

**PLANNING COMMISSION
MEETING MINUTES
WEDNESDAY, JANUARY 18, 2006
7:30 P.M.**

I. CALL TO ORDER

The meeting was called to order at 7:20 p.m.

II. ROLL CALL

Present: G. Clark, N. Fosket, C. McPherson, E. Walters,
Brian McClemens

Absent: M. Brandt (excused) R. Johnson (excused)

Staff: N. Voght, City Planner, N. Schuette, Exec. Secretary

III. APPROVAL OF MINUTES

Commissioner McPherson moved to approve the minutes of November 16, 2005 with recommended changes on Pages 10 and 11 (Support: N. Fosket) and the motion carried unanimously.

Commissioner Clark asked for a motion to change the agenda putting "New Business" ahead of "Old Business" because of the number of people in attendance on this item. Commissioner McClemens moved to change the agenda as stated above (Support: C. McPherson) and the motion carried unanimously.

IV. AUDIENCE PARTICIPATION

Commissioner Fosket moved to open the public hearing (Support: B. McClemens and the motion carried unanimously.

Jim Fink, 206 S. Washington – is a life-long resident of Ypsilanti. He stated that he wished to comment on the Zoning Text Amendment, item #1 of Old Business. He spent 20 years in police work and the last half of his career has been spent working on community oriented

policing and community oriented government where the idea is that the people in the community have a better sense of what the problems are and what the solutions are, rather than the police. An example of this is in Ann Arbor where a neighborhood had a lot of crime problems and their Police Department did a survey to see what they should focus on. They assumed the neighbors would say that drugs and gangs were the problem but instead found out that it was loud car stereos. This is an example of how sometimes even the well intentioned public servants have ideas but they may not match those of the community.

If this is passed, it is his opinion that we are saying churches are not welcome here and that they are so not welcome that we are also excluding union halls, NAACP, banquet hall all because we can legally exclude churches. There is no community outcry to ban churches from downtown. While he understands there is a "potential" problem that may arise when someone wants a liquor license and is within 500 ft. of a church, another approach could be to get the legislature to change the law so that in a business district, that statute does not apply.

He is asking that the board deny this Zoning Text Amendment.

Abby Baylis, 1932 Washtenaw Avenue – also has concerns about the same issue as the previous speaker and questioned the reason for this change. She found out that a tattoo parlor could not be within 500 ft of a church but noticed that on this same agenda, there is a request for a Special Use Application for an Tattoo Establishment on 27 N. Washington.

Cheryl Farmer, 214 N. Huron – is in attendance in support of the Zoning Text Amendment previously discussed removing private clubs, lodges, banquet & meeting halls, K-12 schools from the B3 Central Business Zone. Downtown and Depot Town are our "Briarwood" and are the heart of our City's retail experience. What is needed in both the downtown and Depot Town are uses that complement one another. Entertainment complements restaurants, which complements retail. We need to reserve our limited commercial space for businesses that will help each other to draw in the foot traffic that they all need to survive and thrive. It does not make sense to permit these non-retail uses such as clubs and schools in the B3 Commercial district. This is a land use issue. Making this change will also help the City of Ypsilanti in the case of additional churches wanting to locate in our downtown commercial district. We have dozens of churches in the City of Ypsilanti. We also have very many areas in the City where new churches would be allowed by right under the current zoning.

What has changed is that under the Clinton Administration, legislation was passed that would prohibit discrimination against churches. Most downtowns historically have excluded churches from their retail areas under their zoning provisions and since this change, there have been challenges where churches have tried to locate in various downtowns across the country. Some churches have prevailed and some communities have prevailed and the difference whether or not a city prevails seems to be related to what else they exclude from their commercial area. Clubs and schools are more like places of assembly (i.e. churches) than not. If they are also excluded from the retail district, then it's easier for a city to sustain a challenge if a church wants to move in because we would be treating churches, schools, etc. the same.

She is encouraging the board to adopt this Text Amendment. It will be a good thing for protecting our downtown and Depot Town for retail, restaurants and entertainment that we need to make it vibrant.

