City of South St. Paul  
Planning Commission Agenda  
Wednesday, January 6, 2021  
7:00 p.m.

Please be advised that the regular meeting location is City Hall Council Chambers located at 125 3rd Ave. N., South St. Paul, but pursuant to Minn. Stat. 13D.021, under the current emergency declaration due to the COVID-19 health pandemic, some or all of the Planning Commission members may participate in remote locations using WebEx. City Hall is open so any members of the public wishing to monitor the meeting or participate in the meeting may do so either in-person at City Hall or electronically by logging in as follows:

**WebEx Meeting**  
For the Public  
Join by phone: 1-312-535-8110  
Access Code: 177 677 6489#

Members of the public wishing to participate in the meeting with video should email City Planner Michael Healy at least two (2) hours prior to the meeting to request a link to the WebEx meeting. He can be reached at mhealy@southstpaul.org.

**Roll Call**

1. Agenda

2. Minutes  
   A. December 2, 2020

3. New Business

4. Public Hearings  
   A. Public Hearing for Variances Related to a Deck Addition and Roof at 600 Concord Street North

5. Other Business  
   None

6. Adjournment

Next Planning Commission Meeting: February 3, 2021

This meeting is being taped by Town Square Television (NDC4): phone: 651-451-7834 web: www.townsquare.tv  
Replays can be viewed on Government Channel 19 on the Thursday following the meeting at 1:00 p.m. & 7:00 p.m.
MEETING CALLED TO ORDER BY CHAIR DESMARAIAS AT 7:00 P.M.

Present:  Angela DesMarais  
        Tim Felton  
        Jason Frankot  
        Justin Humenik  
        Ruth Krueger  
        John Ross  
        Matthew Thompson  
        Ryan Garcia, Economic and Community Development Director  
        Michael Healy, City Planner  
        Monika Mann, Community Development Support Specialist

Absent:  None

1) APPROVAL OF AGENDA – Krueger/Thompson (7-0)

2) APPROVAL OF MINUTES – November 4, 2020 – Motion to approve the minutes as presented – Thompson/Humenik (7-0).

3) NEW BUSINESS

   A) Planning Commission Elections

   Mr. Healy explained that the Planning Commission elects new officers each March. This past March, Stephanie Yendell was appointed Chair and Angela DesMarais was appointed Vice Chair. When Ms. Yendell resigned earlier this year, Vice Chair DesMarais ascended to Chair. This left the Planning Commission without a Vice Chair. Staff wanted to offer the Planning Commission the option to elect a Chair and Vice Chair to serve until March of 2021.

   Commissioner Ross explained the standard procedures for nominations.

   Chair DesMarais opened the floor for nominations of the Office of Chairperson.

   Commissioner Krueger nominated John Ross as Chair of the Planning Commission.

   Commissioner Ross accepted the nomination.

   Commissioner Felton asked Chair DesMarais is she was interested in chairing again. Commission DesMarais stated that she was open to chairing again but that she was not opposed to having a new chair.

   No further nominations came from the floor and a unanimous ballot was cast for John Ross for the Office of Chairperson.
Chair DesMarais opened the floor for nomination for the Office of Vice Chairperson.

Chair-Elect Ross nominated Angela DesMarais as Vice Chair of the Planning Commission.

Mr. Healy called for additional nominations.

No further nominations came from the floor and a unanimous ballot was cast for Angela DesMarais for the Office of Vice Chairperson.

4) PUBLIC HEARINGS

A) Public Hearing for Preliminary Plat and Conditional Use Permit for a Planned Unit Development for “The Yards” Multi-Family Residential Project- 201 and 205 Concord Exchange North

Mr. Healy presented the Staff report. The applicant is the Beard Group, a Hopkins-based developer. The applicant is seeking City Approval for a multi-family apartment. The applicant is requesting the following:

- Preliminary Plat
- A Conditional Use Permit for a Planned Unit Development to grant flexibility from the Concord Gateway Mixed-Use District standards for building architecture, exterior building materials, setbacks, parking supply, bluff impacts, parking designs, site design, lighting, and signage.
- A Conditional Use Permit for a building that is greater than 50 feet in height.
- A Conditional Use Permit for a use exceeding 10,000 square feet in size.
- A Conditional Use Permit for lighting that is 16 feet above the ground.
- Site Plan Review for a 154-unit apartment building (Phase One).

The proposed apartment building would be located at the corner of Grand Avenue and Concord Exchange. The project site is 4.07 acres and is comprised of several parcels and a platted street. The site is almost entirely vacant with current uses consisting of two surface parking lots owned by the City’s Economic Development Authority and an obsolete office building. Concord Exchange was the City’s original downtown main street. The site historically had numerous small buildings on it which were all torn down during the 1970s as part of an urban renewal plan. The City’s original goal was to replace the downtown area with a car-oriented suburban retail environment. While a few buildings were built under this plan, overall the redevelopment plan failed to catch the market’s interest. The type of commercial redevelopment that had originally been envisioned on Concord Exchange has since fallen out of style.

In 2003, the City hired a consulting firm to do public engagement and to help the City create a new vision for Concord Exchange. The consulting firm created a small area plan known as the Concord/Grand Avenue Gateway Streetscape and Redevelopment Plan. The plan called for street improvements and strict design guidelines to attempt to recreate the 1900’s downtown main street feel the street historically had. Since the small area plan and Concord Gateway Mixed Use (CGMU) zoning district were put in place in 2003, only one new building has been built along the corridor. While there is still an interest in pedestrian-friendly site design, the City Council has indicated at recent meetings that their new vision for the area is for a more modern look and feel.

A concept plan for this project was reviewed at a joint work session with the Planning Commission and the City Council in September of 2020. Both groups expressed support for the project at that time and were aware that the project would require numerous zoning approvals and PUD flexibility. The applicant is seeking to build a modern building that does not conform to the traditional architecture that is required for any building within the
CGMU district. The site has a number of topographical challenges which create a need for flexibility from some of the Code’s standards. Finally, the project proposes to base the number of parking spaces on the number of bedrooms and the building will mostly be made up of one-bedroom apartments. These factors all contribute to the need for a Conditional Use Permit for a Planned Unit Development. Staff recommends approval of all of the areas where the applicant is requesting PUD flexibility.

