

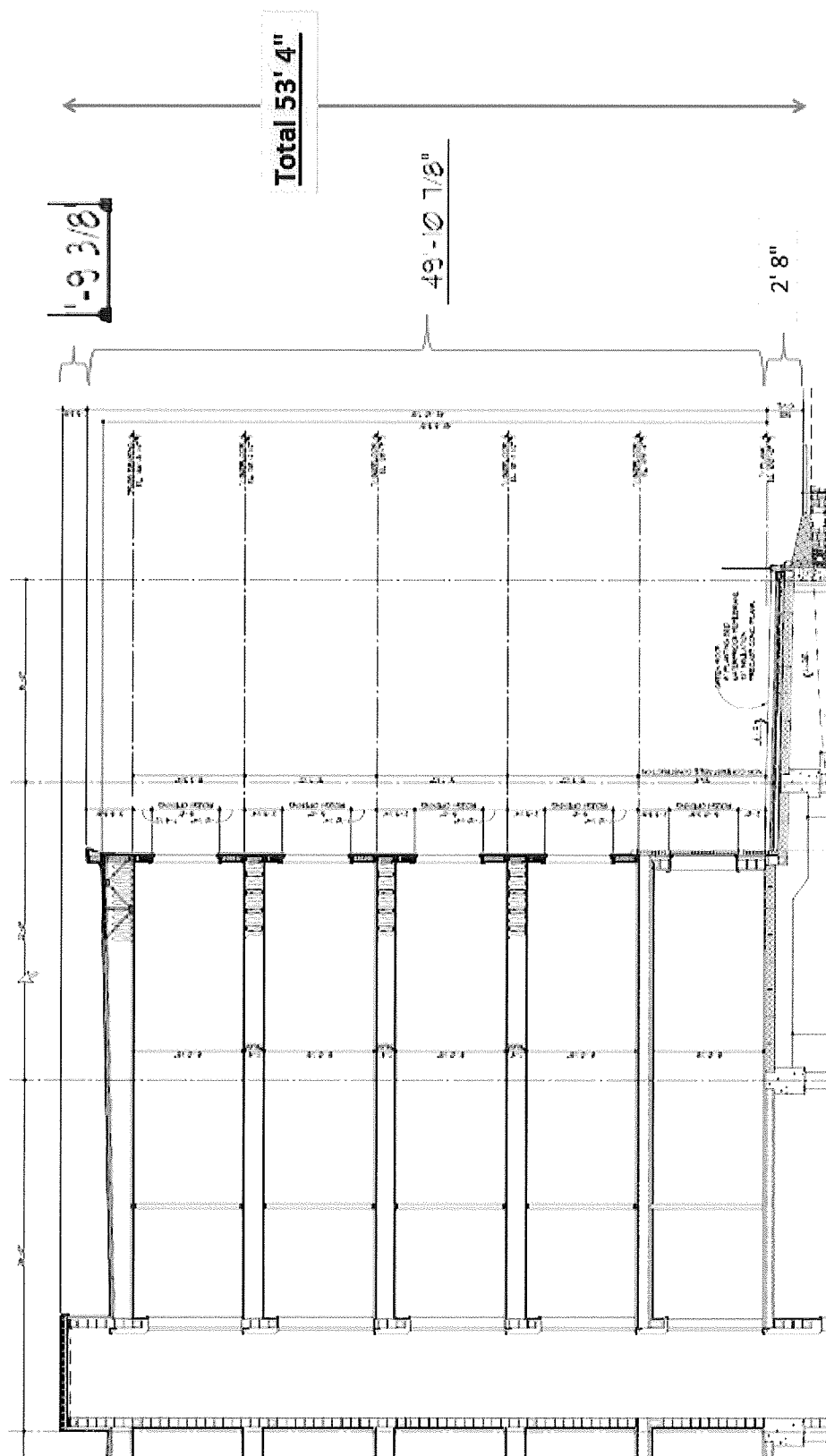
Third, Section 61.402(c) also requires the Commission to consider whether the site plan is consistent with “applicable ordinances of the city.” See also Nelson Motion to Deny. Otherwise stated, the Commission must confirm that that all Zoning Code provisions are satisfied. Again, although findings were made, the proposed project does not satisfy all Code requirements.

