

## **MARCH 3, 2009 PLANNING COMMISSION MINUTES**

(a) Public Hearing and Action on Revisions to the Downtown Rezoning and Amendments to City Code to Implement the Ann Arbor Discovering Downtown (A2D2) Recommendations. (Properties within the Downtown Development Authority District (DDA) boundaries, excepting those zoned R2A, R4C, O, PL or PUD; properties zoned C2B on the west side of South Ashley between West Madison and West Mosley; properties zoned C2B on the south side of East Madison between the railroad and South Fifth Avenue; properties zoned C2B on the east side of South Fifth Avenue between East Madison and Hill; properties zoned C2A on the north side of Willard between East University and South Forest; properties zoned C2A on the east side of South Forest between Forest Court and the DDA boundary; and property zoned C2A on the south side of South University east of the DDA boundary.) A revised proposal to implement the recommendations of the A2D2 initiative, to include: 1) text and map amendments to Chapter 55 (Zoning) to eliminate the C2A, C2A/R and C2B/R districts and their references; 2) text and map amendments to Chapter 55 (Zoning) to add downtown core and interface base district uses and area/height/ placement requirements; 3) text and map amendments to Chapter 55 (Zoning) to add downtown character overlay districts and related design standards; 4) text amendments to Chapter 55 (Zoning) to revise floor area premium options; and 5) text amendments to Chapter 59 (Off-Street Parking) to revise requirements for the downtown special parking district (postponed from 2/19/09 meeting) – Staff Recommendation: Approval

The public hearing for this item was closed at the February 19, 2009 Commission meeting.

The three motions under discussion were:

**Moved by Derezhinski, seconded by Westphal, that the City of Ann Arbor Planning Commission hereby recommends that the Mayor and City Council approve amendments to Chapter 55 (Zoning) and Chapter 59 (Off-Street Parking) to implement the Ann Arbor Discovering Downtown recommendations.**

**Moved by Derezhinski, seconded by Westphal, that the City of Ann Arbor Planning Commission hereby recommends that the Mayor and City Council approve the proposed D1, D2, and PL District Rezoning, the Character Overlay Zoning District Rezoning, and the Building Frontage Rezoning as shown on the attached maps.**

**Moved by Derezhinski, seconded by Westphal, that the City of Ann Arbor Planning Commission hereby directs Planning staff to collect data about the impacts of the Downtown Rezoning and Amendments to City Code and further, that staff report back to the City Planning Commission about these impacts one year from adoption of the amendments.**

Bona read the three motions from the staff report, which were postponed at the February 19 meeting. She also noted that a question was raised after the last meeting regarding the number of affirmative votes needed to pass an amendment to a motion, two of which were voted on by a margin of 4-3 at the February 19 meeting.

Carlberg reported that according to the Commission By-Laws, a minimum of 5 affirmative votes were required to pass any motion, and that 6 votes were required to: adopt or amend plans; adopt or amend policy statements; recommend items to Council; grant special exception uses; or amend or alter the By-Laws.

Bona stated that based on this interpretation, both amendments from the prior meeting failed. She also repeated her explanation of the Executive Committee memorandum (Memo) that detailed the Commission's rationale for supporting the changes to the zoning ordinance, which

listed a set of facts about the proposed amendments, based on public comments and Steering Committee guidance since September 2008. For the benefit of the listening audience, she revisited the first zoning ordinance issue discussed at the February 19, 2009 Planning Commission Meeting, South University Character Area, from the Memo, noting that the Planning Commission was recommending D1 density, a 120-foot height limit, and clearly defined building setbacks in the South University Character Area,

Potts stated she had a problem all along with this, noting she made a motion in September to zone this area D2 in order to provide a buffer for residential neighborhoods. She described South University as one of several areas with no buffer, and she could not agree with 15-foot setbacks. She said 3-story buildings located only 15 feet away from property lines would be too close.

Potts made a motion to have the South University Area zoned D2.

There was no second to this amendment.

**Moved by Potts, seconded by Carlberg, to amend Table 5:10.20C – Downtown Character Overlay Zoning Districts Building Massing Standards in the draft ordinance by requiring a minimum of no less than 30 feet between residential property lines and new construction in the South University Area.**

Mahler said a vote was taken on this motion at the last meeting, which failed 4-3. Because the zoning amendment was postponed at the previous meeting, and was therefore part of the same public hearing at this meeting, he said the same motion could not be proposed a second time.

The amendment was withdrawn.

Carlberg said a motion to reconsider could be made by the majority.

Bona noted that in this case, the majority would be those opposed to the motion.

**Moved by Westphal, seconded by Carlberg, to amend Table 5:10.20C – Downtown Character Overlay Zoning Districts Building Massing Standards in the draft ordinance by increasing the Maximum Building Height in the South University Character Area from 120 feet to 165 feet, and to restore the previously stated diagonal requirements of 200-foot maximum for lower towers and 120-foot maximum for upper towers.**

Mahler asked what height limit was proposed in the motion that failed by a vote of 4-3 at the previous meeting.

Bona said 170 feet.

Borum noted that the diagonal requirement was a separate motion at the previous meeting.

Bona summarized the motion as increasing maximum height from 120 feet to 165 feet, and reintroducing the 200-foot lower diagonal and 120-foot upper diagonal maximums.

Carlberg Asked Commissioner Westphal if the rationale for the motion was because the existing South Forest building would be nonconforming, or because he believed these maximums were appropriate for the rest of the South University Area.

Westphal said it was partly because of nonconformance, and also because these maximums seemed to represent a palatable compromise between the public, the developer, the Commission and Council.

Carlberg asked what the impact of leaving the maximum height at the recommended 120 feet would be.

Rampson said the 601 Forest site plan was approved for three years, and if not built during that time, the project would have to comply with new code requirements.

Carlberg said she would not support the motion, because there is no buffer area. She was more comfortable leaving the height maximum at 120 feet, which was effectively 2 blocks on South University.

