

**PLANNING COMMISSION
MEETING MINUTES
DECEMBER 18, 2002**

I. CALL TO ORDER

The meeting was called to order at 7:30 p.m.

II. ROLL CALL

Present: A. Malmer, F. Enneking, R. Miller, R. Johnson, G. Clark

Absent: F. Davis (excused) J. Adams

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

III. APPROVAL OF MINUTES – November 20, 2002

R. Miller moved to approve the minutes of November 20, 2002 (Support: G. Clark) and the motion carried unanimously.

IV. AUDIENCE PARTICIPATION

None

V. OLD BUSINESS

N. Voght stated this is a Special Use Permit and Site Plan Review for 529 Tyler. A public hearing was held in October, and in November a number of residents were allowed to speak regarding this application. Planning Commission members had some concerns on environmental impacts of towing operations, distribution of vehicles over a 24 hour period and paving of the storage lot. Staff was directed to review this further. In the interim, the applicant has looked into the feasibility of paving the lot and they have agreed to pave the lot. A copy of letter dated December 1, 2002 from Mr. Schwartz is included in the packets. Mr. Schwartz, the applicant's attorney, has agreed to provide the paving that staff and the Planning Commission had initially requested. The paving would be 8" of compacted stone under 5" asphalt, and in addition, they have agreed to provide an oil separator, which would improve the quality of the water before it is discharged into the retention pond, which ultimately infiltrates in the ground. They are proposing these changes with the hopes that this

will satisfy environmental concerns and other concerns, in regard to the Special Use. The Site Plan will require further work and we are still waiting a revised site plan. It is the understanding of both the applicant and staff that the site plan will be tabled.

To answer some of the questions posed to staff last month, he has provided some answers. The three questions were:

1. More information on traffic distribution over a 24 hour period.

Voght referred to the Institute of Traffic Engineers who publish surveys all across the United States on all types of land uses. However, one is not available for a 24 hour towing operation and if it was, the sample count would probably be quite low. He did not find a source for this information but regarding the disbursement of traffic over a 24 hour period, he would defer to the applicant to provide some indication on the level of activity they would expect on the site.

2. The potential environmental impacts of towing operations in general.

The second topic was the environmental impact on hydrocarbons in general and Voght stated that he would be glad to do further research if the board desires.

3. What information the City has on the existing Lowell's site which could give us some indication on what impact we assume could occur on the new site.

A Phase II was conducted on Lowell's Discount Towing and found trace amounts of different metals and carcinogens which are below maximum levels established by the State of Michigan. The report stated that some of it can be background contaminants which are found in soil in general. The report indicated that additional research would have to be done to find out what these levels were. Staff concluded based on this report that the contamination on the site is minimal. He spoke with Brett Lenart who is our Redevelopment Coordinator who agreed that the existing site has minimal contamination.

With regard to the Special Use, staff feels that this would be a good opportunity to discuss the latest proposal by the applicant to pave the vehicle storage lot, provide an oil separator and the screening fence with

the staggered row of evergreens on the school property. They could also discuss the traffic over a 24 hour period.

Voght recommended 11 conditions should the Special Use be considered for approval. Finally, over the last month, the building official made us aware that the existing septic field should be reviewed to verify that it is functioning properly just to ensure that the disposal of waste is handled appropriately. County Health Regulations or State Law might require them to tap into the public sewer which the applicant has indicated would be preferable. Orchard, Hiltz, McCliment are reviewing the location of the sewer lines and possible alternatives for the applicant to tap into the public sewer.

Ken Schwartz, Attorney for Applicant – stated that Scott Klaasen is the owner/operator of this operation. He will have two tenants – Discount Towing and Lowell Towing. They believe they have addressed every issue that the Planning Commission has brought up throughout the process satisfactorily.

Last month when they were here there were some concerns regarding oil separation and run-off and they have addressed that by agreeing to pave the entire portion of the site that would store vehicles. Storm discharge would run through an oil separator before being discharged to a retention pond. They have had discussions with the school and they are satisfied with the evergreens and fence proposed on their property because of the elevation.

