goals and requirements of the City’s Comprehensive Plan would not be in the best interests of the City generally and this area of Marshall Avenue specifically.”

- i. Further, “[T]he potential for incompatible or inconsistent redevelopment activity along this stretch of Marshall raises substantial questions relating to the ability of the City’s present official controls to assure compliance with the City’s Comprehensive Plan.”

3. Project’s “underground” parking structure is not “completely underground” (St. Paul Code, Table 66.231, *Residential District Dimensional Standards*, [note c]), because it protrudes above both the established natural grade (see June 14, 2017, Survey Report, Sheet S1 and December 28, 2017, Civil Engineer Drawings, Sheet C3.0) and existing mean/average grade (December 28, 2017, Architectural Drawings, Sheet Nos. 9–12) by over 2 feet in several areas of the rear and interior side yards, therefore:

- a. City staff expressly stated to the Applicant during the November 7, 2017, Site Plan Review meeting, that “even one inch of fill” was not acceptable to adjust or reset the measurement of building height:
 - i. St. Paul Code § 60.203.–B, *Building height*, establishes, “The existing grade of the property shall not be raised around a new building or foundation in order to comply with the height requirements of this code.” The term “This code,” as used here, refers broadly to the St. Paul Code in its entirety.
 - ii. Accordingly, this § 60.203.–B requirement would not only apply to the new principal structure but would also apply to any other buildings or garages on the property, including an above-grade “underground” garage structure.
 - iii. “Completely underground” undeniably sets a standard for the upper height of any parking structure that is truly underground (St. Paul Code, Table 66.231, *Residential District Dimensional Standards*, [note c]).
 - iv. **To allow the Applicant to simply bring in more fill to cover the “underground” garage, as is proposed with this Project, does not comply with St. Paul Code in principle or spirit, and to permit this flagrant violation of Code would establish a dangerous precedent with an ambiguous height measurement standard, subject to significant abuse by developers and residents, with the potential for unlimited amounts of fill or earth layered on the existing grades of redevelopment sites to meet various height limitations prescribed in St. Paul’s Code.**
- b. The Project includes 13 encroaching, noncompliant parking spaces in its “underground” garage that are not “completely underground,” and therefore, they do not qualify for a density bonus under St. Paul Code, Table 66.231, *Residential*

- District Dimensional Standards*, (note c), which reduces the number of permitted dwelling units from 16 to 13, 3 fewer dwelling units than the Project proposed;
- c. The Project's "underground" parking structure requires major, and unapplied for, variances to encroach in the rear and interior side-yard setbacks, 25 and 9 feet respectively (St. Paul Code § 60.220.–S and Table 66.231, *Residential District Dimensional Standards*) because it is not underground. St. Paul Code § 60.220.–S, defines "Setback" as "The distance required to obtain front, side, and rear yard open space provisions of this code, measured from the lot line to the above-grade faces of the building." The Applicant failed to request these major setback variances, and City staff, the City's Zoning Committee of the Planning Commission, and the City's Planning Commission all overlooked these violations of zoning and other code, which resulted in errors in both finding and fact (reference Zoning Committee Staff Report, Section H, Finding No. 2);
 - d. The Project requires major, and unapplied for, variances to exceed the maximum lot coverage permitted in RM2 zoning districts by 19.1%, from 35% to 54.1% (St. Paul Code § 66.232, *Maximum lot coverage*.) because it is not actually underground. The Applicant failed to request these major variances, and City staff, the City's Zoning Committee of the Planning Commission, and the City's Planning Commission all overlooked these violations of zoning and other code, which resulted in errors in both finding and fact (reference Zoning Committee Staff Report, Section H, Finding No. 2);
 - e. The Project requires major, and unapplied for, variances to reduce the minimum lot area per dwelling required in St. Paul Code, Table 66.231, *Residential District Dimensional Standards*, from 1,500 square feet to 1,248 square feet because the overall density must be reduced by 3 dwelling units. The Applicant failed to request these major variances, and City staff, the City's Zoning Committee of the Planning Commission, and the City's Planning Commission all overlooked these violations of zoning and other code, which resulted in errors in both finding and fact (reference Zoning Committee Staff Report, Section H, Finding No. 2);
 - f. Once all 13 encroaching, noncompliant "underground" parking spaces are removed, the Project does not meet minimum off-street parking requirements under St. Paul Code § 63.207 (i.e., off-street parking capacity is reduced from the Project's proposed 30 spaces to 17 spaces, and 30 spaces are required for this Project under St. Paul Code § 63.207 Table, *Minimum Required Off-Street Parking By Use*); and
 - g. No elevator equipment or hydraulic pump room (approximately 5' x 10') is shown adjacent to the Project's elevator shaft in the parking garage or first floor; if installed in the parking garage, this room would potentially interfere with (and reduce) parking space capacity and access.