In addition to a Conditional Use Permit for a Planned Unit Development, the applicant is requesting three additional Conditional Use Permits: a Conditional Use Permit for a use that exceeds 10,000 square feet, a Conditional Use Permit for a building height that exceed 50 feet, and a Conditional Use Permit for exterior lighting that is more than 16 feet off the ground. Staff recommend approval of all three Conditional Use Permits.

Chair Ross spoke to the shortcomings of the 2003 Concord/Grand Avenue Gateway Small Area Plans and why it is appropriate to deviate from this plan. Chair Ross asked if parking at the site would be impacted when there were events at the historic Concord Exchange Building. Mr. Garcia explained that ample parking would be available for events between the parking being added along Concord Street, the parking being added along Concord Exchange, and the EDA-owned surface parking lot near the site.

Chair Ross asked if there were visibility improvements planned for the intersection of Concord Exchange and Grand Avenue. Mr. Garcia explained that the proposed building would be setback further from the road than the existing building to improve visibility at the intersection. Mr. Healy added that the plan had been reviewed by a number of departments and that increased traffic may warrant additional traffic controls in the future.

Bill Beard of the Beard Group came forward to answer questions.

Chair Ross asked Mr. Beard to elaborate further on the sheet piling and the available options to improve their aesthetics. Mr. Beard explained that in previous projects, they had covered the sheet piling with quick growing vines which would cover the sheet in a number of years. Mr. Beard explained that they were willing to adjust the materials if that was preferred by the Commission.

Commissioner Felton asked why the developer chose South St. Paul for this project and what the target market was. Mr. Beard explained that the project came about after a phone call from Mr. Garcia. Mr. Beard explained that the target is two populations: millennials and empty nesters.

Commissioner DesMarais asked if the final product would be rented as apartments or sold as condos. Mr. Beard stated that the apartment units would be rented.

Chair Ross asked if the developer had a contingency plan if Phase Two did not go forward due to a recession. Mr. Beard explained that their success with their Robbinsdale property and the market demand in the area gave him confidence that the second phase would not be delayed.

Chair Ross opened the public hearing.

No one had submitted comments on the item nor was anyone present to speak on the item.

Chair Ross closed the public hearing.

Commissioner Felton voiced his concerns that the development required too much PUD flexibility and does not seem to be consistent with the vision for the Concord Gateway Mixed Use zoning district. Commissioner Felton also shared that he was concerned that a residential project was not the best use for this site and that he does not
believe multi-family residential projects will make Concord Exchange more attractive to commercial developers. Mr. Healy shared that many of the City’s small area plans needed to be refreshed to match the City’s current goals. He also shared that while the main street architectural standards of the CGMU district were not being met with the project, the use itself and the pedestrian friendly site design was consistent with what the district intended. Mr. Garcia explained that it is incredibly difficult, if not impossible, for a small mom and pop business to find the capital to create a building that would meet the architectural requirements of the district. This is why Concord Exchange has sat vacant for 40 years. The type of development the Concord/Grand Avenue Gateway Plan envisions is only feasible if developed by a large commercial developer. However, the area offers no major roadways, no residential density, and no commercial draw for these developers. The area is stuck in a “Catch 22” because without these aspects, it is difficult to attract large developers.

Commissioner DesMarais asked if there were any plans for commercial or other uses at the site. Mr. Healy stated that the proposed building was just for residential multi-family use.

Chair Ross asked about the leasing prices for the units. Mr. Beard stated that the average rent would be about $1,475 a month.

Motion to approve Preliminary Plat- DesMarais/Thompson (6-1) (Felton)

Motion to approve a Conditional Use Permit for a Planned Unit Development - DesMarais/Thompson (6-1) (Felton)

Motion to approve Conditional Use Permits for a building that exceeds 50 feet in height, a use greater than 10,000 square feet, and lighting more than 16 feet above the ground - Krueger/DesMarais (6-1) (Felton)

Motion to approve a Site Plan for a Multi-Family Residential Building- Thompson/Frankot (6-1) (Felton)

5) OTHER BUSINESS

None

6) ADJOURNMENT

Motion to adjourn- DesMarais (7-0).
Prepared By:  
Michael Healy, City Planner  
Meeting Date:  
1/6/2021  

Item Description:  
Public Hearing for Variances Related to a Deck Addition and Roof at 600 Concord Street North

ACTION REQUESTED
A motion(s) recommending approval or denial of six (6) variances that are needed to keep an unpermitted roofed deck addition at 600 Concord Street North.

BACKGROUND/DISCUSSION

Review Timeline

   Application Submittal: December 8, 2020  
   Planning Commission: January 6, 2020  
   City Council Meeting: January 18, 2020  
   60-Day Review Deadline: February 6, 2020

Application

The Applicant is George Tirado on behalf of Las Islas Restaurant at 600 Concord Street North. Earlier in 2020, the Applicant built a large wooden deck addition off the back of the restaurant building without any type of building permit or City approval. He also constructed a rolled rubber roof over the original deck and over the deck addition. The unpermitted addition and roof were discovered by the City’s Building Official during an unrelated site visit. The deck addition and deck roof do not comply with the Zoning Code, Building Code, or Fire Code and need to be removed unless the Applicant is able to obtain several variances and a building permit and then bring the structure up to code.

The Applicant is not the property owner and leases the building from an individual named Merced Rojas. With the property owner’s written permission, the Applicant has submitted an application requesting variances in order to get a building permit and keep the deck addition. Staff has determined that six (6) variances and a site plan approval would be required before the deck addition is eligible for a building permit:

1. Site Plan review for a roughly 700 square foot addition onto an existing 750 square foot deck and a roof addition over the entire deck (total deck size is 1,453 square feet).

2. A variance from the North Concord Mixed Use (NCMU) zoning district requirement that buildings be at least 20 feet way from rear property lines. The addition is 2.9 feet from the rear property line.
3. A variance from the requirement that nonconforming buildings that are expanded by between 10% and 50% of their total floor area or assessed value must come into partial compliance with the NCMU district architectural and site design requirements. The roughly 700 square foot addition expands the floor area of the building by roughly 12%.

