

City of Ann Arbor

301 E. Huron St.
Ann Arbor, MI 48104
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Formal Minutes - Final

Tuesday, August 16, 2011

7:00 PM

Ann Arbor Municipal Center, 301 E. Huron Street, 2nd Flr.

City Planning Commission

- 9-a 11-1004** Public Hearing and Action on Hofmann Annexation and Zoning - A request to annex the two parcels totaling 0.058 acres at 1643 and 1645 South State Street into the City and zone them C3 (Fringe Commercial District). Staff Recommendation: Approval

Cheng presented the staff report.

Walter Hansen and Hannah Cheadle, 3150 E. Morgan Road, Ann Arbor, the petitioners and owners of Biercamp, said they moved here 6 months ago from New York to open up their business. In their opinion, they are adjacent to the Stimson/South Industrial commercial, and they are surrounded by commercial. They said they had an old appraisal from Alcock that quotes Planning staff as saying that possible zoning designations that could be considered for the parcels are C3 or O. They stated that they have been open for a month. They said that they understand the City is afraid that the owner of the parcel could convert the buildings to a drive-through McDonald's restaurant, and because of this possibility they are open to revising the request to C2B. They are willing to draw up any contract saying they wouldn't allow any corporate businesses on these parcels. They stated that they love the area, but are limited by the zoning, so C2B or C3 would be ideal. They expressed that they are looking to get a beer and wine license for sale of Michigan products.

Mahler declared the Public Hearing closed at 7:30 pm.

Moved by Derezinski, seconded by Westphal, that the Ann Arbor City Planning Commission hereby recommends that the Mayor and City Council approve the Hofmann Annexation.

COMMISSION DISCUSSION:

Giannola stated that she doesn't support the rezoning of the parcels to C3 or C2B, since she sees this as spot zoning. She added that she feels for the petitioner's predicament. She noted that while this company is something that we want in Ann Arbor, we need to look at the precedent the City would be setting. She said that since neighbors of the parcels could request the same rezoning, she felt it could become a domino effect along State Street. She said that the Commission needs to use the Master Plan as reasoning for zoning in that area to be consistent. She said the courts have shown that spot zoning is illegal.

Giannola noted that the State Street corridor was also a part of the Planning Commission Work Program until recently when their funding for the research was taken away by City Council, which she interprets to mean that the City Council is not interested in looking at rezoning that area. She asked if it would be favoritism to be rezoning just these parcels when they need to be looking at the whole area to see if it is zoned correctly or needs to be rezoned. She said that this business could be located anywhere in Ann Arbor and in order for it to exist in this location, it has to have a community benefit. She stated that the benefit for their existence in this location is for the petitioner and not for the community. She said since the petitioner didn't do their due diligence before they rented a location that was in the Township and was zoned Industrial, she questioned if the City might now be taking on the risk of a future lawsuit.

Derezinski thanked Giannola for her input and noted that sometimes it turns out the the intended zoning designation for some areas doesn't end up turning out that way, which he felt was the case in this situation. He felt this parcel was unique since it was coming from the Township and would therefore have little precedential value. He noted that the staff has recommended approval of this annexation and requested further staff input on Giannola's concerns.

Cheng explained that the petitioner's request to annex into the City was to be able to connect to the City's utilities. Cheng said that staff had asked the petitioners if they would consider rezoning 1645 S State Street, the parcel to the south, to M1. He said that the petitioners felt that their application would be stronger by keeping the parcels zoned the same.

Cheng clarified that the request before the Commission was the approval of the annexation and a recommendation from staff to postpone the zoning part of the petition, noting that staff is still coordinating with the Township to get the petitioners a Certificate of Occupancy. He said if

they can get a Certificate of Occupancy in the Township, it would allow their use to be grandfathered into the City. Cheng said that if they rezoned the parcels to M1, they would still be allowed to exist but wouldn't be able to expand or do something different, such as retail, in the future.

