

## **JULY 7, 2009 PLANNING COMMISSION MINUTES**

a. Public Hearing and Action on City Place Site Plan, 1.23 acres, 407-437 South Fifth Avenue. A proposal to demolish seven existing buildings (total of 21 existing dwelling units) and to construct two three-story apartment buildings containing 24 rental units (144 bedrooms) total and 36 parking spaces –  
Staff Recommendation: Approval

Thacher explained the proposal and the process involved in it being considered again by the Planning Commission.

Tom Whittaker, president of the Germantown Neighborhood Association, expressed his opposition to this proposal, stating that it violated several literal readings of the zoning ordinance.

Glen Thompson, a licensed professional engineer, found it unbelievable that a proposal building of this height was acceptable in a zoning district where the maximum height allowed was 34 feet.

Karen Sidney, local resident, said it was her hope that the Planning Commission vote would be based on each member's conscience, not on the threat of being sued by the petitioner, adding that it was impossible to predict the outcome of a court action.

Kim Katchedorian, 204 East Davis Street, expressed her opposition to this proposal, referencing the systematic dismantling of neighborhoods that the City has been experiencing and the negative impacts that result.

Louisa Pieper, 408 Awixa, representing the Ann Arbor Preservation Alliance, expressed opposition to this proposal, stating that it did not meet the intent or the spirit of the neighborhood.

Ellen Dacory, representing the Michigan Preservation and Historic Network and the National Trust for Historic Preservation, urged the Planning Commission to deny this proposal.

Ellen Ramsburgh, 1503 Cambridge, expressed her hope that the Planning Commission would support the effort to pass a moratorium on new development in the R4C zoning district until the problems of the zoning district could be addressed.

Tom Luzac, 438 South Fifth Avenue, said he hoped the Planning Commission would table action on this proposal until the R4C zoning district was studied.

Beverly Strassman, 545 South Fifth Avenue, addressed the crisis of leadership in local government and how it pertained to this proposal and asked that the Planning Commission serve the greater good by taking all comments into consideration and voting against City Place.

Shirley Semple, 434 South Fourth Avenue, urged the Planning Commission to deny this proposal.

Ann Eisen, a resident at Fourth Avenue and Packard, believed this proposal was about destroying an entire neighborhood, not just seven houses.

Susan Whittaker, 444 South Fifth Avenue, believed the right action to take here was denial of the project, adding that now was the time to fix the problems with the R4C zoning district.

Alice Ralph, 1607 East Stadium Boulevard, provided her analysis of the last time the City Planning Commission reviewed this project, adding that she believed this project violated many of the definitions contained in the City's zoning ordinance.

Alex deParry, petitioner, stated that he has worked closely with staff to make sure this proposal met all applicable City Code requirements, adding that the only change that was made to the project was the use of the front setback averaging option.

Scott Munzel, attorney representing the petitioner, noted that the existing houses were older structures, have been rental units for decades, have taken a beating over the years and were highly energy deficient, adding that this area on a busy street was not a single-family neighborhood. He stated that this proposal was entitled to a positive recommendation from the Planning Commission.

Brad Moore, of J. Bradley Moore and Associates, architect representing the petitioner, explained design aspects of the proposal.

Fred Beal, 112 South Main Street, thought this was a good project, one that would bring more people to support the ongoing business of Ann Arbor.

Ray Detter, representing the Old Fourth Ward Association, believed the Planning Commission should encourage a moratorium on development in R4C zoning districts. He stated that there was nothing in any of the City's master plans that called for putting high density buildings in this area.

Claudio Vincense, a resident on South Fifth Avenue, believed the 'must approve' mentality has been propagated because of the uneven application of the R4C zoning standards and the Central Area Plan.

Noting no further speakers, Bona declared the public hearing closed.

**Moved by Carlberg, seconded by Derezinski, that the Ann Arbor City Planning Commission hereby recommends that the Mayor and City Council approve the City Place Site Plan and Development Agreement.**

Bona thanked everyone for attending the meeting this evening. She provided background information on the R4C zoning district, stating that it was created in the 1960s with the express intent of redeveloping older neighborhoods, which would involve demolishing buildings and constructing new ones. This was reinforced by the fact that the existing structures in the R4C zoning district were nonconforming, she said, noting that they would not be allowed to be built within the current zoning standards. She stated that the Planning Commission has been concerned about this and the Ordinance Revisions Committee has been looking at some of the specific code requirements; however, these details do not address the scale and character of neighborhoods, or infill or the assembly of lots. The Planning Commission recommended that City Council study the central area relative to the R4C and R2A zoning districts, she said, and now that the A2D2 efforts are almost completed, Council has passed a resolution to form an advisory committee to begin studying this.

Carlberg did not believe this could be treated as a new project, as the Planning Commission has seen it before in this form. She very much bemoaned the loss of these beautiful houses; however, she said, they were not legally protected and Planning Commission members did not have the basis to deny the proposal because they valued the existing houses more than they valued the proposed project. She stated that this proposal would not be before the Planning Commission tonight if the houses were protected legally. She did not find a difference of one story of height in a neighborhood a cause for inconsistency or incompatibility, noting that many neighborhoods contained houses of different heights and there were no problems. She did not buy the argument that the proposed housing was six efficiencies masquerading as one unit. She said so many arguments happened in group living because everyone shared one refrigerator. Students moving into dormitories brought their own small refrigerator and small microwave oven, even though there was a central kitchen for everyone to use, she said, so she did not see this as an acceptable argument. She stated that the outcome of the R4C study was not known, but said it could be a recommendation for higher density because this area was so close to the downtown. She could find no basis for turning this proposal down, noting that it met the minimum regulations of the City's ordinances. She stated that some parts of the project could be considered consistent with the Central Area Plan and some could not, but said this was not the determining document for the decision making here. She did not particularly care for the appearance of this project,

but said she believed dense residential development was suitable in this area and beneficial to the downtown area. She would support this proposal.

