

**MINUTES OF THE ZONING COMMITTEE**  
**Thursday, March 10, 2016 - 3:30 p.m.**  
**City Council Chambers, 3rd Floor**  
**City Hall and Court House**  
**15 West Kellogg Boulevard**

PRESENT: Makarios, Nelson, Reveal, and Wickiser  
EXCUSED: Edgerton, Merrigan, Padilla, and Wencil  
STAFF: Bill Dermody, Samantha Langer, Allan Torstenson, and Zac DesAutels

The meeting was chaired by Commissioner Nelson.

**Victoria Park Apartments Phase 3 - 16-009-038 - Conditional use permit to increase the allowable height for a multi-family building from 45' to 49'-1 1/2 ", 763 Kay Ave, SW corner at Mercer Way**

Bill Dermody presented the staff report with a recommendation of approval with a condition for the conditional use permit. He stated District 9 recommended denial, and there were 0 letters in support, and 7 letters in opposition.

Upon questions from the Commissioners, Mr. Dermody stated that the Planning Administrator has approved the amendment to the Victoria Master Plan to allow for the requested height. The decision has been appealed by the adjacent property owner and will be before the Zoning Committee on March 24. Therefore, the recommended condition in the staff report has not been met at this point because it is not final until the appeal process has been completed. Mr. Dermody stated that prior to the recent Planning Administrator decision 40 feet was the maximum height for this parcel. He confirmed that if the conditional use permit for 49 ½ feet is not approved, then a plan amendment would still be necessary just to go to 45 feet. In regards to the surrounding building heights, Nova Academy is built at 43 feet with a maximum height of 52 feet, and the residential building to the northeast has a maximum height of 40 feet. He stated that in the original Master Plan this parcel was supposed to be townhomes, and he isn't sure if the density is higher now that what was proposed in the Master Plan. There have been many changes since the original plan was introduced including the addition of the school. He can provide an analysis of the total residential units at the Planning Commission meeting.

Commissioner Wickiser stated he was involved in parts of the Master Plan years ago. It seems to him that the spirit of the Master Plan was not to have forty foot buildings throughout Victoria Park. We are not seeing the single-family houses and townhomes that were part of the original Master Plan. He questions if the spirit of the Master Plan is actually being achieved or if this conforms to the Comprehensive Plan.

Mr. Dermody said that the question of conformance with the spirit of the Master Plan is not one that staff felt was one of the findings for the conditional use permit. With regard to the Comprehensive Plan conformance, Mr. Dermody said the Master Plan is a zoning mechanism, not an addendum to the Comprehensive Plan. While looking at the Comprehensive Plan and applicable sub area plans there are only general strategies that apply to this site and issue. This is a Mixed-Use Corridor and a Neighborhood Center which generally calls for higher density residential and a mix of uses. It does not provide a lot of guidance on whether 40 or 49 feet is more appropriate.

Commissioner Wickiser stated he feels this area is disjointed at this point. He does not want to perpetuate something that is not in the spirit of the type of development that he wants to see in Saint Paul.

At questions from the Commissioners regarding the current zoning, the Master Plan, and what the potential amendment means, Mr. Dermody provided information to clear up some of the confusion. Mr. Dermody stated that the current zoning is T3M with a Master Plan requirement. The Victoria Master Plan has been approved and that is able to provide more specificity than what the T3 regulations state, but it cannot exceed any of them. Since the maximum height is 45 feet for the T3 district that cannot be exceeded through the Master Plan without a variance or conditional use permit. He did refer earlier to a maximum height of 52 feet in the Master Plan for the school building, and that was permissible because it is not a residential building.

Allan Torstenson stated that the applicant would have to meet both the Master Plan and general zoning of the area. There is a provision in the code for the Master Plan to be amended. The applicant submitted an application to amend the Master Plan which can be approved administratively. They would only be able to amend the Master Plan to 45 feet because of the provision in a T3 District. In order to obtain the 49' 1 1/2" height they need to apply for a conditional use permit which is allowed by a provision in the zoning code.

Commissioner Reveal questioned why they are seeing this application in this sequence. Why couldn't they wait for the final decision of the Master Plan and then consider a conditional use permit if it allowably exceeds the Master Plan.