4. A variance from the Mississippi River Critical Corridor overlay district rule that structures must be set back at least 40 feet from bluffs. *The deck hangs over a bluff and is supported by posts that are installed in the bluff.*

5. A variance from the Shoreland District rule that properties within 300 feet of the Mississippi River cannot exceed 30% coverage by impervious surfaces. *The property is at nearly 100% coverage by impervious surfaces following the addition.*

6. A variance from the Mississippi River Critical Corridor overlay district rule that retaining walls built into bluffs be wood or natural stone or similar. *The Applicant is proposing to have a concrete retaining wall support a set of stairs.*

7. A variance from the parking ordinance which requires restaurants to provide one (1) parking stall per 3 seats. *The 700 square foot addition has added new seating and no additional parking is provided.*

**Background**

The subject property, 600 Concord Street North, contains a restaurant building that was constructed in 1970. The building is situated on a very narrow parcel and the western side of the building has a 0-foot setback from the front property line along Concord Street. The building is built into a river bluff and, for many years, has had a roughly 750-square foot open-air deck which overhangs the bluff and is supported by posts installed in the bluff. This deck is sunken below the building, is attached to the building’s basement, and is not visible from Concord Street. The deck can only be seen if one is standing in the restaurant’s parking lot or if one is east of the property using the Mississippi River regional bike trail.

The building has hosted a large number of different bars & restaurants since 1970. While there have been many changes to the inside of the building over the years, the outside of the building and the site configuration have been left largely unchanged since 1970.

The Applicant took over the restaurant space in late 2019 and began renovating the interior. During fall of 2019 and winter/spring of 2020, there were multiple incidents where Building Official Joe Heimkes became aware of work being done inside the restaurant without building permits. Specifically, the bathrooms were remodeled and new ductwork was installed without proper permits. In each case, Heimkes required the Applicant to obtain a building permit and explained to the Applicant that building permits are required for all major construction projects.

At some point in late 2019 or early 2020, the Applicant built a small addition onto the existing deck without a permit. This addition was not reported to the City and went unnoticed but can be confirmed from aerial photographs taken in May of 2018 and May of 2020 which show that the deck was expanded in size (See ATTACHMENT C). At some point during the summer of 2020, the Applicant built a second larger addition onto the deck without a permit. They then built a roof over the entire deck, also without a permit. Building Official Joe Heimkes became aware of the project on September 11, 2020 and issued a “stop work” order. He sent a letter to the Applicant on September 18, 2020 stating that they could not continue working on the project without obtaining a building permit and getting any necessary zoning approvals.
Zoning of Subject Property

The subject property is zoned North Concord Mixed-Use (NCMU). It is also located in the Mississippi River Critical Corridor overlay zoning district and the Shorelands overlay zoning district.

Relevant Zoning Code

The following zoning code sections are relevant to this review:

- Section 118-19 of the City Code governs Variances.
- Section 118-127 of the City Code governs the North Concord Mixed-Use Zoning District.
- Section 118-167 of the City Code regulates the Mississippi River Corridor zoning overlay district.
- Section 118-169 of the City Code regulates the Shorelands zoning overlay district.
- Section 118-351 through 118-355 of the City Code regulates parking and loading.

The 2003 “Concord/Grand Avenue Gateway Streetscape and Redevelopment Plan” is the small area plan that underpins the CGMU and the NCMU zoning districts’ zoning rules and provides the justification for those rules being in place. This plan can be found on the City’s website at the following URL: https://www.southstpaul.org/803/ConcordGrand-Gateway-Redevelopment-Plan.

Background on North Concord Mixed-Use (NCMU) Zoning District

In 2004, the City Council was concerned about the quality of new development along Concord Street North and specifically concerned that too many properties were turning into used car dealerships. They put a 6-month moratorium in place which prevented all new development on Concord Street North while they studied the corridor.

The City Council ultimately chose not to do a full zoning study for North Concord in 2004 and instead repurposed a zoning study that had been completed the year before for the Concord Exchange area. Concord Exchange had been rezoned in 2003 to the “Concord Gateway Mixed Use” (CGMU) zoning district which is a pedestrian-friendly mixed-use zoning district that requires all new buildings to be brick or stone and to be built with early 1900’s main street architecture. There are also rules in place restricting the construction of additions onto existing nonconforming buildings because technically the goal is to see those buildings torn down and replaced with buildings that meet the Code. The CGMU rules were copied almost word-for-word and applied to Concord Street North in 2004 as the new “North Concord Mixed Use” zoning district.

In the 16 years that have passed since the NCMU zoning rules were put in place, there has been no new development on Concord Street North. The Planning Commission and the City Council have both noted that the existing design rules are a poor fit for Concord Street North and need to be revised and loosened. The City recently obtained a grant from Dakota County to conduct a zoning study of Concord Street North and overhaul the NCMU district rules. The City will be hiring a consultant in February 2021 and overhauling the NCMU zoning district during 2021 (the grant requires that the project be completed by October 2021).
Site Conditions

The subject property is a narrow strip of land that is located between Concord Street North and a small but steep river bluff. The bluff is 16-20 feet tall with a slope of approximately 50%. As previously mentioned, the restaurant and deck are built into the bluff. The Union Pacific railroad tracks are to the east of the restaurant, directly below the bluff. The Mississippi River Trail, a regional bike trail, sits east of that between the railroad tracks and the Mississippi River.

Zoning Status of 600 Concord Street North Restaurant Building and Original Deck

The restaurant building was constructed in 1970 at a time when the City did not have many rules regarding building quality and site design. The original deck’s construction date is not documented but it is assumed to have been built legally. The zoning rules in this area have changed a lot in the past 50 years and neither the restaurant building nor the original deck comply with modern zoning requirements:

- The City no longer allows structures to be built overhanging bluffs. The City’s Mississippi River Critical Corridor Area ordinance states that no building or structure may be placed within 40 feet of a bluffline. The restaurant and the original deck are both much closer than 40 feet to the bluffline.

- As previously stated, the City created the North Concord Mixed Use (NCMU) zoning district in 2004 and rezoned all of Concord Street North to have NCMU zoning. New buildings in this zoning district must have brick, stone, or glass as their main exterior building material and must be designed to look like traditional main street buildings. There are also a number of rules regarding parking lot design, landscaping, and other aesthetic requirements. The existing building is stucco and the site does not comply with most of the NCMU site design requirements.