#### *Height*

The Code sets a maximum height in RM2 of 50 feet. Section 66.231. The height is to be measured from the established grade to the surface of the roof. *Id.* The proposed site plan violates this maximum in two respects: the way the height was measured and the height of the stairwell.

First, a close look at the plan indicates that the height of the building was measured not from grade, but from a 2-foot high parking structure. The normal architectural practice is to show the distance of a line from point to point. The plan shows this as 49 feet, then shows an additional part of the proposed structure below that, down to the natural grade, with no distance cited, just a curious note “see civil.” The plan unequivocally shows that the building is taller than 50 ft. when measured from the natural grade.

Second, the stairwell extends above the roof. Sections 60.203 and 63.102 list various parts of a building that may extend above the 50 ft.; the stairwell does not fall under any of the exemptions (it is not like a cornice nor like mechanical equipment). Again, the Commission did not measure the height full; when that is done, the plan fails to satisfy Code requirements.



From Plan Page A5.1 - Building Section

## *Setbacks*

Staff and Commission incorrectly found the building meets setback requirements (25 feet) because they did not count the setback from the correct structure. Under Section 60.220, setbacks are “[t]he distance required to obtain front, side or rear yard open space provisions of this code, measured from the lot line to the above-grade faces of the building.” (emphasis added). The Commission used the apartment structure, but ignored the fact that the 2-foot high structure rising above grade for the underground garage that surrounds the apartment portion is also a “building” as defined by the Code s 60.203 – B (defining it as “any permanent structure having a roof and supported by columns or walls). It is also “above-grade” and not “underground” as found by Staff; Staff made the determination it is “underground” based on the fact it will have a few inches of soil and grass on top. Finally, this part of the building does not meet the Code’s definition of “open space” and should not be counted as a “setback.” “Open space” is defined under Section 60.216 – O, as “[l]and and water areas retained for use as active or passive recreation areas or for resource protection. For the calculation of minimum open space within a TN3 traditional neighborhood district development, open space shall not include parking facilities, driveways, utility or service areas, or required yards.” The building structure is not intended for recreation and does little for resource protection since it cannot support trees or shrubs. The City should not allow a developer to skirt the Code requirements by putting grass on a concrete roof. If measured from this outermost “building,” there are only a few feet, not 25, from the neighboring property to the West.

## *Density*

The Commission found the proposed development meets density maximums in the Code and Comprehensive Plan Land Use documents; it does not. This section of Grand Avenue is zoned as a “residential corridor,” which sets a maximum density at 4-30 units/acre. On its own, the proposed apartment has 48 units/acre. The only way the site plan can meet density maximums is to count the bonus the Code gives for parking. Section 66.231, note c, allows for a bonus if parking is located “completely underground” or in a completely above ground structure. As noted above, part of the parking garage structure protrudes 2 feet above ground; under the Code, it is neither completely “underground” in the ordinary meaning of the word nor in a completely above-ground structure, thus it cannot be used as a bonus to satisfy density requirements. Therefore, the development has 48 units/acre and violates the Code.

## *Parking*

Section 63.207 requires 40 conforming spaces for this density. Section 63.305 provides the minimum widths for each space (9 ft. for standard cars and 8 ft. for compact cars). The Code provides that a maximum of 50% of the parking spaces can be for compact cars; for the proposed structure, this would mean a requirement for 18 standard and 18 compact spaces. However, the site plan shows support columns extending into 16 of the spaces, making them narrower than the required widths (8 ft. 2 in. and 7 ft. 2 in.). This turns many of the “standard” spaces into “compact” parking and several of the “compact” spaces into spaces that do not meet the minimum width requirements at all. Thus, when calculated correctly, the proposed development has only 8 conforming standard parking spaces and more compact spaces than allowed. Eight spaces does not meet the minimum required standard spaces. As Commissioner Nelson correctly noted, overall then, the site plan only has 29 spaces when measured correctly, not the 37 it needs.

The site plan also does not meet the standards for accessible parking spaces. Section 63.213 requires 2 accessible parking spaces. Under the plan, the access aisle is obstructed by one of the columns, making them difficult for use by wheelchairs and in violation of the requirements.