Loretta Meier, 3467 W. Delhi, Ann Arbor – stated that her husband is an architect and appears at various Planning Commissions on a regular basis. It is her opinion that oftentimes Planning Commissions bring up ordinances and amendments because they see a trend, consequently, she is asking if we are bringing this to the forefront because people have come before the board requesting change, or there has been public input on this topic with people coming before the board saying churches are a problem because of parking congestion, etc.

She does not feel it is in the best interest, or constitutionally correct to say that we should include/exclude churches from this particular location. She understands the constitution to say that we have the freedom for religious people to gather any place.

Steve Pierce, 118 S. Washington – spoke last month on this same subject in opposition to change the zoning. He feels this ordinance will be a detriment to our community. We are based on a variety of different people who came from all over the country to settle here. At that time, they brought with them their cultures, religions and ideals and created this community. Looking at this ordinance, it is his opinion that many things will be prevented from occurring, one of which is the Riverside Arts Center. This was brought about by the masons at the turn of the century and it was their lodge for a number of years. This ordinance would prevent them from building in the downtown area and it is his opinion that this was not the intent of our founding fathers. We will also be banning other organizations, i.e. NAACP. He doubts whether anyone feels that this organization is bad for the downtown, nor any union hall.

He is discouraged that this ordinance is being forced through by the Planning Staff. It has not come from the DDA nor has it come from the business owners in the community and asks the board to vote this down.

Commissioner Walters moved to close the public portion of this hearing (Support: B. McClemens) and the motion carried unanimously.

IV. NEW BUSINESS

1. 27 N. Washington – Special Use Application

N. Voght presented his staff report stating that this is a Special Use Application for a tattoo establishment at 27 N. Washington. This particular location is an existing building in our downtown on the West side of N. Washington, near Pearl. The space is approximately 1300 s.f. in size and is zoned B3 Central Business District.

Tattoo establishments in the B3 are considered Special Use and there is also some supplemental requirements for this use. Tattoo establishments used to be regulated and included with our Adult Regulated Uses but at some point in about 1994, they were taken out. Some of the spatial requirements were left in, hence the reason for the 500 ft. from another tattoo establishment, schools, places of worship, or residential zoning districts. The concept is to ensure that there is not a concentration of this particular use which is one strategy that has been employed for adult uses for many years.

Voght included in his staff report the definition from the Zoning Ordinance and the applicant does propose a use that is consistent with that definition. They are also proposing body piercing services. Figure 1 in his staff report shows a conceptual 500 ft. radius map using our GIS System which includes the proposed location and a 500 ft. radius showing the various churches, existing tattoo establishment, R4 zoning etc. and how the spatial requirements impact the use.

Surrounding areas are generally commercial, office, entertainment, restaurants, etc.

Voght stated that because this is a non-discretionary standard, this does require some kind of dimensional variance from the Zoning Board of Appeals (ZBA). The applicants have applied to the Planning Commission and at the same time, they have applied to the ZBA. Procedurally, they must come before the Planning Commission first to allow this board to deal with the Special Use. Voght is recommending that we hold the public hearing at this meeting but defer it to the ZBA to let them deal with the issue of the dimensional variance.

Voght checked into Tattoo Establishment Licensing to find out how this use might be licensed apart from zoning, similar to a day care center or adult foster care, since a lot of these uses have state licensing. There has been a lot of legislation proposed at the state level but none has ever been adopted. Some County Health Departments do regulate these kinds of establishments but Washtenaw County does not. Therefore, there are no regulations in terms of health requirements that would pertain to this use. At some time in the future, this type of use could be regulated by the County. The Board does have some control under the special use provisions to consider restrictions/conditions, should it be approved, that might address some health requirements, i.e. disposable gloves, restrictions on age, etc.

Voght reviewed the Special Use criteria as listed below:

Section 122-165 (b) provides standards for reviewing special use requests. The proposed use as a Tattoo Establishment requires Special Use review. Below we provide the Special Use standards and staff comments on each:

Approval of a special land use permit shall be based on the determination that the proposed use will comply with all the requirements of this chapter, including all site plan review criteria (section 122-127) and the applicable site development standards for the specific use. In addition, the following standards shall be met:

- (1) *The location, scale and intensity of the proposed use shall be compatible with adjacent uses and the zoning of the land.*

COMMENTS: The scale and intensity of the use is compatible with adjacent uses. However, the location of the proposed use is not consistent with the zoning of the land, which requires the use to be located at least 500 ft. from other tattoo establishments, churches, schools, and Residential zoning districts. This standard is not met.