Enter Pratt.

Potts agreed with Commissioner Carlberg that 120 feet in height, roughly 11 or 12 stories, was quite tall compared to the houses and retail in the area. She believed a 120 foot height maximum was quite generous.

Bona supported the 165-foot height maximum and the diagonals, because it would allow more light and air between buildings. She believed reintroducing the diagonals would reduce mass, and she supported the variety.

Bona summarized the amendment for Commissioner Pratt.

A vote on the amendment showed:

YEAS:	Bona, Derezinski, Mahler, Westphal,
NAYS:	Borum, Carlberg, Potts, Pratt, Woods

### **Amendment failed.**

Bona read the Height Limits & Diagonals section of the Memo, and summarized the Commission's recommendation as follows: *the Planning Commission continues to support "no height limit" in most of the D1 district coupled with Diagonal requirements, except for the South University Character Area. (Height in the South University Character Area is addressed further below.) The Commission continues to support a 60-foot height limit in the D2 district.*

Potts saw nothing in the diagrams on pages 19, 20 or 21 of the draft plan suggesting slender towers. She described the example in the plan as a wedding cake, broad on the bottom and slender on top. She did not believe a building like this achieved the stated goals. The diagrams showed very bulky buildings, she said, not slender buildings allowing more air and light. She finished by saying the slight tapering resulting from these guidelines did not do the job.

Carlberg asked what the approximate base of a building would be with a 120-foot diagonal tower.

Bona suggested 100 feet by 100 feet, or 10,000 square feet.

Carlberg said that meant building on a site that is 105 feet by 105 feet or 110 feet by 110 feet.

Rampson said the base could be whatever size a builder chose, so long as the diagonal was met.

Carlberg was interested in knowing how many lots it would take to achieve a 120-foot diagonal. She guessed it would take 3 or 4 lots.

Rampson noted the standard downtown lot was 66 feet by 122 feet. She said it varied by parcel, as many have been cut smaller over the years, and it would be speculation at this point to guess how lots might be assembled. She suggested it might be difficult to achieve the 120-foot diagonal on most blocks.

Carlberg noted that historic districts further reduced the number of possible lot assemblies.

Rampson said there were cases of existing buildings adding a tower, but it depended on existing foundations.

Bona listed the Maynard house (100-foot diagonal), the Corner House Lofts (130-foot diagonal), and Glazier on Main Street (105-foot diagonal) as examples provided by Rampson.

Pratt was okay with unlimited height, because a 120-foot diagonal floor plate was pretty small. He noted that an 85-foot by 85-foot floor plate would result in a 120-foot diagonal. He agreed with Commissioner Potts that diagonals did not achieve slenderness, stating that from a development perspective the project either worked financially or it did not. He said there was an inherent tug of war between height and diagonals, because slenderness meant taller buildings, and diagonals drove up average height. He said once a building had to go above 4 stories, the jump was not to 5 or 6 stories, but to 9 or 10 stories. He said a diagonal did not change the look of a building of that size. He understood the concern by some people about not having height limits, but he believed a diagonal and a height limit hindered the goal of getting quality development downtown.

Bona read the Design Guidelines section of the Memo, and summarized the Commission's recommendation as follows: *the Planning Commission believes the Design Guidelines give more definition to the community's vision for downtown than is possible in our Zoning Ordinance or our Downtown Plan while allowing design flexibility and creativity. The Design Guidelines are on the Planning Commission Work Plan for recommended approval in June 2009, followed by Council approval. This schedule was preliminary and may need to be adjusted to allow adequate time for its review.*

Potts was not okay with the recommendation. She believed most of what they were talking about, such as height, diagonals, and mass, depended upon design guidelines, and she was uncomfortable talking about these things without reference to the design guidelines in the Zoning Ordinance. She questioned whether the height, diagonals and mass requirements they were passing would be appropriate for whatever design guidelines eventually emerged. She was pessimistic.

Carlberg asked staff whether the design guidelines would be completed by June.

Rampson did not believe June was realistic, because no timelines or meetings were scheduled with Winter & Company to assist staff. She said she had not talked to the Steering Committee about a revised timeline.

Bona said June was proposed last year, and that due to setbacks to the original timeline, work was already behind.

Carlberg asked for an anticipated date.

Rampson said the Steering Committee, which was meeting on March 6 to discuss comments from this meeting, had asked to set design guidelines aside, and that it had not been revisited. She said staff needed to meet with the consultant to develop a work plan.

Carlberg understood the concerns of those speakers who worked on the design guidelines that the guidelines were not linked hand in hand with the zoning. She said a date certain for

completion of the design guidelines would make her more comfortable, whether that be December 2009 or some other date.

Bona made note of Commissioner Carlberg's concern in the Memo, and emphasized that the Commission intended to complete the design guidelines.

Carlberg asked if the Steering Committee believed design guidelines were necessary.

Pratt said the Steering Committee, like the Planning Commission, recognized that existing design guidelines were not good enough. He said the Steering committee was looking at an independent review board, and was struggling with mandatory versus non-mandatory guidelines. He believed that no matter what was in place, some development would be unattractive, because you could not write legislation to please 115,000 people. He asked Rampson why some parts of the proposed zoning ordinance looked at design related issues.

Rampson replied that when the Design Guidelines Advisory Committee held 3 workshops with Winter & Company, there were recommendations for some design standards, like the shape of buildings, and some design guidelines, like the appearance of the building, its pedestrian friendliness, windows, etc. She said standards were numerically based, and, as such, were designed to be part of the zoning.