Cheng further explained that in speaking with the Township, the I 1 zoning and M1 zoning in the City are very similar, with the exception of sales. He noted that the City's M1 zoning allows for 20% of the floor area for incidental sales. He said that after speaking with the petitioners he didn't think they would be using more than 20% of their floor area for retail sales. He said in the Township they allow sales on 100% of the floor area. Cheng said that they might have problems with selling beer and liquor that is not made on site.

Cheng said that once the State Street corridor study was complete, staff would be open to a possible commercial zoning if the study found that commercial would be more of a viable use there. He said that staff is going by the land use recommendation originally included in the South Area plan, which has now been incorporated in the Master Plan Land Use Element, noting that it is a 20-year-old document. He said that staff doesn't consider the parcels to be located adjacent to Stimson nor South Industrial Highway, and the appropriate zoning should be M1.

Briggs said that she strongly supports rezoning the parcels to C2B. She said if we are just looking to our Area Plan guide, then it is recommending the M1 zoning. She noted that that document is out of date and the Commission is in the process of trying to update it. She said if we are looking to a more current guide as to what the City is looking for in terms of our environmental goals and sustainability goals to guide us, then she felt they would be pointing us towards uses like this one that we are trying to encourage for our City. She stated that she felt we should support this business and nurture it so we see more of it along the corridor, adding that the benefit to the community is the locally-produced food.

Westphal asked staff if they are currently operating without a Certificate of Occupancy and if that is typical.

Cheng responded yes, that they are currently operating without a Certificate of Occupancy in the Township.

Westphal asked if the petitioner could annex into the City but still keep the Township zoning and they could keep operating as they are.

Cheng said that while they are in the process of annexing into the City,

they would be allowed to continue operating as they are, but since they have started the process of annexation into the City, the City rezoning is a second step in that process.

Westphal asked if there had been other rezoning requests along the South State corridor.

Cheng answered, yes, he recalls the other one was a few parcels further south, for a Tim Horton's restaurant, with a drive-thru and he believed they were requesting to go from Office to C3. He explained that specific request was denied.

Westphal asked if other possible petitioners have discussed the issue with staff.

Cheng answered yes, but when they read the Master Plan they don't go any further.

Westphal said the fairness issue strikes him when looking at them individually without doing a comprehensive study. He noted that several of the Commissioners have advocated the necessity for a long time to get the study completed, since this area seems to be of interest. He said he would advocate for staff to make the decision on the fairness issue of these requests. Westphal stated that it was important to realize that the zoning stays with the parcel and is long term versus businesses that come and go.

Westphal asked if it would be possible to do some type of Development Agreement or deed restrictions for these parcels.

Rampson responded that deed restrictions aren't enforceable by the City because they are private agreements.

Westphal said that he would like to get an official study done as fast as possible so that the City can move ahead on these zoning issues.

Cheng said that staff isn't concerned with parking issues under the current business, but if the City were to rezone the property to C2B and it changed hands and they put a different business in there, parking would become an issue since they wouldn't meet the minimum requirements. He noted that they have room for 14 spaces but would be required to have 20 spaces. He added that the City doesn't have a traffic study on this parcel and it doesn't know what kind of mitigation would be required.

Woods asked what would happen if the City annexes the parcels but the

Certificate of Occupancy wasn't issued by the Township.

Rampson explained that currently the operation of the business is still under the jurisdiction of the Township and they would be making the decisions on what they allow. She added that the City also doesn't want to inherit an issue that has been unresolved at the Township level.

Woods enquired about the shared parking at The Produce Station.

Cheng responded that he wasn't aware of any formal agreement between Biercamp and the Produce Station.

Woods agreed with Giannola and said she agreed with the postponement of the petition until all issues have been resolved.

Bona asked why the connection of utilities was occurring now if the business has existed. She also asked if getting the business in compliance first, would it potentially slow the process of the completion of the annexation as it moves on to city Council.

Cheng said in order for the petitioners to receive their approval from the Department of Agriculture to operate in compliance and make food on site, they had to hook up to City utilities.