- The City now requires restaurants to provide one (1) parking stall per three (3) customer seats when at maximum capacity. Per a Staff report that was written in 1995, the restaurant had roughly 45 off-street parking stalls but has a capacity of 160 persons which requires 53 parking stalls. The NCMU zoning district allows properties to also count any on-street parking stalls that are directly adjacent to their property which means that the subject property “gets credit” for another 14 parking stalls, bringing their total to 59 based on the 1995 calculation.

- Properties within 300 feet of the Mississippi River are not allowed to exceed 30% coverage by impervious surfaces. The subject property has a much higher level of impervious surface coverage.

- There is a 20-foot rear setback requirement for buildings in the NCMU district. The original deck only had a roughly 2.9-foot setback.

Because Las Islas Restaurant and the original deck do not meet modern zoning requirements but were constructed legally, they are considered “lawful nonconforming” or “grandfathered.” Under State Law, lawful nonconforming buildings can be maintained, repaired, improved, and replaced BUT NOT expanded. The unpermitted addition is considered an expansion and would not be allowed without variances.

As previously mentioned, the NCMU district rules contain a large amount of architectural and design requirements for new buildings. The Code states that a “grandfathered” building can be expanded up to 10% of its floor area or assessed value without meeting the NCMU code. If the building is expanded between 10% and 50% of its floor area or assessed value, the owner is supposed to bring the site and building into
partial compliance with the NCMU architectural and site design rules. Per the Code, it is up to the City Council to decide what “reasonable partial compliance” is for each project.

**Fire Code and Building Code Issues with Deck and Roof Addition**

The deck addition and roof addition were not built in a way that complies with the Building Code or Fire Code. Commercial building additions are required to be designed by a licensed architect. There are numerous Building Code and Fire Code safety regulations that come into play and the architect is responsible for doing a code analysis to ensure that the project conforms to these safety rules. Some types of projects also require the involvement of a structural engineer who must confirm that the structure’s supports are properly designed and will not collapse beneath the structure. When projects are built on steep hills, it generally is also required that a soils expert examine the site and analyze the soil. The structure’s supports and footings need to be designed differently depending on whether the soil is sand, clay, rock, or some other substance.

The Applicant built the deck addition and the roof over the deck in an “informal” manner without hiring any licensed professionals to assist him in designing the project. Because the deck is built over a steep bluff and is supported by posts that are installed in the bluff, the project should have been designed with by a licensed architect working with a licensed structural engineer and a licensed soils expert.

Following the Building Official’s “stop work” order, the Applicant did hire a licensed architect and a licensed structural engineer to go examine the addition and draw up plans that could be submitted to obtain a building permit. The Applicant submitted these plans on December 8, 2020 as part of their variance application. Building Official Joe Heimkes visited the Applicant’s property with a copy of the plans and compared the plan drawings with the actual deck addition that has been built. The Building Official documented at least 16 significant structural issues that need to be corrected before the deck matches what is shown on the plans. He wrote a letter which is included as ATTACHMENT G.

In addition to the structural issues with the covered deck itself, the new addition causes Building Code & Fire Code compliance issues for the original restaurant building. The original building was “grandfathered” under an older version of the Building Code and is only partially covered by a fire sprinkler system. Because the deck addition has a roof, it is considered a building addition under the Building Code and triggers a requirement that the entire building and the new covered deck be brought “up to code” with a new sprinkler system that protects the entire structure.

**Analysis of Requested Variances**

Staff has conducted an analysis of each of the six (6) requested variances:

**Variance #1: Rear Setback Variance**

The NCMU zoning district requires a 20-foot rear yard setback. This requirement is in place because the NCMU zoning district is a copy of the CGMU zoning district which has a 20-foot rear yard setback. This is probably not a realistic setback requirement for Concord Street North since the properties are so narrow and are constrained by bluffs. The subject property is only 60 feet deep and is constrained by a bluff.

Twenty (20) feet is a large rear yard setback requirement compared to most of the City’s zoning districts. The City only requires a 10-foot rear yard setback in most commercial districts and actually allows a 0-foot...
rear yard setback in industrial districts for rear property lines that are adjacent to railroad tracks. The subject property’s rear property line is adjacent to a railroad track.

The subject property’s original deck had a roughly 2.9-foot setback from the rear property line and the deck addition matches that setback. Staff supports the rear setback variance.

**Variance #2: NCMU Design Standards Variance**

The NCMU zoning district has a large number of requirements regarding building architecture, landscaping, parking lot layout, and site design. Because Concord Street North was historically a commercial/industrial corridor and not a main street mixed-use area, not a single existing building on the corridor complies with the NCMU code requirements. Every existing building on North Concord Street is considered lawful nonconforming under the zoning code and is “grandfathered” in its current state.

As previously stated, the NCMU district requires properties to be brought into “partial compliance” with the NCMU standards any time an addition adds between 10% and 50% to the floor area or assessed value of a building. The existing building has roughly 5,120 square feet of floor area spread out over two floors and the original deck had a floor area of roughly 750 square feet. The enclosed deck addition expands the floor area of the building by roughly 12% and triggers the “partial compliance” requirement. As previously noted, the NCMU standards are going to be overhauled in 2021 and will likely be greatly loosened.

Staff does not see any easy opportunities to bring the subject property into partial compliance with the NCMU standards. The narrowness of the lot makes it impossible to add additional landscaping or install a setback for the parking lot. Additionally, it is not possible to turn the building into a main-street style building. It may be technically possible to install additional windows along Concord Street to increase the building’s curb appeal but that may be challenging due to the building’s layout.

Staff would note that the deck addition is completely invisible from Concord Street and this is why it took City Staff so long to learn of the unpermitted construction. Staff could support granting this variance or could also support denying the variance and requiring some very small “partial compliance” effort such as the installation of additional windows along Concord Street.

**Variance #3: Bluffline Setback Variance**

The City requires all new structures to observe a 40-foot setback from bluffs. One of the goals of this rule is environmental protection as the City wants to preserve the majority of its bluffs in a natural state. Another goal is to prevent buildings from being built dangerously close to bluffs since bluffs are often unstable and construction too close to a bluffline may endanger the long-term health of the building and the bluff.

In this case, the restaurant building and its existing deck were already built into the bluff without a setback. The bluff is not in a natural state in this area and the toe of the bluff is a heavily industrialized area with railroad tracks and railroad support buildings. The subject property would not be considered “buildable” without a variance from the bluffline setback requirement since no part of the subject property is more than 40 feet away from the bluffline.

