

PLANNING AND DEVELOPMENT SERVICES STAFF REPORT

For Planning Commission Meeting of June 5, 2018

SUBJECT: 1140 Broadway Rezoning to Add Conditions to C1A/R With Conditions Designation

File No. Z18-005

PROPOSED CITY PLANNING COMMISSION MOTION

The Ann Arbor City Planning Commission hereby recommends that the Mayor and City Council accept the offer for a new condition to tie development in the C1A/R With Conditions district to the 1140 Broadway Planned Project Site Plan and revise the height limit condition by approving the amendment to the Conditional Zoning Statement of Conditions.

STAFF RECOMMENDATION:

Staff recommends that the **offer to amend** the Conditional Zoning Statement of Conditions be **accepted** because the additional and revised conditions provide further, rather than less, certainty and specificity for development of the site.

PETITION HISTORY:

The Planning Commission at its meeting on May 16, 2018 postponed consideration of this petition to allow additional time for neighbors and interested residents more time to review the proposed offer.

ADDITIONAL STAFF COMMENTS:

Staff has responded to several questions about the additional condition offered, to tie development of the site to the 1140 Broadway Planned Project Site Plan. The questions and staff's responses are summarized below for the benefit of the Planning Commission.

Relationship of Land Divisions to Zoning District – Zoning designations run with the land, not an owner or developer. The C1A/R With Conditions (and With “Additional” Conditions if accepted) will remain in perpetuity for all 6.4 acres unless another zoning petition is submitted. Land within the C1A/R With Conditions district may be divided into smaller lots and/or a condominium may be established in accordance with State statutes and City ordinances, two of which are the Zoning Ordinance and Zoning Map. This means that land divisions that conform to the area (lot area and FAR), height, placement, access, and required development regulations of the C1A/R With Conditions

specifically and the Unified Development Code broadly will be approved. But those actions do not affect the zoning designation of the land and do not change the boundaries of the C1A/R With Conditions district.

Relationship of Site Plan to Land Divisions – Site plans can include a single or multiple parcels. The 1140 Broadway Planned Project Site Plan as originally approved on December 4, 2017 was a plan for a single 6.4-acre parcel. The site plan has since been amended and superseded with the 1140 Broadway Planned Project Site Plan , approved May 17, 2018, for a two-parcel site covering 6.4 acres. Future land divisions, and future amended site plans to reflect the land divisions, are possible that still cover the 6.4-acre site.

Relationship of Site Plan to Zoning District – Normally, a site plan is approved when it meets the specific requirements of the zoning designation of the land and the broad requirements of the Zoning Ordinance. But there is no perpetual relationship between the site plan and zoning district. Site plans can expire and new plans submitted, and new site plans can be submitted to supersede previously approved plans. Existing developments can be demolished and new, entirely different developments can be approved on the same site.

With a condition to tie a site plan to a zoning designation, then a perpetual relationship is established. Development of the named site plan becomes a requirement of that zoning district. The site plan may expire but only a new plan exactly matching the named site plan may be approved. Once built, if existing development in the district is demolished, only new development exactly matching the named site plan may be constructed. Changes to the site plan must conform to the Statement of Conditions. In the case of this C1A/R With Conditions “additional condition” petition, administrative amendments can be approved. The Unified Development Code contains a list of changes that can be approved with a Site Plan for Administrative Approval (see 5.29.6.F.)

Relationship of Statement of Conditions and Development Agreement – Development agreements address needed improvements beyond the boundaries of the site plan, unique circumstances that are not addressed City Code, and establishing procedures. For example, upsizing a water main in the street fronting the site is a needed improvement beyond the boundary of the site plan. Unique circumstances could include donating land to the City for parkland. Submitting documents prior to issuance of a building permit is an example of a procedure. All of these things are related to the site plan and are triggered *if* the approved project is developed. However, there is nothing in City Code nor the development agreement that requires the project to be developed. If the site plan expires, so does the development agreement, and if a new site plan is submitted, a new development agreement will be prepared tailored to that new site plan – which may be for an entirely different concept.

The Statement of Conditions is a requirement of the zoning designation. Tying development of a named site plan to the zoning designation means the site plan now runs with the land. The conditions will not expire with the site plan and are not triggered

if the site plan is developed. Rather, tying the site plan to the zoning district requires *that* the site plan is developed.

Declining the Offer – Declining the offer to tie the 1140 Broadway Planned Project Site Plan to the C1A/R With Conditions zoning designation means the current designation and entitlements to the land continue to apply. The C1A/R With Conditions zoning designation and Statement of Conditions is the zoning designation of the land and the only condition, or additional regulation, is related to maximum height.