They feel that they have addressed the issues that were raised by this Commission and hope that the Commission will recognize there is a strong need for this kind of service for the citizens of the community and that the change in use from the previous owner will be an improvement. They hope to get the Special Use at this meeting and will accept all the conditions put forth by staff understanding that the Special Use and their right to use it will be contingent on approval of a satisfactory Site Plan.

R. Johnson asked if they had a 24 hour traffic plan and Klaasen responded that they did not. It would vary on weather and other conditions but a heavy day would be approximately ten cars which drops after about 10:00 p.m. Johnson asked about Saturday evenings from 12:00 – 4:00 p.m. and Klaasen responded that generally these cars are ones that have been in accidents or parked illegally. Johnson asked the most ever done on a Saturday and Klaasen responded that he did not have this information. Schwartz stated that most towing requests come from the Police

Department or Washtenaw County Sheriff. Most towing would be coming from governmental demand.

Clark stated that this had been discussed last month since in order to get the City Contract they would have to be available 24 hrs per day. Schwartz stated that there is no guarantee they would get the City Contract but if they did, this would be a requirement of the contract. If they don't get the contract, they may not be a 24 hr towing operation. Schwartz added that neighbors are important but there are only two houses that border the property and they are M-2 zoning. They will do everything they can to mitigate the situation. The paving will help with any problems of dust. Klaasen stated that these houses are close to the I-94 expressway.

R. Johnson stated that he feels the applicant has bent over backwards to meet our requirements and moved to approve the request for a Special Use Permit contingent on the eleven conditions presented by staff and Site Plan Approval. There was no support for the motion.

Enneking stated that he did not support the previous operation and although he is not against this function, he does not believe it should be located next to a school. One of the goals of the City is beautification and he does not believe that this falls into the category.

Miller stated that he supports the comments of Commissioner Enneking. He is opposed solely to the use, definitely not the operator – is concerned about a towing company at that location.

Johnson stated that he does not see any danger. Clearly the operation presents some concern to owners of the homes next door and the school but doesn't see where towing yards would be much of an issue – doesn't see any evidence of that. If they are willing to abide by all the conditions and make the site plan work, he doesn't see what the problem is.

Clark stated that he is on the "fence" on this issue. It is nothing to do with the applicant since he believes that the applicant does a good job with his other properties. He doesn't like it being located next to a school and doesn't understand why the applicant can not present traffic pattern numbers since he feels this information would be made available by the City. He is concerned about the eleven conditions and how they would be enforced. He also feels that the residents have a legitimate concern but it is his opinion that this is a better use than the previous one.

Schwartz stated that the authority of the board must be exercised in a fair and non-arbitrary manner. He does not know where towing can be located in the City and this is M2 zoning on Tyler Road. The owner can establish practically any kind of use that is permitted by merely submitting a site plan. It is zoned M2 and this would be one of the least intensive uses for the site. If it does not go to Mr. Klaasen, the owner has every incentive to turn around and sell it to someone who may come in and want to put a paint factory there. The intent for the M2 district is supposed to be handling heavy traffic and the most grimy types of businesses. What they are asking for as a Special Use Permit, lowers the intensity to less than anything that the owner would have a right to do under the M2. As far as location, there is not a better location in the entire city for a towing operation. While he sympathizes with the neighbors, the representatives from the school attended previous meetings and were satisfied with the conditions.

Malmer feels that they have met the criteria and although it could be conflicting land uses, it is zoned M2.

Voght recommended that the board go through the Special Use criteria since we need to have a basis for any decision that is made. Malmer asked Voght to walk the board through this process:

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

Miller stated that we do not know the intensity since the business is not up and running yet. Voght added that we know the capacity of the storage yard. Miller continued by stating that intensity cannot be determined without knowing the number. It is obvious there will be some peak times – June through August there would be fewer calls since many of the students are gone but we know the population of the city nearly doubles when the students are here and many students have vehicles. Voght stated that it would be hard to get a specific number. Schwartz added that if there are specific questions that need to be answered, he has no objection to tabling this for another month. Miller referred to Schwartz' letter in which he stated that it is Lowell's plan to have two light duty tow trucks and one flatbed, Discount has one flatbed and two light duty tow trucks and American would have one flatbed and two light duty for a total of 9 vehicles.