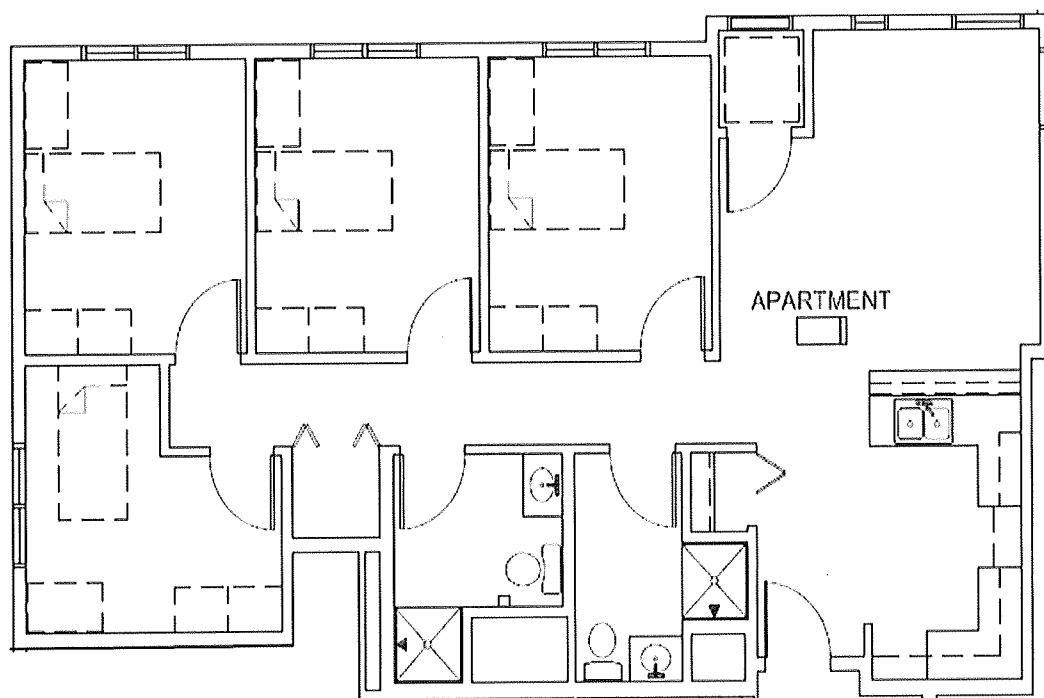
The Commission issued one condition after considering parking from the viewpoint of the surrounding neighborhood. The Commissioners realized that the proposed structure would be located in a restricted parking area, in which this student housing would normally be allowed up to 120 parking permits (4 per unit plus 2 visitor passes per unit) and the Commission foresaw the

issues in the neighborhood. Thus, the resolution includes a condition restricting the permit parking passes to 1 per unit.

For its multiple additional failings under Section 61.402(c), the Commission erred and the site plan should be rejected.

- 4. The proposed development is a *de facto* dormitory, not a traditional apartment complex; therefore, the Commission erred in failing to make a similar use determination under Section 65.150 of the Code, and requiring a conditional use permit for the site.**

While the proposed structure is described as a multifamily dwelling within an RM2 zone, the building is not a traditional multifamily apartment complex. It is, without dispute, off-campus student housing. In materials distributed to neighbors and in public hearings before the Commission, the developer of the proposed structure himself referred to the building as off campus student housing. Nearly everything about the proposed development, but especially the floor plan design, confirms his reference. The following images provide a comparison between a four-bedroom unit floor plan for the proposed “apartment” at Grand and Finn (above), and a four-bedroom unit floor plan in Flynn Hall, one of UST’s on campus dormitories (below):





selby

The two floor plans are in all key respects identical. The one notable difference is that the Flynn Hall dormitory units have closets so presumably the “professionals” who the Grand and Finn developer says he may try to market the property to will have find other ways to store their professional attire.

There is no credible reason to believe that any single professionals, let alone families, will choose to live in this “apartment” complex directly across the street from UST’s southern perimeter. The four-bedroom units accommodate only single beds, with a small shared living space and kitchen to be used by the residents. The units have one use and one use only – to house undergraduate students. It is a dormitory in every aspect. The Zoning Code has as yet no specific provisions governing “student housing” constructed off campus by a private developer, but the Code is unambiguous regarding dormitories in RM2 – they must be governed by conditional use permits.