- (2) *The proposed use shall promote the use of land in a socially and economically desirable manner and shall not be detrimental, hazardous, or disturbing to existing or future neighboring uses, persons, property or public welfare.*

COMMENTS: The proposed use is personal service in nature, similar to barber shops, beauty salons, shoe repair, drug store, dry cleaning, tailor, locksmith, etc. The B3, Central Business District zoning allows these personal service uses but also retail, restaurant, and entertainment uses drawing from a more regional customer base. Washington Street in the downtown has evolved into an entertainment center with Pub 13, Club Divine, and Déjà vu. A Mongolian Barbecue style restaurant is under construction as well. The proposed use will not be detrimental to these existing uses.

- (3) *The proposed special land use shall be designed, constructed, operated and maintained to assure long-term compatibility with surrounding land uses. Consideration shall be given to the placement, bulk, and height of structures; materials used in construction; location and screening of parking areas, driveways, outdoor storage areas, outdoor activity areas, and mechanical equipment; nature of landscaping and fencing; and hours of operation.*

COMMENTS: The use will occupy a downtown building with zero lot lines, so site design, setbacks, screening, etc. is not addressable. A public parking lot is located to the rear, which will provide easy customer access. This use is satisfactory.

- (4) *The proposed special land use shall not present unreasonable adverse impacts on traffic circulation. Consideration shall be given to the estimated traffic generated by such use, proximity to major thoroughfares, proximity to intersections, required vehicular turning movements, and provisions for pedestrian traffic.*

COMMENTS: The use will not present unreasonable traffic impacts.

(5) *The proposed use shall not create additional requirements at public cost for public facilities and services that will be detrimental to the economic welfare of the community.*

COMMENTS: The proposed use will not create additional need for public facilities or services.

(6) *The location of the proposed use shall not result in a small residential area being substantially surrounded by nonresidential development, nor a small nonresidential area being substantially surrounded by incompatible uses.*

COMMENTS: The proposed location for this use is within an established commercial/entertainment area.

Staff recommended that we hold public hearing for input but that no action be taken on this issue at this time, that it be tabled until it goes before the ZBA and comes back to the Planning Commission, unless ZBA denies the variance.

Commissioner McPherson asked if tattoo establishments should be at least 500 ft. from other tattoo establishments and/or churches, and what the origin of this regulation is. Voght responded that from what he has seen in our zoning ordinance, when we first adopted our Adult Regulated Uses in 1984, we included Tattoo Establishments with all the plethora of Adult Uses. Around 1994, Tattoo Establishments were separated from adult uses. For example, in looking at adult regulations, there is 500 ft or 1000 ft spatial requirements. The strategy we employed, which is similar to what Ann Arbor and many other cities did for adult uses, and was upheld, was to either put them in one street in a very concentrated area or make sure they are spread out so that the impact of an adult use, or other use that could be objectionable, would not be as disturbing or detrimental to one specific area. At one time, the tattoo establishments were taken out of the Adult Regulations and put in a few districts as special uses, but the carry-over was the spatial requirements.

Commission Walters asked if we should consider any issue with hazardous waste, i.e. needles, etc. Voght responded that if this use was approved, we could talk to Washtenaw County, look at their draft rules and come up with appropriate conditions. He also suggested that this be discussed with the applicant.

Commissioner McPherson moved to open the public portion of the hearing (Support: B. McClemens) and the motion carried unanimously.

Sharon Foust, 5924 S. Mohawk, Ypsilanti – she and her husband are the current owners of Liquid Swordz at 312 Perrin. They are requesting this Special Use Permit to enable them to change the location of their current business. This is an established business of eight years and would like to move to a larger location to promote a positive art network within the City. This would include creating an art gallery and a reception area along with monthly gallery events. The proposed location would allow them to keep the tattoo/body piercing area

separate from the gallery. They have had a positive reputation for the last eight years and would continue to ensure that this does not change by not allowing tattoos that encourage gangs, violence or hate. Because tattoos are permanent, they do not tattoo anyone under 18 years of age regardless of parental consent. Ms. Foust distributed examples of forms and agreements for piercing for minors with parental consent. Ms. Foust added that there are no licensing requirements in Washtenaw County. However, they do practice regulations by the APT and APP, which is the Association of Professional Tattoos and Piercing. Every needle and tube set are individually packaged and sealed, opened in front of every customer and every piece of equipment, gloves, etc. is discarded after one use. All work areas are cleaned with an anti-bacterial agent after each application.

