



1           **a.) Approval of the May 3, 2021 Planning Commission Meeting Minutes**

2  
3 Chair Plantan read the items on the consent agenda and asked for a motion to approve as presented  
4 unless anyone had anything to remove from the consent agenda.

5  
6 Commissioner Merriam requested a change to the minutes on page 4 Line 7 where it says  
7 “Commissioner Merriam asked if the wording could be changed to similar and equivalent quality  
8 materials rather than same or similar materials.” She noted that she intended to say “same or similar  
9 and equivalent quality” and wondered if that is what was heard and what went in to the design  
10 standards.

11  
12 Director Goellner noted she would need to look through the design standards materials regarding  
13 that particular piece. If it was clear that Commissioner Merriam meant the word “quality” was to  
14 be included, if the Commission is comfortable with that, they can make that change to the minutes.

15  
16 Commissioner Merriam asked for an additional change to the minutes on page 18 Line 17 where  
17 she asked Mr. Chermak if the design of 520 and 524 was actually bigger, to which he stated that  
18 “the westerly wall is about five feet longer.” She noted that she then made the comment that that  
19 was his hardship, and that was not included in the meeting minutes; she said he had stated the  
20 hardship was the location of the stormwater pipe. She asked to add to the minutes that she made  
21 that additional comment.

22  
23 Commissioner Parkhill made a motion, seconded by Commissioner Merriam, to approve the  
24 Consent Agenda with Commissioner Merriam’s requested revisions.

25  
26 Director Goellner completed a roll call vote on the motion. The motion carried unanimously.

27  
28 **AGENDA ITEM 5. Public Hearing Items**

29  
30           **a) Consider Development Application for Side Yard Setback Variances, Shoreland**  
31           **Setback Variance, and a Conditional Use Permit at 900 Shady Lane East**

32  
33 Assistant Planner Kieser explained that this application was for side yard setback variances, a  
34 shoreland setback variance, and a Conditional Use Permit (CUP) to construct a new single-family  
35 residence at 900 Shady Lane East. The Applicant is Kathryn Alexander with Alexander Design  
36 Group. The zoning of the property is R-2A single family residential district, and all the properties  
37 east of this property along Shady Lane East are also zoned R-2A; to the south and west is Lake  
38 Minnetonka which makes the property in the shoreland overlay district and west of the property is  
39 a meandering creek along with a storm water pond and the Section Foreman House is on the  
40 western property as well. To the north are the railroad tracks and the property zoned C-2 is a  
41 shopping center and C-4B for central business district. Planner Kieser noted that in the 2040  
42 Comprehensive Plan, this property is designated as low density residential and the Section  
43 Foreman House property is designated as parks; just north of that is the central business district  
44 along Lake Street.

45

1 Planner Kieser explained that there are essentially three requests in the application, with one that  
2 could be separated into two, setback variances from the R-2A zoning district requirements. First  
3 is the north side yard setback for variance of 1 foot of the required 15-foot distance for a distance  
4 of 14 feet and the south side yard setback variance of 5 feet off the required 15-foot setback to a  
5 distance of 10 feet. There is also a shoreland overlay district setback variance of 50 feet off the  
6 required 75-foot distance for a distance of 25 feet. Third, which is a bit unique, is a CUP for a  
7 structure located in the Flood Fringe District. Assistant Planner Kieser showed an aerial of the  
8 existing lot and gave background information. In 1984 there were previous setback variances  
9 granted to construct the principal structure of the home on the site which was recently demolished.  
10 He noted that in 2019 a similar development application with similar requests for a new single-  
11 family residence was approved. He noted the current application requests are almost identical  
12 except for the north side yard setback variance, where the request is for a variance of 8 feet off the  
13 required 15-foot setback to a distance of 7 feet. Therefore, this proposed home would be less on  
14 the north side yard setback than what was previously approved.  
15

16 Planner Kieser showed a table outlining the R-2A zoning district requirements, the shoreland area  
17 of the property, and the shoreland zoning district requirements. In the R-2A district the 15-foot  
18 setback they are requesting is a variance from that on both sides of the home, and the proposed  
19 rear yard setback meets the R-2A requirements but requires a variance from the shoreland setback  
20 of 75 feet; they are proposing a 25.3-foot setback from the shoreline. The Applicant would meet  
21 the lot coverage and impervious surface standards with a lot coverage of 14.1% and impervious  
22 surface at 25% which is the shoreland overlay district limit. They would also meeting the building  
23 height requirement of a little over 24 feet to the peak. He walked the Commissioners through the  
24 survey on screen. The proposed home is a slab on grade with no basement and there is a pool deck,  
25 pool, and hot tub. The practical difficulty stated in the application is the unique shape and location  
26 of the lot on Shady Lane, especially with the meandering creek, which creates a small buildable  
27 area of a little under 2,800 square feet. Mr. Kieser also noted that the property is close to the flood  
28 plain, and reviewed the proposed flood plain mitigation plan. He said the proposed home would  
29 be in the Flood Fringe District as shown in yellow on screen. It is a small portion of the plans, a  
30 majority of which is the hot tub and the boat house. He noted that these are permitted uses within  
31 the Flood Fringe District, but the main thing is the fill or the flood plain volume, of which they are  
32 adding to that volume located on the site. He explained that this is important because it is where  
33 the water flow will go on the site, so they want to ensure if there is a flood in any circumstance the  
34 water has enough area to flow naturally. He shared that the Applicants have been in contact with  
35 the DNR and the Watershed District, who had no formal comments on the application at this time.  
36 They will need future correspondence and potential approvals from the DNR and the Watershed  
37 District to locate the hot tub and boat house within the flood plain and there may be more insurance  
38 needed for those areas. Mr. Kieser reviewed the tree preservation plan and noted trees in red shown  
39 on the slide have been removed along with the work of the most recent single-family home that  
40 was to be put there, so those would still be counted within the tree preservation plan, which they  
41 will need to calculate in to the overall plan. Mr. Kieser stated there are 74 inches of significant  
42 trees on the site and under the Code they are allowed 25% removal, or 18.5 inches; overall they  
43 will need 28.5 inches of replacement for the proposed trees to be removed. The Applicant is  
44 proposing to add in 36 inches of tree replacement on site which would exceed the Code  
45 requirement. He noted there were quite a few house renderings provided with the application, and  
46 showed a few on screen.

1  
2 Mr. Kieser noted that there had been no public comments received prior to the public hearing. He  
3 noted that the questions for the Commission to consider with the application include: is there a  
4 practical difficulty to support the variance requests? Is this project a reasonable use of the land? Is  
5 the project compatible with the preservation of the natural land forms, vegetation, and the  
6 wetlands? Are there protected measures in place for any flood plain alteration? Mr. Kieser noted  
7 that staff recommends approval of the application based on the unique shape, lot, and location of  
8 the project, especially because of similar approvals have been granted in the past and in 2019,  
9 which were almost identical requests/approvals for this property. The current proposal is less  
10 intensive on the north side yard setback, and the proposed project will increase the flood plain  
11 volume to allow the water flow in the case of a flood.

12  
13 Chair Plantan asked if the Commission had any questions for Staff or the Applicant.

14  
15 Commissioner Bashioum asked if a formal landscape plan was submitted with the application.

16  
17 Assistant Planner Kieser said the tree preservation plan shows locations of proposed trees. It does  
18 not describe the species but on the north and west sides there are proposed landscaping  
19 improvements to the site.

20  
21 Commissioner Bashioum asked if there is any other landscaping in the flood plain or is that not  
22 needed?

23  
24 Assistant Planner Kieser replied that is not a requirement, and showed on screen some existing  
25 trees and arborvitae on the west/northwest side.

26  
27 Commissioner Stockton asked how flood plain volume is actually increased.

28  
29 Assistant Planner Kieser explained, showing the plan, that it is essentially taking fill out of the  
30 flood plain area to meet the elevation at the 931.5; they take some fill out from around the edges  
31 of the area to allow an increase in water volume. A civil engineer would calculate the volume in  
32 cubic yards of the water flow.

33  
34 Commissioner Stockton noted they are actually raising the elevation of the property in certain  
35 areas.

36  
37 Assistant Planner Kieser replied this is essentially lowering the fill, or taking out fill, to allow more  
38 volume.

39  
40 There being no further questions for staff, Chair Plantan asked if the Applicant would like to speak.

41  
42 Applicant Kathryn Alexander, Alexander Design Group, 275 East Lake Street, Wayzata noted  
43 Gary Kraemer and Kevin Hilgers with John Kraemer and Sons are also present and they would be  
44 happy to answer any questions the Commissioners may have.

