

MINUTES OF THE ZONING COMMITTEE
Thursday, July 20, 2017 - 3:30 p.m.
City Council Chambers, 3rd Floor
City Hall and Court House
15 West Kellogg Boulevard

PRESENT: Baker, DeJoy, Lindeke, Makarios, and Ochs
EXCUSED: Edgerton, Fredson, and Reveal
STAFF: Bill Dermody, Cherie Englund, and Allan Torstenson

The meeting was chaired by Commissioner Makarios.

Victoria Park Apartments Phase 3 - 17-056-298 - Conditional use permit to increase the maximum allowable height up to 2 ft.; with a variance of 5 ft., (10 ft. required) in building setback at 1425 Victoria Way, NW corner at Kay Avenue.

Bill Dermody presented the staff report with a recommendation of approval for the conditional use permit and variance with a condition. He stated District 9 made no recommendation, and there were no letters in support or opposition.

Chair Makarios asked what has taken place since the Zoning Committee meeting last year about this project. Mr. Dermody said that official actions have included Planning Administrator approval of a minor Master Plan amendment for additional height and a change to an apartment building type last year. On appeal, parents and school administrators from the neighboring Nova Classical Academy said it would exacerbate an existing traffic problem in this area by allowing for additional density. He added that there was a lesser concern regarding shadows and visibility into the school. The Planning Administrator's decision was upheld by the Zoning Committee, Planning Commission, and City Council. Also, a Site Plan Review meeting took place on Tuesday, July 18, 2017 regarding the project.

Chair Makarios asked if there were any changes to the plan regarding pedestrian safety. Mr. Dermody said that he is unsure of any changes and will defer this question to the applicant.

In response to other questions by Chair Makarios, Mr. Dermody said these are market rate apartments. Chair Makarios said he is having difficulty with granting a variance for a plan to allow balconies for luxury apartments. He said that setback requirements are in place for a reason, and he does not agree with the findings for the variance.

Mr. Dermody clarified that this is not a variance from the master plan, but rather from the T3 zoning code requirements. He added that if Mercer St. was considered a side or rear yard this variance would not be needed.

Commissioner Baker asked if he could see the Victoria Park Master Plan and asked if housing is allowed in a mixed use corridor. Mr. Dermody said that a mixed use corridor calls for higher density development with a mix of uses, which doesn't mean that any given site allows a mix of uses. An apartment of this density is in conformance with the mixed use corridor and meets the comprehensive plan guidance. He said that he would check his folders for the 2011 Master Plan.

Commissioner Baker asked if the size of the site fits into the mixed use corridor. Mr. Dermody said the proposal for additional height is in conformance with the comprehensive plan, which calls for a mixed use corridor, where height allows for higher density. He said the size of the parcel is not addressed, but it is about how the parcel is being used.

Commissioner Baker asked how staff made the determination for finding 5(c). Mr. Dermody said part of their rationale is that the project improves the neighborhood by redeveloping a vacant parcel at the heart of the Victoria Park Urban Village. He added that after the traffic study it was determined that the apartments' impact

on the traffic situation is minimal and that most of the traffic is generated by the school with the pickup and drop off of students, concluding that there is no issue with the health, safety, or welfare from this apartment building to the neighborhood.

Commissioner Ochs asked why the building height could not be lowered. Mr. Dermody said that the primary limiting factor is due to the small size of the site with underground parking. He said lowering the height of the building would create a sharp drop for the driveway ramp going beneath the building. He also said that market expectations on ceiling height means there is limited ability to shrink the height of the building.

Commissioner Ochs said he did not have a lot of empathy for ceiling height, but he could understand the slope of the ramp for underground parking.

Chair Makarios said there are two issues. One is a conditional use permit to increase the maximum allowable height up to 2 feet, as long as it meets the conditions and that it is not detrimental to the neighboring uses. The other is the variance. He said that variances have different standards and there has to be a good reason why the code cannot be followed.

Mr. Dermody responded to questions by Commissioner Lindeke that he is unaware if Nova Classical Academy purchased the land next to them or if there were any goals about tax base in the master plan.

The applicant, Joe McElwain, Developer Manager with Chase Real Estate, 2140 County Road 42, Burnsville said he has been in contact with Eric Williams, Director of Nova Classical Academy, and the District 9 Council to gain approval for the project. He said that they also did a traffic study and it was determined that there is enough capacity for this apartment building. He added that there have been no changes with the building plan.

