

**PLANNING COMMISSION
MEETING MINUTES
AUGUST 20, 2003**

I. CALL TO ORDER

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

II. ROLL CALL

Present: F. Davis, G. Clark, F. Enneking, R. Johnson, J. Adams,
C. Knapp, N. Fosket

Absent: Mary Margaret Brandt (excused)

Staff: Nathan Voght, City Planner
Nan Schuette, Secretary

III. APPROVAL OF MINUTES – July 16, 2003

G. Clark moved to approve the minutes with a correction on page 12 – eighth paragraph, first line should read “60.5 percent of all dwelling units” (Support: R. Johnson) and the motion carried unanimously.

IV. AUDIENCE PARTICIPATION

Steve Pierce, 118 S. Washington – addressed the board on general subjects and stated his opinion on why Planning and Zoning is so important to our community. Some applicants have stated in the past that if they provide information to the City, the City will use that against them. If the applicant has nothing to hide, there should be no worry about disclosing facts and true intentions. An excellent case in point is the adult novelty store on West Washtenaw. The application was filed as Ypsilanti Gifts, LLC and the store opened as Priscilla’s. We are now in court trying to undo it because the use is clearly a violation of our zoning

laws. He does not understand why the City Attorney has not filed criminal charges against the owner of Priscilla's for false affidavit in their application.

Anyone who comes before this board, or any board in the City, should be held accountable and there should be consequences when misleading statements are made on an application.

He gave other examples, i.e. Sobbry's, the mobile home chop shop and B.P. Gas Station. In each case, an attempt was made to approve the special use or permit with the thought that they would adhere to the conditions stated and in each case, this did not happen. No matter how nice the applicant is, and how well meaning, we should not force incompatible uses into districts and areas where they were never intended. He referred to 112 S. Adams stating that it has been three years since the repairs from the fire, yet they still do not have a C/O, no approval from the city for their site plan, and yet they rent out their three units to low income tenants and even get a tax credit. This must stop and it starts with the Planning Commission, the City Council, City Staff, Attorneys, and most importantly, the applicants. As a community, we need to fairly enforce our laws and be clear on our intents and vision for specific areas in the community.

He stressed the importance of working with other commissions, i.e. HDC and DDA.

V. OLD BUSINESS

1. 28 N. Huron – Ozone House, Inc.

R. Johnson moved to remove this item from the table (Support: C. Knapp) and the motion carried unanimously.

Voght presented the staff report giving a brief update on this issue. After the last meeting, the board expected to have applications for the funding sources that Ozone House would be using for this project submitted to the City Attorney. Staff did get that information – two applications as well as the laws that allow the grants. Staff has also received some additional information in the interim and Ozone House provided sample of the lease that would be used for the tenants in the apartments since this was information requested by the board. The cover letter submitted by Ozone House covers all the information they have included. Voght met with Jack Gilbreath, Asst. City Attorney to review the information to address the Commission's request to see if there was a way that the

Special Use Permit could be crafted that protected us as a community from the apparent discrimination of renting the apartments to youths. They drafted some conditions that might be possible to use in the event that the board would choose to approve the permit.

Voght provided Mary Jo Callan, Director of Ozone House, with the conditions and after some discussion she indicated that she had questions on #4 and #5. On #4 she would like to change the expiration date to 20 years and on #5, she had concerns about the "funding sources". Voght reviewed the seven draft conditions in detail that could be imposed on the Special Use to make our approval legal. Voght also referenced a letter from the Office of Legal Affairs at MSHDA provided by Ozone House which addresses the issue that we are not in conflict with Fair Housing Laws. When considering approval of a Special Use Permit, he wanted to point out that there is a section in the Zoning Ordinance that talks about Special Uses being approvable even if they are time-related or are temporary in nature. Voght specifically wanted to reference that section because he thinks that any time-related approval would be based on this provision.