45

1 Commissioner Parkhill asked if the reason the structure could not be moved a bit more to the west  
2 towards the river was because of the flood plain. It seems like visually there would be space to  
3 move the building a bit to reduce the setback variance needed.  
4

5 Ms. Alexander replied they pushed it as far west as they can with the flood plain and the setback.  
6 She stated the reason there are so many jogs on that side of the house is because they are actually  
7 touching the setback in several points.  
8

9 Assistant Planner Kieser noted there is a wetland edge and wetland setback there, as well, which  
10 limits where the home can go.  
11

12 Commissioner Merriam asked if they have talked to the neighbor to the east.  
13

14 Ms. Alexander stated that she has not personally talked with the neighbor and was not involved  
15 with the 2019 variance, but knows much of that legwork was done back then with the former  
16 owner.  
17

18 Commissioner Merriam noted it looks as though the house is no closer than the previous home and  
19 asked if that is correct.  
20

21 Ms. Alexander replied that is correct.  
22

23 Mr. Hilgers said they have not had any interactions with neighbors in regards to the new project.  
24 He stated they always send out letters to neighbors with the contact information and encourage  
25 good relationships with neighbors. Once they get through this preliminary approval process the  
26 site supervisor and Mr. Hilgers are planning to approach the neighbor to get that correspondence  
27 started, knowing that the end of the cul-de-sac and access for construction vehicles will be very  
28 challenging on this project. They want to talk through it and be sure they have good standing  
29 relationships with the neighbor throughout construction.  
30

31 There being no additional questions from the Commission for the Applicant, Chair Plantan opened  
32 the public hearing on the application at 7:01 p.m. She noted the public hearing portion is a very  
33 important part of the City Code and State Law. It gives anyone the opportunity to comment on an  
34 application and provides the Commissioners with valuable feedback as they review and make a  
35 recommendation to the City Council on these applications. She noted that the Planning  
36 Commission only provides recommendations to the City Council and are not a legislative body,  
37 so it is important to carefully consider all the comments, and they will listen carefully to all of  
38 them.  
39

40 There being no one wishing to comment on the application, Chair Plantan closed the public hearing  
41 at 7:02 p.m.  
42

43 Chair Plantan asked for the Commission to share their thoughts on the application.  
44

1 Commissioner Parkhill said given it was discussed two years ago, he does not think what is being  
2 asked is an unreasonable request. He would be fine whenever the Commissioners are ready to  
3 make a motion on these requests.  
4

5 Commissioner Bashioum said she remembers the proposal, and the Commission went through all  
6 of these “asks” when it was before them previously. Since nothing has basically changed and they  
7 have not heard any negative thoughts about the project, she would encourage the builder to reach  
8 out to the neighbor before it comes to planning as a touchstone to start a dialogue. She likes the  
9 project and thinks the home is beautiful, and would also be in favor of the project.  
10

11 Chair Plantan thanked the Applicant for such a thorough application, and noted it was very detailed  
12 and included a great set of documents. She said she agrees with fellow Commissioners that this is  
13 a difficult lot to build on and similar variances were granted in 2019. She stated this project meets  
14 the intent of the City’s ordinances and definitely demonstrates clear and practical difficulties. She  
15 thinks it is consistent with the intent of the zoning ordinances and does not really impact any  
16 adjacent homes. She, too, would be in favor of this proposal.  
17

18 There being no further discussion, Chair Plantan asked for a motion on the application.  
19

20 Commissioner Parkhill agreed the home is beautiful, it is a hard lot to build on, and complimented  
21 the Applicant on turning in the tree preservation plan, because it is always a question that gets  
22 asked. He thanked the Applicant.  
23

24 Commissioner Parkhill made a motion, seconded by Commissioner Bashioum, to direct Staff to  
25 prepare a draft Planning Commission Report and Recommendation with appropriate findings  
26 reflecting a recommendation of approval for a setback variance, a Shoreland setback variance, and  
27 a Conditional Use Permit for principal structures in the Flood Fringe District at 900 Shady Lane  
28 to be reviewed and adopted at the next Planning Commission meeting.  
29

30 Director Goellner completed a roll call vote on the motion. The motion carried unanimously.  
31

32 Chair Plantan noted this will appear on the Consent Agenda at the next meeting.  
33

34 **b) Consider Development Application for a Planned Unit Development Amendment**  
35 **(PUD) and Variance for the Rice Street Townhomes of 520, 524, 530, and 534 Rice**  
36 **Street East**  
37

38 Director Goellner began staff’s presentation. She said the Applicant is Pillar Homes Partner, Inc.  
39 who has applied for a PUD amendment to an existing 3 building PUD plan, and variance to the R-  
40 4 and R-5 standards of the PUD district zone, and that the project is called Rice Street Townhomes.  
41 She noted on screen the surrounding neighborhood properties and the Applicant’s properties which  
42 are zoned as a Planned Unit Development. The PUD is surrounded primarily by commercial and  
43 residential uses. The property is guided as high-density residential use in the 2040 Comprehensive  
44 Plan, and there are a mixture of uses but primarily residential uses to the north with some  
45 commercial uses to the south and institutional uses to the east. She showed an aerial map of the  
46 properties including Building 1 of the PUD (existing), Building 2 (proposed – building

1 construction halted) and Building 3 (proposed). There are 6 units included in the proposal, units 1  
2 and 2 in blue, unite 3 and 4 in red, and units 5 and 6 in purple.

3  
4 Director Goellner reviewed the unique history of the property, and said the PUD district and a  
5 PUD general plan was approved by the City Council in 2005, and a development agreement was  
6 executed with the property owner in 2006. Since 2006, Building 1 was constructed, along with the  
7 storm water management system and the parking lot behind Building 1. After a lapse of time,  
8 construction on Building 2 began in 2020 but was then halted, and there has been no construction  
9 of Building 3. Director Goellner clarified that the properties for Buildings 2 and 3 are under new  
10 ownership since 2006.

11  
12 Director Goellner explained that in 2019, Staff and Applicant began discussing plans for Buildings  
13 2 and 3 with the current property owner, and after some deliberation the owner and current  
14 Applicant indicated to Staff that they would like to complete the project as originally approved  
15 and submitted an application for a Building permit, which did not require a public review process  
16 in the form of a Planning Commission public hearing and City Council review and approval. The  
17 building permit was subsequently issued by the City for Building 2. It was later discovered that it  
18 was incorrectly issued because applicable and important PUD standards for the site were missed;  
19 after it was discovered that the building permit was incorrectly issued by the City, construction  
20 was halted on Building 2 which happened in late March during the framing process. After that  
21 time, the framers were allowed to be on site in April and May to add a roof cap to preserve building  
22 materials, but no further construction was permitted at that time. The Applicant is now proposing  
23 to finish constructing Building 2 and is proposing to construct Building 3 as shown in the  
24 application. This requires a PUD amendment and a variance to the R-4 and R-5 standards that are  
25 applicable in the PUD district. In the 2006 development agreement, it states that the PUD must be  
26 constructed in accordance with general plans approved by the City Council and filed with the City  
27 and recorded against the property.

28  
29 Director Goellner noted that the Applicant submitted a previous application that was reviewed by  
30 the Planning Commission on May 3, 2021, and the Planning Commission recommended denial  
31 unanimously of that application. The Applicant then withdrew that application from further  
32 consideration and submitted the application before the Commissioners this evening. She showed  
33 photos of the existing conditions of the site and said the first request is for a PUD amendment that  
34 would incorporate the Applicant's current plans for that would complete the previously approved  
35 PUD project in a manner similar to the existing PUD plans in the sense that the new buildings 2  
36 and 3 would remain townhomes with the same unit count. The modifications to the plans for  
37 buildings 2 and 3 require a PUD amendment under City Code Section 933. The Applicant is also  
38 requesting a variance from the R-4 and R-5 standards that are applicable in a PUD district for  
39 multi-family PUDs.

40  
41 Assistant Planner Kieser noted general amendments/deviations from the 2005 general plans for  
42 the proposed PUD amendment, including the front yard setback, the staggering of building heights  
43 for Building 2, the construction deadline in the PUD agreement, and the additional architectural  
44 modifications shown in the proposed plans which include the location, size of windows, rooftop  
45 enclosure, floor plans, and deck locations. He compared the current development application to  
46 the previous application that was recently reviewed by the Planning Commission. He noted that

1 the proposed front yard building setback for Building 3 has changed from .5 feet to 6.5 feet by  
2 reducing the proposed length of the building. He noted that additional information and clarity has  
3 been provided on materials for the proposed buildings, making it clear that they will be built with  
4 full brick and limestone accent material. Tops of the windows will have curved architectural  
5 cornice and limestone accent or banding, and limestone banding has been included in the plan  
6 elevations around all the facades. The parapet wall has been lowered on the rooftop by 8 inches on  
7 Building 2 and 3. A landscape plan has been provided. The footing for the rear deck of Building  
8 3, Unit 6, has been removed and the rear decks on that building are now cantilevered from the  
9 building. The rooftop enclosures for both buildings are proposed to be constructed with a steeper  
10 angle on the north and south sides. Along with that, the width of the rooftop enclosure of 520 Rice  
11 Street East has been reduced from 11 feet to 8 feet which has reduced the total area of the enclosure  
12 by around 20 square feet. He showed front yard setbacks for each building on screen and noted the  
13 2005 general plans have a 6.5 front yard setback for all buildings.  
14

15 Assistant Planner Kieser then went over the proposed front yard setbacks and said Building 1 is at  
16 6.8 feet, Building 2 would stay in the same place it is currently with front yard setback of 2.1 feet,  
17 and Building 3 would be pushed back from the previous proposal to meet the current 6.5 front yard  
18 setback. Another PUD plan amendment would be the height staggering. He noted building 3 would  
19 not have unit staggering under the existing or proposed plans. He stated the maximum building in  
20 the PUD zoning district is 35 feet; the proposed height for Building 1 is difficult to determine  
21 without an as-built survey, the proposed height of Building 2 is 33 feet 1 inch, and Building 3  
22 would be 32 feet 10 inches.  
23