Section 65.190 of the Code defines a “dormitory: as:

A building designed for or used as group living quarters for students of a high school, college, university or seminary, organized and owned by a high school, college, university or seminary.

*Standards and conditions:*

- (a) In residential and TN1 traditional neighborhood districts, a conditional use permit is required for off-campus dormitories.
- (b) The use must be within two hundred fifty (250) feet of the campus of the institution it serves, for a college, university, seminary or other such institution of higher learning as established in a conditional use permit. In RL—R4 residential districts, the use shall be on the campus.
- (c) The yard requirements for multiple-family use in the district apply when the use is not located on a campus established in a conditional use permit.

The Commission could have engaged in a vigorous debate on how to mitigate the negative impact of siting a proposed high density undergraduate student dormitory in a residential

neighborhood, for example, by lowering the height, massing and scale of the building, or requiring a variety of unit designs that would genuinely appeal to other potential tenants, and/or by specifying that a certain percentage of units be rented to graduate students residents or non-student tenants. Instead, the Commission failed to evaluate the true character of the use and therefore, erred in calling it a "permitted use" without addressing its similarities to a dormitory and requiring a conditional use permit to set limitations on the negative impacts of such a structure in a residential neighborhood.

**5. As approved, the site plan undermines the conditions imposed on student residential construction on the University of St. Thomas' campus, a mere thirty feet from the proposed off campus dormitory.**

As discussed above, the design of this eighty-bed apartment building limits its use to a private dormitory, unwisely sited in a residential neighborhood. As such, this proposed development extends the character of a dormitory and essentially the campus itself across the southern boundary of the university and into the neighborhood. This undermines planning documents related to UST's 2004 campus expansion and runs counter to the effort by four neighborhood organizations (the Merriam Park Community Council, the Macalester Groveland Community Council, the Summit Area Residents Preservation Association and Neighbors United) and hundreds of neighborhood residents over a period of many years to limit and mitigate the negative impacts of UST and its student body on the surrounding neighborhoods. These efforts by neighbors and neighborhood organizations culminated in the adoption by the St. Paul City Council of the 2004 Conditional Use Permit ("2004 CUP") which, among many other things, sets strict limits on new construction on the UST campus blocks bounded by Summit Avenue on the north, Cretin Avenue on the west, Cleveland Avenue on the east and Grand Avenue on the south.

For example, the 2004 CUP adopts a 25-foot **set back** from Grand Avenue for all newly constructed UST residential buildings for the two blocks (hereafter the "east block" and "west block" separated by Finn Street) between Cretin and Cleveland on the north side of Grand Avenue, just thirty feet from the proposed development. The CUP also adopts strict **building height limits** of 59 feet to the top of academic buildings and 40 feet to the top of residential buildings within the above referenced two-block area. Per the CUP, these height limits "shall be considered an absolute maximum, including all mechanical equipment." (2004 CUP, Sec. 2, p. 2).

One intention of setting height limits was to make these two blocks a **zone for transition** from the UST campus, dominated by relatively massive university buildings, into the Macalester Groveland neighborhood, composed largely of single family homes. The 2003 Record of Decision related to the Environmental Assessment Worksheet prepared in the context of UST's campus expansion toward Grand Avenue stated that with these specified parameters, the "massing better emulates the District." (2003 EAW, p. 24.) Additional measures adopted to foster this "transition zone" or buffer included requiring UST to sell all of its real estate holdings on the south side of Grand between Cleveland and Cretin (since satisfied), constructing only two academic buildings on the east (of Finn St.) block and no academic buildings on the west (of Finn St.) block, and prohibiting UST from petitioning to close Finn St. between Grand and Summit Avenues for at least 30 years.

Adoption of the 2004 CUP came after many years of public activism, involving substantial acrimony between neighbors and UST. The motivation for this public activism (and its culmination in the 2004 CUP) was preservation of the generally single family residential character of the Merriam Park and Macalester Groveland neighborhoods in the vicinity of the UST campus. While home-owning neighborhood residents welcome a percentage of renters on their block, student and non-student alike, all neighborhood residents benefit when a majority of residents are single family owner occupied home owners. Neighborhood residents have devoted tens of thousands of hours of volunteer time and substantial financial resources over more than a decade to carry on the fight to ensure that this single-family neighborhood character endures.