Ms. Foust is asking for board approval of this Special Use.

B. Robb, 408 E. Cross – encouraging board to grant approval of this application. The proposed business will be located in the entertainment district and fits well with the area.

R. Peto – stated that he is currently employed by the Ypsilanti Police Department although his opinion or statement does not represent that department. It is solely based on his experience in that area.

He has been employed by the Ypsilanti Police Department since 1997. He was assigned to the Perrin Street Mini Station in 2001, which is located close to Liquid Swordz. His duties were specifically to work with fraternities, colleges, businesses individually and as a group. Since that time, he has become very familiar with the area and has close ties to all the businesses. His experience with Liquid Swordz has been very positive and he found it to be very professional at all times. He has never had a call for that location and is not aware of any negative calls at that location. Mr. Foust has attended all business meetings with neighbors and has actively worked to improve the area.

Jennifer Albaum, 42 S. Wallace Blvd, Ypsilanti – stated that she is speaking as a resident of the City as well as a former downtown business owner, DDA board member, Chair of Local Cool Cities Advisory Group and as a professional with MAP Info Corporation.

Ms. Albaum has known Jeff Foust since about 2000 and when she was preparing to open her former business in Ypsilanti, she met and consulted with Jeff about good business practices. His business is professionally run and very successful and the type of business that we should encourage. They have a loyal customer following with an opportunity to attract even more customers. She is asking the board to vote in their favor.

Jonathon Cuidry, 8551 Brookpark, Canton – stated that not only is Mr. Foust professional in the way he runs his business but he has been very active in helping others and a positive role model for other businesses coming into the area. Jeff is very active in community service sponsoring a family affected by Katrina and Thanksgiving dinners to the homeless. He supports this request and asked the board for approval.

Loretta Meyer, Ann Arbor – is concerned about the spatial requirements. It is her opinion the board should look at each project on an individual basis. Does it benefit the community??

Joe Lawrence, 212 S. Huron – owns eight properties in the City, seven of which are in the Historic District. One of his properties is close to Liquid Swordz' current location and in the time this business has been located on Perrin, none of his tenants have had any problems with this business. None of his tenants have turned him down due to the proximity of a tattoo establishment. He totally supports the request for Liquid Swordz to relocate and recommends application approval. These are local people with a track record who also own a home in the City and have children in the Ypsilanti school system.

Steve Pierce, 118 S. Washington – also endorses the Foust application to locate in the downtown area. There has been a history of labeling a tattoo establishment as part of an adult establishment but times have changed. He supports this request.

Mayor Farmer, 214 N. Huron – urged the Planning Commission to table this item until the ZBA can rule on the special requirements. If it comes back from the ZBA, she is asking the board to think about the purpose of B3 zoning. It is for retail – it is a land use issue. Would a tattoo establishment on N. Washington Street add or detract from the vibrant retail mix that we are hoping to put together – that would be the question.

Commissioner Fosket moved to close the public portion of the hearing (Support: E. Walters) and the motion carried unanimously.

Commissioner Fosket asked what happens to the disposal of needles, etc. Mr. Foust responded that they take the storage container to St. Joseph Hospital for incineration. It is a free service and they do get receipts for this material.

Commissioner McClemens asked for more explanation on the gallery usage and Mr. Foust responded that this is a collaborative effort between EMU and parents of students to show off their artwork, possibly once a month. Community members would also be welcome to bring their art.

Commissioner Fosket stated that oftentimes, some people have a tendency to lump bikers or people with tattoos as hoodlums but that is simply not true.

Mr. Voght reminded the board that the business is for the use, not the business owner, and should be what they take into consideration.

Commissioner Walters moved to recommend tabling this item until Zoning Board of Appeals has made their decision on the variance (Support: C. McPherson). A roll call vote was taken and carried unanimously.

VI. OLD BUSINESS

1. Zoning Ordinance Text Amendment

Voght distributed a letter from Mr. Fink and also referred to a letter from Mr. Keith Peters, Chamber of Commerce Director which was included in their packets.