Pratt noted that some of the items went well with the ordinance, like building diagonals. He had no quarrel with wanting to see how the zoning and guidelines fit together, but he said there will always be subjective, non-numerical issues, which are difficult to quantify, and that those belonged in design guidelines. He believed it was easy to agree whether a building was shaped appropriately, but difficult to reach consensus on form. Standards, he noted, spoke to the trade off between tall and slender versus short and blocky buildings. He said the challenge was to figure out what is good enough, and that the Steering Committee was moving toward asking a panel or professionals to deliver a professional opinion. He noted the Commission did not strongly support the content of the current design guidelines, and that the vagueness in the document prohibited either the Commission, staff, or an independent panel from judging whether a specific project met the intent of the current guidelines.

Woods said Commissioner Pratt's comments got to the heart of why the Commission was involved in this process, because people did not like the way buildings looked. She agreed with Commissioner Carlberg that a time limit to complete the design guidelines would be welcome. She sensed frustration among the former Design Guidelines Advisory Committee members. On the other hand, she understood that no one wanted to be held responsible if the next set of design guidelines resulted in ugly buildings. She asked Commissioner Derezinski if Council had a timeline in mind for design guidelines. She asked that the Council not punt the issue back to the Commission, that they make a decision to give direction to the Commission.

Derezinski summarized the issue: there is a proposed zoning ordinance before the Commission, and we must decide whether to go ahead with approval of the underlying ordinance without perfection of the design guidelines. To approve the ordinance alone, he said, would indicate that the two are separate, and that the Commission and Council would hope in good faith that the design guidelines would follow. He said guidelines were essential, but he believed the Council wanted to look at the ordinance now and take action. His sense was to move forward with the ordinance, and to have staff and the Commission complete the design guidelines within a reasonable timeframe. He said the process could not go on forever, but that the design guidelines should not halt the whole process. He asked if December was a reasonable deadline.

Rampson was unsure, but she said Winter & Company was interested in working with the City, and that it depended on availability.

Derezinski believed the end of the year seemed reasonable.

Pratt said he, as a Steering Committee member, was hoping for an even earlier date to put something before Council. He anticipated debate at the Council level, but hoped to move on the design guidelines quickly, perhaps by the end of summer at the latest.

Bona believed once the ordinance was complete, working through design guidelines would be an easier, more efficient process.

Potts said Commissioner Carlberg asked the right questions, and that Commissioner Pratt laid out the dilemma. She said many presumptions had already been made about design guidelines in the ordinance, and she feared these presumptions would shape the design guidelines. She worried about setbacks in residential neighborhoods. She understood why the design guidelines were put aside, but she believed the guidelines and zoning had to go hand in hand, because many of the standards in the ordinance would either help or hurt good design. She could not vote for the ordinance, because she was not ready to measure and enforce measures without the guidelines.

Carlberg asked if there was work for the Commission beyond reviewing the design guidelines.

Bona understood the Commission's role to be to respond to the draft.

Rampson said the Steering Committee did not plan to reconvene the Design Guidelines Advisory Committee, and staff would prepare the design guidelines and bring the draft to the Commission.

Pratt said the Steering Committee had not discussed specific plans yet, but he noted the current design guidelines were 45 pages long, and that they were confusing. He stated the goal as quality residential development downtown to support the good jobs that are being created at the University of Michigan. He noted a SEMCOG study suggesting that good paying jobs, between \$60,000 and \$110,000 in salary, are and will continue to be generated by the University, and that the City needed living space for these people. He said there was a housing and transportation shortage, and that maybe an additional 2,500 units of housing were needed.

Bona said she would revise the Memo to reflect the Commission's desire to receive realistic direction from Council. She then read the Flood Plain section of the Memo, and summarized the Commission's recommendation as follows: *the Commission recommends that all floodplain regulations be incorporated in the new Floodplain Ordinance and not in the downtown zoning. The Commission will be seeking Council input on the proposed floodplain policies before the ordinance is finalized. This is on the Commission's Work Plan for recommended approval in July 2009, followed by Council approval.*

Woods asked whether overlay districts superceded zoning.

Rampson replied yes, that overlay districts added further restrictions to zoning, and that the restrictions varied from overlay district to overlay district. She said the flood overlay district would supercede the underlying zoning.

Woods asked if the City Attorney's office would review the floodplain ordinance to ensure that the zoning and overlay were in agreement.

Rampson replied that with zoning in place, staff could work through hypothetical situations with the floodplain. She said that, primarily, restrictions were placed on flood ways, and that there was some room for development in flood plains.

Woods asked whether the property next to the new YMCA was on a floodway or floodplain.

Rampson replied that it was in a floodway, and that significant restrictions were in place in the Old Westside.

Pratt remembered discussing this issue in 2007, noting that the questions raised by those who sent in floodplain comments were the right questions, and that they were discussed at great length. He estimated that staff and the City Attorney's office had spent 8 months going over what the City can and cannot do in the flood plain. He praised staff for the job they did exploring hypothetical examples of loopholes.

Bona then read the Density section of the Memo, and summarized the Commission's recommendation as follows: *the Planning Commission continues to support the Floor Area Ratio recommendations. These levels meet the broad goals identified in the Calthorpe Report and the recommendations of the Zoning Advisory Committee.*

Rampson clarified that premiums were not allowed in floodplains.

Potts could not go along with the heights.

Bona asked if Commissioner Potts had a problem with the densities.

Potts replied density with building mass was what she had a problem with.

Bona asked if Commissioner Potts had any recommendations.

Potts replied no.

Bona asked Commissioner Potts if she would like to see density stay at 660% in D1 districts.

Potts agreed.

Bona asked Commissioner Potts if she was okay with the Commission's recommendation of a maximum of 400% in D2 districts and a height restriction of 60 feet.

Potts said yes, but she was having trouble picturing it.

Westphal asked to be reminded of the original D1 by-right ranges of FAR premiums as proposed by the Zoning Advisory Committee.

Rampson replied 400-500% in D2 and 700-800% in D1. She noted one change was to offer more premiums, so that more opportunities would exist to exceed by-right floor area, allowing office and other buildings to exceed premiums.

Bona noted there was also a desire to have an affordable housing super premium that staff felt was necessary to attract affordable housing.