24 Assistant Planner Kieser walked the Commissioners through a table with spot elevations from the  
25 surveyor to the top of the parapet. Regarding building footprint, Building 1 is at 2,908 square feet,  
26 Building 2 at 2,726 square feet, and Building 3 is at 2, 614 square feet, all falling within the 2005  
27 original proposed range of Building 1 and 2 at 3,100 square feet. Proposed building materials are  
28 available to view on site. Assistant Planner Kieser reviewed additional changes proposed,  
29 including an updated construction deadline of two years after any development agreement would  
30 be approved, garage entrance angle for unit 6, removal of self-service doors next to the garage  
31 door in the rear, and changes to window locations and sizes.  
32

33 Director Goellner stated the City received several advance public comments that all were received  
34 by June 3, 2021 at around 9:00 a.m., and those are in the packet. She noted they were from  
35 Christopher Vojta, 125 Walker Avenue South, Nicole Dunham 530 Rice Street East, Tony  
36 Straszewski 527 Rice Street East, and Kelly Harrington, 540 Rice Street East. She noted that  
37 Additional public comments received on or after June 3, 2021 were sent to the Planning  
38 Commission via email and included comments from Bruce Merry, 216 Minnetonka Avenue South,  
39 Jon Monson of the Landschute Group, and John Adams, 544 Rice Street East. She noted that the  
40 comments included many concerns about the proposed changes from the 2005 PUD Plans, such  
41 as the front yard setback, change in the staggering of the unit heights, building height, and changes  
42 to building materials. A neighborhood meeting held the previous week had 10 people in  
43 attendance, and a meeting was hosted at City Hall to hear neighborhood concerns about the project.  
44

45 Director Goellner noted the questions for the Commission to consider for the application requests  
46 include: Are there higher standards of site and building design through the use of trained and



1 experienced land planners, architects, landscape architects, and engineers? Is there a creative use  
2 of land and related physical development which allows a phased and orderly development and use  
3 pattern? Is there a development pattern in harmony with the objectives of the Wayzata  
4 Comprehensive Plan? Are there practical difficulties associated with development of these  
5 properties? – whether the changes result in the reasonable use of the property and whether the  
6 change would not have an effect on the essential character of the locality, and whether the plight  
7 of the landowner is due to a unique circumstance caused by landowner. She explained that the next  
8 steps include the Applicant presentation, questions for staff and Applicant, the public hearing,  
9 Commission discussion, and consideration of adopting one of 3 alternatives: Option 1, adopting  
10 the Planning Commission Report and Recommendation of Approval with the addition of  
11 conditions of approval or any adjustments to the report; Option 2, adopting a report recommending  
12 approval of some but not all requests, or Option 3, adopting a report and recommendation of denial.  
13 She noted that if a report is adopted, the application could be reviewed by City Council on Tuesday,  
14 June 15.

15  
16 The Chair then invited the Applicant to address the Commission on the application.

17  
18 Applicant K.C. Chermak of Pillar Homes Partner said after the last meeting, and as he heard some  
19 of the Rice Street neighborhood feedback, it became apparent that he was going to need to do a  
20 steadfast improvement which could not be integrated by going to the City Council under that  
21 application. He therefore felt it was important to redo the proposal based on feedback presented.  
22 He explained that before the Planning Commission is a “reboot” based on some of that feedback  
23 he felt was important to incorporate into the new application. He said staff informed him that there  
24 was some communication variation on what is considered real brick, and the color and installation  
25 with the limestone, so he wanted to make sure that was provided. Regarding the feedback on the  
26 windows, he elected to incorporate that even on the sides and back, the radius as opposed to  
27 architectural details being minimized, so instead of designing just for function, it became apparent  
28 that the form and shape was slightly more important than the function. He noted that other details  
29 changed have to do with the stairway enclosure which was slightly reduced, and after evaluation  
30 of concerns and comments about height he was able to reduce the height of the parapet. All of this  
31 was from feedback received and he adjusted accordingly. The last adjustment had to do with  
32 Building 3 and the ability to redesign the front setback to achieve the 6.5 front setback from the  
33 original PUD. He explained that the redesign took some challenges, and revolves around the storm  
34 water sceptor and the pipes behind the building. He noted that the rear lot line location of Building  
35 6 (the west-most building) was not altered and was set zero, and cannot be altered due to the  
36 information and actual location of that pipe. He explained that he went slightly wider while keeping  
37 the center lot line the same as it is twin home, reduced the square footage, and redesigned the floor  
38 plan pulling lot 6 or location 6 back to meet the 6.5 foot from the front. With Building 5, he  
39 explained that he slid it back to meet and accommodate that 6.5 foot setback, so there was no  
40 redesign on that, it was just slid back.

41  
42 Mr. Chermak stated that the first proposal was based on information and data collected by the  
43 surveyor, Sathre-Bergquist, in current time. The information gathered caused the first application  
44 to not have the proper requested 6.5 feet setback for Building 5, and that has now adapted based  
45 on the feedback and requirements stated. He noted that the information was gathered in 2020  
46 during the pandemic and during contact with the City, Sathre-Bergquist had to reboot and gather

1 information from the application. Mr. Chermak explained that it was then discovered that there  
2 was no current or as-built information provided either with the initial permit for Building 1 and  
3 following the completion of it. This data had to be collected by Pillar Homes representative Sathre-  
4 Bergquist, including the information for storm water management (the culvert) behind Building 6  
5 and the piping that goes to the west.  
6

7 Mr. Chermak showed 2005 information on screen and noted recommendations, decisions, and  
8 deviations to properly build and locate the buildings to avoid the structure that exists on site. He  
9 noted the proposed 2005 storm sewer pipe on screen and said the actual storm sewer and culvert  
10 are two elements that are driving decision that the Applicant had to alter around. Mr. Chermak  
11 said he discovered their practical difficulty which then was used to make some decisions. The  
12 difference of the offset that is determined between the existing pipe - and where a building could  
13 be placed - and the new pipe that is actually in place, was roughly 4 feet. It is this four-foot  
14 difference that the building has been moved back for Lot 6, and it is also the same 4 feet that was  
15 proposed to the City with the original building permit application for Building 2, and was used for  
16 the sliding of the building to the north to offset and create a "stepping" in the building from  
17 Building 2 to Building 3. He explained that the same 4-foot adjustment calculated from Building  
18 6 was then used to cause and request an adjustment for Building 2. Mr. Chermak stated that this  
19 adjustment was never disclosed and was never as-built in any way to the City after it was installed,  
20 and most of this is now being uncovered and will need to be better clarified. He said it is this  
21 practical difficulty, which is living, existing, and not anything that should be built on, that is the  
22 reason location 6/Building 3 was adjusted, and explains how Building 2 was slid to the north the  
23 4 feet that it was, and caused the difference in the front setback. It was this practical difficulty that  
24 was discovered by Sathre-Bergquist, and Mr. Chermak noted the circumstances were clearly not  
25 created by him in any way. The deviation between existing available information is different than  
26 existing on-site.  
27

28 Mr. Chermak said the request now of the new application will not create an essential character  
29 change to the area, and is a slight deviation from the original PUD which brings him before the  
30 Planning Commission today. In looking at the survey before and after there is a very large right-  
31 of-way between the back of the curb from the existing road (Rice Street) and that of the front lot  
32 line. He believes it is roughly about 20 feet and is very abnormal for Wayzata as it is quite large.  
33 He does not believe the slight slide to the north changes any of the character of the existing  
34 development or the surrounding area. He stated it was driven by the practical difficulty of the storm  
35 sceptor and the pipe installed. Mr. Chermak said he is available for questions and hopes the second  
36 application shows a willing effort to listen to the adjacent neighbors and feedback from nearby  
37 residents while integrating it with factual information discovered that the Applicant needs to deal  
38 with. This as a 2005 development that was approved and 16 years later Pillar Homes is putting its  
39 best foot forward and trying to make an effort and interpretation of what is needed to be done now.  
40

41 Chair Plantan asked if the Commission had any questions for Staff or the Applicant.  
42

43 Commissioner Merriam asked to look at the materials slide of the brick and stone and noted there  
44 is the brick wall, 2 coloring samples, and laid bricks. She said it looks like 4 different options and  
45 asked what they are looking at.  
46

1 Mr. Chermak stated that he thinks the two boards with the hand-sets on them were just to show a  
2 color cross-section of the brick. The brick down below is a non-assembled brick that is used behind  
3 on the vertical wall that is 2x3 feet wide. This example is just for color, it is the exact same brick.  
4

5 Commissioner Sorensen asked about the decks on the back of the building, and noted that it looks  
6 like the original building has the appearance of cantilevered decks on two levels with angles and  
7 angle bracing, but they have a certain look to them. From what he understands, Building 2 and one  
8 unit in Building 3 would look different with perhaps a roof over the decks and operable screens.  
9 He asked how that might look esthetically versus Building 1.  
10