The 1140 Broadway Planned Project Site Plan is and continues to be valid until December 4, 2020. Permits to construct the approved development may be issued until that time, and continuing after that date until completion of the project if the first permit is issued before December 4, 2020. If construction does not begin and the site plan expires, any site plans that conform to the current C1A/R With Conditions, including Statement of Conditions, as well as all applicable development regulations and meeting the standards for site plan approval will be approved.

Prepared by Alexis DiLeo
Reviewed by Brett Lenart
6-1-18

References: [May 16, 2018 Planning Staff Report Amended Statement of Conditions \(5-11-18\)](#)

c: Ron Mucha, Morningside Lower Town, LLC (Owner)
Tom Covert, Midwestern Consulting, LLC (Petitioner's Agent)
Systems Planning
Project No. Z18-005

PLANNING AND DEVELOPMENT SERVICES STAFF REPORT

For Planning Commission Meeting of May 16, 2018

SUBJECT: 1140 Broadway Rezoning to Add Conditions to C1A/R With Conditions Designation

File No. Z18-005

PROPOSED CITY PLANNING COMMISSION MOTION

The Ann Arbor City Planning Commission hereby recommends that the Mayor and City Council accept offer for a new condition to tie development to the 1140 Broadway Planned Project Site Plan and revise the height limit condition by approving the amendment to the Conditional Zoning Statement of Conditions.

STAFF RECOMMENDATION:

Staff recommends that the **offer to amend** the Conditional Zoning Statement of Conditions be **accepted** because the additional and revised conditions provide further, rather than less, certainty and specificity for development of the site.

LOCATION:

North side of Maiden Lane between Broadway Street and Neilsen Court; northeast planning area; Ward 1.

SUMMARY:

The applicant is offering an additional condition to the existing C1A/R With Conditions zoning designation of this site. Such action is considered a rezoning petition from C1A/R With Conditions [maximum height is eight stories and 100 feet, further restricted to maximum height four stories and 60 feet in certain areas] to C1A/R With Conditions [develop site as 1140 Broadway Planned Project Site Plan; maximum height is seven stories and 91 feet, further restricted to maximum height of four stories and 60 feet in certain areas].

BACKGROUND:

The 6.4-acre site at the northeast corner of Maiden Lane and Broadway Street was rezoned from PUD (Planned Unit Development) to C1A/R With Conditions (Campus Business Residential) and the 1140 Broadway Planned Project Site Plan was approved on December 4, 2017. The applicant offered, and City Council accepted, conditions to further limit the maximum height restriction from none to a maximum height of eight stories and 100 feet for most of the site, and a maximum height of four stories and 60 feet nearest Traver Creek. A Conditional Zoning Statement of Conditions was executed and recorded.

The 1140 Broadway Planned Project [Site Plan](#) includes four buildings having a total of 825,074 square feet and a FAR of 295%. Buildings A, B and C are mid-rise residential buildings providing 607 units. Building C also contains 4,600 square feet of commercial use. The fourth building is a 451-space, six-story parking garage that is completed surrounded by Building A.

Planned project modifications were approved to reduce the setbacks from Broadway Street, Maiden Lane and Neilsen Court. A variance was granted to reduce the required off-street parking for residential uses by 10%. Authorization for disturbance in the natural features buffer area, to remove existing encroachments and place a new fire hydrant, was included with the site plan approval.

OFFER OF ADDITIONAL CONDITIONS:

In response to concerns raised by residents and City Council, the applicant [offers](#) another condition, to tie the development of the site to the approved site plan, as well as revise the previously offered height restriction to more closely match the approved site plan. Staff has amended the Conditional Zoning Statement of Conditions to include the additional and revised condition, attached.

Offering or revising conditions to a zoning designation is considered a petition to rezone. In this case, from C1A/R With Conditions to C1A/R With Conditions.

STAFF COMMENTS:

The offer to place an additional condition and revise the existing condition provide further assurances that the site will be developed as currently approved. Without these conditions, the current height limitations – mostly eight stories and 100 feet, and four stories and 60 feet within 100 feet of Traver Creek – will remain in place for any future site plan but that site plan would not have to be the currently approved 1140 Broadway Planned Project Site Plan. Any site plan meeting the use, area, height, placement and development regulations in effect could be submitted and approved.

With these conditions, the future development is more certain. Only minor changes that can be approved administratively, which are defined in the Zoning Ordinance, can be approved. This is an added degree of certainty that is not normally available.