Malmer asked if the board is satisfied with the criteria and Miller responded that we cannot determine it and Johnson agreed, because they are subjective. Voght added that most of these standards are indeed subjective, but the point of the Special Use standards is that there is discretion given to the board to evaluate the use based on these standards. He explained this concept further in more detail.

Schwartz added that he could go to Lowell asking them to add their invoices for all their requests for services to get an average if that would be helpful. Malmer responded that this could be helpful.

- 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.***

Johnson stated that this is inherent in the existing zoning. Clark added that regardless of the use, we will have to choose the best possible use for the surrounding neighbors that is the least detrimental to them, and which meets the special use criteria. Malmer stated that this applicant does want to work with the city to which Clark agreed.

- 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.***

Voght stated that the above gets in to site planning issues and special conditions which are intended to ensure that the site is designed, operated and maintained in compatibility with surrounding land uses. This standards speaks to the site plan itself, which we have reviewed.

- 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.

Miller stated that hopefully the data the applicant will provide should answer this.

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.***

Voght stated that this refers to impacts on our public services, i.e. fire department, schools, etc. that would make it more difficult for us to provide services because of the demand of the use. Malmer stated that this does not seem to be an issue.

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.***

Voght stated that this does not change the existing scheme that has been previously discussed.

Malmer stated that after reviewing the standards there is one piece of information that we have requested from the applicant and wondered if the board should wait for that piece of information to make decision.

Since there was no further discussion, R. Miller moved to table 529 Tyler in order to receive information on the volume of towing currently being done by Lowell Discount as well as a geographical breakdown of where traffic is coming from (i.e. City, County) as well as records from the Police Department (Support: R. Johnson) and the motion carried unanimously.

2. South Depot Town Neighborhood

Voght stated that last month some representatives of the South Depot Town Neighborhood came before the board to discuss concerns they have with the neighborhood. Staff was directed to create a basis for any future analysis or potential Master Plan updates that we might consider. He

provided an existing land use survey based on assessing data as well as his familiarity with the neighborhood. He sent this to Chris Knapp, representative of the association, with the hope that they would have some comments on the accuracy of the map. Voght proposes that we have a brief discussion at this meeting and come back within the next month or two with some recommendations. By reviewing the map, we can see some of the potential problems and why they have been having some land use conflicts in this neighborhood. We did a preliminary analysis of what we found in doing this map and those are the six items referred to in Voght's December 13th memo listed below:

1. The neighborhood is characterized by diverse land uses due to the transitional nature of this area of the city. For example, commercial/industrial uses near the railroad tracks and commercial uses to the south give way to low to medium density residential uses to the west and north. This transition occurs very quickly within a small geographic area, which partially leads to the issues confirmed by the neighborhood association.
2. The neighborhood is the southern gateway in to the Depot Town area, but also isolated due to surrounding land uses that are largely incompatible.
3. The existing zoning is in appropriate for some of the blocks in the neighborhood, including North Lincoln, North River south of North Street and the block bordered by North Park, Babbit, North Lincoln, and North Street.
4. The R3 designation of North River may be too dense considering the preponderance of single-family homes on this block.
5. There is evidence of spot-zoning in the neighborhood.
6. There are a number of vacant buildings and vacant parcels in the neighborhood.

City Council discussed a vacant buildings ordinance which will strengthen our ability to go in and give disincentives for owners to let a building sit vacant, requiring them to fix them up.

Donna Seibert, 105 Babbitt – was in attendance to represent the association. She stated that they had found a few inconsistencies on the map but is willing to discuss them with Voght on another occasion since they are not major. She questioned some of the zoning on the map since it looked to her that large blocks are being designated the same. Voght stated that the map indicated existing zoning. This is not the Master Plan or future land use but what current zoning is. Ms. Seibert continued by stating that in looking at this map, it really does show what a mix of zoning and uses they have. Although not necessarily bad since some

mixed uses are needed, but finding a balance will be difficult. They would like to bring zoning more in with current usage. She wonders what could be done with regard to zoning to encourage the kinds of businesses that are suitable to engage people living there. She referred to the Radiator Shop that is in the middle of a residential block as an example of type businesses that do not fit.