With a single vote to approve this site plan, the Commission threatens to undermine the 2004 CUP (adopted as part of the City's Comprehensive Plan) and the historic effort of these many neighbors and neighborhood organizations by permitting construction within the Macalester

Groveland neighborhood of a 53-foot high private dormitory set back only 23 feet from Grand Avenue. It is important to note that the 2004 CUP, which requires a 25-foot setback and limits the height of residential buildings to 40 feet, would not allow for construction of this student housing structure on the UST campus. Therefore, as shown above, to allow for the construction of this private dormitory literally 30 feet across the street from the UST campus and within the Macalester Groveland neighborhood runs contrary to the letter and spirit of the 2004 CUP, the Macalester Groveland Community Plan, the Saint Paul Comprehensive Plan and to the spirit and intent of the City of Saint Paul Zoning Code. Of equal importance, construction would betray the past and present efforts of hundreds of neighborhood residents to preserve the single-family character of Macalester Groveland neighborhood. In this way, the Commission has failed to fulfill its obligations under the Zoning Code to establish conditions necessary to protect properties adjacent to the site and promote the general welfare of the neighboring community. On these bases, the Commission's approval of this site plan was in error and must be overturned on appeal.

**6. As approved, the proposed structure and use exacerbates a growing problem of increasing student density in an area already oversaturated with unsupervised undergraduate student residents.**

It has been suggested that this type of development will help solve the student housing problem in the near UST neighborhood. Let there be no mistake – this eighty-student development will not take students out of the existing student rentals. It will only serve to focus further investor interest in converting single-family homes south of Grand into student rentals, effectively continuing the Dinkytown effect in this near UST neighborhood.

It is critical at this juncture that City leaders understand and accept several truths about the UST student housing problem. First, many college students prefer to live in unsupervised off campus housing. It is frequently cheaper than on campus housing (particularly in old houses), and more importantly to many students, there are fewer rules to limit their social activities and fewer consequences for failure to adhere to those rules. In an on campus dorm, there are quiet hours, and drinking and drug use is strictly prohibited and monitored by residence hall assistants. Failure to adhere to dorm rules results in eviction from campus housing (which unfortunately for neighbors is the same as handing these problem students a one way ticket to renting out in the neighborhood). By contrast, an off campus dorm has all the advantages of campus dwellings. It is close to classrooms and the new Student Center and recreational facilities, but apart from the occasional no smoking and no keg policies, there are virtually no rules to restrict either illegal or nuisance behavior. It is up to long-term residents of the surrounding neighborhood to step into the role of the RA and monitor behavior that disrupts the quality of life of the traditional single family residential neighborhood.

Second, the single most important factor driving the conversion of owner occupied homes into student rentals is the financial benefits afforded to families of UST students when they purchase homes for their children in the neighborhood. These parent-owned houses (which these days are becoming student-owned houses to get around the temporary student housing moratorium rules) can be homesteaded and thereby provide mortgage deductions and other financial benefits that rental housing or dormitory living typically cannot. Try Googling the following search: "parent investing buying houses for college students" and see how many articles describe the trend of parents buying homes for their children to live in during college years.

The construction of a five-story eighty-bed *de facto* dormitory would not take students OUT of the neighborhood, but would place 80 additional students IN the neighborhood. The presence of this 80-bed dormitory would not make a dent in the 1700 students living within one mile of campus and it most certainly would not slow the parent investor trend. In fact, absent the student rental ordinance currently under consideration, developments like the proposed off campus dormitory would likely accelerate the trend of conversion of single family homes into student rentals, because it would dramatically focus student activity into the area south of Grand Avenue.