Westphal had some reluctance about moving forwarding without guidelines, but he was comfortable knowing the increases were negligible. He believed a timeline would be a good thing.

Bona read the Buffers & Setbacks section of the Memo, and summarized the Commission's recommendation as follows: *the Planning Commission continues to support the proposed building setbacks along adjacent residential districts in all the Character Areas except for South University. The depth of these setbacks is reasonable for the traditional and typical small size of downtown sites. Larger setbacks would encourage the assembly of lots and could make some sites very difficult to build on.*

Potts asked for the page numbers of the setbacks in the draft plan.

Bona replied pages 22 and 23, and asked Rampson to summarize the setbacks in different areas.

Rampson summarized the various setback requirements in different neighborhoods, noting that the maximums were based on the characteristics of the areas and districts.

Borum asked what were the existing setback requirements in the South University area.

Rampson replied that it depended on the specific lot and building height. In R4C, she said, it was not a straight 15 feet or 30 feet.

Borum said the current rear setback was 30 feet. He asked if the proposal was to reduce this number.

Bona confirmed that the rear setback was proposed to be reduced from 30 to 15 feet, but that the other setbacks would remain the same.

Rampson noted in R4C, an inch and a half per foot of building height was tacked on to the required setback.

Potts assumed the setbacks in question were 15 feet from the lotline of residential properties in R4C districts, whether a single-family home or an apartment building. She believed 15 feet was far too small, and that a 30-foot setback from a 3 story or taller building was also inadequate.

**Moved by Potts, seconded by Carlberg, to amend Table 5:10.20A–  
Downtown Character Overlay Zoning Districts Building Massing Standards  
in the draft ordinance by increasing the minimum setback in the East  
Huron Character Area Character Area from 15 feet for buildings up to 30  
feet in height and 30 feet for buildings taller than 30 feet in height to a  
straight 30-foot minimum setback, regardless of height.**

Carlberg supported this motion because she also supported the similar South University Character Area motion. She said the commercial properties to the north of the East Huron Character Area made a 30-foot setback appropriate.

Westphal asked if shading would be more restricted in this area because buildings could not be built within 150 feet from the East Huron property line.

Carlberg said, having looked on Ann Street, that those buildings were very tall and very noticeable.

Bona wanted to confirm that the proposed 30-foot setback applied only to the first 30 feet of a building, and not to the tower.

Rampson confirmed that towers would have greater restrictions.

Carlberg said a 3-story building within 30 feet of someone's backyard was still tall. She believed a 30-foot setback was more humane in residential areas.

A vote on the amendment showed:

YEAS: Carlberg, Potts, Woods  
NAYS: Bona, Borum, Derezinski, Mahler, Pratt, Westphal

**Amendment failed.**



Bona then read the Premium section of the Memo, and summarized the Commission's recommendation as follows: *the proposed Premiums generally align with the recommendations of the Calthorpe Report and the more detailed conclusions of the Zoning Advisory Committee. The intent with the Premiums is to get identified public benefits in exchange for allowing additional floor area (up to a maximum). The Residential Premium was reduced from the current ordinance based on a desire to balance the use of all the premiums. With the recent popularity of residential projects, it is important to make sure the community also gets the benefits of the other premiums. The use of the Premiums will ultimately be decided through a developer's financial analysis considering the economic climate at that time. As this is a moving target, the incentives (increase in floor area percentage) will need to be evaluated on a regular basis to assess how they are being used and if the percentages need to be adjusted to encourage benefits that are not otherwise provided. A Premium for transfer-of-development-rights has not been included. The Commission recommends that this be reconsidered for inclusion in the future (currently under more detailed review) as a tool that could be used to protect some historic buildings or could encourage dedicated open space, such as in the Allen Creek floodplain.*

Potts commented on the Historic Preservation Premium on page 37 of the draft ordinance, stating she believed it should be left to Chapter 103 of the City Code as to what is or is not permitted on lots containing historic buildings. She was concerned with the language allowing up to 50% of the lot area in excess of the normal maximum usable floor space.

Rampson replied the premium was suggested because some downtown properties not located within historic districts were not protected. The premium encouraged developers to maintain historic buildings as part of a project by allowing excess floor area elsewhere on the site.

Potts said any development on such a site would damage the historic resource.

Rampson noted the affected properties were defined, but not designated as, historic, meaning the property owners had voluntarily registered their properties and have no protections. She described the premium as one way to encourage a property owner to keep historic buildings on site, by allowing greater premiums elsewhere. She said she could talk to the City Attorney's office about a better way to word the premium language.

Potts was appreciative, but said she still failed to see how an historic building could be preserved if a large, other portion of the lot were developed.

Woods asked Rampson if the entire historic resource needed to be preserved to receive the premium, or whether a developer could simply preserve a façade, as has been done on the University of Michigan campus.

Rampson said the premium was intended for the preservation of a whole building, not just façade. She said the same standards as in historic districts would be used to ensure the intent, and that she would work with the City Attorney's office.

**Moved by Potts, seconded by Carlberg, to amend Section (a) of the Plaza Premium on page 39 of the draft plan to read as follows: "(a) Have a minimum dimension of 10 feet; and occupy not less than 500 square feet; and."**

Potts believed 500 square feet was large enough to have the potential for an interesting streetscape, but felt requiring plazas on corners prohibited creativity.

Bona asked if the corner requirement was from the original ordinance.

Rampson confirmed that it was.

Borum supported the amendment because he believed it was important to have buildings on corners, and that corners defined blocks, creating a relationship between the public aspect and the street. He believed open corners broke down the larger coherency, and that plazas in the middle of blocks helped to break up the urban wall.

Bona asked if plaza meant open to the sky, and not just a recess.

Rampson confirmed that was true.

Woods asked for examples of corner plazas.

Borum offered the corner of South University and East University. He believed this plaza broke down the continuity on those blocks.

