


Ann Arbor City Council Regular Session: August 7, 2023
Email Redactions List Pursuant to Council Resolution R-09-386

	A	B	C	D	E	F	G
1	<u>Sent Time</u>	<u>Received Time</u>	<u>TO</u>	<u>From</u>	<u>CC</u>	<u>Redactions</u>	<u>Reason for Redaction</u>
2	7:21 PM	7:21 PM	All City Council; Atleen Kaur; Milton Dohoney Jr.	Tom Stulberg		Personal contact information	MCL 15.243(1)(a)
3	9:02 PM	9:02 PM	Jen Eyer; Dharma Akmon	Edward Vielmetti		Personal contact information	MCL 15.243(1)(a)

From: [Beaudry, Jacqueline](#)
To: [Radina, Travis](#); [Kaur, Atleen](#)
Cc: [Frost, Christopher](#); [Hess, Raymond](#)
Subject: Bylaws - DB-1
Date: Monday, August 7, 2023 9:29:34 PM

This item was contingent on the Ordinance approval. It should be postponed to September 18 as well.

Jacqueline Beaudry, City Clerk (she/her/hers)
President, Michigan Association of Municipal Clerks
2019 Michigan City Clerk of the Year
Ann Arbor City Clerk's Office | Guy C. Larcom City Hall | 301 E. Huron, 2nd Floor · Ann Arbor · MI · 48104
734.794.6140 (O) · 734.994.8296 (F) | Internal Extension 41401
jbeaudry@a2gov.org | www.a2gov.org
 Think Green! Please don't print this e-mail unless absolutely necessary.

From: [Heidi Poscher](#)
To: [Disch, Lisa](#)
Subject: Thank you, Lisa
Date: Monday, August 7, 2023 9:08:38 PM

This message was sent from outside of the City of Ann Arbor. Please do not click links, open attachments, or follow directions unless you recognize the source of this email and know the content is safe.

Lisa,

Thank you for the care you took in introducing our project tonight. This project is so important to our mission and we greatly appreciate your support.

Hope you enjoy the rest of the summer.

Best regards, Heidi

From: [Edward Vielmetti](#)
To: [Eyer, Jen](#); [Akmon, Dharma](#)
Subject: Thank you for your TC-1 votes
Date: Monday, August 7, 2023 9:02:48 PM

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and if you notice the tan rain jacket in my seat front and center and can make sure that someone at city hall sets it aside when you are done I'd appreciate it. I sent a note to the clerk as well.

--

Edward Vielmetti + [REDACTED]
[REDACTED]

From: [Briggs, Erica](#)
To: [CityClerk](#)
Cc: [Lenart, Brett](#)
Subject: proposed amendment
Date: Monday, August 7, 2023 8:43:55 PM

Section 2. That Section 5.16.3.C of Chapter 55 (Unified Development Code) of Title V of the Code of the City of Ann Arbor be amended as follows:


C. Automobile, Truck, Construction Equipment Repair 1. C2B and TC-1 District
Repair of Automobiles, Trucks, and Construction Equipment must be located in an enclosed Building.

Erica Briggs, Ward 5 Council Member
Phone: 734-355-3931

Sign-up for my newsletter and get details about upcoming coffee hours at: www.ericafora2.com

From: [Beaudry, Jacqueline](#)
To: [Briggs, Erica](#)
Subject: Amendment
Date: Monday, August 7, 2023 8:43:34 PM

Section 2. C. 1
Strike – “Storage and”

Jacqueline Beaudry, City Clerk (she/her/hers)
President, Michigan Association of Municipal Clerks
2019 Michigan City Clerk of the Year
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From: [Eyer, Jen](#)
To: [JB It](#); [Jen Eyer](#)
Cc: [Akmon, Dharma](#)
Subject: Re: potential new multifamily project in ward 4
Date: Monday, August 7, 2023 7:55:18 PM

Friday after 4 works for me

From: JB It <brad@jbradleymoore.com>
Date: Monday, August 7, 2023 at 12:19 PM
To: Jen Eyer <jeneyer@gmail.com>
Cc: Eyer, Jen <JEyer@a2gov.org>, Akmon, Dharma <DAkmon@a2gov.org>
Subject: Re: potential new multifamily project in ward 4

This message was sent from outside of the City of Ann Arbor. Please do not click links, open attachments, or follow directions unless you recognize the source of this email and know the content is safe.