11 Mr. Chermak replied the main floor decks are virtually the same, and the decks he proposed are a  
12 little less than 5 feet shorter in length. Between 2005 and now the idea was to evaluate everything  
13 in current time and make sure things looked the same. The shortening of the deck was to give a bit  
14 more distance and privacy between the town homes. The rooftop or deck above is slightly larger,  
15 so some of the length from the main floor was proposed to go above it and be just a roof over the  
16 top of it. From a construction standpoint, he stated they are virtually the same; roughly a foot thick  
17 and designed in the same fashion, and are stacked which is slightly different than the original plan.  
18 He explained that they are proposing that some buildings will have brackets and others will have  
19 a post, which are more architectural.  
20

21 Commissioner Bashioum noted one comment received during the public comment portion of the  
22 last meeting was that the roof above the third floor would create a lot of shade and not allow  
23 sunshine in. She noted it looks like they have kept the roof above those balconies and asked if that  
24 is correct.  
25

26 Mr. Chermak replied that is correct and instead of it being 13-14 feet, it is 7 feet long. He said it  
27 exists now and is a deck above, so they have removed the railing but made the deck a little longer  
28 to match the shorter one on the main floor.  
29

30 Commissioner Bashioum said she is talking about the enclosure over the top, shading that portion  
31 of the back of the building.  
32

33 Mr. Chermak noted it is a flat roof and is not an enclosure. There has been a discussion about roll-  
34 out screens that go up and down and would be temporary in nature.  
35

36 Commissioner Bashioum asked when those screens are down whether that constitutes a sense of  
37 being an enclosure.  
38

39 Mr. Chermak said he could see where that would be short-term, temporary. He expressed that it is  
40 screened, it is not a solid structure, and it is not permanent. They are rolled up and down.  
41

42 Commissioner Parkhill noted the Applicant said he had to move Building 6 four feet forward  
43 because of the pipe running through - but ended up moving it 6 feet forward and the second  
44 building 4 feet forward. He asked whether they could have moved the second building 2 feet  
45 forward and the third building 4 feet forward to compensate for that.  
46

1 Mr. Chermak said he moved the location on lot 6. He is not sure he moved it 6 feet.

2  
3 Commissioner Parkhill clarified Building 2 was moved 4.4 feet forward, and Building 3 was  
4 moved 6.1 feet forward.

5  
6 Mr. Chermak asked if the question pertains to the previous request.

7  
8 Commissioner Parkhill answered yes. The changes in the current plan looked like it was pushing  
9 the building forward by 4 feet, or they will change location of the pipe.

10  
11 Mr. Chermak stated he is not sure he is quite following, but noted when the engineers laid this out,  
12 they were trying to keep consistent and have a staggering. He asked if Building 5 could have been  
13 only moved 4.4 feet on the previous application and said the answer probably could have been yes,  
14 but he thinks it was driven more by the location 6, which he reduced back quite a bit and the fact  
15 that he was under the requirement of 75% hardcover. He noted that there were many elements that  
16 the engineers were trying to fit into the formula. He said in this new application, he basically  
17 implemented getting back the 6.5 on the front.

18  
19 Commissioner Parkhill said his biggest hurdle is the change in the setback, and that is why he is  
20 trying to understand that change.

21  
22 Commissioner Merriam said along those lines, she recalls from the last meeting that the westerly  
23 wall on Unit 6 was actually 5 feet longer than on the original PUD plan. She said that explains  
24 why they would need to move Building 3 forward but noted that now the Applicant is saying it is  
25 because of a different location of the storm sewer. She does not know how both could actually be  
26 the case.

27  
28 Mr. Chermak answered the 5-foot additional length was discussed. He reduced it and shortened it  
29 back. He believes the main reason for the longer length was because he had increased the square  
30 footage but was still under the 75% hardcover. It was not brought to his attention that the front  
31 setback needed to be setback from the front property line until this application and the previous  
32 one. The actual practicality and shifting of it was caused by the piping and the storm sceptor  
33 from behind, so the building was not to be built on top of it.

34  
35 Commissioner Merriam stated in looking at Buildings 530 and 534 and also on 520 and 524,  
36 regarding the rooftop, it has some kind of railing and a huge structure in the middle. She noted that  
37 when she looks at the existing Building 1 today from Rice Street, she does not see anything on the  
38 rooftop, although she knows it is up there and sees it in the drawings. She wondered how the  
39 rooftop structures are different from those on the first, existing building.

40  
41 Mr. Chermak replied, based on Staff review and what he turned in, there actually really isn't  
42 anything different. The reason they can see it more now is because the parapet wall is not built,  
43 there is no perimeter on the structure that is built right now, that is just where they put the deck.

44  
45 Commissioner Merriam clarified she is talking about the drawings, rather than as she sees it today.

46

1 Mr. Chermak answered based on Staff review and the architect, it is not intended to be different at  
2 all.

3  
4 Commissioner Merriam asked why the building is actually higher. She said the Applicant has made  
5 them shorter than the proposal the Commissioners looked at previously; the buildings are now  
6 somewhat shorter but are still 10 inches taller than what was proposed on the original PUD. She  
7 is wondering what the difference is.

8  
9 Mr. Chermak may need Staff to help with this one as he does not believe the buildings are taller.

10  
11 Assistant Planner Kieser said from the previous application submitted by the Applicant, the rooftop  
12 enclosures have stayed the same size, the angles of which the roofs of those enclosures have  
13 become steeper, and the only other change is that the width of the Unit 6 rooftop enclosure is  
14 smaller by about 3 feet.

15  
16 Commissioner Merriam asked what the difference is between what Mr. Chermak is proposing and  
17 what was on the original plan from 2005.

18  
19 Assistant Planner Kieser replied when they reviewed that in the plans that are associated with the  
20 development agreement, there were not dimensions of that rooftop enclosure; they also do not have  
21 an as-built as to what was actually built for those rooftop enclosures in Building 1. Thus, Mr.  
22 Kieser said it is hard to say the exact area and size of those rooftop enclosures from the information  
23 they have in the development agreement. He noted it is not an easy or exact answer.

24  
25 Commissioner Merriam stated that she has been hearing from the neighbors, and John Adams who  
26 worked on the final plans, that there are differences between what Mr. Chermak is proposing and  
27 what he actually built and what was on the final plans. There are concerns there, and she also sees  
28 in the Staff report that the buildings that Mr. Chermak is proposing are 10 inches taller than what  
29 was approved with the PUD agreement.

30  
31 Assistant Planner Kieser noted with these plans, and part of the reason they put “uncertain” for  
32 some of the building heights of Building 1, they have one building height for Building 1 of 34 feet.  
33 But it is hard to say how they calculated average grade, and if they used average grade to calculate  
34 those building heights. He stated they are also unsure if that is to the top unit to the bottom unit or  
35 mid-point between the two, which is why they say it is uncertain at this point, what the building  
36 height of Building 1 is without an as-built survey. That is why the surveyor tried to get those spot  
37 elevations to show exactly how the staggering or height of those buildings differs from building to  
38 building to clarify and give more information.

39  
40 Commissioner Merriam said that answered part of her question. The other part of the question is  
41 that there is a final plan for how Building 1 was completed, and there is a rooftop up there. There  
42 is a final plan for Buildings 2 and 3, and she realizes they were not in the original PUD agreement,  
43 so it is not being used for tonight’s purposes. However, they know that there was a final plan, so  
44 how does Mr. Chermak’s proposed plan tonight compare with what is in that final plan.

45

1 Assistant Planner Kieser answered that the final plans the previous owner sent over to the City are  
2 different than those that the City has on record for the permitting of Building 1. With that in mind,  
3 Staff has not been able to review those plans in full detail at this point, the plans on record which  
4 are not associated with the development agreement were not actually what was built. He noted  
5 they are a good comparison of what was built so those final plans that the previous owner sent  
6 over could have been the final plans but the City does not have those on record. That is why an as-  
7 built would be the best representation of what was built, and the City has to go off the 2005 plans  
8 which were reviewed and approved by the City Council. Building permit plans are not approved  
9 by the City Council so that PUD district is based on the terms of the PUD development agreement  
10 and those plans associated with that. Mr. Kieser explained that is how the City reviews it in terms  
11 of comparing it to the new proposal; the other plans are certainly something they can compare it  
12 to, but they are not something they should necessarily review the new plans through.

13  
14 Commissioner Merriam asked if there was anything specific in the plans regarding the roof.

15  
16 Assistant Planner Kieser replied yes, and he would have to look at it exactly to tell what those are,  
17 but there would be dimensions in those plans.

18  
19 Commissioner Merriam said shouldn't they compare the plans proposed in the application with  
20 the specifics that they do have, since it is an amendment request.

21  
22 Assistant Planner Kieser said the PUD district is not based on those building plans that were  
23 permitted or approved with the building permit. They need to review the current application  
24 through the PUD district standards with the development agreement that was approved and those  
25 plans associated with it. The building plans or final plans that were sent over are outside that scope  
26 and should not be reviewed to compare the proposal.

27  
28 Commissioner Merriam stated that she understands that and her question is whether there are  
29 specifics that went along with what went into the PUD agreement. She further clarified that she  
30 is talking about what they have, and whether there were specifics about what was to happen on the  
31 rooftop setbacks, size of enclosure, whether there will be a staircase.