Johnson asked if it would be up to an owner to request a change in zoning and Voght responded that the City can initiate a rezoning, or an owner can request the same. Malmer asked if the City would be responsible for any potential legal actions in rezoning and Voght responded that any legislative change that potentially infringe on the reasonable use of property could be challenged as a "taking" of property. However, he feels that Ms. Seibert is merely wondering how they can encourage commercial uses that would serve the neighborhood. B1 does allow various kinds of businesses that may be compatible with the neighborhood, but may also create traffic. Clark added that because of the railroad, at one time businesses corresponded to that and houses were built to house those employees of the businesses, which at that time, made perfect sense.

Enneking asked if the neighborhood has been in contact with the various businesses and Ms. Seibert responded that they had not. She continued by asking if there would be a public hearing for the Master Plan and Voght responded in the affirmative. Voght also suggested to Seibert that the association contact the businesses and explain how they have had meetings to discuss concerns, not by being confrontational, but just an informal meeting to have them included in the process.

After further discussion by the board, staff and Ms. Seibert, R. Miller directed staff to come back with suggestions that will correspond to the Master Plan.

V. NEW BUSINESS

1. 1645 Washtenaw

Voght stated that this is a report and request from staff to the Planning Commission to revoke a Special Use Permit. The report outlines a history of this property – BP Station. In 1987 a Special Use Permit was granted for an expansion of the existing gas station. There were new pump islands, curb cuts, car wash, convenience store and fencing erected at that time.

Voght listed the violations stating that this had first come to us as a citizen complaint, and as part of enforcement, we follow up on them to determine the status. In this case, Voght reviewed the file and found a 1987 Special Use Permit that was approved with various conditions:

1. *The curb cut on Marion be of sufficient height and angle to direct traffic on Marion to the North, and that both curb cuts on Douglas be of sufficient height and angle to direct traffic on Douglas to the North. The intent being to direct traffic away from the residential area toward Washtenaw. The final specs to be approved by professional staff and on Planning Commission member.*
2. *That parking spaces numbered 6 through 10 be eliminated from the site plan, as they would cause an undesirable traffic pattern.*
3. *In order to address the nuisance issues in the neighborhood,*
 - A. *That the hours of operation be limited to 7:00 a.m. to 11:00 P.M. for the car wash, and from 6AM to 12PM for the store and gas station.*
 - B. *That the power to the car wash be shut off at closing.*
 - C. *That the water be shut off at closing during the warm weather months.*
 - D. *That illumination be provided in the bays after closing.*
 - E. *That signage be posted on the South and North sides of the building stating no playing of radios, no loitering, and a number where responsible management can be reached. On the North side of the property by the parking, a sign indicating 15 minute parking only.*
4. *That the fence bordering the south side of the property be of concrete block, 3 feet in height at the bottom, with a 6 foot staggered wood fence on top of it, to provide maximum sound absorbency, tapered toward the west and east ends for visibility. The final design and specs to be approved by professional staff and one Planning Commission member.*
5. *That the noise level for all vacuums operating at once cannot exceed the standards of the noise abatement ordinance. Specs to be approved by professional staff and one Planning Commission member.*

We did an inspection shortly before July 23, 2002 and found six violations:

1. The hours of operation for the convenience store are currently 24 hours.

2. The car wash is operational after 11:00 p.m.
3. The water to the car wash was not shut off during the warm weather months.
4. No signs are posted on the north side of the site stating 15 minute parking, or a number where responsible management can be reached.
5. The curb cuts on Douglas are not constructed as required to direct traffic north.
6. The required "no left turn" sign at the southern curb cut on Douglas is not present.