Mr. McElwain said that these are market rate apartments, but the project is unique due to its small size. He added that the goal is to offer studios and one bedroom apartments with a balcony to extend the living space and provide more light. He said the reason they could not set back the building any further is because there has to be underground parking. They would like a 10' buffer for landscaping and walk out balconies all around the site, per the master plan. The plan is to have 9' ceilings and with a 2' floor structure at 11' per floor with 4 floors is 44'. He said there is added height for roof sloping, the parapet and an added 2 ½' because the building will be built 5 steps up from grade.

Chair Makarios asked if all of the issues with Nova Classical Academy have been resolved. Mr. McElwain said they had.

In response to a previous question by Commissioner Lindeke, Mr. McElwain said that Nova Classical Academy purchased the property next to them and is going through Site Plan Review for a soccer field.

Commissioner Baker asked if the Fort Road Federation made a recommendation on this application. Mr. Dermody said that the District Councils get notified of all applications at the time the application is received and again for the public hearing. He added that the District Council may put the item on their next Land Use Committee Agenda for discussion and may make a recommendation at that time, but it is not required.

Commissioner DeJoy said that Fort Road Federation was involved in the Victoria Park planning, but did not weigh in on this application.

Mr. McElwain said the last time he met with Fort Road Federation was last year.

Mr. Dermody responded to a previous question by Commissioner Lindeke that there is no reference to tax base in the goals of the master plan.

No one spoke in favor or opposition and the public hearing was closed.

Commissioner DeJoy moved approval of the conditional use permit and variance with a condition. Commissioner Lindeke seconded the motion.

In response to a question by Commissioner Lindeke, Mr. Dermody said that the building entrance is along Victoria Way and is considered the front yard. He said that by definition, if there is a yard opposite the front yard that also fronts on a street, it is called a through lot. He added that when there is a through lot both front yards must abide by the 10' minimum front yard setback requirement, and that in a T3 zoning district there are no minimum setbacks for a side yard or rear yard, except to meet building and fire code requirements.

Chair Makarios asked if there are doors on the rear yard. Mr. Dermody said that on the north elevation there will be balconies and windows, but the south elevation is the true front and has the entrance doors.

Mr. Torstenson noted language in the staff report about articulation and the relationship of the units to the street, which is improved by the balconies.

Commissioner DeJoy said she recalled the previous public hearing and the large attendance, but does not recall the issue of the 2' or 5' variance. She said the concerns at that time were mostly about traffic, pedestrian safety, and utilizing the land for a dog park. She added that housing was not the concern at that time and for these reasons, she is supporting this application.

Chair Makarios said he is struggling with findings 6 (c) and (d) for the variance, because the Zoning Committee needs to find that there are practical difficulties in complying with this provision that are not the plight of the landowner and that there are circumstances unique to the property and not created by the landowner. He said he is comfortable with the conditional use permit, but to put balconies on luxury apartments within the 10' setback is in violation of the code.

Commissioner Lindeke said he supports the motion on the table, because practical difficulty is a condition of the small lot surrounded by streets on three sides. If they changed the front of the building to one of the other streets then there would be side setbacks that would be in compliance of the zoning code.

Commissioner Ochs said that in the absence of a floor plan, the difficulties described are more for a return on investment and adding the balconies to increase the value is reasonable. He said how the front was determined with having three sides to choose from is not known. Chair Makarios noted that if they had chosen the east side as the front there would be side yard setbacks.

Commissioner Ochs said it would be nice to know the square footage is of the units on the Mercer Street side to see if this is truly a hardship or if the balconies could be inset.

Chair Makarios said a balcony is a nice amenity, but it does not require the granting of a variance.

Commissioner DeJoy asked Chair Makarios if he feels the balconies are detrimental to the existing character. Chair Makarios said he does not, but that he does not feel the conditions have been met under finding 6 of the staff report.

Chair Makarios suggested amending the previous motion to approve the conditional use permit, but not the variance.

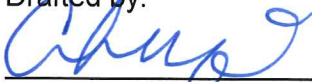
Commissioner Ochs made a motion to strike the second half of the paragraph of the staff recommendation to remove "and a variance of 5 ft. (10 ft. required) in building setback." No one seconded the motion.

Commissioner Ochs noted that the vote will be a single vote for both the conditional use permit and variance. Chair Makarios agreed.

The motion passed by a vote of 4-1-0.

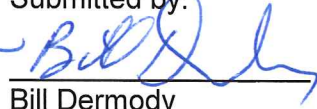
Adopted Yeas - 4 Nays - 1 (Makarios) Abstained - 0

Drafted by:



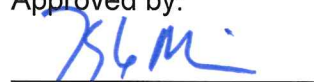
Cherie Englund
Recording Secretary

Submitted by:



Bill Dermody
City Planner

Approved by:



Kyle Makarios
Chair