Staff supports the bluffline setback variance for this project provided that a structural engineer and a soils analyst are both willing to sign off on the project and declare that the structure is safe for construction and use. This would all need to be part of the building permitting and inspections process if the variances are approved.
Variance #4: Impervious Surface Coverage Variance

Properties within 300 feet of the Mississippi River are considered to be in the “Shorelands” overlay zoning district and cannot have more than 30% coverage by impervious surfaces (surfaces that water cannot get through to reach the ground). The subject property is roughly 265 feet from the Mississippi River. The subject property was already almost 100% covered by impervious surfaces before this project and the enclosed deck addition covers one of the few remaining pervious areas on the site.

The subject property is just over a half-acre in size and space is used very efficiently in order to fit the restaurant as well as parking & loading areas onto the site. Realistically, there are no existing impervious surfaces that are able to be removed to offset the new impervious surfaces created by this project.

The impervious surface limit is at odds with the City’s goals for economic development along Concord Street North. The NCMU district is set up to encourage a dense, walkable, mixed-use neighborhood that makes efficient use of land. Because most of the parcels along North Concord are so small and narrow, it is not possible to develop them efficiently and comply with the 30% limit on impervious surfaces.

The City Engineer and the Minnesota Department of Natural Resources have both reviewed the variance request and have provided comments. Staff is willing to recommend approval of this variance so long as the Applicant installs erosion control measures north of the building to protect the bluff from stormwater runoff. The City Engineer has noted that the site has very bad erosion control today and a large amount of sediment is knocked over the bluff. There is the potential for this project to actually result in an overall improvement to the site’s compliance with stormwater and erosion control standards if new erosion control measures are built into the site design.

Variance #5: Retaining Wall Material Variance

The Code states that retaining walls built into bluffs should be wood or natural stone and should not generally exceed five (5) feet in height.

As previously stated, the Applicant initially designed and built the deck addition without any involvement from a licensed architect. A licensed architect visited the subject property “after the fact” and drew up plans regarding what it would take for the deck to meet the Building Code. His plans show a second emergency exit being needed off of the northern end of the deck. This would require installing a small concrete retaining wall into the bluff and setting a small set of stairs on top of said wall. It is not known whether it is possible to design a means of egress without a concrete retaining wall.

The City Engineer has reviewed this request and is recommending approval of the variance on the condition that the concrete must be treated to have integral coloring to better match the bluff and give the appearance of a more natural stone.

Variance #6: Parking Variance

As previously stated, the existing building and its deck were determined to have a capacity of 160 persons back in 1995 which “requires” 53 parking stalls since the City requires one (1) stall for every three (3) seats. The property was determined to have roughly 45 off-street parking stalls in 1995 which included an informal/unstriped gravel parking area. Staff is not sure how the parking number was calculated in 1995 as modern aerial photographs show the property as only having roughly 24 striped/paved off-street stalls in addition to the relatively small gravel area which can possibly accommodate 8 parked cars.
The NCMU zoning district is designed to have reduced parking requirements to encourage efficient use of land and shared parking between businesses with much of the parking being provided on the street. When the NCMU district was created in 2004, it included a rule that businesses “get credit” for any on-street parking stalls that are on the public road directly adjacent to their business. There will be 14 on-street parking stalls adjacent to this business when the reconstruction of Concord Street North is completed in 2021/2022. If one were to use the 1995 parking calculation, this would bring the property’s total parking stalls to 59 which would mean that they had six “extra” parking stalls and could technically accommodate 18 new seats.

The unpermitted roofed deck addition adds roughly 700 square feet of new area to the restaurant without adding any new parking. However, Staff would note:

- It is not clear exactly how many new seats can be accommodated by the addition. The Building Code requires at least 15 square feet per person which means that, in theory, the addition could accommodate somewhere around 47 new seats.

- The City historically has not required additional parking for outdoor patios with the understanding that these are still the same patrons and that they are just eating outside in the summer instead of eating inside. There is an understanding that outdoor seating does not substantially add to the building’s parking demand since the indoor areas will be less used during the summer.

- It is unclear whether a roofed deck addition should be treated like a patio and exempted from the parking requirement or treated like a building addition and required to provide parking. This is a “gray area” in the parking ordinance as the ordinance does not address outdoor dining areas.

Staff does not have any concerns regarding the parking variance. The roofed deck will be used like an outdoor patio and most likely will not see much activity during the colder parts of the year. Additionally, it is consistent with the spirit of the NCMU district rules to be flexible about parking to increase the efficient use of land and allow businesses to grow and provide new amenities for the community.

**Additional Requirements if Variances are Approved**

If the City Council denies the variances, the entire deck addition and roof addition will need to be removed. If the City Council approves the variances, the addition will become eligible for a building permit. To obtain a building permit, however, the Applicant will need to undertake a number of additional tasks:

- They will need to have a full code analysis of the building done by a licensed architect. They will need to meet any code requirements outlined in this analysis IN ADDITION to fixing the issues that have already been identified by the Building Official and Fire Department.

- They will need to hire a soils expert to do a soils analysis for the area where the deck footings will go and the area where the concrete retaining wall is proposed.

- They will need to make a Sewer Access Charge (SAC) payment to the Metropolitan Council to cover the sewer impact of the restaurant expansion.

- There is a makeshift plywood storage building underneath the deck. The Applicant claims that this building was already there when he began operating the restaurant. There is no record of any type
of approval for this building and it does not meet the Zoning Code or the Building Code. Its removal should be a condition of the variance approval.

- The City Engineer and the Minnesota DNR are recommending that the Applicant be required to provide some site improvements to mitigate the damage to the bluff that has been caused by the addition. The northern part of the subject property is currently a gravel parking lot that backs up right against the bluff. A large amount of garbage and erosion fall off of the gravel parking lot and into the bluff area. The City Engineer is recommending that the Applicant be required to install some type of improvement in this area to prevent erosion.

Discussion

This is a difficult request to evaluate because of the way that the Applicant went about their project. It is highly unusual and highly inappropriate to build a major addition without a building permit or any kind of input from the City or from licensed design professionals. In general, the City does not want to encourage businesses to take a “build now, ask forgiveness later” attitude towards site improvements. That being said, there is a lot to like about this project and Staff believes that it is largely consistent with the City’s economic development goals for the Concord Street North corridor. The City wants to attract commercial businesses such as retail and restaurants to Concord Street North. This is a challenging location to operate a restaurant due to its isolation and a large number of restaurants have failed here over the past 50 years. This deck addition could make this a more viable location for a restaurant.