4. **City staff and the Planning Commission neglected to identify that the Project did not adequately or directly respond to the November 9, 2017, Site Plan Review Report, Section 18, requirement that “there must be 1 foot of separation from the 100-year high water level and low floor,” pursuant to St. Paul Code § 52.04(d), *Flood control for buildings*. As specified in the December 28, 2017, Civil Engineer Report, Sheet C4, the 100-year high water level is 891.14 feet, which is actually above, not one foot below as required, the Project’s Low Interior Floor Elevation of 891.0 feet, as specified in the December 28, 2017, Architectural Drawings, Sheet No. 11.**
 - a. Applicant was not responsive to this requirement from City staff and did not adequately demonstrate that the Project’s storm water storage system will provide a workable alternate approach to address this low-floor elevation requirement (i.e., that it must be at last 1 foot above the 100-year high water level).
 - b. The Planning Commission’s decision was not factually substantiated.
5. **City staff and the Planning Commission recommended approval of the Project, even though Project’s December 28, 2017, Architectural Drawings, especially Sheet No. 11, are inadequate and incomplete, conflict with the Project’s Civil Engineer Drawings in several material respects (particularly Paving and Landscaping Plan, Grading and Erosion Control Plan, Utility Plan, and Details sheet), and do not demonstrate that the Project could actually be built, as designed. In addition, no structural engineer drawings have been provided.**
 - a. The Planning Commission’s decision was not factually substantiated.
6. **To actually be built, the Project would require a major, and unapplied for, variance to exceed the maximum height permitted in RM2 zoning districts, which is 50 feet above established/existing grade (St. Paul Code, Table 66.231, *Residential District Dimensional Standards*, and § 60.203.–B):**
 - a. Project’s “underground” garage door height clearance is inaccurately depicted on the December 28, 2017, Architectural Drawings, “Building Section,” Sheet No. 11, which sets the overall building height and specifies a garage door threshold elevation of 892.8 feet. Conversely, the Project’s December 28, 2017, Civil Engineer Drawings, Sheet C3.0 specifies a garage door threshold of 893.25 feet, 5.4 inches taller than shown in the Architectural “Building Section” drawing (a **significant and material inconsistency among documents for the same Project**):

- i. By necessity, this would increase Project height to over 50.5' (possibly as much as 51') to provide adequate vertical garage entrance clearance for the Project's proposed 8.75' garage door and door header.
- ii. City staff and the Planning Commission neglected to identify these plan inconsistencies between the December 28, 2017, Architectural Drawings, and the Project's December 28, 2017, Civil Engineer Drawings, Sheet C3.0. The Planning Commission's decision was not factually substantiated.
- iii. The Applicant failed to request this major variance.
- iv. City staff, the City's Zoning Committee of the Planning Commission, and the City's Planning Commission all overlooked these violations of zoning and other code, which resulted in errors in both finding and fact (reference Zoning Committee Staff Report, Section H, Finding No. 2);

7. Project does not provide site accessibility in accordance with provisions of the Americans with Disabilities Act ("ADA") and 2015 MN Accessibility Code § 1105, Accessible Entrances, and § 1106, Accessible Parking.