Mr. Dermody explained that State Law MN Revised Statute 15.99 states they have to process this application within 60 days. It can potentially be extended to 120 days. They do not have the same requirement for the Master Plan amendment, at least not explicitly.

At questions from Mr. Makarios regarding the current zoning and allowable maximum height on the site, Mr. Dermody stated that currently the allowed maximum height for a residential building is 40 feet. There is a Planning Administrator's decision on the site, but that decision is not yet final – there is an appeal process and at this point it would be considered an interim decision.

Mr. Torstenson provided more process clarification regarding the Master Plan amendment. He explained the staff recommendation is for approval subject to the condition that the Master Plan is amended to allow that height. If the administrative approval appeal is upheld and the Master Plan is not amended then the conditional use permit would not apply. They would not be able to meet the condition.

Upon questions from the Commissioners, Mr. Dermody stated that the required parking depends on the size of the units. At this point they do not know the numbers in order to calculate a precise number of parking spaces required. He stated there is not a request for a parking variance. He confirmed that the applicant is currently proposing 45 underground parking spaces. The site is subject to site plan review and parking stall numbers would be finalized there to meet the zoning code.

Commissioner Reveal stated she thinks they need to know what the parking relationship is to a conditional use permit. It's fine to provide a range, but it should be part of the staff background.

The applicant, Joe McElwain, Chase Real Estate, 2140 County Road 42 W, Burnsville, MN, showed a site plan and 3D rendering of the proposed development. He pointed out that the 49 1 1/2" feet is taken from the highest point to show the front entry to the building. The building will be dropped down throughout the majority of the building and the building abutting the school will be 47' 1". They are building a four story building because financially it is the best case scenario for this property. It is in a Master Plan that requires underground parking and that is very expensive. They own and operate the building across the street with 215 units and that makes this proposed building feasible because they can run this property and its offices and management out of the adjacent existing property. He believes that this lot wouldn't be developed by any other developer because of the expense to build a building of this scale. They will have roughly 48 to 50 units that are primarily one plus dens to two bedroom units. They have been through site plan review and that requires 69 1/2 stalls, and after a 25% reduction because they are near a transit corridor and a T3M district, he is required to have 52.1 stalls. They will have 46 underground parking spaces and he is allowed to provide street parking in front of the building. There are roughly 18 stalls around the property and he is going to ask for 6 of those stalls to be used for their tenants. They are requesting 49 feet because typical construction with a nine foot ceiling with two foot trusses brings you roughly to 44 feet for only a building that is sitting on the ground. They like to have a few steps up to the property to help with grading and they also have a parapet. He also stated with a conditional use permit they are allowed up to 75 feet and at 75 feet is when it becomes a variance.

Upon questions from the Commissioners, Mr. McElwain stated he is requesting that his additional 6 stalls be allowed to be parked on the street. They would be allowed in any of the stalls around his property. There would not be signage. Mr. McElwain showed where the buses pickup and drop off students. He stated he has monitored street traffic and typically parking is through students and staff. He would argue that the tenants have the right to park in the neighborhood just as much as the school would. He stated that this design with the courtyard is the most efficient plan.

Mari Bergerson, 740 Victoria Street South, Saint Paul, spoke in opposition. Ms. Bergerson stated she is the principal at the Nova School. She said they have great concern about extending the height of this building because it will increase the occupancy. It will add one story and probably 25% of the total building occupancy. That will increase vehicles and people which will jeopardize the safety of our children. They have approximately 1,000 students in the building. Currently she lives in Victoria Park right across the street and when she initially moved in she did not utilize underground parking. It is an additional \$70 per month. It is something that is not required or obliged to its tenants. She would guess at least 60% of the tenants will be using street parking. They have 11 buses with an increase to 14 anticipated for next year. Loading right now goes to the end of Kay and Victoria and will wrapping around Kay with the additional buses next year. She stated this will greatly alter the neighborhood and the flavor of what Victoria Park was initially about. Extending a building 49 1 1/2" and adding 25% of potential tenants in a building that size would wrong and she would question the wisdom of anyone who would allow that to exist 8 feet from a public school.

At questions from the Commissioners, Ms. Bergerson stated she is relatively new to the school and believes a school was part of the Master Plan and there were slated to be 10 to 12 townhomes in the property they are proposing this apartment building.