Cheadle stated that they needed to have their septic system tested and the Township said they would have to connect to City utilities.

Rampson added that the owner of the parcels, Stephen Hofmann, had been requested to voluntarily connect to the City's utilities in 2009, but the City hadn't followed through at that time.

Bona asked the petitioner if they are currently operating.

Cheadle said, yes, that according to Hamlin at the Township they only needed the Certificate from the Department of Agriculture. She explained that they are asking for the Building Certificate of Occupancy from the Township only to allow them to be grandfathered into the City.

Cheng stated that the annexation process could continue while they were in anticipation of the Certificate of Occupancy from the Township Building Official. He was hopeful that it would be forthcoming shortly before the annexation came before the City Council. Cheng added that it could be possible to annex a parcel into the City and leave it unzoned for some time.

Bona said that she would like to see the petitioner be able to annex into

the City and continue to operate their business while they were working on resolving the Certificate of Occupancy issue.

Cheng explained that the City's M1 zoning would allow them to continue operating their business.

Bona said that she agrees with the Commissioner's comments and added that a Master Plan isn't just a land use plan but it looks at traffic, alternative transportation and adjacent uses. She noted that the vehicular traffic is far more significant in commercial districts and State Street is a very busy street, specifically since it narrows down to one lane just north of the proposed parcels.

Bona said we need to push hard for a Corridor Study of State Street and in the meantime hopefully have a back-up plan for what might or might not transpire. She noted that the City has several Commercially zoned areas where a small business could operate.

Bona added that a more formal parking agreement between the petitioner and the Produce Station would be desirable since she hoped the petitioners would be very successful and need lots of parking.

Adenekan asked if they were currently in operation and for how long.

Cheadle responded yes and for about a month.

Adenekan asked how many cars and bicycles they could have in the parking lot at one time. She also asked if they had bicycle racks available.

Cheadle said that they had space for 14 cars and that they have approximately 5 cars a day in the parking lot with 4-5 bicycles. She said that they are in the process purchasing a bike rack for 10 bicycles.

Mahler asked what would happen if the petitioner doesn't receive the Certificate of Occupancy from the Township.

Cheng said that they would then be back before the Commission requesting the C2B or C3 to allow them into the City for retail. He added that the M1 is the only zoning that would allow them to operate at the current site while meeting the zoning requirements for parking.

On a roll call, the vote was as follows with the Chair declaring the motion carried.

Annexation approved by City Planning Commission and forwarded to City Council.

Yeas: 8 - Bonnie Bona, Eric A. Mahler, Wendy Woods, Tony Derezinski, Erica Briggs, Kirk Westphal, Diane Giannola, and Eleanore Adenekan

Nays: 0

Absent: 1 - Evan Pratt

Moved by Derezinski, seconded by Adenekan, that the Ann Arbor City Planning Commission hereby recommends that the Mayor and City Council approve the Hofmann Zoning to C3 (Fringe Commerical District).

Moved by Woods, seconded by Derezinski, to postpone the zoning request.

On a roll call, the vote was as follows, with the Chair declaring the motion passed and action on the Zoning postponed.

Yeas: 8 - Bonnie Bona, Eric A. Mahler, Wendy Woods, Tony Derezinski, Erica Briggs, Kirk Westphal, Diane Giannola, and Eleanore Adenekan

Nays: 0

Absent: 1 - Evan Pratt

Moved by Derezinski, seconded by Adenekan, that the Ann Arbor City Planning Commission hereby waives the area plan requirement for the Hofmann Zoning petition because no new improvements or alterations to the site are proposed.

Moved by Woods, seconded by Derezinski, to postpone the Area Plan waiver request.

On a roll call, the vote was as follows, with the Chair declaring the motion passed and action on the Area Plan waiver request postponed.

Yeas: 8 - Bonnie Bona, Eric A. Mahler, Wendy Woods, Tony Derezinski, Erica Briggs, Kirk Westphal, Diane Giannola, and Eleanore Adenekan

Nays: 0

Absent: 1 - Evan Pratt