Jack Gilbreath, Asst. City Attorney – stated he was compelled to make a number of comments since he worked with Nathan on the draft conditions and agrees with his presentation. He wanted to know exactly what the Planning Commission has in mind about the whole process and decisions that would be made. In early 20th century there was a case involving Ambler Realty vs City of Euclid in the United States Supreme Court proclamation that zoning is legal in this country and in essence what it says is that the City can be empowered to control their communities through Zoning Ordinances. Within every state in the union there is some legislative statutory scheme which gives cities, such as Ypsilanti, the right to zone. The pre-cursor to enact zoning is to have a plan on how the city is going to manage their property. We have a Master Plan System which is a basic guiding document for how this community is going to be developed with designated areas such as R1, R2, etc.

It also includes provisions for various bodies to decide how to interpret the zoning ordinance and other bodies to determine whether various other special exceptions to that zoning ordinance will be granted. This is where this Planning Commission comes in on determining the outcome of this particular property. Originally, when there is a document that is put together by the City Planner, Nathan Voght, he outlines the authority in terms of the Special Use Conditions. Voght has recommended against the proposed use, and has listed a number of reasons for his decision, one of which is that it is inconsistent with the Master Plan of 1998.

The Zoning Ordinance gives the Planning Commission some latitude, which was given by the Zoning Board of Appeals as the body that can actually change the Zoning Laws and also interpret them. What the ZBA has done in this instance is determine that the City does not have this type of use specifically defined in the Zoning Ordinance, therefore, as a consequence, it must be an Unclassified Use which brings this request before the Planning Commission. On one hand, we have Mr. Voght's opinion and on the other hand, we have this Special Use Request.

Mr. Gilbreath was asked to look at one specific question, which is, if in the process of the board's deliberations they are being asked to create something that is contrary to laws that prohibit discrimination, can a decision be made that allows a Special Use to discriminate against a whole series of people? Part of the outcome of the *Ambler vs City of Euclid* suit stated that this could not be done. On the other hand, there are specific situations where there is an authority stating explicitly that you can discriminate and under those circumstances, a Special Use Permit could be fashioned that could be consistent with the enabling authority.

A number of documents have been received, included among which are the applications for various grants and it is clear that in Mr. Gilbreath's review of those documents, there is a number of sources/grants for money to enable this particular use to come to fruition. The applicant is saying that the property is going to be used for people 17-20 and that these people have a general need of supportive housing. In the HUD documentation, the actual application has not been approved by them, however, Gilbreath feels that the applicant would not be going forward if she did not anticipate approval. There is no language in the HUD document that states that they are allowing the applicant to discriminate against a city that might have a Human Rights Ordinance but what it does say is that they will provide money for supportive housing.

Gilbreath referred to the conditions listed in N. Voght's memo dated August 13, 2003 which allows the Planning Commission a basis for approval as the enabling authority if they so decide. On the other hand, there is the Master Plan which does not allow for this use, consequently, this is a decision for the Planning Commission.

Gilbreath added that we have a rental inspection program that takes place every two years. He is asking that if this request is granted that they be sure they get on the rental inspection list to be in compliance with the City of Ypsilanti.

Mary Jo Callen, Director – Ozone House - stated that they do have approval from HUD subject to site control. She referred to Condition #4 asking that this be changed to 20 years and explained the reasons for this request. On Condition #5, she appreciates Mr. Voght's flexibility adding that funding sources is an issue especially by scope of project and population served. She asked for clarification on #3 – "permit shall expire" and asked what they can do before the permit shall expire. She also asked that the words "and/or State funding sources are renewed" be modified or stricken since their funding comes from a variety of sources. She added that they were in total agreement with the recommendation of rental inspections.

Commissioner Johnson asked Ms. Callen to confirm that HUD is saying that they have to keep to their standards regardless of where the money comes from and Ms. Callen responded that they would only be seeking funding that would fit with HUD's standards.