Bona mentioned the new Ford School of Public Policy as an example.

Carlberg offered the front of the county courthouse.

Derezinski asked for staff's recommendation on the proposed amendment.

Rampson said staff could go either way. She believed Commissioner Borum made a compelling argument, but noted that midblock plazas were often viewed as not as inviting or as welcoming as corner plazas.

Bona then read the Open Green Space/Open Space section of the Memo, as she believed it pertained to the current discussion, and summarized the Commission's recommendations as follows: *the Planning Commission does not recommend green space or open space requirements as a part of private development in the downtown districts beyond the front open space required on Front Yard Streets at this time. This should be re-evaluated once the Park Advisory Commission identifies a method of quantifying urban open space.* She was unsure whether this information complicated or helped the discussion, and mentioned that the Park Advisory Committee had also struggled with defining a "good" plaza.

Carlberg believed a successful plaza was dictated by what was going on in the buildings surrounding around it. She believed a midblock plaza could be successful, but it was not possible to legislate successful plaza locations. She believed removing the language about corners gave developers options.

Potts said that open spaces between buildings added to the streetscape and architecture in general, and did not want to inhibit creativity on the part of developers with language about corner versus non-corner plazas.

Westphal mentioned that, at the initial discussion, he may have proposed removing the plaza language altogether from the ordinance. He said the Liberty Plaza on public land has required significant public resources and police presence. He hoped plaza premiums would be used judiciously, noting it was harder to build a good plaza than a good building.

Derezinski asked if a premium would encourage putting plazas on corners, and asked whether it was desirable to have plazas specifically on corners as opposed to just having plazas in general (anywhere).

Rampson said the thinking 15 years ago was to encourage corner plazas. She noted that ideas evolved, and that the key was to have plazas in places that encourage use by the public. She said staff was fine with removal of the restriction.

Bona stated that removing the premium for plazas would not prohibit the installation of plazas anywhere.

Westphal asked if anyone else would be in favor of removing the plaza premium.

Bona said the Commission needed to act on this amendment first.

A vote on the amendment showed:

Woods YEAS: Bona, Borum, Carlberg, Derezhinski, Mahler, Potts, Pratt, Westphal,  
NAYS: None

**Amendment carried unanimously.**

After a brief recess, Bona asked if anyone would like to move to postpone the Transportation Plan item from the March 3<sup>rd</sup> to the March 17<sup>th</sup> meeting.

**Moved by Carlberg, seconded by Borum, to postpone the Public Hearing and Action on the 2009 City of Ann Arbor Transportation Plan Update.**

Bona said after the current item, the Commission would open the public hearing for the Transportation Plan and postpone it to the March 17<sup>th</sup> Commission meeting.

A vote on the motion to postpone showed:

Woods YEAS: Bona, Borum, Carlberg, Derezhinski, Mahler, Potts, Pratt, Westphal,  
NAYS: None

**Motion to postpone carried unanimously.**

**Moved by Westphal, seconded by Borum, to remove the Plaza Premium (page 39) from the draft zoning ordinance, until further study.**

Mahler asked staff to explain the history of this section of the Zoning Ordinance, and specifically why the plaza premium was included in the ordinance.

Rampson replied all premiums were added to the ordinance as part of the Central City High Rise Study in 1967, which was the first attempt to design incentives in the ordinance. The current version, she said, was updated in the early 1990s, including the plaza section.

Mahler asked Commissioner Westphal what he was hoping for from the motion.

Westphal replied beneficial plazas were tough to design, and removing the plaza premium would help to avoid offering premiums that become dead space. He hoped the Park Advisory Commission could strategically review plaza locations.

Mahler asked Commissioner Westphal what kinds of questions he hoped to see answered.

Westphal replied one question was whether plazas are beneficial in downtown, and, if so, where they should be located. He hoped to prevent plazas from being installed without thought.

Mahler asked about premiums.

Westphal said he was recommending removing plazas from premium options to study whether their installation was worth incentivizing.

Woods supported leaving the language in the ordinance, because the issue of private plazas was not under the purview of the Park Advisory Commission, which dealt with public land and did not receive plans to review. She said in terms of plaza premiums, application for which was rare, she preferred to leave open the option for rewarding creative design. She noted that some premiums were far more beneficial, from a developer's point of view, and that the plaza premium was probably often ignored.

Derezinski asked for staff comments, and whether holding off on offering a plaza premium would add to the discussion on plazas.

Rampson mentioned that there was a section in the draft design guidelines dealing with plazas, and that it could be used. She also mentioned that there was some discussion of public realm planning as a follow up to A2D2.

Potts believed irregularities along the fronts of buildings were important and interesting. She believed it was a public benefit to have variety in the streetscape. She believed premiums offered incentives to consider these issues.

Pratt recalled voting against this motion previously, but, after some thought, decided to support Commissioner Westphal's motion. He noted developers could still install plazas, but he did not remember the premium ever being used. He believed it made sense not to reward someone for a feature that is arguably detrimental to the built environment.

Carlberg supported leaving the premium in the ordinance, stating that to remove it invited wall to wall buildings. She believed outdoor seating was useful and created ambiance, and that plazas prohibited lots of floor space, making incentivizing important. She listed Huron Street as a good example of a street in need of plazas.

Potts suggested that perhaps the City's setback requirements were restricting plazas.

Rampson replied the primary street setback requirement was a 1-foot maximum, with an exception for plazas, entry areas, etc., except in the downtown core, of up to 20% of the frontage.

Bona noted on secondary streets, the setback was greater.

Rampson confirmed that there was a 10-foot maximum on secondary streets.

Borum asked whether, on secondary streets, a 10-foot setback with 500-square feet of open space would qualify for a plaza premium.

Rampson confirmed that if the space was being used as a plaza, the answer would be yes, so long as all of the requirements were met.

Westphal believed the language was unclear as to criteria.