- a. A minimum of 60% of all public entrances to the Project building shall be accessible per § 1105 of the MN Accessibility Code. The Project's main public entrance is located on the south side of the proposed structure, facing Marshall Avenue. However, the Project's proposed accessible entrances are actually at the rear of the building and through the non-public side door facing Moore Street, in violation of ADA and MN Accessibility Code.
- b. There are two accessible parking stalls proposed in the Project's above-ground parking garages along the east elevation. Under ADA and MN Accessibility Code, these accessible parking stalls are required to have a height clearance of 8' 2". The proposed parking garage doors for these two garages are shown to be less than 8' in height, and therefore, do not comply with the Accessible Parking Section 1106 of the 2015 MN Accessibility Code § 1105, *Accessible Parking*.
- c. City staff's recommendation to approve the Application and the Planning Commission's decision to approve it were not factually substantiated (reference Zoning Committee Staff Report, Section H, Finding No. 10).

8. The Project's 8 above-ground parking garages with a paved driveway through the east interior side yard will create a nuisance because the increased number of cars driving through and parking in the Project's side yard will substantially and unreasonably impair the rights of the neighboring property owners to peacefully enjoy their properties, and this parking configuration is noncompliant with St. Paul Code:

a. Nuisance:

- i. Project's side-yard parking will infringe on or interfere with the free use of abutting properties and the comfortable enjoyment of life, particularly 1969 Marshall Avenue.
- ii. A "nuisance" in this instance is a wrong arising from an unreasonable or unlawful use of property, to the discomfort, annoyance, inconvenience, or damage of another, and, even if the definition does not always specify the element of continuous or recurrent acts, it includes that element.
- iii. A claim of private nuisance does not require proof that the nuisance harm resulted from a "wrongful" act except to the extent the plaintiff must prove fault on the part of the defendant.
- iv. The proposed garages along the Project's east elevation will impact the adjacent properties with additional car noises, exhaust, and lights in a side yard. There is a 6' planned screening fence for the Project, which will not be sufficient given the high traffic volume and additional parking likely to occur on the driveway in the interior side yard.
- v. Over 3,100 SF of paved, impervious surface in the east side yard located 4' of the shared eastern property line.
- vi. Adjacent structure (1969 Marshall Avenue) to the east is located less than 2' from the shared property line.
- vii. The driveway slopes 1.5% towards the east and there is only a 4' wide buffer.
- viii. These conditions will undoubtedly cause off-site surface storm water runoff and drainage directly on to the adjacent property during storm events and snow melt, ensuring flooding of the property and basement of 1969 Marshall Avenue.

b. East interior side-yard above-ground parking facility is noncompliant with Code and contemplates a much higher volume of parking spaces than would typically be permitted in a side yard in a residential district:

- i. Code § 60.217. – P. Parking facility, off-street. All areas, spaces and structures designed, used, required or intended to be used for the parking of more than three (3) motor vehicles. This definition is intended to include adequate driveways, accessways, parking bays, garages of a combination thereof, but does not include public roads, streets, highways and alleys.
- ii. Code § 63.312. – Setback. Except as otherwise provided in section 66.442(a) or section 66.431(b) off street parking spaces shall not be within

- a required front or side yard and shall be a minimum of four (4) feet from any lot line.
- iii. Code § 63.106. – Projections into yards. There are no exemptions for parking facilities in the required interior side yard.
- iv. Therefore, the proposed parking facility, accessed from the public alley, which is located 4' from the east interior side property line, requires a major variance to encroach into the east interior side setback, required to be 9' from the property line.
- c. The Applicant failed to request this major variance.
- d. City staff, the City's Zoning Committee of the Planning Commission, and the City's Planning Commission all overlooked these violations of zoning and other code, which resulted in errors in both finding and fact (reference Zoning Committee Staff Report, Section H, Finding No. 2).