Lincoln Avenue, immediately south of this project, is already experiencing the negative impact of increasing student presence in the neighborhood. Of the 23 homes or duplexes on the block between Cleveland and Finn, four single family homes and one duplex have been converted to student rentals in the past decade, adding to two rental houses and at least one duplex unit that already existed on the block a decade ago. This has brought 24 more undergraduate students (and their cars) to the block, leading to one ZAP violation and two social host citations in the past two years, and countless police calls. One neighborhood family has sold their home and left the neighborhood due to this trend, and when the Commission approved the site plan for this eighty-bed in our backyards, another long-term owner occupant contacted a realtor to start the work of putting their house up for sale. Thus, before the spade has even hit the ground on this "apartment complex," the Dinkytown-ization of this area has begun. At the hearing sponsored by the Zoning Committee on this project alone, the developer lamented that he could not install a beer garden on the roof. "I could charge higher rent if I put a beer garden on the roof," he reportedly told the Commissioners.

### **Conclusion**

To those Commissioners who believed that this private unsupervised dormitory might be a way to lessen student rental pressure, the appellants and fellow neighbors are grateful for your desire to assist us in preserving the residential stability of this neighborhood. However, off campus dormitories like the proposed five story 80-bed unit at Grand and Finn (and this is surely only the first of such units to be proposed for this area; the same developer is also building a triplex on Cleveland Avenue) will not solve the problem of accelerating student rental incursion into the traditional single family neighborhoods around UST. Those of us on the ground, living the day to day experience, expect only further exodus of single family owner occupied and long-term rental neighbors if a precedent is established that allows any home on Grand Avenue and similar corridors to be razed in order to construct five-story dwellings designed exclusively as off campus undergraduate student housing.

Increased density is urban design trend and may well be the wave of the urban future. But using "higher density" as a buzzword with no context or meaningful parameters for how it fits into the traditional single family residential structure is ineffective planning and is contrary to the requirements of St. Paul's underlying planning documents. The need to comprehensively assess the impact of each higher density development proposal and land use decision is all the more important when the development is driven by a growing university that brings thousands of 18-22 years olds to a traditional residential neighborhood. Campus communities face many problems unique to their neighborhood, the foremost of which is degradation of the surrounding environment. This truth has been borne out time and time again, from New Haven to Columbus to St. Paul. Nearly ten years ago, UST brought a noted campus developer, Dick Dober, to St. Paul to assist in creating what became UST's plan for campus expansion. Neighborhood leaders involved in the expansion debate attended a meeting with Dober, and heard him say that UST is trying to accomplish land use goals in 80 some acres what most other institutions require 130 plus acres to accomplish. Thus, we are already experiencing higher density in this neighborhood. In fact, according to Dober, we are experiencing over density, and this has created and will continue to create problems for the surrounding neighborhood, including the problem of conversion of single family homes into student rental units. Dinkytown wasn't created in a day, and the phenomenon of the Dinkytown-ization of a neighborhood cannot be stopped with out conscious regard for the full impact of each campus-related development proposal on the work to keep a healthy majority of owner occupants and long term residents in this neighborhood.

There are ways to address these problems that encompass higher density goals, starting with requiring UST to build more dorms and house more of its students on its own campus, rather than excusing UST from its obligations and permitting *de facto* campus expansion by the construction of private off campus dormitories. The problems associated with the oversaturation of undergraduate students living in this residential neighborhood cannot be solved unless City decision makers approach this issue with heightened attention to their obligation to consider land use decisions in this broader context. Not only the Zoning Code but the nature of the problems themselves require comprehensive assessment of the purpose, spirit and intent of the underlying



planning documents, and a willingness and ability to employ a greater level of scrutiny than was afforded to this site plan review. What will not work is to cite to a higher density future, then apply the terms of what may be in this context an inadequate zoning designation and authorize a development proposal so clearly out of scale for a traditional residential neighborhood. Surely a proposal to raze two existing homes and construct a five-story 80-bed off campus dormitory in an already stressed residential neighborhood merits as much consideration as the design and construction of the four-story Oxford Hill condominiums further down Grand Avenue in an established commercial district. Regrettably, the Commission here has failed to effectively evaluate this private dormitory site plan and its affect on the adjacent residents, and exercise its authority to reject the plan or impose sufficient conditions so as to ensure compliance with the Zoning Code, the Comprehensive Plan (including the UST Conditional Use Permit and the Macalester Groveland Community Plan), and protect the adjoining properties in this campus neighborhood. For these many reasons, this site plan should be rejected.

Dated: May 29, 2012

See next sheet  
for signatures

Dated: May 29, 2012

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