32  
33 Assistant Planner Kieser said in the development agreement, the main thing it states is that the  
34 rooftop enclosure needs to be setback 10 feet from the front building line and there is no elevator  
35 access on those. Outside of that, those are the conditions that are listed that touch on the rooftop  
36 enclosure and the plans themselves show the rooftop enclosure but do not show dimensions, size,  
37 height, or anything like that.

38  
39 Commissioner Merriam clarified the amended plans the Planning Commission is looking at tonight  
40 fulfill all of those requirements that were in the original PUD agreement.

41  
42 Assistant Planner Kieser replied with those conditions listed, yes.

43  
44 Commissioner Bashoum asked about revisiting the pipe situation and why Buildings 3 and 4 were  
45 moved to accommodate that. She queried that didn't City Engineer Mike Kelly address that  
46 situation and say that there was no reason to move the buildings.

1  
2 Public Works Director/City Engineer Kelly stated he believes the question at the previous Planning  
3 Commission meeting was what was the configuration, and was it built to the original standards or  
4 plan. He stated the answer is yes, generally it was constructed that way. As the Applicant and Mr.  
5 Kieser has mentioned, they do not have an as-built survey of what exactly was put in the ground.  
6 The drawing presented last time showed a highlighted purple area in the driveway, and there is a  
7 big storage system under the driveway that drains to a manhole structure directly behind Unit 6  
8 and then drains directly to the west over to Minnetonka Avenue. Mr. Kelly said his response at the  
9 last Planning Commission meeting was yes, it was constructed generally that way. Based on the  
10 survey that Sathre-Bergquist has provided as well as a field visit, it is obvious that from the  
11 manhole structure behind Unit 6 to where the pipe ties in to Minnetonka Avenue, there is an angle  
12 on the pipe which brings the pipe slightly closer to the southwest corner of proposed Unit 6. The  
13 original design had accounted for the pipe and manhole and based on the current drawing of what  
14 is proposed, and he believes they are doing the same. Mr. Kelly said that they are getting as close  
15 as 2 feet to that pipe and are getting within about 3.5 feet of the manhole structure which is about  
16 as close as he would feel comfortable having the structure so it does not have any impact on the  
17 drainage. He said as Mr. Chermak mentioned and the plans show, the Applicant has been able to  
18 bring the setback back to the 6.5-foot front yard setback and still maintain a safe distance from the  
19 pipe to provide the structure.

20  
21 Commissioner Merriam said regarding the landscape plans, she is curious if the Applicant will  
22 include the brick posts and gate, and wrought-iron fence as exists with Unit 1. She does not see  
23 them on the drawing.

24  
25 Mr. Chermak replied yes, the intention is to do the same brick structure with the wrought-iron and  
26 gates.

27  
28 There being no additional questions from the Commission for the Applicant or staff, Chair Plantan  
29 opened the public hearing on the application at 8:16 pm.

30  
31 Nicole Dunham, the buyer of a unit in the proposed project at 530 Rice Street, stated she is very  
32 excited about the opportunity to move to Wayzata and specifically living closer to her family which  
33 she has been looking to do since last summer. She said after meeting with Pillar Homes last  
34 December, she signed a purchase agreement for 530 Rice Street in January of 2021. At the time it  
35 had already received a permit and construction had begun on the property. She said she also made  
36 a down payment of 30% for this home, so she has a significant investment in the property already.  
37 Following that purchase agreement, she listed and sold her previous home in March and has since  
38 moved in to temporary housing on a short-term basis which expires in November. She noted that  
39 at the time she signed her lease, she would have had plenty of time on the completion of her home  
40 in September or October in order to not extend that lease. Over the past 5-6 months her family of  
41 architects and engineers have guided her and spent hours and days working on floor plans for her  
42 unit and many of those design changes have been applied to other units in the development,  
43 specifically on the lower level, main floor, and upper level. She said she has spent additional hours  
44 planning for this home with the builder and has hired an interior design team, selecting appliances,  
45 cabinets, and countless design boards to create the vision for her home. Ms. Dunham said she  
46 appreciates hearing the concerns of the neighbors and the City around the development, all of

1 which affect the home she has purchased and many of which Mr. Chermak has addressed tonight.  
2 She stated specifically that she wants to address 2 concerns: the shape of the windows and the  
3 elevator access to the rooftop. In regards to the windows, she said she has been working with her  
4 interior design team to create a contemporary home within a traditional brick structure to which  
5 the rectangular windows played very favorably to. Pillar Homes original plans, under which a  
6 permit was granted and which she signed a purchase agreement for, had rectangular windows and  
7 an exterior façade that maintained the arched style of the original building while meeting current  
8 building trends. The request to change the windows on the main floor and upper levels to arches  
9 and half rounds would greatly impact the work she has done from a time and monetary standpoint,  
10 as well as the feel of this home. She said she completely understands the City's desire for continuity  
11 and believes there is a balance that can be struck if all parties can come to the table and find a  
12 solution in keeping these buildings in harmony with one another yet current to today's styles. Ms.  
13 Dunham noted her previous home was similar in style, with brick and limestone exterior and both  
14 arched and rectangular windows, which gives her confidence that a solution can be found to  
15 maintain the aesthetics of this development and neighborhood while adding new buildings to the  
16 community that reflect the desires of today's buyers. In regards to the rooftop, Ms. Dunham wants  
17 to be really clear on what she is looking to do. She is not, never was, or entertained the idea of a  
18 room or a fourth floor on that rooftop; she is seeking a landing that would provide handicap  
19 accessibility to extending the current elevator to all levels. An elevator running to all stories of the  
20 home from the main level to the upper level and rooftop is personal to her because she has a family  
21 member who is unable to climb a flight of stairs and would not be able to access the rooftop without  
22 an elevator. In addition to those with physical limitations, the elevator would be an added value as  
23 the population continues to age and they should all be acutely focused on creating a more  
24 accessible City which Wayzata's 2040 Comprehensive Plan seeks to do. The addition of an  
25 elevator to the rooftop can be implemented without impacting the neighbor's views as it would be  
26 located on the rear of the building and would not impact the overall vision for the development.  
27 She noted that the rooftop already has an encasement for that staircase and the addition of the  
28 elevator would not change the total height of the building and would still fall within code  
29 compliance and height requirements. The addition of the elevator would not result in any unsightly  
30 equipment disturbing the views of other homes in the area like it may have 15 years ago when the  
31 original development was proposed. The appearance of this request will be negligible to the  
32 neighborhood, and Ms. Dunham asked that they consider allowing for this exemption. Building a  
33 home is a stressful time in anyone's life and this process has been far from easy, incredibly  
34 complicated and challenging for her. She stated that six months ago, when she signed the purchase  
35 agreement, it had been permitted and was under construction; then to have that permit pulled which  
36 extended her timeline for moving in, increased her costs significantly from a short-term rent  
37 standpoint, rising interest rates for mortgages, and missed investment opportunities because she  
38 has money tied up in the property. Ms. Dunham said she is committed to working with the  
39 neighbors and the City to quickly come to a resolution on this. She said it adds to the community  
40 of Wayzata, will unite the neighborhood in the end, and get them all back to enjoying the beautiful  
41 summers on the lake. She thanked the Commissioners for the time this evening to share her  
42 concerns.

43  
44 John Adams, 544 Rice Street East, thanked everyone for the incredible amount of time spent and  
45 said he has a much clearer understanding of where everyone stands. He stated Attorney Schelzel  
46 is taking the position that the final plans he submitted were not recorded. Mr. Adams said they



1 were referenced in the PUD and that it says on page 145 of the packet, which is in the PUD granting  
2 developer's agreement that he signed back in 2006, "the recorded copy of this agreement is  
3 required below, shall be considered amended by the plans as submitted to the City." He stated that  
4 is in reference to the plans he submitted at the City's direction that were the finals plans and final  
5 working drawings for all three buildings. Contrary to what Assistant Planner Kieser has said, the  
6 City has or should have all of those final plans in their archives from 2006. Mr. Adams' lawyers  
7 are of the opinion that those final plans were approved by the City and are a part of the PUD and  
8 they have a difference in legal opinions of Attorney Schelzel. It has driven him a bit crazy that all  
9 of this reference to the incomplete nature of the plans and the PUD, those are the concept plans.  
10 He would like to ask the attorney if he was doing a PUD today and Mr. Adams was the developer  
11 and received his concept approval and building permit, did the final plans per the City's direction,  
12 and got to the developer's agreement, would he have attached the final plans to the developer's  
13 agreement or would he have just simply referenced them like his colleague Bob Meller from the  
14 same firm did back then. Either Mr. Meller felt referencing them in the developer's agreement was  
15 adequate or he mistakenly left it out. Mr. Adams read an email Mr. Chermak sent him dated April  
16 8 to the Rice Street home owners that says "after discussing and listening to your feedback, I have  
17 decided to simply proceed and complete the townhomes with the exteriors in the original  
18 architecture that was part of the original PUD agreement that is filed with the City of Wayzata and  
19 Hennepin County. The main reason for this has to do with the City of Wayzata requirement to  
20 have each owner sign the development application for an acknowledgement of amending and  
21 updating the current PUD with the City of Wayzata. By keeping the original architecture and  
22 listening to the feedback presented to me through John Adams that replicating the exteriors using  
23 the same initial architecture and exterior appearance is what your ownership preference is. This  
24 will be accomplished by your signing any documents that will be required by the City to assure  
25 this direction is approved." Mr. Adams said Mr. Chermak received those final plans when he  
26 bought the lots, the City has those final plans, and his question to Mr. Chermak is: why didn't he  
27 just build the final plans? He said he knows it was said after 15 years the codes had changed, and  
28 Mr. Adams spoke with Jon Munson about that and he said there were not any codes that he was  
29 aware of that had changed that would affect the design of the project as originally approved and  
30 designed. Life would have been so much simpler if Mr. Chermak had just followed the plan. Mr.  
31 Adams said that at the last Planning Commission meeting, both the Harringtons and Mr. Adams  
32 and his wife Rhonda stated they did not want this large roof over the deck or a screened porch  
33 there as it will block their light and view and is not acceptable to them. He noted there was selective  
34 listening at the last Planning Commission meeting, and that he appreciates everyone's time.