Voght stating that this is continued review of a proposed Zoning Ordinance Text Amendment. Some board members were absent when this was initially discussed. It is an amendment that the City Attorney's Office has prepared and is requesting Planning Commission input, after which, it would go to City Council for their decision. The role of the Planning Commission on this is the impact to the Zoning Ordinance, decide if this change is appropriate and make a recommendation to Council for their final decision.

He gave some background information on this proposed amendment. Over the last number of years, there has been various versions of religious protection of freedom with legislation at the federal level that has endeavored to give churches more protection from zoning regulations that restricts where churches are established or constructed. The version that was finally put in place in 2000 is the RLUIPA Act, which essentially says that you cannot place a significant burden on religious exercise. Some of that language is noted in the resolution provided by the City Attorney as well as the ordinance so you can read that language and see what the attorney is trying to do. Since 2000, there has been case law with regard to this legislation. Churches and other religious institutions have used it to allow them to freely exercise their religion. Communities may have been sued by religious institutions under this act and there is a lot of evolving case law, some tested, some untested with regard to what communities need to do to be consistent with federal law. This is really what this issue is about. The changes that are proposed by the City Attorney will ensure that our zoning regulations are consistent with federal law in that we treat any public assembly use, specifically, private clubs, meeting halls, lodges, banquet halls, on the same playing field as churches, which is another form of assembly.

Some of the case law that has come out, according to the City Attorney, is that in any particular zoning district, i.e. B3, if you are treating a private lodge or club differently than a church, then that is unequal treatment that is not warranted under this federal law. The church would be being treated differently than a private club or lodge. Churches have always been prohibited in our downtown zoning, at least since 1953, with very few exceptions. A cursory review was made of previous zoning ordinances and the intent has never been to have churches in the Central Business District. The CBD is for commerce/retail. This is not about changing that precedent or creating prohibitions for churches in the downtown. This change is to make sure that our existing zoning regulations are consistent with federal law.

This is a text change, not a map change to the ordinance. What has been proposed is to remove private clubs, lodges, banquet/meeting halls, K-12 schools from the B3. The reason the schools have been thrown in as well is because some of our rationale for churches and the

potential conflict with liquor licensing is that the State Liquor License Act says that churches could potentially protest and require public hearings before liquor licenses are issued, expanded or relocated to a different location. This could have a chilling effect on downtown development of entertainment uses, restaurants, bars, etc. Because schools also have this effect, for consistency, the City Attorney's office has suggested that we make sure that K-12 schools are also removed from the B3.

At the last meeting where this was discussed, it was confusing because of all the legal aspects, case law, etc. Voght wants the Planning Commission to focus on the land use discussion, which is really what the Planning Commission should do. What effect this has, if any, on the zoning ordinance should be the focus. His review of December 15th examines the proposed change, reviews some of the background, provides a copy of the zoning map where B3 is currently located, which is generally downtown and Depot Town. He reviewed where private clubs and lodges, and banquet halls are currently allowed in detail.

In Voght's analysis, he reviewed where private clubs and lodges and banquet halls are allowed and noted that they are accommodated in a variety of other zoning districts. He looked at the Master Plan to determine what goals are listed for the central business district. The Master Plan calls for downtown areas to attract retail and restaurant uses.

He recommends that this amendment be adopted and that the board recommend the change to City Council.

Commissioner Clark asked if he was a restaurant owner and wanted to do outside seating, or expand the footprint of his building and was within the 500 ft. of a church. Voght responded that his understanding of the licensing requirements is that the Liquor Control Commission sends a notice to the church involved stating that they have a license request from some restaurant/bar within 500 ft., and the church involved would have the opportunity to either protest this or ask for a public hearing and generally, they could come to the public hearing and express their objections. Mr. Walters continued by asking if the business person involved would also have to go to the hearing for the LCC and Mr. Voght responded in the affirmative.

Commissioner Walters asked about the distinction between banquet halls and meeting halls as opposed to banquet facilities in an existing restaurant. Are we in any jeopardy of prohibiting an existing restaurant's use of a banquet facility or a new restaurant that would want a banquet facility? Voght responded that if someone came in and wanted to open a banquet facility alone, this would be considered the principal use of the property. If an existing restaurant desired to have an additional room dedicated for special events and banquets and provide the food from the restaurant kitchen, that would be considered an accessory use to the restaurant and be allowed. Walters also asked about the difference between meeting halls vs churches in terms of assembly which Voght explained in detail.