Staff believes that the six (6) variances are all supportable. If the Planning Commission and City Council wanted to approve five (5) of the variances but deny the variance regarding partial compliance with the NCMU district standards, it might be appropriate to require the Applicant to add additional windows to the building frontage along Concord Street North.

The Applicant is going to need to spend a very significant amount of money to fix this deck and make it useable if they are able to secure the variances and apply for a building permit. The costs are going to be much higher than they would have been if the Applicant had approached the project correctly and gotten permits before building the addition because so many components of the deck are going to need to be reworked and rebuilt. Staff does not believe that approval of the variances will encourage a “build now, ask forgiveness later” approach since this would have been a much easier and cost-effective project if the Applicant had approached it correctly and gotten approvals lined up before they began construction.

Additionally, there are two aspects of this project that should be considered a “win” for the City:

1. If the entire building loses its Building Code grandfathering and needs to be sprinkled, it will mean the building is much safer.

2. Fixing the erosion control issues along the northern gravel parking lot will be a major improvement that will help protect the bluff.

Variance Analysis

The Planning Commission is asked to review the proposed variance using the criteria laid out in the City Code. Staff has drafted an analysis that the Planning Commission can use if they wish to recommend approval of the variances:
a. That the variance is in harmony with the general purpose and intent of the ordinance

_The general purpose and intent of the NCMU ordinance is to support dense, walkable, amenity-rich development along Concord Street North. Attracting restaurants to the corridor is one of the City’s goals and the variances will support having a restaurant in this location. The site was already developed in a way that conflicts with the Shoreland district rules and Mississippi River Critical Corridor Area rules for setbacks and impervious surfaces. By addressing erosion control through this project, the site can be brought more closely into alignment with the goals of those districts._

b. That the terms of the variance are consistent with the Comprehensive Plan.

_The comprehensive plan encourages mixed-use development along Concord Exchange North while also stressing the importance of protecting and enhancing the bluffs and the Mississippi River. The variances will allow a project that does a good job balancing those goals._

c. That economic considerations are not the reasoning for the variances.

_Economic considerations are not the reasoning for the variance. The Applicant is seeking to construct a deck addition to improve the quality of their restaurant operation._

d. That the Property Owner proposes to utilize the property in a reasonable manner

_The addition of an enclosed deck with river views is a reasonable use for a restaurant in a mixed-use area._

e. That the plight of the property is not due to the circumstances created by the property owner

_The complicated and steep grades of the property are unique and were not created by the Applicant. The building and site’s configuration were established in 1970. Because of the extreme narrowness of the lot and presence of the bluff, there are few options for the use of this property that do not involve variances. In fact, the subject property is not even considered a buildable lot without variances._

f. That the variance will not alter the essential character of the neighborhood.

_The addition will not alter the essential character of the neighborhood. It is not visible from Concord Street North and is only visible from the bike trail along the river. The building already had a deck and the addition does not substantially change the views. The old deck was in poor condition and the addition, once brought up to code, will be an aesthetic improvement._

**Comments from Other Departments and Agencies**

**Police Department**

The Police Department saw an increase in nighttime noise complaints regarding Las Islas restaurant over the summer. They believe that the expanded deck may be one of the reasons for the increased complaints. The Police Department is recommending that one of the conditions of approval for the variances be that the deck cannot be used past 10 PM each night which is the time that the City’s noise ordinance takes effect.
City Engineer

The City Engineer noted that:

- A soils expert needs to conduct a soils analysis for the site of the deck footings and retaining wall.
- The Applicant should be required to provide erosion mitigation along the gravel parking lot that is north of the building to prevent erosion into the bluff.
- The City will need engineered plans for the footings and for the retaining wall.
- The City must collect a $2,500 erosion control escrow to pay for erosion control monitoring by a third-party consultant during construction.

Building Official/Fire Department

The Building Official and Assistant Fire Chief reviewed the submitted plans together. As previously stated, the Building Official visited the site and determined that the existing deck does not match the submitted plans and needs substantial modifications. Additionally, the addition of the roofed deck will likely trigger the requirement that the entire building be sprinkled.

The Building Official has written a comments letter which is included as Attachment G.

Minnesota Department of Natural Resources

Area Hydrologist Taylor Huinker stated: “It would be good to see some site improvements, such as stormwater treatment, to mitigate for the work and direct water away from the bluff.”

Staff Recommendation

Staff recommends approval of the site plan and the six (6) variances, subject to the following conditions:

1. **Submitted Plans.** The conditions of this approval are based on the following plans:
   
   b. Structural Plans dated 11/12/2020 prepared and stamped by Mark Hostetler, Inc. (structural engineer) and Jim Mackey Architect (architect).

2. **Building Permit Required.** The Applicant shall not perform any work on the deck or its roof until they have obtained a building permit(s).

3. **Structural Issues Identified in Building Official’s Letter.** The Applicant shall address all 17 of the structural issues concerning the roofed deck addition that are identified in the Building Official’s letter dated December 17, 2020.

4. **Code Analysis by a Licensed Architect.** The Applicant must hire a licensed Minnesota architect to do a full code analysis for the building. The code analysis must be submitted to the City as part of the building permit application. The code analysis is subject to review and approval by the Building Official. The
Applicant must address any issues identified in the code analysis in addition to the issues that were identified in the Building Official’s letter dated December 17, 2020.

5. **Sprinkler System.** The Applicant shall be required to fully sprinkle the entire structure, including the roof covering the deck. This requirement may be fully or partially waived if an alternative means of Building Code compliance is identified during the code analysis and the alternative is approved by the Building Official.

6. **Soils Analysis.** The Applicant shall hire a licensed professional to conduct a soils analysis for the proposed location of the deck footings and the retaining wall. The soils analysis must be submitted along with the building permit application and shall be subject to review and approval by the City Engineer. The structural plans must be revised if found to be incompatible with the condition of the soil.

7. **Engineered Plans for Footings and Retaining Wall.** The Applicant shall submit engineered plans for their footings and retaining wall.