35  
36 Kelly Harrington, 540 Rice Street East, stated she sent a letter to the committee and she thinks the  
37 amendments to Building 3 are commendable, and the changes look great. Her issues land with  
38 Building 2 and how close it is to the street. She said they can talk about brick and roof but to her  
39 that is so far down the road from where they are today. She noted there was a stop work order and  
40 Mr. Chermak worked for 40 days beyond that which is part of the reason they are where they are  
41 right now and so far down the road in this process. Ms. Harrington said she just wants the  
42 Commissioners to know her opinion, they are super excited about being here, and she understands  
43 where Ms. Dunham is coming from as they had a project in Excelsior they had to walk away from  
44 because they could not come to terms with the City. She noted it is really hard but what they all  
45 have to say as neighbors is important and she appreciates the Commissioners time, as well as the  
46 City Attorney's, and the City Planner for listening to them earlier in the week as that meant a lot.

1  
2 Anthony (Tony) Straszewski, 527 Rice Street East, thanked the Commission for listening and  
3 reading all of the letters sent, and thanked Jeffrey Dahl and David Schelzel for sitting down with  
4 them the other day as it feels good to be listened to. Mr. Straszewski said that he has organized his  
5 thoughts and comments into two buckets. The first bucket is that his position has not really changed  
6 since the May 3, 2021 Planning Commission meeting, as he and his wife relied on the City's  
7 assurance that the referenced PUD would be built as it was approved. They moved forward with  
8 the purchase of their home and absolutely love where they live. The second point is that his  
9 neighbors Kathleen Nash, Tom Robbins, John and Rhonda Adams, spent hours, days, months,  
10 negotiating the PUD that was approved back in 2005. Going back on those setback and height  
11 restrictions today is just fundamentally not fair to them and to the neighbors, as they negotiated on  
12 their behalf. Third, the City Code requires any changes to a PUD to be approved by City Council  
13 and the developer's variance application does not include a lot of the changes. Mr. Straszewski  
14 said he thinks Commissioner Merriam was asking some questions about the iron railings and brick  
15 pillar features in the front. He stated that the plans the Applicant is working off of today do not  
16 include any detail about the front steps, and it looks like what is poured there in terms of  
17 infrastructure, substructure, and framing would not be consistent with what they see at Building 1.  
18 He said he wants to remind everyone that the Code requires any change to go through the Planning  
19 Commission and City Council. Mr. Straszewski said the structures at 530 and 534 Rice Street  
20 violate the PUD zoning. He noted that PUD stands for Planned Unit Development and it is a  
21 vehicle that cities, developers and neighbors can use when everyone agrees that there could  
22 potentially be a better use of the land, and allows them to go around the codes that exist. He noted  
23 some discussion tonight around the R-4 and R-5 standards, and there is a variance factor there. Mr.  
24 Straszewski stated the City Staff and the Applicant never pointed out what the R-4 and R-5  
25 standard is, and he believes it is a 20-foot setback. What they have here is a 6.5-foot setback and  
26 the Applicant originally wanted to go to 1/2 of a foot – that is almost a 100% variance. He said  
27 that the structure there today (Building 2) exceeds the front yard setback by 4 feet, and in a City  
28 where they measure ground cover and building height in inches, that is a big deal. Mr. Straszewski  
29 said the structure will clearly exceed the 32 feet 3-inch height restrictions that were negotiated in  
30 the original PUD, and all this monkey business around the working drawings is just that – monkey  
31 business. He said that the developer agreement that was filed with Hennepin County does specify  
32 the 6.5-foot setback from the front yard and the height restrictions of 34 feet for Building 1, 32  
33 feet 3 inches for Building 2, and 32 feet for Building 3, and the unit height of number 4 and the  
34 roofline not stepping down from Unit 3. Mr. Straszewski said the second bucket is focused on  
35 some things learned at the May 3, 2021 meeting. He said he thinks the neighbors were really  
36 shocked to find that the City Staff has not acknowledged those working drawings. Mr. Straszewski  
37 knows that Attorney Schelzel's position is that those working drawings were not filed with the  
38 PUD documents filed with Hennepin County, and it is not necessary because they are incorporated  
39 by reference in the PUD plan and are mentioned. John Adams read that sentence earlier and it was  
40 lifted right out of the development agreement that was recorded with Hennepin County and is  
41 highlighted in yellow. He said they assert, and Mr. Adam's lawyers are behind this 100%, that  
42 those working drawings are absolutely relevant, all of the detail down to the location of the light  
43 fixtures, the shape of the windows, the staircase enclosures, it is all incorporated by reference. Mr.  
44 Straszewski said he thinks it has become abundantly clear that Pillar Homes fabricated a rationale  
45 for moving Building 3 six feet forward and the rationale for moving Building 2 four feet forward.  
46 He continued that there is a lot of talk about the storm sewer and the location of a pipe that goes

1 at a different angle, and still even with the location of Building 3, the building would not be over  
2 the pipe. He said, as Tom Robbins pointed out at the last meeting, with those circumstances doesn't  
3 it make more sense to move the pipe and not the building? Mr. Straszewski said he'd like to  
4 remind everyone that the permits mistakenly issued to Pillar Homes included fourth stories on both  
5 buildings, and a significant amount of square footage was being added and those "flex rooms" as  
6 they were promoted amounted to about 700 square feet. This was not insignificant. He said all of  
7 that has gone away and there has not been any discussion around that but it is important to bring  
8 up tonight because what they strongly suspect is that the moving of the buildings had much more  
9 to do with the fact that the City was going to allow Pillar Homes to build to a 35-foot standard and  
10 not the 32 feet 3 inches and the 32 feet that were approved in the PUD. They had to move the  
11 buildings to necessarily get that height. Mr. Straszewski said he was doing some research about  
12 parapet walls around the top of a building and the main reasons architects use them is for safety  
13 and to shield rooftop equipment. He said he'd like to remind everyone that the development  
14 agreement that was recorded with Hennepin County, the standard used is that any of the rooftop  
15 structures must not be visible from the pedestrian level at Rice Street or Minnetonka Avenue. He  
16 said they all know that Mike Kelly, City Engineer, who testified truthfully that all of this talk about  
17 the storm sewer really had nothing to do with moving the buildings. Mr. Straszewski noted at the  
18 May 3, 2021 meeting, there was some discussion around the surveys Mr. Chermak keeps referring  
19 to, one of which is dated March 2021. It would seem that all this talk about data points not matching  
20 up has more to do with supporting the fabrication of the storm sewer. Mr. Straszewski said that  
21 although Mr. Monson was not able to join the meeting, he has provided some direct testimony and  
22 public comments that are really important. Mr. Straszewski said the Rice Street neighbors simply  
23 won't concede on the height restrictions and the setback restrictions that were negotiated and are  
24 part of the recorded PUD with Hennepin County. He said the full set of working drawings are very  
25 relevant and should be recognized by the City, they are incorporated by reference and they have  
26 been given the letter of the document that was recorded with the City. He respectfully asked that  
27 the Commissioners deny the Applicant's request for variance and recommend to the City Council  
28 that they order the immediate removal of the violating structure and compel Pillar Homes to start  
29 over in accordance with the PUD zoning. He said that many people have talked that the Planning  
30 Commission and City Council would do well to conduct their analysis as if the violating structure  
31 had not yet been built and the developer were seeking the variance before construction  
32 commenced, and Mr. Straszewski agrees with that.

33  
34 There being no one else wishing to comment on the application, Chair Plantan closed the public  
35 hearing at 8:45 pm.

36  
37 Chair Plantan asked for the Planning Commission to share their questions and feedback on the  
38 application.