9. Project does not comply with the *St. Paul Comprehensive Plan (2010)*, including the *Generalized 2030 Future Land Use Comprehensive Plan*:

- a. At 46 units per acre, the Project proposes a density standard that materially exceeds the *St. Paul Comprehensive Plan* for a Residential Corridor, such as west Marshall Avenue:
 - i. The *St. Paul Comprehensive Plan* specifically states in several sections that a density bonus and/or other incentive tools may be applied only when calculating a density standard for affordable housing production; no density bonuses are referenced or provided for housing that is not labeled as "affordable." (*St. Paul Comprehensive Plan*, Land Use Policy 1.43, Housing Policy 1.9, Housing Policy 1.10, Housing Policy 3.4, and Key Steps for the City/HRA).
 - ii. The Applicant marked the Application form "N/A" next to "% AMI for Affordable";
 - iii. City staff erred in applying a density bonus, when calculating the allowable Residential Corridor density standard for the Project, which includes no affordable housing (reference Zoning Committee Staff Report, Section H, Finding #1), which resulted in errors in both finding and fact;
 - iv. Maximum density standard for the Project, located on a Residential Corridor, should have been calculated to be 10.5 units, which reflects the total Project site's 0.35 acres;
 - v. Residential corridors are specifically guided for medium density and the density goal in Residential Corridors is residential development of 4-30 dwelling units per acre and adjacent commercial areas (see *Generalized 2030 Future Land Use Comprehensive Plan*, Fig. LU-K).

- b. Project does not preserve certain unique geologic, geographic, or historically significant characteristics of the City:
 - i. The Project contemplates tearing down two architecturally significant, historic homes and an original carriage house.
 - 1. 1977 Marshall Avenue, constructed in 1906:
 - a. Architecturally significant structure, designed by Charles W. Beuchner (worked for renowned St. Paul architect Clarence H. Johnston); Beuchner's notable commissions include three in use today on University Avenue:
 - i. Raymond/University Historic District (Specialty Building [1908] at Raymond and Carleton Place Lofts [1909]); and
 - ii. Fire station at St. Albans Street (1908)
 - b. Built for industrialist Albert A. Fry & wife, Agnes Loudon Fry (owned Minneapolis factory for the Loudon Machinery Co.)
 - c. Original garage/carriage house still intact.
 - d. Original exterior wood siding and intricate architectural detail and leaded glass windows largely intact.
 - e. Interior has later modifications with some original architectural features intact.
 - 2. 1973 Marshall Avenue, constructed in 1906:
 - a. Harry Metcalfe house.
 - b. Architect: not listed on the original building permit.
 - c. Most original exterior architectural elements intact, except has later, wide asbestos siding.
 - d. Beautiful original interior woodwork, built-ins, and art glass windows are almost entirely intact.
 - 3. City staff's recommendation to approve the Application and the Planning Commission's decision to approve it were not factually substantiated (reference Zoning Committee Staff Report, Section H, Finding No. 3).
- c. Project does not adequately protect adjacent and neighboring properties through reasonable provision for such matters as surface water drainage, sound and light buffers, preservation of views, light, and air, and those aspects of design, which may have substantial effects on neighboring uses:
 - i. Surface water drainage