The owner, Feredioun Saremi, was given 60 days to address the above violations in a July 24, 2002 letter. On September 3, 2002, staff discussed the violations with the owner on the phone. Mr. Saremi indicated a willingness to comply, but requested a week to discuss the issue with his attorney. An October 28, 2002 letter was received from Sandra Sorini, attorney for the owner, indicating the owner will comply with all conditions except hours of operation. We responded in an October 31, 2002 letter, which indicates all conditions must be complied with, or revised Special Use Permit sought.

Despite phone conversations with the owner and owner's attorney in late November indicating they would comply with all conditions, no action has been taken to correct the violations. No building or sign permits have been submitted for review, nor have the hours of operation been adjusted to comply with the Special Use Permit. Site inspections have been made weekly by the Ypsilanti Police Department that verified that the store has been open 24 hours.

Voght stated that since the owner has failed to respond, he is bringing this before the Planning Commission with the request to consider revoking the permit. He has reviewed the authority that the Zoning Ordinance grants the Planning Commission to revoke a Special Use Permit. This has just been strengthened with a zoning ordinance text amendment which was adopted recently by City Council. The owner essentially entered into a contract with the city with special conditions and there has been no compliance with these conditions over the years. Voght included pertinent correspondence for the board's review. The owners are in attendance to answer any questions.

Commissioner Johnson asked the nature of the citizen complaint and Voght responded that it was the hours of operation and the fact that this site has problems with crime – there are many calls by the Police Department.

Fred Saremi, 1645 Washtenaw – stated that he had worked for the previous owner prior to buying the business and it was his assumption that he could operate 24 hours. He was surprised when he got the letter from Mr. Voght since this was the first time he was aware of the conditions. Financially, this has been

a bad year for him because he had to change the old tanks which were very expensive. He has borrowed against his home and taken another loan to pay for this. He has never had any problems with the neighbors.

Commissioner Johnson asked Saremi if he understood the concept of re-applying for a Special Permit since his attorney wrote that he would agree to do everything that was asked but yet the issue still has not been addressed. Also, there is a tacit acceptance that if they are open for 24hrs, it is not part of the agreement. Johnson asked Saremi why he did not apply for the permit to which he responded that he planned to do so but had financial problems. Johnson stated that Saremi indicated he needed to be open 24hrs but yet neither he or his attorney had applied for a revised Special Use permit.

Voght added that if he wants to expand his hours, that is one thing, but in the meantime, he must comply by closing at the time noted in the conditions. He also added that requesting a permit to expand the hours in that neighborhood will likely be controversial; however, he has the right to apply.

Miller also noted that in November, the City and Mr. Saremi's attorney had a conversation during which the attorney agreed to comply with all conditions and nothing has happened. He asked Saremi why he had not contacted the City who responded that he did not have any excuse.

Ali Damsez, 4000 Washtenaw, Ann Arbor – stated that he is a friend of the owner. He added that part of the land contract entered into by Mr. Saremi indicated that Gallup Properties were supposed to clean up the property which they never did. Mr. Saremi paid almost \$200,000 for the environmental clean-up to satisfy the State and MDEQ. To close earlier would affect Mr. Saremi financially.

Johnson asked for clarification on the hours and Saremi stated that the car wash has been closed for the last month and he would be willing to cut hours permanently. Voght disagreed stating that the Police Department has been checking on this location during the night shift, and just in the last week, the store has been open with the car wash in operation. Saremi responded that the car wash is now closed during the night.

After further discussion with board members, staff and the owner, Clark moved to table this issue until the January 15, 2003 meeting with the condition that all 1987 Special Use conditions except construction of required curb cuts will be met by January 15, 2003-with compliance with hours of operation by January 3-and that discussion will be held on January 15, 2003 to determine a date by when curb cuts will be done (Support: R. Johnson). A roll call vote was taken and carried unanimously.

2. Malmer noted that Commissioner Emily Turner-Jones resigned from the Planning Commission Board effective December 16, 2003.
3. Commissioner Clark stated that noted that this is Commissioner Amy Malmer's last meeting. Amy resigned due to family obligations. He read a resolution in appreciation of her many years on the board.

Since there was no further business, G. Clark moved to adjourn the meeting (Support: F. Enneking) and the motion carried unanimously. The meeting adjourned at 9:40 p.m.