If the offer of additional conditions is declined, the current C1A/R With Conditions remains in effect and runs with the land. The 1140 Broadway Planned Project Site Plan is valid until December 4, 2020. A permit must be pulled before the site plan expires, or an extension is granted.

Prepared by Alexis DiLeo
Reviewed by Brett Lenart
5-11-18

References: Amended Statement of Conditions (draft 5-11-18)
[Application to Change Zoning](#)
[August 1, 2017 Planning Staff Report](#)
Approved 1140 Broadway Planned Project [Site Plan](#)

c: Ron Mucha, Morningside Lower Town, LLC (Owner)
Tom Covert, Midwestern Consulting, LLC (Petitioner's Agent)
Systems Planning
Project No. Z18-005

Amended Conditional Zoning Statement of Conditions

This Conditional Zoning Statement of Conditions (“Statement of Conditions”) is made and entered into this ___ day of _____, 2018, by and between the City of Ann Arbor (“City”), a Michigan municipal corporation, with offices located at 301 E. Huron St., Ann Arbor, Michigan 48107, and Morningside Lower Town, LLC (“Developer”), a Michigan limited liability company, with principal address at 223 W. Erie, Third Floor, Chicago, Illinois 60654.

Recitals

- A. The Michigan Zoning Enabling Act (P.A. 110 of 2006, as amended) allows for conditional zoning of land when the City is amending its zoning map, or a conditional zoning of land when the City is zoning property in MCL 125.3405.
- B. The City of Ann Arbor recognizes that there are certain instances where it would be in the best interest of the City, as well as advantageous to the Developer, for certain conditions to be proposed as part of a request for rezoning or a request for an amendment to the zoning map.
- C. On February 27, 2017, the Developer applied for an amendment to the City zoning map for land in the City of Ann Arbor site planned as 1140 Broadway, as more fully described on the attached **Exhibit A** (the “Property”).
- D. Included with the rezoning petition, the Developer voluntarily offered in writing conditions regarding the use and development of the land to be incorporated into the zoning of the Property.
- E. On August 1, 2017, the Planning Commission, after public hearing, recommended approval of the rezoning of the Property to C1A/R (Campus Business Residential District) with Conditions. The Developer also submitted a Site Plan showing the specific proposed use and site design of the property.
- F. On December 4, 2017, the City approved the conditional rezoning subject to this Statement of Conditions.
- G. Based on the specific facts and circumstances regarding this property, the City has decided to accept the Developer’s offer of conditional zoning.

H. By executing this Statement of Conditions, the City and the Developer desire to set forth and confirm the conditions under which the City granted conditional zoning of this Property.

I. On March 23, 2018, the Developer offered to amend the Statement of Conditions with one additional and one revised condition as provided below.

J. On [Month, Day, Year], the Planning Commission, after public hearing, recommended approval of the amendments to the Statement of Conditions.

K. On [Month, Day, Year], the City approved the amended Statement of Conditions.

NOW, THEREFORE, Developer and City agree:

1. Conditions Running with the Property. This Statement of Conditions covers the Property described in the attached **Exhibit A**. The Statement of Conditions is incorporated into the zoning of the Property and shall be binding upon and inure to the benefit of the Developer and the City, and their heirs, successors and assigns, and shall run with the Property.

2. Site Plan. The conditional zoning was granted by the City based, in part, by the Developer's stated proposed use of the Property as a mixed-use urban village development, as shown in an excerpt from the proposed Site Plan attached as **Exhibit B**.

3. List of Conditions. The conditional zoning was granted to the Developer based on conditions that were voluntarily offered by the Developer. The City and Developer agree that restrictions on the use and development of the land are necessary for consistency and conformance to the Master Plan – Future Land Use Element with regard to new development in the Northeast planning area. The conditions which form the basis of the City's grant of the conditional zoning are as follows:

A. The height for any part of a building or structure on the Property shall be a maximum of ~~eight~~seven stories and a maximum of ~~100~~91 feet, which shall be further restricted to a maximum height of four stories and a maximum height of 60 feet within the area defined by the attached **Exhibit C**.

B. The maximum height limitations shall include architectural features such as parapet walls, railings, skylights and similar structures, but shall exclude structures such as chimneys and ventilation assemblies, mechanical equipment and screens, elevator penthouses, solar panel installations, antennae and similar structures. Excluded structures shall not extend more than the minimum height necessary to achieve their

intended purpose, and shall not extend more than 20 feet above the maximum height limit.

C. The Property shall only be developed as the 1140 Broadway Planned Project Site Plan as approved by the Ann Arbor City Council on December 4, 2017 as well as any administrative amendments to the Site Plan. The complete, approved Site Plan and amended Site Plan, are on file with the City of Ann Arbor. An excerpt is attached as Exhibit B.