1. Over 3,100 SF of paved, impervious surface in the east side yard located 4' of the shared eastern property line.
 2. Adjacent structure (1969 Marshall Avenue) to the east is located less than 2' from the shared property line.
 3. The driveway slopes 1.5% towards the east and there is only a 4' wide buffer. This will undoubtedly cause off-site surface water drainage directly on to the adjacent property during storm events and snow melt, ensuring flooding of the property and basement of 1969 Marshall Avenue.
 4. Snow storage still appears insufficient for the proposed impervious surface area;
- ii. Sound and site buffers
1. The proposed garages on the east wall will impact the adjacent properties with additional car noises and lights in a side yard. There is a 6' planned screening fence, which will not be sufficient given the possible traffic and additional parking likely to occur on the driveway.
 2. The proposed balconies are a nuisance on the west elevation and the increased height of the structure over all others in the area cannot be mitigated. The upper balcony is 275 square feet, which has an occupant allowance of up to 18 people, which will generate excessive noise and encourage large gatherings. Sound projects from the higher elevation for a greater distance. Additionally, gatherings on the balconies are likely to occur in hours when the on-site management office is closed, which will impact City resources as necessary to respond to nuisance complaints.
- iii. Preservation of views, light and air:
1. The Applicant demonstrated significantly greater shadows cast during the December 18, 2017, Union Park Land Use Committee meeting than originally represented. The properties to the east and west will have full shadows cast on yards and houses, before and after midday. The proposed structure will be located on the north side of Marshall Avenue, casting shadows on neighboring properties in excess of 100' throughout the year. Alternatively, the existing character of the typical Marshall Avenue three-story building does not have these same impacts.
 2. There are no 5-story buildings located on Marshall Avenue, between Dale Street and Cretin Avenue. This Project will be

- intrusive and visible for several blocks in all directions. The Project will operate as a large student dormitory.
3. The proposed Project structure will exceed 56' from the public sidewalk and will exceed the heights of all other dwellings in the area by over 20' and 2 stories.
 4. The Project's proposed parking area on the east side of the property will negatively impact air quality due to car exhaust within 6' of windows on the adjacent property at 1969 Marshall Avenue.
- iv. City staff's recommendation to approve the Application and the Planning Commission's decision to approve it were not factually substantiated (reference Zoning Committee Staff Report, Section H, Finding No. 4).
- d. Project proposes insufficient landscaping, fences, wall, and parking necessary to meet the City's residential zoning objectives:
- i. There is insufficient landscaping proposed to mitigate storm water runoff to the east.
 - ii. The proposed landscape buffer is insufficient to provide a reasonable screen to adjacent properties from the proposed on-site parking area and driveways.
 - iii. Substantial negative effects on neighboring land uses:
 1. Applicant indicated to the Union Park Land Use Committee (during October 30, 2017, and December 18, 2017, meetings) that he will not assign parking to each of the proposed dwellings. Instead, parking will be charged separately and will be available on a "first-come, first-served" basis. Because the Project's student tenants will likely choose free on-street parking over expensive daily parking within the Project, this arrangement will inherently lead to greater demand for on-street parking, where parking availability challenges already exist for Four Seasons A+ Elementary and St. Mark's schools. Additionally, there is a higher local on-street parking demand because large religious institutions (Evangelical Formosan Church and the Church of St. Mark) operate at Moore Street and Iglehart Avenue and Moore Street and Dayton Avenues.
 2. Applicant initially stated that the on-site management office within the Project was intended for leasing and oversight for all of Applicant's rental properties. After learning that this commercial office would violate residential zoning code, Applicant changed

his position; however, Applicant's compliance will need to be monitored by City inspectors.

- iv. City staff's recommendation to approve the Application and the Planning Commission's decision to approve it were not factually substantiated (reference Zoning Committee Staff Report, Section H, Finding Nos. 6 and 9).
- e. Project does not arrange its building, uses, and facilities in order to assure abutting properties and property occupants will not be unreasonably affected:
 - i. 1969 Marshall Avenue
 - 1. The Project will reasonably affect this abutting property and property occupant due to excessive storm water runoff, noises, exhaust and lights from cars and Project windows, and the visual impact and loss of views from the abutting property.
 - 2. The proposed side-yard driveway will undoubtedly be used for additional, outdoor parking. All of the parking on the east side of the building will be accessed via the public alley.
 - 3. The shadows cast on the entirety of the abutting structure and yard occur at midday through sunset, all year, as demonstrated by the shadow studies provided by the Applicant.
 - ii. 1972 and 1980 Iglehart Avenue and 1985 Marshall Avenue
 - 1. The Project will unreasonably affect the abutting property owners due to the visual impact and loss of light and views from the north and east.
 - 2. The mass of the Project will be fortress-like and overbearing on the abutting single- and two-family dwellings and their rear and side yards. There are no 5-story buildings along Marshall Avenue between Dale Street and Cretin Avenue. Project will operate as a large student dormitory.
 - 3. The proposed drive aisles will undoubtedly be used for additional, outdoor parking. All of the parking on the east side of the building will be accessed via the public alley introducing significant traffic impacts on a residential alley.
 - 4. The proposed structure will be located on the north side of Marshall Avenue, casting shadows in excess of 100' throughout the year.
 - 5. The proposed balconies are a nuisance on the west elevation and there are no noise mitigating strategies proposed by the Applicant.