F. Davis stated that he appreciated the efforts by the Assistant City Attorney responding to questions from the previous month. He referred to the staff report from the previous month in which Voght states the specific criteria that the board needs to use. The Planning Commission is here to serve the public but also to meet standards and carry out our duties to define land use. Voght has reminded us that when we make a motion to adopt, we should have a reason to do this. We have experienced some court cases in recent history where the City has had to defend the Planning Commission with regard to some of its decisions and it would be beneficial for the City Attorney to be able to point to a document that says we make these decisions for a reason and these reasons were rational based on our ordinances. He reminded the board that regardless of our decision, that we craft our motion keeping the Special Use criteria in mind which was referred to by Mr. Voght.

Commissioner Johnson does not have a problem with the application except that in the criteria, it states that this is not in compliance with our Master Plan. This is the one issue that is a sticking point with him. Commission Enneking asked about back-up if this is approved and problems arise later. Commission Davis responded that we have had some experience with revocations in the past. Voght added that this is covered in Condition #5. Commissioner Fosket asked if this organization decides to move, does the permit go to some other organization or is this strictly for Ozone House and Commissioner Davis responded that it could go to another non-profit organization. He added that he had a concern of grant funding and potential future grants. If the terms of the grant application changes and they place other restrictions in addition to what

they have, this would give us an opportunity to at least see that. Mary Jo Callen stated that the Planning Commission is covered by the scope of the project and that this is Supportive Housing.

Commissioner Adams was concerned about Condition #4 "in the event that the permit expires" and be no longer in effect 20 years after the Planning Commission approves. His interpretation is that we are going to honor this for 20 years regardless and it is his opinion that we should have something in writing to give the Commission an opportunity to exercise denial rights. Commissioner Johnson responded that he did not see any language that states this is an expressed approval of 20 years. Adams felt that this is a guarantee for 20 years. Davis stated that if this body should decide to approve it, the question was what conditions could be put that would restrict it so that it did not go with the land forever. Adams was concerned about misuse and potential welfare to the community. Gilbreath stated that if there was any vandalism or criminal behavior, that would be handled by the Police Department.

Commissioner Davis stated that Ozone House has presented us with lease documents, program documents, etc., and if they do not adhere to the Special Use conditions, their Special Use could be revoked.

Commissioner Davis has problems with residential housing programs in a downtown environment. It would have an impact on the neighborhood and is not appropriate to be downtown. Our 1998 Master Plan identifies this and we ratified this in reference to the Downtown Plan, that in the planning process, we did not want to encourage social service agencies in the downtown area. We found it to be more appropriate in other areas of the city.

Commissioner Clark stated that the process of doing this job is complicated by every exception we make to the Master Plan. We are not allowing the Master Plan to function when we make exceptions to it. We have a Master Plan that evolved in 1998 which strongly recommends that we not put any more social services in the downtown area. He does not have a problem with this personally but he has a problem with the process - what it means for the Planning Commission and how it affects our future in adhering to the Master Plan and anyone who wants us to make an exception. We have guidelines that we basically have to follow, therefore, for every exception we make, we are setting a precedent for other exceptions to follow. His other concern is our inability to fund city services and every time we take additional properties off the tax rolls, we are decreasing our ability to provide services, i.e. fire, police and recreation. He likes clarity for our processes as part of this commission

and the board has been given a Master Plan that is intended to provide us with clarity and guidelines that we should follow. We are making this an exception because it is a good agency and good provider of services and does good work and his hope, regardless of approval/denial, is that they continue this good work in this location. We have clarity that we should follow and the reason for having the Master Plan is so that we do not have to engage the community into these kinds of discussions which create needless animosity within our community. To the extent we do not follow the Master Plan, we are inviting this in an ongoing way.