Commissioner McClemens asked how many existing clubs, meeting halls, etc. would be effected by this change to the B3, and Voght responded that he is not aware of any.

After further discussion, Commissioner Walters moved to approve amendments to Section 122-392 and 122-805 and recommend to City Council, based on the following findings stated in the staff report dated December 15, 2005.

1. The proposed Zoning Ordinance amendments will remove any potential substantial burden on religious exercise or any potential treatment of religious institutions that is on less than equal terms than non-religious assemblies and institutions.
2. The proposed amendments are consistent with the intent and purpose of the B3 zoning district to promote redevelopment and continued maintenance of the downtown and depot town commercial areas, through development of a mixed use district of a variety of retail, office and service uses.
3. The proposed amendments are consistent with stated 1998 Master Plan goals for the downtown and depot town uses for "encouraging uses that will create destination retail, restaurant, and entertainment uses..." by removing potential barriers for the establishment of such uses.
4. The proposed amendments will remove potential barriers for Downtown and Depot Town restaurant and entertainment uses from acquiring, transferring, or expanding liquor control permits.
5. Removing private clubs, lodges, meeting and banquet halls as a Principal Use from B3 zoning is appropriate as they have site requirements, such as need for on-site parking that downtown buildings do not generally provide.
6. Private clubs, lodges, meeting and banquet halls are allowed in a variety of other zoning districts including R/O, R/C, B2, B4, C/I and W/S. Therefore, there are substantial areas within the City that these uses could be located.
7. Kindergarten through grade 12 schools are accommodated in many other zoning districts in the City, including R1, R2, R3, R3, R/O, PL, and R/C.

The motion was supported by C. McPherson. A roll call vote was taken and carried unanimously.

2. Various Zoning Ordinance Text Amendments

N. Voght, City Planner, stated we discussed these text amendments initially back in July. Periodically we like to do housekeeping amendments to the ordinance. Voght identified discrepancies, standards that really need updating, etc. quite often or we discover issues that don't work in the process of doing site plans. What we did in July was to come up with a list of items that could be looked at. This is just a list and he would have to come to the board

with detailed text changes for the board to review. He does not have all these changes at this time but he would like to get the board's input to determine if he is going in the right direction, or if there is something he is missing that the board may feel is a priority. Voght feels that these issues must be discussed so the board can understand exactly why we are looking at them.

Voght referred to the December 15, 2005 memo in which he proposed language for Section 122-835 (5) of the Zoning Ordinance on surfacing. He has added some text on best practices, proximity to the Huron River, etc. He would like to get this in place so that we can save people a step when it comes to alternative surfacing of parking lots. If the board is comfortable, he would like to schedule a public hearing on this for next month. He would also like to come back with a more refined list on the other items with more detailed language.

Commissioner McPherson moved to direct the City Planner, Nathan Voght, to schedule a public hearing for next month to discuss/approve various zoning ordinance text amendments, Item 4, 11, 13, 14, 15, 18 and 19 listed on the December 15, 2005 staff report including any minor amendments that have simple reference corrections as well as Section 122-835 (5) language as proposed in the December 15, 2005 staff report (Support: E. Walters). A roll call vote was taken and carried unanimously.

3. 753 S. Grove Master Plan Amendment

Commissioner McClemens made a motion to open the public portion of the hearing (Support: N. Fosket) and the motion carried unanimously.

Since there was no response from the public, Commissioner Fosket moved to close the public portion of the hearing (Support: B. McClemens) and the motion carried unanimously.

N. Voght, City Planner, stated that that the applicant is requesting a Master Plan amendment for a 1.49 acre parcel from Local Business to Community Business.

Commissioner McClemens moved to adopt the Master Plan Amendment from Local Business to Commercial Business (Support: C. McPherson). A roll call vote was taken and carried unanimously.

VII. ADJOURNMENT

Since there was no further business, Commissioner Fosket moved to adjourn the meeting (Support: B. McClemens) and the motion carried unanimously. The meeting adjourned at 9:44 p.m.