A vote on the amendment showed:

YEAS:	Bona, Borum, Pratt, Westphal
NAYS:	Carlberg, Derezinski, Mahler, Potts, Woods

**Amendment failed.**

Bona read the Allen Creek Greenway section of the Memo, and summarized the Commission's recommendations as follows: *the concept for the Allen Creek Greenway is supported in the current PROS Plan, the current Non-Motorized Transportation Plan and the new Downtown Plan. Because the majority of the Allen Creek floodplain extends beyond the downtown, the Commission does not support using the downtown district zoning to direct its planning.*

Potts said her only concern was that it was within the downtown zoning.

Bona suggested this concern could be addressed through other overlay districts. She then read the Active Use section of the Memo, and summarized the Commission's recommendations as follows: *the Commission continues to support the 60% minimum frontage of first floor retail on identified "active use" streets to reinforce independent local retailers that depend on pedestrian traffic between adjacent uses for their survival. This includes the main retail sections of Main Street, State Street, Liberty Street, Washington Street and South University. New nonconforming uses can continue (see Chapter 55, 5:86).*

Mahler asked if the Commission was on solid legal ground with regard to permitting nonconforming uses to continue and to allow them to be replaced with new, nonconforming uses.

Rampson replied that this language allowed existing nonconforming uses to continue or be replaced, but not to expand. She noted it as an unusual, but allowable scenario.

Mahler asked whether a new but different nonconforming use would be permitted in an existing building if the space were not modified. In other words, he said, the use would be modified but not expanded.

Pratt asked if the language in the Memo could be revised. He said in most cases, this example would involve a different business moving in and continuing the same type of use, such as a café replacing a café.

Mahler said the language made it sound like he could modify his use, so long as no expansion took place.

Pratt suggested the language be changed from "new" to "continued" nonconformance.

Mahler said he preferred the word "existing."

Westphal suggested "nonconforming may continue in accordance with existing code."

Potts agreed that referencing code was best, because code was clear.

Bona noted the recommendations.

Bona read the North side of East Huron (Division to State) section of the Memo, and summarized the Commission's recommendations as follows: *the Commission continues to support the compromise of maintaining the D1 district on this block with the additional tower setback from the adjacent residential districts.*

Potts said a 15-foot setback was not enough protection from development to the north.

Potts made a motion to rezone the north side of Huron (from Division to State) to a D2 district.

There was no second to this motion.

Bona noted that the Downtown Plan had been approved at the February 19<sup>th</sup> Commission meeting. She then read the Massing Standards, Character Areas section of the Memo, and

summarized the Commission's recommendations as follows: *the Commission continues to support the eight (8) Character Areas and the inclusion in the Zoning Ordinance of the design Massing Standards.*

Potts agreed with the identification of the eight Character Areas, but she had a problem with their descriptions, stating she believed the area and height provisions did not seem to correspond to the descriptions.

Bona asked Commissioner Potts to be specific.

Potts read the description of Kerrytown on page 18, and then read from the Kerrytown Massing Standards on page 23. She believed the small setbacks in Kerrytown were inadequate, given the area's D2 zoning and 60-foot building heights.

Bona asked Rampson if there were an example of design guidelines that helped define the guidelines Commissioner Potts was talking about.

Rampson replied that an example would be the roof form design guidelines that matched the characteristics of specific areas, such as peaked versus flat roofs. She said each Character Area had specific contexts to accompany their numerical standards. She said the Character Area intent statements came from these guidelines.

Bona asked if it were true that, using Kerrytown as an example, if someone proposed an 8 instead of a 10-foot sideyard setback in a planned project, the intent statement would help the Commission to judge the project.

Rampson replied perhaps. She said planned project guidelines contained nothing currently that speaks to meeting an intent statement. She said it would be an interpretation using existing standards.

Bona thanked Rampson, and asked for other comments on massing standards.

Potts made a motion to limit the height of buildings in Kerrytown to 30 feet.

There was no second to the motion.

Potts commented on Rampson's statement regarding intent statements coming from design guidelines. She noted that there were descriptions in one place and numbers in another, and was concerned that greater heights were being permitted in areas adjacent to residential neighborhoods.

Woods asked for clarification regarding whether Character Overlays superceded the underlying zoning in a district.

Rampson replied that Overlays do not supercede zoning, but they do add a layer of complexity. She said D1 or D2 indicated the base zoning. Character areas, she said, controlled the shapes of the site, including setbacks, street-wall height, diagonals, etc. She said design guidelines would talk about skin or exteriors of buildings.

Potts believed Commissioner Woods asked an important question. She was very concerned about zoning, character overlays, and design guidelines not working together. She said she viewed design guidelines as covering mass, height, and scale, not superficial building skins. She was afraid that the exact heights and sizes codified in the ordinance would limit the discussion of guidelines.

Pratt understood Commissioner Pott's frustrations, but he was less concerned with where Commission expectations were written than he was with Commission reaching agreement on the expectations.

Potts believed zoning was taking away from the ability to craft design guidelines, and was frustrated that the Design Guidelines Committee had been disbanded. She said quite a few people were in favor of greater restrictions on massing.

Bona read the Simplifying the Code section of the Memo, and summarized the Commission's recommendations as follows: *the Commission believes that the proposed zoning district boundaries are far more consistent and logical. The Commission also believes the proposed ordinance amendments are clear and the new technology tools will make navigation much easier for developers and citizens.*

Potts agreed that simplifying the code seemed like a good idea, but she was afraid it had become a one size fits all. She believed categorizing everything as either D1 or D2 put a straight jacket on downtown. And that the City would pay a high price for simplifying.

Bona noted that there were 8 Character Areas and three types of street frontages in the downtown.

Bona read the Downtown District Boundaries section of the Memo, and summarized the Commission's recommendations as follows: *the Commission has excluded nonresidential properties in the Old Fourth Ward and the Old Westside historic districts from rezoning due to the residential character (and primarily residential use) of these historic districts and the fact that they were created after, and in reaction to, their current zoning designations.* She noted that there were approximately a dozen properties excluded on Ashley and in the Old Fourth Ward, on Ann Street and Division Street.