Commissioner Johnson moved to deny this application for 28 N. Huron because of the following findings from page 7 of the Staff Report dated June 13, 2003:

1. The applicant Ozone House, Inc. currently operates a youth drop-in center at 30 N. Huron.
2. The applicant proposes to lease the two, upper-floor apartments to youth between the ages of 18-21, when first signing the lease, with address 28 N. Huron.
3. The subject property is zoned B3, Central Business District.
4. The apartment tenant will be receiving supportive services from Ozone House staff, including case management, counseling, life skills training, employment and educational support and advocacy. These services may be delivered from the ground floor drop-in center, or in the youth's home.
5. The Zoning Board of Appeals determined that the proposed use was Unclassified, and must be reviewed pursuant to 122-651, which requires Special Use review and approval by Planning Commission.
6. A residential neighborhood is more appropriate for the proposed use, rather than a mixed-use commercial district. In a residential neighborhood, neighbors surrounding the supportive housing would maintain similar hours to that of the proposed use, which would provide a setting more conducive to assisting the tenants to become responsible and contributing citizens and neighbors. Conversely, placing the tenants in a commercial and mixed-use district would not provide an environment as effective in this regard.
7. The proposed use is not consistent with the intent of the B3 zoning district, which, in part, is to provide for uses that complement each other.
8. The proposed use is not consistent with the 1998 City of Ypsilanti Master Plan, by reference to the 1992 Downtown Economic

Revitalization Initiative by Hyatt-Palma, which calls for developing fewer social service facilities in the downtown.

9. The proposed use is unclassified. The City must be given the opportunity to determine what residential Zoning Districts are appropriate for this use.

The motion was supported by G. Clark and a roll call vote was taken with a vote of 5:2. Norma Fosket and Christopher Knapp voted against the motion and the motion carried.

V. NEW BUSINESS

1. 1645 Washtenaw

Commissioner Davis stated that this is a Special Use Request to modify a current Special Use condition, which requires a public hearing.

Voght presented the staff report stating that this is an application to amend a Special Use Permit condition to allow 24 hr operation. The Zoning Ordinance allows an applicant who was granted a Special Use Permit the opportunity to ask the commission for a change to any of the conditions. The request is from OMUI Investments, owner of the property. It is a BP Gas Station with a convenience store and car wash. The original permit was granted on August 1987, the site plan approved shortly thereafter in 1988 with conditions added after the original permit was granted. The site is zoned B1 located on the south side of Washtenaw between Marion and Douglas.

Voght reviewed the conditions that were placed on the approval August 4, 1987 noting that the applicant is asking to change Condition 3 (A) which reads "That the hours of operation be limited to 7:00 am to 11 pm for the car wash, and from 6 am to 12 pm for the store and gas station." The applicant would like to operate the gas station and convenience store 24 hours. Over the years, this store got out of compliance with some of these conditions and this came to Voght's attention last year about the hours of operation. He contacted the owner but did not get a good response. He has had a number of meetings with the owner who also came before the Planning Commission to discuss compliance. There is still one outstanding compliance item that has not been completed, which is the curb cuts on Douglas. They were supposed to be completed by May 31, 2003. Voght reviewed the standards of Section 122-165 indicating that the standards had not been met and recommended denial of the request listing his eight reasons.

Commissioner Johnson moved to open the public portion of the hearing (Support: N. Fosket) and the motion carried unanimously.

Don Darnell, Attorney – was in attendance to represent the applicant at his request. Mr. Darnell gave a statement of circumstances listing Mr. Saremi's cooperation to fix the problems. This station was open for 24 hrs a day for more than ten years and then there were complaints. Mr. Saremi, who had purchased the station in 1997, was not aware that he did not have a Special Use Permit to be open 24 hrs a day. Mr. Saremi has financial problems. He talked to neighbors and they were friendly and he felt he was part of the neighborhood. Mr. Darnell's assistant, Sandra Wilson, visited with several neighbors asking for their support but was unable to get any support. Their complaints are loud music from the car wash both day and night, unruly behavior, ignoring the speed limit and no control over customers. They feel this will worsen if the applicant is allowed to open 24 hrs a day. Mr. Saremi stated that since he has closed the station, he has had vandalism behind the car wash and there is no way to control people who loiter there. The neighbors may feel these issues will worsen if the business is allowed to operate 24 hrs a day, however, it is the position of Mr. Darnell that this issue needs further study to determine if there is some way he can operate the business so that the problems the neighbors are concerned about will be less during the night. Nothing can be done if there is no one there.