39  
40 Commissioner Bashoum stated she revisited a letter received from Anne LaFrance, who is also  
41 listening tonight to the Zoom meeting, dated April 28, 2021 which was included in the packet prior  
42 to the May 7, 2021 meeting. In an effort to understand the timeline of events, Ms. LaFrance  
43 mentioned a retaining wall suddenly materialized on her property line adjacent to the Pillar  
44 brownstone project at the beginning of construction activity without her knowledge until the work  
45 had already begun. Commissioner Bashoum quoted from the letter: "I feel dismissed,  
46 disrespected, and insulted by the mess Pillar Homes, K.C. Chermak, and the City officials have

1 wrought on our neighborhood. There seems to be a pattern of missteps, misinformation, in regard  
2 to the adherence of standard code enforcement for this project including enforcing the existing  
3 PUD.” Ms. Bashioum asked what is the Commission’s responsibility was to the property owners  
4 in Wayzata, and whether they should dismiss the situation as a little mistake and hold no one  
5 responsible. She said she does not think so. She said that the Planning Commission has received a  
6 mountain of correspondence in this regard suggesting a conflict between all parties involved.  
7 Commissioner Bashioum paraphrased a statement received earlier today from Kathleen Nash:  
8 “There is a lot at stake here regarding the Pillar Rice Home/brownstone project. Leaving Building  
9 2 in the wrong place in our neighborhood will leave the neighbors holding the bag. There is no  
10 doubt that Building 2 is out of compliance...I hope you keep those who are responsible  
11 accountable and not require the neighbors to take the brunt of somebody else’s missteps.”  
12 Commissioner Bashioum said she believes approving this proposal tonight does leave the  
13 neighbors holding the bag and stated: doesn’t it set an unfortunate precedent that Wayzata doesn’t  
14 enforce their building code? She said the Planning Commission also received comment  
15 correspondence from John Adams and his architect Jon Monson at Landschute with the original  
16 architect for the Rice Street brownstones and an email chronology of when the plans were made  
17 available to Mr. Chermak along with his assurances that he would comply with the PUD.  
18 Commissioner Bashioum wonders if this issue is better solved by another authority but she is  
19 certainly unwilling to approve any deviation from the original PUD and encourages the City  
20 Council to do the same.

21  
22 Commissioner Stockton asked to clarify what someone had mentioned about a stop work order  
23 that was not followed. She stated that she does not understand that and would like to know the  
24 answer to that.

25  
26 Director Goellner replied that work continued on the property to secure the site for an extended  
27 period of time. She has no evidence that additional construction to further construct the building  
28 was done under that stop work order.

29  
30 Commissioner Stockton asked if she understood correctly when Mike Kelly spoke earlier was  
31 about whether there was a difference of 4 feet with the angle of the pipe.

32  
33 City Engineer Kelly replied yes, he is not sure that it is 4 feet but there is a slight difference of 2-  
34 3 feet between the original alignment and the actual alignment.

35  
36 Commissioner Merriam said in regard to the request for the amendment, the first time around on  
37 May 3, 2021, Mr. Chermak had stated it was because of the location of the storm sceptor that he  
38 had moved the building forward. She said they also discovered at the same time that the unit was  
39 actually 5 feet longer and now he has Building 3 setback 6.5 feet, which is great, and she said it is  
40 wonderful the changes the Applicant has made to the plans from May 3 to today. She said it is  
41 great that Mr. Chermak was able to achieve it, and he could have also achieved it with Unit 2 in  
42 the first go-round; he had the information and knew there was to be a 6.5-foot setback that was  
43 part of the original agreement. Commissioner Merriam said she has a really difficult time seeing a  
44 hardship or practical difficulty in this case that would be due to circumstances unique to the  
45 property and not created by the land owner. She said, as mentioned, the setback in that zone is 20  
46 feet - they negotiated in 2005 to get 6.5 feet - and to go even closer to Rice Street is just

1 unnecessary, so it is unfortunate that the building has begun there. In regard to the Applicant's  
2 request for an amendment of the PUD agreement, Commissioner Merriam stated for intents and  
3 purposes it is to encourage higher standards of site and building design, and she does not see higher  
4 standards of site and building design with this amended proposal. She said she thought they did a  
5 really nice job the first time around, and it seems like some of the products are not of the same  
6 standard, some things are changing such as the setback within Building 2 and that does not seem  
7 to make sense. Commissioner Merriam said she has a hard time, and would recommend denial of  
8 the application based on her findings.

9  
10 Commissioner Sorenson stated this is a tough one. He said he thinks they all struggle with how  
11 they can look at this fairly and objectively and do their best as Commissioners to really use the  
12 criteria they are given to evaluate the changes here. He said they fall on the lines of, does it affect  
13 the essence and character of the neighborhood, and will they be in harmony with the general  
14 purpose and intent of the PUD and the zoning ordinances He noted the Planning Commission has  
15 been given a lot of information and one asks what is driving these changes and amendments. He  
16 asked, were there hardships? He said they have heard a lot of debatable testimony that perhaps  
17 there has or has not been. Certainly, general market conditions are having an effect here, and the  
18 developer initiated other changes, and they perhaps do not know totally why. Commissioner  
19 Sorenson said he thinks cost may be an issue but they have heard so much information about  
20 heights, rooftops, why Building 3 was moved, the location of the receptor, and what plans apply  
21 to the PUD. As he said as he thought about it and in trying to be fair, looking at the aesthetics of  
22 the exterior of the building, if one was a neighbor living on Rice Street or across the street, are the  
23 differences they are talking about substantial enough to really alter the character of the original  
24 building and original PUD? Clearly some of the changes the developers made have been with that  
25 in mind in terms of clarifying the materials. Commissioner Sorenson said in trying to boil all this  
26 information down, it kind of felt like aesthetics and what this thing looks like is very important.  
27 The one item he struggles with along those lines is the decks; he said he does think that is a  
28 significant issue and the fact that they would potentially be screened, even if they are operable  
29 screens - he knows people with operable screens that are down a lot and sometimes they are not  
30 down a lot. He noted that visually, some have posts, and he thinks if those decks were aesthetically  
31 consistent with Building 1, it would go a long way towards making this building look and feel a  
32 lot more in character. Commissioner Sorenson said he thinks it would behoove the Planning  
33 Commission to try to find a way to move this on to Council, noting they have heard a significant  
34 amount of information over the last month and hopefully they can find a way. He said if they could  
35 get comfortable with the setbacks, the buildings not being staggered, and additional modifications  
36 on the decks, that may be a way forward to think about approving this amendment with additional  
37 clarifications.

38  
39 Commissioner Stockton said she will comment on specific aspects of where the Applicant has  
40 made some progress. She said she thinks the material improvements are strong, the window shape  
41 change is not something that, to her, impacted primary aesthetic appeal at the back of the property.  
42 As an interior designer, she said she will seek a sympathy viewpoint from treating windows; if the  
43 window requirement should change, she does not see it as mission-critical for this application. She  
44 noted that the elevation staggering height as one cascades down Rice Street from what was  
45 originally proposed to what it is now, is a very nice aspect of continual cascades in Building 1 and  
46 2 and then the leveling of Building 3 which seemingly match to the elevations of the original

1 proposal back in 2005. However, there is a lot of staggering that is still happening, and she is not  
2 sure that she sees that as critical, although she agrees that the original was aesthetically more  
3 appealing. Commissioner Stockton said she thought she understood that the decks would all be  
4 cantilevered now, but she thinks that is maybe not so. She said she does think it is an architectural  
5 element and her initial reaction would be that they should be the same stylistically as the other  
6 decks, especially if the windows were to be different. She said she thinks the jutting out and third  
7 dimension of a deck or roof deck area is much more obvious of a distinction from what was  
8 original. Commissioner Stockton said she also thinks the original pipe location has triggered an  
9 alternate need for repositioning of the property; to what extent is a large question mark and to  
10 whether or not it was ever necessary for the second building to be pushed forward is also in  
11 question and potentially unlikely that it was ever needed to be pushed forward. She stated that  
12 moving the third building back to its position is a good improvement and necessary change. She  
13 said she cannot recall specifically what aesthetic implications would be required of an elevator to  
14 the rooftop, but she knows there are internal ways to provide handicap access, as well. She said  
15 there is certainly aesthetic concern for visibility and what is on the roof, given the viewpoint  
16 perspectives given originally, it should be looked at with weight because rooftops have become an  
17 important item they are addressing as part of the zoning task force, and that is something at the  
18 forefront of her mind.