Rampson commented that these changes were from discussions last summer.

Potts confirmed that these areas were removed from D1 and D2 districts.

Bona said they would remain zoned Office or C2B.

Bona read the Parking section of the Memo, and summarized the Commission's recommendations as follows: *the Commission has added that any premium for public parking on private property meet DDA standards. Additionally, the Commission has clarified that required residential bike parking must be enclosed and lockable.*

Potts asked how parking in excess of what was required would be treated.

Bona said that any above grade parking would count against the floor area ratio. She then read the Non-Conformities section of the Memo, and summarized the Commission's recommendations as follows: *the Commission has changed the new massing standards to only apply to new buildings or additions.*

Carlberg asked for clarification on the language on page 15 stating a minimum height in D1 and D2 districts. She recalled Council approving a 2-story minimum height requirement.

Rampson said the language carried over from the current C2 and C2R district language in the code. She said the requirement was just being carried forward under D1 and D2 districts.

Carlberg did not understand the impact.

Rampson said if a 1-story building wanted to add on, but not build a second story, the City would not want to have to force them to build a second story. She said the language was designed to protect existing 1-story building.

Bona asked if the Memo missed any other topics brought up by the public.

Potts made a motion to require 30-foot buffers between historic preservation sites and new buildings.

There was no second to the motion.

Westphal was concerned about the outcome of the debate on the South University Area. Using 601 Forest as an example, he said the proposed height limit of 120 feet was much shorter than the approved height of 165 feet for 601 Forest. He was concerned that redevelopment in the South University area would not resemble what the public had approved through compromise. He believed the height limit would constrain creativity and the desire to move mass away from residential neighborhoods, and that it would tie the hands of developers. He said if the 120-foot height limit was because of proximity to residential areas, then he would support increasing the height limit to 150 feet and extending the buffer area to 30 feet from abutting residential uses.

Bona noted the setback in the South University area was 15 feet for buildings up to 3 stories, and 30 feet for taller buildings. She asked Commissioner Westphal if he was recommending an additional 30-foot setback.

Westphal said no, just a straight 30-foot setback.

**Moved by Westphal, seconded by Carlberg, to amend Table 5:10.20C – Downtown Character Overlay Zoning Districts Building Massing Standards in the draft ordinance by increasing the Maximum Building Height in the South University Area from 120 feet to 150 feet and increasing the minimum Side and Rear Setbacks in the South University Area from 15 feet to 30 feet for all buildings.**

Mahler asked if Commissioner Westphal was proposing anything to be done with diagonals.

Westphal asked for input from an architect with regard to diagonals.

Carlberg said that while she seconded the motion for discussion, she was not sure she saw a difference between 150 feet and 120 feet, because the only place buildings of this size could be built was along South University Avenue to Willard Street. She was concerned that as buildings were taken down, their replacements would form a canyon-like corridor effect. She was in favor of the setback.

Borum said the potential to use diagonals could reduce the potential canyon effect. He was interested in rear setbacks, and would support an increase in height with or without diagonals to gain the buffer.

Mahler believed that with a 30-foot setback, there was no longer a need for diagonals. He said the larger buffer would have the same affect as a diagonal, which was a desirable affect as far as he was concerned. He preferred 160 or 170-foot height limits, but he said 150 feet could work. He would support the 30-foot setback.

Carlberg asked for an explanation of what might happen along South University as existing buildings began to get demolished.



Borum said if it were a year ago, he would have anticipated pretty tall buildings, something like the 601 Forest project. He could foresee a time when the block between East University Avenue and the current 601 Forest project would be fully developed. Without diagonals, he said, it might look like a long slab of buildings along the street. He noted Zaragon Place was on a smaller lot, and the City ended up with bedrooms without windows. He said that slender upper floors result in more residential and livable spaces. He said residential space works better when buildings are taller and slenderer. He offered Zaragon Place as an example of a big, flat floor-space with artificial air, dead spaces and no light. He said 601 Forest was proposed as a taller, more slender building.

Bona said the former diagonal for the South University area 200 feet for lower towers and 120 feet for upper towers.

Westphal asked if Zaragon Place would have failed to comply with these diagonal requirements.

Rampson replied that Zaragon Place probably would have complied with those requirements.

Carlberg asked where things stood with regard to the proposal for diagonals.

Bona was interested in seeing more height on South University to avoid the slab like feel. She said 150-foot height limits would create more air and light than 120-foot height limits, and that she had no strong feelings on setbacks. Regarding diagonals, she did not know what the right threshold was. She said that although Zaragon Place complied with the regulations, it did not meet the window requirements. She said she would support the motion with or without diagonals.

Potts said the 601 Forest project was proposed to be built on a large piece of land, giving the developer the ability to create a slender, L-shaped building. She said 150 feet was not much shorter than the tall tower currently on South University Avenue, and that even a 30-foot setback was insufficient. She would not support the motion.

Pratt believed the motion was a pretty reasonable compromise, and he would support an even taller height limit. He said he heard speakers loud and clear that they wanted more distance between their properties and tall buildings, whether the buildings were 10 or 20 stories tall.

Carlberg believed there was a need for diagonals, or else the area would be populated by Zaragon Places. She said she needed a diagonal.

Mahler asked Commissioner Carlberg if she was seeking a diagonal and a 30-foot setback.

Carlberg said yes.

Mahler replied that he would not support that.

Westphal said the number of properties that this would apply to was minimal.

Pratt stated it would be difficult to max out at 150 feet in height, meeting the floor area ratio, and satisfying the 30-foot setback, unless it was a very large lot.

Westphal said his intent with a 30-foot setback was not to restrict the rest of the district regarding height, only a few properties.

Bona mentioned four properties on Forest Court, plus the Mudbowl.