Chuck Walgren, 470 Douglas – has lived there for 25 years. Mr. Saremi may face economic problems, however, the residents in that neighborhood face the same economic problem because they feel their property values are dropping because the environment where they live continues to deteriorate. When he moved there 25 years ago, the strip mall on the south side was a bank. Now they have two fast food places, Lover's Lane and a party store. On the next block, they have a gas station that has been a very bad neighbor with loud noise, garbage and cars speeding up and down. He will agree that some improvement have been made by Mr. Saremi, however, Mr. Walgreen feels that expanding the hours is detrimental to the neighborhood and asking that the board deny this request.

Scott Street, 1146 Whittier – is opposed to this request. He feels it would set a precedent since Walgreen's Drug Store would like to do the same. The noise is a big problem and even although he lives a few blocks away, he can still hear all the noise at his home. He is asking to deny this request.

Nancy Harvey, 496 Marion – urged denial of this request. The noise is intrusive and has a negative effect on their neighborhood. This summer has been relatively quiet. There is also a safety issue with children in the neighborhood and speeding cars cutting through the gas station. There is litter in her yard on a daily basis, i.e. pop bottles, lottery tickets, etc. that are obviously from the convenience store.

Maria Davis, 524 Marion – has lived in the neighborhood for 28 years. It used to be a quiet street when until Gallup Silkworth received their approval to open up a gas station at that location. The owner has stated he will have an attendant address the loud music but when she has gone there to complain, the attendants say they are afraid and can do nothing. The business is open 18 hrs a day and does not need to be open for 24 hours. Her house has been broken into as well as other neighbors – they do not need any more traffic on that street inviting more problems. She is asking for denial of this request.

Harold Goodsman, 482 Marion – feels that the owners of the station have constantly pushed to have the restrictions of their Special Use Permit reduced. Denying this permit would help to maintain a very desirable and peaceful neighborhood.

Harry Hutchison, 2020 Roosevelt – approving this request presents an opportunity for a domino effect – we do not need a 24 hour gas station. It is not the problem of the neighbors that the owner did not do due diligence when he bought the property. He is asking for the board's denial because he is concerned about the long-term effect.

Pam Hamblin, 109 North – stated that we are having problems with enforcing Special Use Permits because of the reduction in police and fire departments. This is largely due to the state shared revenues which were drastically reduced in this year's budget. Recommends denial.

Dennis Oakes, 539 Marion – stated that the biggest problem is the noise although trash, lights are an issue. The curb cuts are totally ignored. Does not support this request.

Nick Reszetlar, 474 Courtland – people ignore the curb cuts and now that the streets are fixed, it will be worse for speeding. He questions if the owner has an understanding of a neighborhood.

Chris Barron, 478 Douglas – just moved in to the area recently and lives only two houses from the gas station. There is litter on a regular basis, noise is a problem and the police do nothing about it. She is

concerned about safety with children. There is a definite nuisance problem and requests denial of this request.

Yvonne Abdo, 2028 Collegewood – supports all the other comments made by residents. She is concerned about enforcement and requests denial.

Julie Morris, 459 Douglas – has lived there since 1985. She is also concerned about safety and lack of enforcement. She has called the Police Department on many occasions about people hanging out at the car wash. She asks that we deny this request since it is not safe for the neighborhood.

Steve Pierce, 118 S. Washington – owned a home on Douglas until recently. He wished to address the board about getting the current Special Use Permit enforced. The Neighborhood Association and neighbors have been trying to go to this business since 1999. He went to Mr. Saremi a couple of years after he moved into the neighborhood asking for his assistance to address the problems of trash, noise and bad behavior of some of his customers. Mr. Saremi has never attended a neighborhood meeting, although he has been invited on many occasions with copies of the flyers, and has never returned phone calls to resolve problems. Mr. Pierce visited the area before attending the meeting and there is still a lot of trash all over the place. Rolling back the hours has made a significant difference to the neighborhood. Mr. Pierce is asking for denial of this request and to re-state to the applicant that he must comply with all the conditions of the 1987 Special Use Permit.