On 8/4/2023 4:12 PM, Jen Eyer wrote:

Hi Brad,
I've been traveling this week, looking at networked geothermal districts! Happy to chat next week. **Exciting - I want to hear all about it!** Wednesday is pretty open for me.
Wed is pretty tight for me - I only have 2:30-4pm open at the moment but Thurs and Fri are more open

-Jen

On Wed, Aug 2, 2023 at 6:12 PM JB It <brad@jbradleymoore.com> wrote:

In my continuing effort to find ways to accommodate more neighbors within the city limits I would like to discuss a one and potentially 2new projects that have arisen near The Venue (NOT Southtown). Please let me know if you have any time to discuss these soon (together or on-on-one, whatever works for you-all)

Thanks

Brad

--
Brad Moore, AIA
President, J Bradley Moore & Associates Architects, Inc.

4844 Jackson Rd., STE #150
Ann Arbor, MI 48103

O 734-930-1500
F 734-994-1510
M 734-649-3404

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--

Jen Eyer

734-846-1566

Find me on: [Facebook](#) | [Twitter](#) | [LinkedIn](#)

--

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From: [Ralph McKee](#)
To: [Kaur, Atleen](#)
Cc: [Taylor, Christopher \(Mayor\)](#); [Disch, Lisa](#); [Harrison, Cynthia](#); [Song, Linh](#); [Watson, Chris](#); [Radina, Travis](#); [Briggs, Erica](#); [Cornell, Jenn](#); [Ghazi Edwin, Ayesha](#); [Eyer, Jen](#); [Akmon, Dharma](#)
Subject: SouthTown
Date: Monday, August 7, 2023 7:42:38 PM

This message was sent from outside of the City of Ann Arbor. Please do not click links, open attachments, or follow directions unless you recognize the source of this email and know the content is safe.

I have reviewed Tom Stulberg's email to you on this topic and agree with it. I hope you carefully consider it. One of his points is that approval of SouthTown would result in the ability of all parcel owners in the area bounded by State, Stimson, White and Arch to demand C1A/R zoning, without conditions, which would mean, among other things, the possibility of STRs in all those parcels.

I would ask that you also consider the possibility of developers who are similarly situated with regard to their distance from a different C1A/R parcel in a somewhat different part of town (for example, parcels located south of South U) contending that they are also entitled to C1A/R zoning. I have not done any research on that legal issue, but I think your office should research that before the second reading on this rezoning.

Sent from my iPhone

From: [Tom Stulberg](#)
To: [City Council](#); [Kaur, Ateen](#); [Dohoney Jr., Milton](#)
Subject: Fw: Comments regarding the SouthTown application and conditional rezoning
Date: Monday, August 7, 2023 7:21:15 PM
Attachments: [200706 Agenda ResponsesFinal.pdf](#)
[R4C map north of SouthTown.pdf](#)

This message was sent from outside of the City of Ann Arbor. Please do not click links, open attachments, or follow directions unless you recognize the source of this email and know the content is safe.

Re-sending so as to have it handy.

From: Tom Stulberg [REDACTED]
Sent: Thursday, August 3, 2023 3:52 PM
To: akaur@a2gov.org <akaur@a2gov.org>; Ann Arbor City Council <CityCouncil@a2gov.org>
Cc: [Dohoney Jr., Milton](mailto:MDohoney@a2gov.org) <MDohoney@a2gov.org>
Subject: Comments regarding the SouthTown application and conditional rezoning

To the city attorney and city council:

SouthTown's application's conditional zoning request should be denied, for these reasons:

1. It is the kind of conditional zoning that the courts have very clearly ruled against.
2. It would create significant possible repercussions for property owners and tenants for many blocks nearby, in the area commonly known as Lower Burns Park. This is because the city's approval of SouthTown would prevent denial of future applications for C1A/R zoning in that area, thus allowing unlimited non-principal-residence STRs and a downtown intensity of redevelopment there.
3. There is a legal remedy - a PUD - to have this same site plan and conditions approved without the problems of 1. and 2.