- iii. City staff's recommendation to approve the Application and the Planning Commission's decision to approve it were not factually substantiated (reference Zoning Committee Staff Report, Section H, Finding Nos. 4 and 5).
- f. Project does not reflect energy-conserving design through landscaping and location, orientation, and elevation of structures:
 - i. The Applicant failed to provide energy-conserving design, including but not limited to, solar energy systems, geothermal heating, passive or highly insulated building envelopes.
 - ii. City staff's recommendation to approve the Application and the Planning Commission's decision to approve it were not factually substantiated (reference Zoning Committee Staff Report, Section H, Finding Nos. 6 and 9).
- g. Project does not demonstrate availability and capacity of storm and sanitary sewers, including solutions to any drainage problems in the area of the Project:
 - i. City staff's recommendation to approve the Application and the Planning Commission's decision to approve it were not factually substantiated (reference Zoning Committee Staff Report, Section H, Finding No. 8).
- h. Project does not provide safety and convenience of both vehicular and pedestrian traffic both within the site and in relation to access streets, including traffic circulation features, the locations and designs of entrances and exits, and parking areas within the site:
 - i. Automobile traffic from the Project's 61 tenants will undoubtedly increase traffic and safety risks and concerns for elementary school students, who attend schools in the immediate vicinity of the Project: Four Seasons A+ Elementary and St. Mark's School;
 - ii. Applicant indicated to the Union Park Land Use Committee (during October 30, 2017, and December 18, 2017, meetings) that he will not assign parking to each of the proposed dwellings. Instead, parking will be charged separately and will be available on a "first-come, first-served" basis. Because the Project's student tenants will likely choose free on-street parking over expensive daily parking within the Project, this arrangement will inherently lead to greater demand for on-street parking, where parking availability challenges and restrictions already exist for Four Seasons A+ Elementary and St. Mark's schools. Additionally, there is a higher local on-street parking demand because large religious

institutions (Evangelical Formosan Church and the Church of St. Mark), operate at Moore Street and Iglehart Avenue and Moore Street and Dayton Avenues.

- iii. The immediate area does not have City permit parking in place.
- iv. Parking restrictions are in place at the intersection of Marshall and Moore for a city bus stop.
- v. Project's on-site bicycle parking/storage is insufficient for 61 intended occupants. The Application shows 9 bike spaces.
- vi. A Travel Demand Management Plan has not been provided, giving no means to analyze the actual demand for parking by residents, guests, on-site management, and traffic created by the on-site management office.
- vii. City staff's recommendation to approve the Application and the Planning Commission's decision to approve it were not factually substantiated (reference Zoning Committee Staff Report, Section H, Finding No. 7).