Commission Johnson moved to close the public portion of the hearing (Support: N. Fosket) and the motion carried unanimously.

Commissioner Johnson stated that he has never seen as much as evidence as has been presented at this meeting in support of denying a request, therefore, he made a motion to deny the request to modify Special Use Permit condition for hours of operation from 7am to 11pm to 24 hour operation for the convenience store and Washtenaw Avenue pump island at 1645 Washtenaw based on the following findings included in the August 13, 2003 staff report:

1. The Special Use Permit for convenience store, filling station, and car wash for 1645 Washtenaw was approved on August 4, 1987.
2. Property is zoned B-1, Neighborhood Business District.

3. The property is located in the Residential/Commercial and Entryway Overlay Districts.
4. The property is not in compliance with the approved site plan, specifically, the curb-cuts on Marion and Douglas Streets.
5. The proposed hours of operation would result in a land-use intensity that is not consistent with adjacent single-family residential uses.
6. The traffic, noise and light generated from the site during late hours would be disturbing to surrounding residential uses, and existing condominiums across Washtenaw Avenue to the north.
7. Allowing a 24 hour commercial use adjacent to a single-family neighborhood does not assure long-term compatibility between land uses.
8. The non-compliant curb-cuts on Marion and Douglas increase adverse commercial traffic impacts to the adjacent single-family neighborhood. Expanding the hours of operation will likely result in this same traffic occurring at all times of the day and night, which is an unreasonable impact on the neighborhood.

The motion was supported by Commissioner Fosket. Commissioner Adams asked for clarification of the hours and F. Davis stated that the hours for the car wash would be 7 a.m. – 11 pm and the convenience store would be 6 a.m. to 12 pm.

A roll vote was taken and carried unanimously.

2. Zoning Ordinance Text Amendment – Supportive Housing

Commissioner Davis stated that this discussion came about after a request went to Zoning Board of Appeals and at that time we found it was an Unclassified Use. We now have to determine what it is and have it included in our Ordinance.

Voght stated that this is draft text to the Zoning Ordinance. It is a common format that these types of amendments are put in and is underlying text. He is adding two definitions: one for Supportive Housing and the other for Supportive Services. In three zoning districts, R3, R4 and RC, adding these uses as a special use in both sections and listing it, he refers to a Special Section #122-811. These are supplemental standards for certain uses which would be added. Voght reviewed the draft Zoning Ordinance text.

Voght added that this issue is open for discussion and welcomed any questions by board members. Some concerns were voiced by

members. These include ensuring a drop-in center could be operated in proximity to supportive housing, provided both are operated by the same agency. There was also a concern the spacing requirements for new supportive housing to state-licensed residential facilities, nursing homes, correctional institutions, and other facilities would effectively prevent any new supportive housing from being established. Voght indicated he would do a GIS spatial analysis of supportive housing in R3, R4, and RC zoned areas and all other facilities to ensure that sites were reasonably available for new supportive housing. It was agreed that Voght would bring back new language to address these concerns at the September meeting for further discussion.

3. By-Laws – Review of draft Planning Commission by-laws

Voght stated that the last **signed** by-laws that could be found were 1986 adding that they should be reviewed on an annual basis as well as Election of Officers.

The draft by-laws were reviewed and the following changes were recommended:

Article V – Section 4: Eliminate “Purpose of Meeting” and change to read “Audience Participation.”

Article VI – Section 2(a): Should read “Chairperson explains nature of case and procedure.”

Insert (d) to read “Commissioners have opportunity to ask questions of staff.”

(e) Should read “Motion to open public hearing.”

Change numbering of “d, e, f, g” to read “f, g, h, i”

Change last item to (k) and read “Motion and Decision by Commissioners.”

Article VIII – Section 1: second line should include “regularly” before “scheduled meetings”

Article IX – Section 1: Correction of misspelling on second line to read “affirmative vote”.

VII. ADJOURNMENT

Since there was no further business, R. Johnson moved to adjourn the meeting (Support: G. Clark) and the motion was carried unanimously. The meeting adjourned at 10:25 p.m.