As background, some incorrect comments were made by some city council members regarding conditional zoning at the city council meeting about Morningside's Beekman/LowerTown final phase. This may have arisen because that involved a request to remove conditions that had been previously volunteered by the developer and were approved, rather than a fresh request for conditions. Conditional zoning is complex and sometimes counter intuitive. So, we should start by discussing the conditional zoning request in the upcoming vote on SouthTown. (Note, I am not an attorney and will use layperson's terminology. I may get a legal term wrong, but I am confident of the analysis.)

I am forwarding to you (at the end of this email) what I sent to Planning Commission prior to their vote to recommend approval of this rezoning request and the site plan. But let's address #2 first.

Zoning Conditions must be volunteered by the applicant and may not be requested by the city. If the city approves a rezoning from R4C to C1A/R with the requested conditions for SouthTown, the city will not be able to legally deny a similar rezoning request to C1A/R for any of the properties in the blocks bounded by State Street and White Street north of SouthTown, all the way to Arch Street where the zoning is already C1A/R. (See the second attachment for a map.) And the city may not ask any future applicant there to match the conditions of SouthTown. The city is not allowed to ask for ANY conditions from those future applicants. So, the counter intuitive part is that all of the "good" conditions that SouthTown asks for can be eschewed by these future applicants and the city cannot deny those applicants for lack of the same, or similar, conditions. Yes, each

rezoning is reviewed on its own merits, but should SouthTown be approved as applied for, the city would lose lawsuits from any applicants that are denied a straight up C1A/R rezoning request in the described area. City council would be effectively giving up its discretion regarding things such as heights, setbacks, and long-term vs. short-term rental conditions that currently exist in that residentially zoned area.

Let's look more closely at the LTR vs. STR issue.

Ann Arbor prohibits non-principal-residence short term rentals (STRs) in residentially zoned areas, but permits them in other zoning, such as office, commercial, or other mixed-use. Note, they are not permitted in TC1 either. Here is the UDC

table: <https://www.a2gov.org/departments/planning/Documents/UDC%20STR%20Permitted%20Use%20Table.pdf>

The properties east of State Street and south of Arch Street are zoned R4C, which is a residential zoning and thus prohibits non-principal-residence STRs. The zoning category C1A/R is considered a mixed-use zoning category, so it permits non-principal-residence STRs. C1A/R can be all residential, all commercial, or any mix of the two. Under current market conditions, it will likely be primarily used for predominantly residential projects, as is the case for the SouthTown application. SouthTown plans to have up to 30% STRs. (I leave it to others to debate the merits of allowing any non-principal-residence STRs at that location.)

But that opens a door to ALL of the R4C lots in the blocks bordered by State Street and White Street north of SouthTown and south of Arch Street being rezoned to C1A/R. (The west side is all U of M athletics.) The existing houses can then all be converted to non-principal-residence STRs or the lots could be combined and tall buildings with 100% STRs (essentially hotels) could replace the existing long term housing stock. How far east will that spread? Just to White Street? All of Lower Burns Park? That is hard to say.

If the city makes a conscious decision to do this through the revision to the Comprehensive Plan, then so be it. (It doesn't seem likely that we would, given recent conversations and decisions, such as not to permit them in TC1.) But approval of SouthTown makes this possible in a backdoor manner, seemingly accidental. The property owners and residents of Lower Burns Park would be aware of this if done through a comprehensive plan revision. Do you think they have any clue now? I don't think so.

I took an unscientific poll on NextDoor. There were 165 respondents. Over 3/4 would not be in favor of more non-principal-residence STRs near campus. I wouldn't rely on this poll to make a decision, but it does suggest that this is not something we should accidentally back into because of a lack of understanding the ramifications to nearby properties when approving conditional zoning.

There is a simple remedy for this, as I mentioned above as #3. The exact same site plan for SouthTown could be approved as a PUD. There would be no problematic cascading effect if done that way.

Note that a PUD would also "replace" the approximately 35 moderately priced units being demolished for SouthTown with approximately 35 affordable units out of the 215 units in the plan (or a payment in lieu to the affordable housing fund).

When reading the letter below that I sent to Planning Commission, please allow me to add the italicized sentence to this statement:

The existing zoning for SouthTown does not permit a height that exceeds the proposed condition in the rezoning request. Thus, the status quo already "protects" us from that. The rezoning with this condition serves the applicant's private interests, not the public's. The courts don't like this. *Similarly, the existing zoning does not*

permit any non-principal-residence STRs, so the status quo already protects us from what the voluntary condition presumes to protect us from.