Derezinski stated that people had valid reasons for supporting and not supporting a development proposal and personal attacks made verbally during meetings were unacceptable. He stated that some speakers have said the Planning Commission members should do 'their duty.' He stated that this proposal met City ordinance requirements and that there were opinions to support this from Planning staff and the City's legal staff. He questioned what others would do as Planning Commission members in a situation like this, where a proposal met all legal requirements. If there were problems with the law that was being applied, he said, changing the law should be investigated. He stated that this was what he was trying to do by placing a resolution before City Council that would study the R4C zoning district. He wanted to get this process moving forward because about 90 percent of the buildings in the R4C zoning district did not meet the requirements of that district. In the meantime, he said, there may be projects proposed that meet the zoning requirements, such as the project before Commission tonight. He reiterated that it was the Planning Commission's duty to apply the existing City code requirements to this proposal.

Briggs stated that after reading the Planning Commission bylaws, she believed the Commission's charge encompassed more than just applying the zoning ordinance to development proposals. She said the majority of residents who have spoken about this project strongly oppose it and it seemed to her that Commission's charge was to do a little more than just follow the letter of the law. While this proposal may fit the letter of the law, she said, it did not seem to fit other objectives contained in the bylaws.

Mahler stated that when it came to interpretation of codes, legal binding documents and concepts, he started with one principle, which was that specific requirements trumped general ideas and concepts. In making decisions, he said, concepts should not be taken into account. He stated that issue could be taken with almost every statement in the Central Area Plan, which would be a never ending battle resulting in personal preference and stalled progress. Denying a project that met zoning requirements because some members of the community did not like it was a slippery slope, he said. He believed that was a hypothetical issue and was not what was before Commission this evening. With regard to the design of the building, he questioned whether an eave could be adjusted or if it were permanent.

Thacher said an eave was not defined in the City code; however, the working definition that staff used was the "projecting lower edges of a roof overhanging wall of a building." She stated that nothing about temporary or permanent was contained in the definition.

Mahler wondered if it were conceivable that someone could relocate an eave to adjust the midpoint. He stated the one point made this evening that might be considered technical noncompliance had to do with making the eave temporary, which could then be readjusted to change the midpoint, thereby creating a nonconforming structure.

Bona stated that while very small, there was a piece of the roof that was over the building, it was not just an overhang. She said the roof actually overlapped the building, as it did between the dormers, and changing that would require the structure below to be changed as well. It was not a separate piece, she said.

Mahler suggested that this might be an appropriate issue for the advisory committee to consider when reviewing the R4C and R2A zoning districts. He stated that he agreed with the comments of Commissioners Carlberg and Derezinski. He stated that this property was zoned R4C and the requirements of the R4C zoning district were readjusted long before the Central Area Plan was adopted. He pointed out that the property owners could have made a change to the zoning a long time ago, but it was never done. He was compelled to vote for this project, as it met the technical requirements of the zoning ordinance.

Woods stated that she has not found a reason to vote against this proposal. It was unfortunate, she said, that the petitioner could not find a way to come up with a project that would be best for the neighborhood.

She liked the way the existing houses looked on Fifth Avenue, but said the City was between a rock and a hard place in this situation. She believed she had very high ethical standards and stated that she was doing the best she could as a member of this voluntary commission.

Bona stated that with regard to the Commission's responsibility, she referred to the bylaws and noted that the charge of the Commission was not just to review site plans; rather, it also involved helping to create master plans, write ordinance changes, and involvement in the City's environmental commission. She stated that Chapter 57 of the City code identified the standards for site plan approval, which were the standards by which the Commission reviewed site plans. She agreed with the comments made about frustrations and the realization of what was before Commission. While it did not ease this situation, she said she would like to change the definition of height and the requirement for dwelling units to be bedrooms so there could be single-bedroom units. However, she said, they were not at that point yet. She clarified a comment made by one of the public speakers that she designed the site plan at 133 Hill Street, explaining that she did not design that site plan.

Briggs explained that this was the first time she had been involved in a discussion regarding this project. She stated that a number of people in the audience asked for a moratorium and, given the scope of this project and its irreversible impact on the character of the neighborhood, she believed it should be discussed. It seemed logical to her to put something like this on hold while reviewing inconsistencies with the zoning ordinance.

Derezinski noted that City Council would be making the decision on whether to place a moratorium on development in the R4C zoning district. What was before Commission this evening, he said, was the technical consideration of a site plan.

Carlberg noted that the City was asked to consider an historic district for this area and it was denied. She also pointed out that the study of the R4C and R2A zoning districts would not impact the vulnerability of these houses. She said they were owned by someone who may be interested in demolishing them, regardless of whether or not it was appropriate.

A vote on the motion showed:

YEAS: Bona, Carlberg, Derezinski, Mahler, Woods  
NAYS: Briggs  
ABSENT: Pratt, Westphal

**Motion failed.**