8. **Concrete Retaining Wall Coloration.** The Applicant shall be permitted to install a concrete retaining wall into the bluff to support stairs coming off of the northern part of the deck, consistent with the submitted plans. If a concrete retaining wall is used, it must be integrally colored so as to be more similar in appearance to natural stone. A color sample shall be submitted along with the building permit and is subject to review and approval by the Zoning Administrator.

9. **No Use of Deck without Passing Final Inspection.** No patrons shall be permitted to use the deck until the project passes final inspection and the Building Official gives written approval for the deck to be occupied by the general public.

10. **Erosion Control Escrow.** The Applicant shall be responsible for providing a $2,500 erosion control escrow at the time of building permit application. This escrow will be used to pay the City’s consultant who will monitor the construction site to ensure compliance with erosion control standards. Any remaining funds can be returned to the Applicant after all consultant bills have been paid and the project has been completed.

11. **Permanent Erosion Control North of Building.** The Applicant shall prepare an erosion control plan that provides permanent erosion mitigation for the bluff area adjacent to the gravel parking lot that is north of the building. This plan is subject to review and approval by the City Engineer. The deck may not be occupied until the permanent erosion mitigation has been installed or the Applicant has provided the City Engineer with a cash escrow equal to 125% of the estimated cost of completing the mitigation. The City may use the escrowed funds to complete the mitigation if the Applicant fails to do so within a reasonable amount of time.

12. **Sewer Access Charges.** The Applicant shall obtain a Sewer Access Charge (SAC) analysis of their addition from the Metropolitan Council and shall submit it along with their building permit application. They will be responsible for paying any required SAC fees at the time of building permit issuance.

13. **Hours of Operation for Roofed Deck Area.** Patrons shall only be permitted to use the roofed deck area between 7:00 AM and 10:00 PM.

14. **No Alcoholic Beverage Service without a Liquor License.** No alcoholic beverages may be served or consumed on the deck without a valid liquor license that includes the deck area.
15. **Removal of Unpermitted Storage Building.** The Applicant shall entirely remove the unpermitted storage building that was built into the bluff underneath the deck. The Applicant shall be responsible for obtaining any permits that may be required for demolition.

16. **Termination of Variances.** Per the Code, the violation of any condition in a variance approval may terminate the variance, following a hearing by the City Council. Additionally, a variance shall expire one year from the date of approval if improvements are not substantially begun. The Applicant must submit a complete application for a building permit (including all required supplemental materials such as the code analysis, erosion mitigation plan, and soils report) within one year of date that the variances are approved. As long as the complete application is submitted within one year, the Applicant will be permitted to pay for and pick up the permit after the year has passed provided that they do so within one month of being informed by the City that the permit is ready for issuance. Failure to comply with either of these requirements shall result in a finding that improvements have not substantially begun and the variances will be terminated. Any extensions to this timeline will require approval by the City Council.

17. **Removal of Deck Addition and Roof if Variances are Terminated.** If the variances are terminated, the Applicant shall remove the deck addition and roof addition within six (6) months. The Applicant must obtain a demolition permit prior to removal and must comply with any conditions that are placed on the demolition permit to protect the bluff area.

If the Planning Commission chooses to recommend denial of the variance waiving “partial compliance” with the NCMU district rules, Staff would recommend that a condition be added to the approval requiring the installation of additional windows along Concord Street North to increase the curb appeal of the building. This could be viewed as “partial compliance” with the NCMU ordinance.

**Required Action**

The Planning Commission has the following actions available on the proposed application:

A. **Approval.** If the Planning Commission wishes to recommend approval of the variances and site plan, the following action should be taken:

   • Motion to recommend approval of six (6) variances and a site plan to allow a roofed deck addition at 600 Concord Street North, subject to Staff’s recommended conditions of approval.

B. **Denial.** If the Planning Commission wishes to recommend denial of the proposed variances and site plan, the following

   • Motion to recommend denial of six (6) variances and a site plan to allow a roofed deck addition at 600 Concord Street North, based on a finding that the variance(s) does not comply with the Code’s criteria for variances.

If the Planning Commission wishes to recommend denial, they should adopt a finding that the project fails to satisfy at least one (1) of the Variance criteria:

1. The variance is in harmony with the general purpose and intent of the ordinance;

2. The terms of the variance are consistent with the comprehensive plan; and
(3) The applicant for the variance establishes that there are practical difficulties in complying with the ordinance. Economic considerations alone do not constitute practical difficulties. "Practical difficulties" as used in connection with the granting of a variance means that:

   a. The property owner proposes to utilize the property in a reasonable manner;
   b. The plight of the property owner is due to circumstances unique to the property that were not created by the property owner; and
   c. The variance will not alter the essential character of the neighborhood.

ATTACHMENTS

A. Site Location Map
B. Aerial Photograph of Property
C. Pictometry Photographs of Property
D. Photographs of Roofed Deck Addition
E. Certificate of Survey/Site Plan
F. Building Plans
G. Building Official’s Letter Dated December 12, 2020
H. Applicant’s Narrative
ATTACHMENT B
AERIAL PHOTOGRAPH OF PROPERTY
ATTACHMENT C
PICTOMETRY PHOTOGRAPHS OF PROPERTY

Photograph of Original Deck Taken on May 1, 2018

Photograph of First Deck Addition Built Without Permit Taken on May 31, 2020
Photograph with Roofed Deck Addition Drawn on in Red
Photograph of Front of Property Taken on May 1, 2018

Photograph of Front of Property Taken on May 31, 2020
ATTACHMENT D

PHOTOGRAPHS OF ROOFED DECK ADDITION

Photograph taken from railroad property looking north

Photograph taken from railroad property looking south
Photograph of northern section of roofed deck addition

Photograph of makeshift storage building underneath deck
View of Enclosed Deck from Below
ATTACHMENT E
CERTIFICATE OF SURVEY/SITE PLAN

DESCRIPTION:
The parcel of real property located at 7452 Sunset St., Chula Vista, San Diego County, California, and more particularly described as follows:

Commencing at the West Quarter corner of said real property; thence North 22 degrees 21 minutes 46 seconds East, a distance of 650.00 feet, thence South 68 degrees 51 minutes 14 seconds East, a distance of 3,275.00 feet, thence North 87 degrees 16 minutes 37 seconds West, a distance of 500.00 feet, thence South 22 degrees 21 minutes 46 seconds West, a distance of 650.00 feet, thence North 18 degrees 21 minutes 46 seconds West, a distance of 350.00 feet, thence North 72 degrees 33 minutes 14 seconds West, a distance of 325.00 feet, thence South 87 degrees 16 minutes 37 seconds West, a distance of 400.00 feet, thence North 68 degrees 51 minutes 14 seconds West, a distance of 3,275.00 feet, thence North 22 degrees 21 minutes 46 seconds West, a distance of 650.00 feet to the beginning, the said parcel being bounded on the east by said real property, on the north by a street, on the south by a street and on the west by said real property.