10. Project does not comply with requirements set forth in the *Union Park Community Plan*:

- a. The Project is inconsistent with *Union Park Community Plan*, LU2. Land Use Objectives and Strategies:
 - i. Please reference the Union Park District Council ("UPDC") Board resolution to recommend denial of the Project Site Plan, which was submitted to the Zoning Committee in a January 3, 2018, letter.
 - ii. The *Union Park Community Plan* land use objectives and strategies are intended to preserve the feel and scale of the neighborhood. Further, this *Plan* prioritizes the preservation of lower-density uses outside of Mixed-Use Corridors, such as Snelling Avenue. Marshall Avenue is a Residential Corridor, not a Mixed-Use Corridor. Further, rehabilitation of existing structures to preserve the historic character is a strategy to ensure long-term compatibility with the surrounding neighborhood. Finally, LU2.3 states that new development shall fit within the character and scale of the neighborhood. The proposed Project height is 20 feet and two full stories taller than any existing structures along this stretch of Marshall Avenue and will tower 57' above the public sidewalk.
- b. The Project is inconsistent with *Union Park Community Plan*, H1. Housing Objectives and Strategies:
 - i. The *Union Park Community Plan* housing objectives and strategies are intended to preserve the pedestrian-scale of the neighborhood and providing a range of housing types and affordability. The *Plan* mandates minimizing impacts on lower density areas and uses that are incompatible

with single-family residential areas, outside of Mixed-Use Corridors. The proposed height is over 20 feet/2 stories taller than structures along Marshall Avenue and will be over 56 feet from the public sidewalk. The density is 46 units per acre, which exceeds all surrounding residential densities in the area. Further, the *Plan* encourages a range of affordability – there are no affordable units proposed.

- c. The Project is inconsistent with *Union Park Community Plan* H2. Housing Objectives and Strategies:
 - i. The *Union Park Community Plan* housing objectives and strategies are intended to preserve and improve the character and maintenance of the neighborhood. The *Plan* mandates minimizing impacts on the neighborhood, stating that new construction shall be consistent with the character of the surrounding homes. The Project's exterior materials are predominately fiber cement board and metal panel – exterior materials not found in the neighborhood. Brick is the primary exterior material found on all existing multiple-family dwellings in the immediate area.
- d. The Project is inconsistent with *Union Park Community Plan* H3. Housing Objectives and Strategies:
 - i. The *Union Park Community Plan* housing objectives and strategies recognize and accommodate student-housing needs, while respecting the rights and concerns of all community members. The *Plan* prioritizes new development of multiple-unit student housing on mixed-use corridors over the expansion of single-family rental units in traditional neighborhoods. Marshall Avenue is a Residential Corridor, not a Mixed-Use Corridor.
- e. The Project is inconsistent with the *Union Park Community Plan*, HP2. Historic Preservation Objectives and Strategies:
 - i. The two existing structures are potential historic resources integral to establishing a Marshall Avenue or Merriam Park historic district in the future. The demolition of these resources will impact the harmonious and continuous pattern of historic structures along this corridor.

The January 4, 2018, Zoning Committee public hearing and the January 12, 2018, Planning Commission meeting were conducted with errors in procedure:

- 11. Appellant's right to due process was violated when Appellant's counsel was limited to two minutes of testimony during the Zoning Committee hearing, even after Appellant's counsel indicated that she represented a number of individuals, who had allocated their collective available testimony time to Appellant's counsel.**

- 12. The Zoning Committee did not take adequate time to fully review supplementary written materials provided by Appellant during the Zoning Committee hearing, prior to making its decision, which contributed to inadequate and erroneous findings of fact.**
- 13. Planning Commission Board member Adrian Perryman should have recused himself from voting at the January 12, 2018, Planning Commission meeting, because Mr. Perryman, as a member of the Union Park District Council board, had previously voted against the UPDC board resolution to recommend a denial of the Project Site Plan. Accordingly, Mr. Perryman exercised prejudgment in advance of the January 12, 2018, Planning Commission meeting.**

We understand that the City Council will hold a hearing on this appeal. While we have outlined our position above, we reserve the right to augment this notice of appeal with refinements to and clarifications of materials provided to the Zoning Committee and Planning Commission, and further we reserve the right to submit additional materials, once we have reviewed the minutes of the Planning Commission meeting. Please contact us to discuss the details of the hearing schedule.

Sincerely,



Erick G. Kaardal

EGK/mg