Some people may question the likelihood of some of this happening, but zoning is law, a rezoning is a change to the law, and the possible repercussions must be raised and discussed and addressed prior to creating new legal rights.

Thanks,

Tom

(Prior email to Planning Commission)

Planning Commissioners:

There is a lot to like about the SouthTown application, especially in the attention paid to sustainability.

If you like the SouthTown development proposal, there is an appropriate way to approve it. You have a road map provided for you by The Garnet at 325 E. Summit. Similar to The Garnet, you would reject the current application, and the same or similar plan could be re-submitted as a PUD. You could then appropriately approve it. It would require the developer to spend some extra time, and there would be an affordable housing component added - either units built on site or a payment in lieu. (The developer wouldn't have to go back to the drawing board, since the plans have already been reviewed, but the clock would have to be restarted for the proper meetings and notices for a PUD application.)

As in the case of the Garnet, the conditional zoning requested falls into the categories of conditional zoning that are frowned upon by the courts. See my comments on this at the end of the email.

I also want to point out the inappropriateness of using C1A/R at this location. It is not close to the Campus BUSINESS District. This zoning category was not intended for this location. D1, D2, C1A, and C1A/R are our city's downtown core and transition zoning categories and have certain urban core characteristics clearly designed for that purpose. This has been covered thoroughly. Please review the following documents:

1. C1A and C1A/R are covered on pages 11-15 of the **attached** Agenda Responses from the 7/6/20 City Council meeting. And another map on the last page (21). Decent questions. Short answers. Very helpful maps.
2. This link to communications to CPC from 12/15/20 has a letter from me (which imbeds a 3/31/17 Planning Staff letter) and an excellent letter from Ralph McKee: <http://a2gov.legistar.com/View.ashx?M=F&ID=9017680&GUID=4498E800-DB5A-45D4-AFB2-E6FB372FE50B>
3. The 11/17/17 letter from Susan Friedlaender, which imbeds a planning department memorandum starting on page 8: <http://a2gov.legistar.com/View.ashx?M=F&ID=5564648&GUID=D2F06BC8-BF4D-4FA9-BD2A-65EB818FFE25>

Conditional Zoning: (I wrote this for The Garnet application, which was appropriately turned down. It applies to SouthTown as well.)

The city of Ann Arbor does not apply zoning law appropriately, which includes how it deals with conditional zoning. It is getting it wrong again here.

Conditions are supposed to benefit the community not merely benefit the applicant. Planning department is trying to claim the benefit to the public is that the Garnet can't be replaced by a different (taller) building once the zoning is approved. Their conditions make it so they can't change their site plan without asking for a rezoning. But that is not a benefit to the community because the status quo already protects us from that. Leave it C1B and there is no issue of inappropriate height. Further, their conditional rezoning makes the community worse off because now someone else can get C1A or C1A/R nearby and there do not have to be any VOLUNTARY conditions on the next one.

I have a 10MB document that has excerpts and comments on many legal cases around the country specifically about conditional zoning. Yes, I read the whole thing. If anyone wants it, I'll share it. It is from "the" treatise on zoning law.

Here are applicable highlights from it:

"In this respect, a rezoning with conditions may be held invalid where the police power is bargained away, where the conditions imposed are illegal or unreasonable or where the rezoning primarily furthers private interests rather than the general welfare or otherwise constitutes illegal spot zoning."

"courts approving of rezoning with conditions have held such rezonings invalid when found to primarily benefit a private owner rather than the general welfare or when such action constitutes otherwise illegal spot zoning."

"the imposition of restrictive conditions usually benefits the surrounding properties and adversely affects the owner of the rezoned"

The existing zoning for SouthTown does not permit a height that exceeds the proposed condition in the rezoning request. Thus, the status quo already "protects" us from that. The rezoning with this condition serves the applicant's private interests, not the public's. The courts don't like this. (I am not an attorney and have tried to write this in layperson's terms for the commissioners. The city attorney's office could perhaps rephrase it more artfully.)

Thank you for your consideration.

Tom