PROPERTY ADDRESS:
490 Concord Street
South San Diego, CA 92173

LEGEND:
- Driveway
- Street
- Property Boundaries
- Building
- Street

NOTES:
Base of Survey: San Diego County Public Land Survey System.

11/11/2020
1
GENERAL NOTES

1. THE GENERAL CONTRACTOR IS RESPONSIBLE FOR FIELD VERIFYING ALL
   DIMENSIONS AND EXISTING CONDITIONS.

2. SIMILAR MATERIALS INDICATED ON DIFFERENT PLANS, SECTIONS AND
   DETAILS AND ANNOTATED ON ONE OR MORE PLAN, SECTION OR DETAIL
   SHALL BE CONSIDERED ANNOTATED, NOTED OR LABELED COMPLETELY
   ON ALL PLANS, SECTIONS AND DETAILS.

3. IN THE CASE OF AMBIGUITIES, DISCREPANCIES OR IRREGULARITIES IN
   THE DRAWINGS, SPECIFICATIONS, MANUFACTURING INSTRUCTIONS,
   SITE CONDITIONS OR APPLICABLE CODES AND STANDARDS, REQUEST
   CLARIFICATION FROM THE ARCHITECT OR ENGINEER BEFORE PROCEEDING.
   THE COST OF CORRECTING WORK DONE AS A RESULT OF PROCEEDING
   WITHOUT OBTAINING CLARIFICATION WILL BE BORNE SOLELY BY THE
   CONTRACTOR.

4. THE CONTRACTOR AND/OR OWNER MUST VERIFY AND CHECK ALL NOTES,
   FLOOR PLANS, ELEVATIONS, SECTIONS AND DETAILS AND NOTIFY THE ARCHITECT
   OF ANY ERRORS OR OMISSIONS FOR POSSIBLE CORRECTION PRIOR TO START
   OF CONSTRUCTION.

5. ALL WORK SHALL COMPLY WITH ALL LOCAL AND STATE BUILDING CODES & ORDINANCES.

6. SEE CONSTRUCTION PLANS FOR ADDITIONAL INFORMATION.

Las Islas Restaurant
Deck Extension & Roof
600 Concord Street N
South St. Paul, MN

Mark Hornbaker
Reg. No 10906

Date 11-13-09

Structural Only

Mark Hornbecker

20122 LaFond Avenue
Saint Paul, MN 55114
Ph: 651-292-6368
Fax: 651-292-8180
E-Mail: joheyond.com

I hereby certify that this plan, specification, or report was prepared by me or under my direct
supervision and that I am a duly Registered Professional Engineer under the laws of the State of Minnesota.
December 17, 2020

Re: Construction of a deck addition and adding an unpermitted roof

The deck addition to 600 Concord St. North was constructed as an unpermitted addition. A stop order was posted on site to verify code compliance and zoning requirements. 600 Concord St North is an A-2 occupancy bar/restaurant. Automatic sprinkler requirements are explained in chapter 903 of the 2020 Minnesota Building Code. Section 903.2.1.2 requires an automatic sprinkler system throughout stories containing group A-2 occupancies and throughout all stories from the group A-2 occupancy to and including the levels of exit discharge serving that occupancy where one of the following conditions exist:

1. The fire area exceeds 5,000 square feet
2. The fire area has an occupant load of 100 or more.
3. The fire area is located on a floor other than the level of exit discharge.

Prior to the illegal addition, the existing structure contained a total of 5,120 (grandfathered) square feet of finished area (deck not included) with the roof covering the old and new deck addition the fire area add was approximately 1,360 square feet. The total area of the building now is estimated at 6,480 square feet. The existing building is sprinkled on the basement level only. With the addition, the whole structure now has all the conditions in section 903.2.1.2 met and therefore will more than likely need to be brought up to code and “fully” sprinkled including the roof covering the deck.

To verify this, the City of South St. Paul Building Department is requiring the building owner to hire a Minnesota licensed Architect to complete a code analysis on the entire building. Allowable area, exiting requirements, sprinkling requirements and travel distances all need to be verified compliant with the building code. Additionally, the added square footage/seating area must be submitted to the Metropolitan Council for SAC determination.

Current building plans show the deck addition and the existing deck to be lacking structurally and architecturally in the following areas:

1. Verify existing footings – depth and size per plan
2. Add 1-2X12 to each 2X12 treated rafter
3. Add 2-2X12’s to each existing (2) 2X12 header at the perimeter header location
4. Install new stairs/landing/handrails at north end of deck as per plan (2nd exit)
5. Add (2) 2X10’s to treated beam on existing deck
6. Install new 6X6 treated column (2 thus) on 16” diaX42” deep concrete piers bell bottom out to
7. 42” Center beam add 3-2X12 treated ply’s
8. Add 2X4 treated diagonal bracing between posts
9. Verify new footing sizes 12” diameter, 4’ deep belled out to 36” at the bottom
10. Add guardrails and handrails to staff only stairs
11. Construct concrete retaining walls for new stairs on north side
12. Rotate existing 6X6 posts on old existing deck as per plan
13. Add ledger locks to ledger staggered 16” top and bottom
14. Install 2X6 treated cross bracing between columns as per plan
15. Install 2X6 braces to columns
16. Add ledger locks to rafter ledger at each wall stud
17. Install flashing at new roof/building wall intersection

Currently, the deck, deck addition and the added roof are considered hazardous. Public use is not allowed. Without proper approval for the South St. Paul Building Department and South St. Paul Planning and Zoning Departments, the deck and the roof covering must be removed.

[Signature]

Joe Heimkes
Building Official
City of South St. Paul
651-554-3220
I am asking for the permit because the deck is too small. I want to make the deck more bigger because we now want to be seating outside and it was very small and all the customers want to be outside not to be inside that is closed place and old the customers are more near each other that why I am asking for the permit.