19  
20 Commissioner Parkhill stated this application is certainly a difficult one, and a difficult situation.  
21 He noted that they are a small town, everyone knows each other, and has literally one degree of  
22 separation with mutual friends, acquaintances, and use the same local shops, restaurants, and  
23 markets. He said that unfortunately, despite their best efforts mistakes happen. He said that on May  
24 3, 2021, he presented a motion to deny the original variance request from Pillar Homes because  
25 he was hoping a little more time and communication would result in a compromise, or win-win.  
26 He apologized for not making the neighborhood meeting the previous week but stated he sees both  
27 sides of these issues and it is a very difficult issue. Commissioner Parkhill said today he stood in  
28 front of the buildings and noted how beautiful the one already built (Building 1) is, the limestone,  
29 corbels, details, it is really gorgeous and reminds him of the buildings in Chicago where he used  
30 to live. He especially loved on Building 1 the recessed arches that were over the windows which  
31 were really, really cool. He said that where he comes from in Chicago, there are buildings next to  
32 each other that are all very different, including heights, setbacks, windows, and bricks. Some are  
33 built with limestone, others board concrete. Commissioner Parkhill said the situation is this: they  
34 have two vacant lots for 15 years, and that has not boded well for the tax revenue for the City.  
35 They are talking 4 townhomes, which conforms to the original intent and purpose of the PUD, and  
36 Commissioner Parkhill does not think the townhome windows or the brick will change the  
37 essential character of the locality. He said that Pillar Homes has backed off on the encroachment  
38 of the third building into the setback, and put it back the way the PUD actually is written. He said  
39 he would love to see an elevator for Ms. Dunham's relatives, noting fifteen years ago they were  
40 not all as sensitive to people with different abilities. Regarding the roof over the porch, he said that  
41 if that is not consistent perhaps that is something that is compromised away. He said he does not  
42 see arches as something that should necessarily be a requirement. Commissioner Parkhill said the  
43 one that gives him pause more than any of the changes is the setback, and the fact that it should  
44 have been known prior to the building being built. However, mistakes happen, he believes in giving  
45 people the benefit of the doubt, and there is supposedly a 20–25-foot parkway there, so the front  
46 of the building is really 27.1 feet from the road. He feels that is a very healthy distance and it is

1 lucky that the large parkway is there because in looking on Minnetonka Avenue and the other side  
2 street, it is not. Commissioner Parkhill said he believes there have been a lot of concessions made  
3 and that there are extenuating circumstances. He said he would propose an approval adding the  
4 elevator, because if that is something in the original plans that Ms. Dunham agreed to, he thinks  
5 that is absolutely fine and they should work with that. He noted they can have more discussion  
6 over the roof, but he said that is something that should go away over the deck on the roof, and not  
7 necessarily making the arches a requirement. He said that is something that Pillar Homes has been  
8 willing to go back and add in, and unfortunately that is not exactly what Ms. Dunham was  
9 expecting. With that said, he said he would propose moving this forward to City Council and  
10 letting them make the final decision.

11  
12 Commissioner Bashioum stated that she wanted to address some of Commissioner Parkhill's  
13 assertions. She said they would not be in this place if Mr. Chermak had followed the PUD, as he  
14 said he would as noted in the email chain in the packet. She said she did not know why he changed  
15 his mind, but there was more than one change – a lot of changes – and the Commissioners have to  
16 decide if they will follow the rules or if they will just let someone say “oh, sorry, I made a mistake”  
17 and let it go. She said she is conflicted with this, and it is a very difficult decision. It carries with  
18 it a heaviness of what they decide and ultimately the City Council will make the final decision, but  
19 she does not think they want to send the signal that it does not matter if rules are followed or not.  
20 She also does not think they want to go through with a fine-tooth comb and say they will accept  
21 “this variance” or “this change” to the PUD when really none of it is allowed. She does not think  
22 it is the Commissioners' job to make it easier for someone that has not demonstrated a hardship  
23 that caused this application to come before them again tonight.

24  
25 Commissioner Parkhill said he does not disagree, and said it is a difficult choice.

26  
27 Commissioner Merriam commented on the setback for Building 2, and noted that someone had  
28 said it was 4 feet, and it is actually 2.1 feet, so it is 4.4 feet different from the 6.5 feet of the original  
29 plan. he noted the landscape drawings in the amended architectural plans do not include any kind  
30 of detail that would be necessary to have it continue what is on Building 1. She said she thinks if  
31 it goes forward to the City Council that way, the Planning Commission needs to be clear that it  
32 needs to be completed in the drawings. Otherwise, it may not happen and the Applicant would be  
33 able to say “well, it's not in the drawings.” She would recommend a condition on that.

34  
35 Chair Plantan said she agrees with her fellow Commissioners that this has been really hard, with  
36 heavy decisions and a long and arduous review of documents. She stated that she, too, has been  
37 taking notes and emphasized that an amendment to a PUD should be for a better use of what is  
38 already there. After listening to the Applicant, reviewing the Applicant's application submittal,  
39 and taking all the neighbors' comments into consideration, she does not see a clear hardship or  
40 practical difficulty as defined in the Planning Commission's criteria they are given for granting a  
41 variance. She fully understands some of the architectural detail deviations that are requested, and  
42 some of them make sense due to changes in some of the construction materials and modern lifestyle  
43 living desires. She stated that she does not think most of these proposed decisions would have  
44 altered the essential character of the neighborhood but some would, including the deliberate  
45 changes in the height, the treated timber posts to support the screened porch, it is not cantilevered.  
46 She noted that even if they added a bracket, it does not change that it is supported by posts and

1 very different from what is already there. Chair Plantan continued that the biggest requested  
2 amendment in her mind is the setback, and she stated she just does not see a practical difficulty or  
3 benefit to the neighborhood for that. She said that having a slight angle in the sewer pipe does not  
4 affect Building 2 at all, and having a full 3 story building encroaching into the setback does not  
5 feel aligned with the intentions of the original PUD. She noted that while some of the design details  
6 were concerning, they were not as concerning as that setback with Building 2. With no practical  
7 difficulties as defined in the Planning Commission's criteria for reviewing a variance, and no City  
8 benefit for the PUD amendments, she would not vote in favor of an approval recommendation for  
9 this application.

10  
11 City Attorney Schelzel stated that staff has been carefully listening to the Commissioners'  
12 discussion, the public comment, and everything related to the application. He provided the  
13 Commissioners with an outline of the options available as the next action step. He said in the  
14 interest of moving this along as quickly as possible, and to assist the Commissioners, staff had  
15 prepared two alternative draft reports and recommendations that went into the packet: one with  
16 findings and a recommendation of denial and one with findings and a recommendation of approval.  
17 He noted those drafts are not set in stone but are intended to help move this forward if there is  
18 consensus around one direction or another. He noted that in the motion the Commission could  
19 adopt either report – and he would suggest referencing the page number of which report they are  
20 talking about – and add any condition or amendment to the draft they'd like to make. He explained  
21 that the other option would be to direct Staff to go back and prepare a different report, although  
22 Staff would prefer not to do that in the interest of moving this forward as quickly as possible.

23  
24 Director Goellner noted the draft report of approval starts on page 91 of the meeting packet, and  
25 the draft report of denial starts on page 102.

26  
27 Commissioner Bashioum stated that she does not understand why Mr. Chermak did not follow the  
28 original PUD. She noted that the neighbors want the City to enforce the PUD that is in place right  
29 now and if they evaluate the proposal by the standards that the Chair mentioned, it does not fly  
30 and they cannot approve it because it does not fit what the Commissioners have been instructed to  
31 evaluate it by. She said she is uncomfortable approving any portion of this application, and sending  
32 it to the City Council. She said Mr. Chermak had the plans and all he had to do was follow them.  
33 She concluded that he has not demonstrated a practical difficulty that has not been caused by  
34 himself.

35  
36 There being no further discussion, Chair Plantan asked for a motion on the application.

37  
38 Commissioner Bashioum made a motion, seconded by Commissioner Merriam, to direct Staff to  
39 adopt the draft Planning Commission Report and Recommendation on page 102, with findings and  
40 a recommendation of denial for a Planned Unit Development Amendment and variance from the  
41 R-4 and R-5 Standards applicable in the PUD District for the Rice Street Townhomes at 520, 524,  
42 530, and 534 Rice Street East, as presented.

43  
44 Director Goellner completed a roll call vote on the motion. Ayes: Plantan, Parkhill, Douglas,  
45 Stockton; Nays: Sorenson. The motion carried.

46



1 Director Goellner noted that this application and the Commission's report would be on the City  
2 Council agenda for June 15, 2021.

3  
4 **AGENDA ITEM 6. Other Items:**

5  
6 **a) Review of Development Activities**

7  
8 Planner Kieser stated at the next Planning Commission meeting they have two planned  
9 development applications on the schedule at this point; one for the Lexus dealership for a sign  
10 variance, and the other for Meridian manor, a new proposal called Moments of Wayzata. A  
11 neighborhood meeting will be held on June 10, 2021 for the Moments of Wayzata application.

12  
13 Commissioner Bashioum asked what the proposed use of Meridian manor would be.

14  
15 Planner Kieser replied there is more information online including plans, but the project will be a  
16 similar use with assisted living, memory care units. He noted that they are proposing to essentially  
17 keep the same structure but redo the entire exterior and interior of the building, along with a  
18 parking lot reconfiguration and an addition on the west side of the existing structure.

19  
20 **b) Planning Commissioner Liaison Schedule and City Meeting Calendar**

21  
22 Director Goellner stated the June 15, 2021 City Council meeting liaison is Commissioner Stockton.  
23 She noted the Planning Commission and City Council strategic planning session is scheduled for  
24 the following day at 4:00 pm. She noted that they will return to in-person meetings in a couple of  
25 months, and are working on the hybrid meeting technology that would allow them to stay remote  
26 if they wish to do so.

27  
28 **AGENDA ITEM 7. Adjournment.**

29  
30 There being no further business on the agenda, Chair Plantan asked for a motion to adjourn.

31  
32 Commissioner Bashioum made a motion, seconded by Commissioner Stockton, to adjourn the  
33 Planning Commission meeting.

34  
35 Director Goellner completed a roll call vote on the motion. The motion carried unanimously.

36  
37 The Planning Commission meeting was adjourned at 9:31 pm.

38  
39 Respectfully submitted,

40 Kandi Chavie

41 *TimeSaver Off Site Secretarial, Inc.*

42