

TO: Mayor and Council

FROM: Christine Brummer

DATE: March 15, 2013

I write stymied but not without words. Sustainable development within Ann Arbor's core is at stake.

The case has been made for a timely re-evaluation of downtown zoning. This component of the City Code regulates what takes place on privately, and sometimes publicly, owned lands through controls on three elements: use, form and mass. These three help dictate where to locate structures on a lot as well as how that structure will appear in terms of physical presence. The sum of what may be built determines the character of a downtown, the sense of place, and the user experience. In other words, getting zoning right is critical to planning and stewardship of downtown.

Zoning is the shorthand reference to all the components it embodies. Cities must plan to address important issues such as growth, diversity, and sustainability. Besides projecting future demand for services, zoning must allow for the goals and policies inherent in directing and managing the issues. Tools available are varied but certainly include the general plan, specific plans, zoning and city ordinances. It is important to not make light of these last items which encompass historic district laws, landmark features and other, equal but separate provisions under the governing language for the city.

Zoning is necessarily in a constant state of flux due to hindsight and planning. By systematic review or individual request, a particular provision may be studied and re-evaluated. The process may start with a request from a landowner interested in a certain form of development. Or, a particular, proposed development may prompt a re-examination of current provisions. This is normal. This is necessary. Public participation is required but there are other constraints. Any request for a change must generally be denied under state enabling legislation if it conflicts with a city's general plan.

Historic districts are a form of overlay zoning for areas of special concern. A parcel important to historic resources, downtown, floodplains, natural features and/or planning often may be subject to additional regulations "overlain" upon the basic zoning requirements. A lot that touches an adjacent residential neighborhood, a major thoroughfare, the core of downtown and other recent major development projects is going to be subject to greater scrutiny than a parcel without these attributes. All of the regulations pertaining pertain with at least equal weight. Each embodies important direction.

Planning Commission and the Zoning Board of Appeals enforce zoning laws. Though perceived as a strictly bureaucratic process, land use governance is actually a prelude to the dynamic rise of new buildings, the eradication of abandoned building blight, the fostering of core downtown health and the often inconspicuous but essential task of protecting property values. At base, the planning commission and its appellate cousin, the zoning board of appeals, are responsible for deriving, articulating and enforcing the vision the community enacts for how it is to look and function.

City Council must balance competing constituencies as well as exercise discretion. Obviously conflicts arise as developments are proposed. Notably "a landowner has no constitutionally protected property interest in obtaining [or maintaining] any particular zoning classification merely because the landowner may want it." *Triomphe Investors v City of Northwood*, 49 F3d 198, 202-203 (6<sup>th</sup> Cir 1995) as quoted in Michigan Zoning, Planning, and Land Use (Dec 2012). Council is responsible for general policies fair and applicable to the entire community rather than any one particular party.

Conflict is an inherent part of the process of refining and making "zoning" better. Cities get sued by parties not agreeing with the exercise of judgment inherent in compromising between varied goals. Developers have a reputation for deep pockets and litigious natures. In truth, parties with a legitimate interest also initiate suits against cities for acts or failures to act. Such actions are the cost of a responsible, representative Council exercising its oversight and discretion to balance large interests.