4. Developer Acknowledgment. Developer acknowledges that it voluntarily offered and consented to all of the provisions contained in this Statement of Conditions. Developer agrees that the conditions contained herein are fair, reasonable and equitable requirements and conditions; agrees that the Statement of Conditions does not constitute a taking of property for any purpose or a violation of any constitutional right; and agrees to be bound by each and every provision of this Statement of Conditions. Furthermore, it is agreed and acknowledged that any improvements and undertakings described herein are necessary and roughly proportional to the burden imposed by the conditional zoning, and are necessary to insure capability with adjacent and surrounding uses of land; to promote use of the Property in a socially and economically manner; and to achieve other legitimate objectives of the City authorized by law.
5. Authority to Execute. This Statement of Conditions has been authorized by all necessary action of Developer, and Developer acknowledges that it is the owner of the Property or has been authorized by the owner to conditionally zone this Property. Furthermore, the signatory for Developer acknowledges that he is authorized to enter and execute this Statement of Conditions on behalf of Developer, and bind the Developer to its terms.
6. City Approval. The Statement of Conditions and the City's approval of these conditions is based on the particular facts and circumstances presented, as well as the surrounding land uses and other characteristics regarding this property, and approval of these conditions for this Property may not be relied on as precedent by any other property owner seeking a conditional zoning.
7. Obligation to Obtain Other Approvals. Developer acknowledges that any use or development approved by this conditional zoning that may require a special land use permit, a variance, or site plan approval under the terms of Ann Arbor City Code, may only be commenced if such special land use permit, variance, and/or site plan approval is ultimately granted in accordance with the terms of Ann Arbor City Code.
8. Amendment. This Statement of Conditions may only be amended in the same manner as prescribed for a rezoning of property under the terms of Ann Arbor City Code.

STATE OF MICHIGAN)
) ss
COUNTY OF WASHTENAW)

The foregoing Agreement was acknowledged before me this ____ day of _____, 2018 by _____, of Morningside Lower Town, LLC, a Michigan limited liability company, on behalf of the company.

_____, Notary Public
Acting in the County of Washtenaw
My Commission Expires:_____

Drafted by and after recording return to:
Kevin S. McDonald (P-61761)
Senior Assistant City Attorney
City of Ann Arbor, Office of the City Attorney
P.O. Box 8647
Ann Arbor, MI 48107-8647

Exhibit A

Beginning at the Westerly corner of Lot 78 of ASSESSOR'S PLAT NO. 33, as recorded in Liber 9, Page 46 of Plats, Washtenaw County Records; thence Northeasterly along the Southerly right-of-way line of Broadway Street (variable width) in the following four (4) courses: (1) N 57°48'00" E 564.63 feet, (2) N 01°45'27" E 20.50 feet, (3) N 57°48'00" E 25.88 feet and (4) N 58°18'42" E 33.55 feet (recorded as N 58°18'00" E); thence along the centerline of Traver's Creek in the following four (4) courses: (1) S 22°41'48" E 13.78 feet (recorded as S 22°42'30" E), (2) S 52°07'48" E 51.77 feet (recorded as S 52°08'30" E), (3) S 65°43'18" E 29.31 feet (recorded as S 65°44'00" E) and (4) S 73°04'18" E 50.81 feet (recorded as S 73°06'00" E);

thence N 37°31'42" E 25.40 feet (recorded as N 37°31'00" E);

thence S 79°25'00" E 177.53 feet along the Northeasterly line of Lot 25 of ASSESSOR'S PLAT NO. 32, as recorded in Liber 9, Page 45 of Plats, Washtenaw County Records;

thence S 31°16'00" W 410.58 feet along the Northwesterly line of Ross Maiden Lane Apartments;

thence S 58°44'00" E 74.99 feet;

thence S 31°16'00" W 255.50 feet along the West right-of-way line of Nielsen Court;

thence N 58°44'00" W 653.70 feet along the Northerly right-of-way line of Maiden Lane to the Point of Beginning. Being Lots 25 through 30 ASSESSOR'S PLAT NO. 32, as recorded in Liber 9, Page 45 of Plats, Washtenaw County Records and Lots 72 through 82, inclusive, Lots 83 through 87, inclusive and a vacated alley of ASSESSOR'S PLAT NO. 33, as recorded in Liber 9, Page 46 of Plats, Washtenaw County Records.

Parcel ID# _____

Exhibit B

Excerpt From 1140 Broadway Site Plan approved by City Council

Exhibit C

Height Limitation Area