Mahler asked Commissioner Carlberg about her concern.

Carlberg replied she was concerned about the length of South University Avenue and along Church Street.

Mahler asked if the 30-foot setback would apply.

Carlberg said someone could buy up lots.

Westphal offered to amend his motion to a 170-foot height limit, with the original diagonals and a 30-foot minimum setback.

Bona said that would be a 200-foot diagonal above the base, regardless of height.

Borum suggested a 150-foot diagonal on the lower tower.

Westphal agreed, and withdrew his amendment.

**Moved by Westphal, seconded by Borum, to amend Table 5:10.20C – Downtown Character Overlay Zoning Districts Building Massing Standards in the draft ordinance by increasing the Maximum Building Height in the South University Area from 120 feet to 170 feet, increasing the setback adjacent to residential properties to a minimum of 30 feet, and establishing a maximum 150-foot diagonal on lower towers.**

Borum supported the new amendment.

Woods supported the amendment, because of the 30-foot setback. Her biggest concern was for residents. She still believed 30 feet was pretty close, but it was better than 15 feet.

Derezinski asked what the Zoning Ordinance said without the amendment.

Bona replied that it said 120-foot maximum height, no diagonals, and a 15-foot setback from buildings 30 feet tall or shorter, and a 30-foot setback from buildings over 30 feet tall. She supported the amendment.

A vote on the amendment showed:

YEAS: Bona, Borum, Carlberg, Derezinski, Mahler, Pratt, Westphal, Woods  
NAYS: Potts

**Amendment carried.**

Woods had nothing to add, but wanted to suggest that building height maximums for the various Character Areas be added when staff prepared the zoning ordinance amendments to go to Council.

Rampson replied she could add a reference table for height, such as “for height see table X or Y,” but because height was different by district and Character Area, they could not be listed in the tables.

Bona said that before a vote was taken, she wished to summarize a few other recommendations from the Executive Committee Memorandum: *while the Commission has remained true to the broad principles outlined in the Calthorpe Report and the recommendations of the Implementation Advisory Committees, a lot of interested individuals with differing views on how to achieve those goals have participated in drafting the ordinance language. The Commission believes that the proposed ordinance, with some modifications from the version recommended in September 2008, is the best possible effort given what we know with some reasonable speculation about longer-*

*term impacts. We have sincerely considered all of the issues brought forward by the public, some several times. This draft is far better and goes much further than our current ordinance towards aiding the City in accomplishing one of our most important and agreed upon goals – to create and maintain a vibrant downtown. For all these reasons, and because of the tremendous amount of public input throughout this process, the proposed new ordinance should be enacted. Our understanding and experience is that every community needs to periodically evaluate unintended issues that result from zoning ordinances and related documents. We recommend a full review of implementation issues within 12-18 months of adoption by City Council, to ensure that issues are quickly addressed.*

Potts asked to share some of her remaining concerns about the new zoning ordinance before a vote was taken. She believed the new, draft zoning ordinance reflected much of the public input elicited by the Commission since September 2008, when Council directed the Commission to seek broader public input. She believed that many issues of importance to the public were not adequately addressed in the document, including: *downtown zoning was not limited to within DDA boundaries; areas where D1 core zoning abutted residential were not given a D2 zoning as a buffer, nor given adequate setback buffers; no public green open space was described or located, only portions of the floodplain on downtown's west edge; no reference to the design review process was included; the descriptions of the Character Area Overlays were not reflected in the new zoning for South University Avenue, East Huron, and Kerrytown; construction on the newly zoned D1 section of Washtenaw Avenue will be required to have 1<sup>st</sup> floor commercial/retail – the only retail on Washtenaw Avenue from Platt Road to the University of Michigan on Huron Street.* She concluded by saying she believed the new zoning ordinance failed to improve the downtown, and that new problems could be caused by its adoption. She believed the sense of place and scale in Ann Arbor that people valued was jeopardized by the new ordinance. She finished by saying she believed ideas from the public offered opportunities to improve the draft zoning ordinance.

A vote on the three main motions showed:

YEAS: Bona, Borum, Carlberg, Dereziński, Mahler, Pratt, Westphal, Woods  
NAYS: Potts

**Motions carried, read as follow:**

**Moved by Dereziński, seconded by Westphal, that the City of Ann Arbor Planning Commission hereby recommends that the Mayor and City Council approve amendments to Chapter 55 (Zoning) and Chapter 59 (Off-Street Parking) to implement the Ann Arbor Discovering Downtown recommendations, subject to the following amendments to the draft ordinance:**

- 1) Section 5:1 (55) Usable Floor Area, Nonresidential:** add the following text to the end of the second sentence: “..., except those portions of a parking structure used for required premium or PUD parking.”
- 2) Section 5:65 (2)(e)(2) Plaza:** delete “Be located at a corner lot bounded on two sides by two intersecting public streets, be located at the corner closest to the street intersection,” to read as follows: “(a) Have a minimum dimension of 10 feet; and occupy not less than 500 square feet; and;”
- 3) Table 5:10.20C – Downtown Character Overlay Zoning Districts Building Massing Standards:** amend the South University character area to increase the Maximum Building Height from 120 feet to 170

**feet; change the required side and rear setback adjacent to residential properties to a minimum of 30 feet; and establish a maximum 150-foot diagonal for towers.**

**Moved by Derezhinski, seconded by Westphal, that the City of Ann Arbor Planning Commission hereby recommends that the Mayor and City Council approve the proposed D1, D2, and PL District Rezoning, the Character Overlay Zoning District Rezoning, and the Building Frontage Rezoning as shown on the attached maps.**

**Moved by Derezhinski, seconded by Westphal, that the City of Ann Arbor Planning Commission hereby directs Planning staff to collect data about the impacts of the Downtown Rezoning and Amendments to City Code and further, that staff report back to the City Planning Commission about these impacts one year from adoption of the amendments.**