Commissioner Nelson stated that there used to be a public street right where the public school is now. He said it seems that the school made a significant change in character to the Master Plan itself over the years so in terms of looking at it as changing the character of the area, it has incrementally been changed quite a bit over the years.

Upon inquiry from the Commissioners, Mr. Dermody provided set back requirements from a school for a property this size. He said the minimum setback is from the property line and it is 6 feet if there are windows or doors present. If it were a flat wall there would be no minimum setback requirements from the property line.

Adam Flood, 2229 Douglynn Lane, Saint Paul, spoke in opposition. Mr. Flood said he appreciates the sentiment that we are not discussing the Master Plan specifically, but he thinks it is more than relevant because the Zoning Committee, in his opinion, should have already been involved in all of these decisions. His main concern other than aesthetic, traffic, and other characteristic changes is that the modification procedure for changing a Master Plan seems to have accumulated over the course of the last several years to having had so many minor modifications which can be taken care of administratively to an accumulation of something that if it were asked for in chunks would have certainly accounted for a major modification. He is somewhat new to Saint Paul and he doesn't know the history of the Master Plan, but when he looks at the Master Plan provisions as of 2011 there is no road there and the property for the school has already been carved out. In 2011 it was contemplated there would be 165 townhomes and now there are 12 to the best of his knowledge. He provided more numbers on residential rental units in the area today as compared to the 2011 plan. His specific concerns are traffic, parking, and visibility of children. The population density on this side of the Master Plan is significantly higher than what was contemplated based on 2011. He also mentioned the park that will be built close by and St. Paul public schools will have primary use of the field located there. He knows there has been some parking accounted for in that development, but when you also take potentially 51 units of parking, events at the Nova school, and large scale uses of the park we are really starting to run into scenarios that were not planned for in the area. This is an opportunity that the Commission has to look back at and potentially rectify many of the effects of many of these minor modifications that have accumulated to what should have been a major modification.

Mr. McElwain responded to testimony. He said they are obligated to build underground parking which is immensely expensive. They are completely full and people are on a waiting list for underground parking at the building across the street. He doesn't believe there is a traffic problem currently in Victoria Park. Most residents have a different time frame than the school. His response to the school is where was the responsibility for private parking to be provided for at the school. He believes they are trying to be fair. In response to the townhome issue, he explained there are market forces that need to be addressed. The 14 townhomes had to be put up for auction because there was a market crash and when those were purchased they were converted into apartment buildings. Mr. McElwain stated he is not in favor of an extension. He has been working with city staff and would like to move forward with their plans.

No one spoke in support. The public hearing was closed.

Commissioner Reveal requested a chronology of dates on the original Master Plan showing significant amendments and administrative decisions.

Mr. Dermody stated the original Victoria Park Master Plan was approved in 2005 and amended in 2007 and 2011. The 2011 amendment in this area brought the school in as an allowed use. Since 2011 he believes there have not been any amendments until the recent amendment approved administratively by Donna Drummond. Mr. Dermody stated that the Master Plan is an instrument of the zoning. It is permanent until it is changed.

Commissioner Wickiser stated one of his concerns is there is a proposed change to the Master Plan. He doesn't want to see a change of the Master Plan just for this particular item. He said they are way over the number of units that were originally proposed in the area.

Commissioner Reveal stated her concerns about the evolution of the area. She is uncomfortable at having to act on this matter today in the absence of the second piece. She stated she would not be able to support this today.

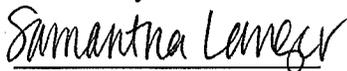
Commissioner Kyle Makarios moved to lay over the conditional use permit to March 24, 2016 in order to address both the conditional use permit and appeal of the Master Plan approval at the same time. Commissioner Elizabeth Reveal seconded the motion.

Commissioner Reveal requested the chronology of the dates of the significant amendments and administrative decisions as well as parking requirements to be included at the March 24 staff presentation.

The motion passed by a vote of 4-0-0.

Adopted                      Yeas - 4              Nays - 0              Abstained - 0

Drafted by:



Samantha Langer  
Recording Secretary

Submitted by:



Bill Dermody  
Zoning Section

Approved by:



Gaius Nelson  
Chair

