

**PLANNING COMMISSION
MEETING MINUTES
SEPTEMBER 15, 2004**

I. CALL TO ORDER

The meeting was called to order at 7:38 p.m.

II. ROLL CALL

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

Absent: F. Davis (excused) M. Brandt (excused)

III. APPROVAL OF MINUTES – JULY 21, 2004

Commissioner Clark moved to approve the minutes of July 21, 2004 (Support: N. Fosket) and the motion carried unanimously.

IV. AUDIENCE PARTICIPATION

None

V. OLD BUSINESS

616 E. Michigan

Commissioner Clark moved to remove this item from the table (Support: N. Fosket) and the motion carried unanimously.

N. Voght gave an update stating that this item was last reviewed by Planning Commission in July. The proposal is for a 6700 s.f. multiple retail center with four spaces at the former Ponderosa site at 616 E. Michigan Avenue.

A couple of months ago, we had a discussion about the placement of the building and some variances that were required based on this placement

and the parking in the front yard and landscaping deficiencies. The project was tabled to allow the applicant to rework the location of the building and to move the parking out of the front yard setback, moving the building closer to the street to try to address the entry overlay standards that require the parking be located behind the building. The revised plans are reviewed in Mr. Voght's September 9 updated review.

In general, Voght feels the plan was improved. There was additional landscaping provided although there are still some deficiencies. The building was moved slightly to the north, closer to the street, the circulation in front of the building on the previous plan was improved. There is still parking in the front yard of the building which is something that would require specific waiver by the Planning Commission because the overlay district requires parking to be in the back or side.

In terms of landscaping, it was improved but foundation landscaping did not meet minimum standards. The biggest issue Voght has is the placement of the building which Voght does not support. He feels it is possible to put this building closer to the street and create a better relationship to the sidewalk and comply with the overlay standards by putting the parking in the rear. The issue of loading spaces blocking parking spaces still needs to be addressed. Voght recommended that the plan be revised again to address the deficiencies as well as some new ones.

Todd Quatro – architect for the project – did agree that there were several items that needed to be addressed. At the last meeting, he left with the understanding that if they could move the building 20 ft to the north, that this would be acceptable and he has tried to work this out but it is difficult because of the configuration of the land. The owner of the property wants the entry at the front of the building because it would cut out usable space if the parking would be located at the back. Landscaping was provided and would exceed most requirements. Because of the L-shape of this property, parking is a problem.

Commissioner Johnson stated that the loading zone is still a problem.

Quatro responded that there is no way they can put it in front – it has to go in the back. Parking calculation is based on 80% actual usable space. He feels confident he can pick up parking space as required – he can take away five parking spaces to be used for loading which would still leave enough parking spaces as required by the ordinance. They have done the best they could to satisfy the requirements of both the owner and the city taking into consideration that this is a difficult piece of property.

Commissioner Johnson referred to a comment of coordinating with the Department of Public Works regarding whether sidewalk reconstruction/repair is necessary along E. Michigan or Center Street and Voght responded that for every development that goes through Site Plan Review, if there is lack of sidewalks, or is damaged/in poor condition, the developer has to repair/add the public sidewalk in front of the development if necessary.

Commissioner Johnson stated that at the last meeting, staff recommended that the building be moved closer to the street. The architect has moved the building forward about 20 ft. He asked the board for comments.

Commissioner Knapp stated that this a very challenging site and has tried to imagine what would be economically viable. There is a very serious blight condition there right now and it is a good idea for this entry way to be developed. The applicant has done a good job representing both the owner and city and he does not feel there is a more feasible way that this could work. If it could be moved forward, that would be preferable but it would still create difficulties with parking, etc. His tendency is to move forward with the plan.

Commissioner Clark agrees with Commissioner Knapp that this is a very difficult site to accommodate this building.

Commissioner Knapp moved that the Planning Commission approve the application of site plan presented for the property at 616 E. Michigan:

- Waiving the requirement for off-street parking in front of the building,
- To address the issue of loading spaces blocking off-street parking spaces as prohibited.
- Variance required for Street Yard Setback by Zoning Board of Appeals, Poor pedestrian connections from the parking lot to the building must be addressed.
- Sheet C-2 must state 54 spaces required, not 52.
- Provide calculation regarding minimum 10 percent site landscaping.
- Foundations landscaping based on building exterior of 328 ft. is required.
- Meet minimum standard for shrubbery.
- Add note to the plan that underground irrigation will be provided for all plantings.
- Sizes for shrubs should reference height or spread, not caliper.

- Address all Entryway overlay standards including pole lighting height, lack of adequate pedestrian connections from parking lot.

The motion was supported by Commissioner Clark. A roll call vote was taken with a vote of 5:0 and carried unanimously.

V. NEW BUSINESS

876 Railroad – Special Use and Site Plan Review

N. Voght, City Planner, stated this is a request to expand an existing towing yard at 876 Railroad to an adjacent lot. There are extenuating circumstances surrounding this property. The City is currently in litigation with the applicant. The original use was established on the westerly lot in 1997 and approved by the Planning Commission as an unclassified use, towing office and vehicle storage. Subsequent to 1997 and between approximately 1999 and 2001, the use was expanded to the adjacent platted lot, which was indicated on the aerial photo included in the staff report. The city took enforcement action to require the owner to apply for a Special Use Permit due to the expansion, who subsequently filed a lawsuit in the fall of 2001 and today, after a lot of different negotiations and resolutions, there was a trial and the applicant is submitting a Special Use and Site Plan Application for the consideration of the Planning Commission.

Voght stated that the Asst. City Attorney, Jack Gilbreath, is in attendance to answer any questions about the litigation, however, Voght will focus on the Site Plan and Special Use Standards.

The Site Plan currently submitted to Planning Commission is essentially the same Site Plan that was submitted in 1997 for original approval on the westerly lot. The adjacent lot was added to this plan to the east in 1999, according to the architect's revision date, but this addition was never submitted for Special Use approval until the Commission's review this evening. Staff noted that this plan lacked quite a bit of information. Under our Zoning Ordinance, Section 122-125, there is a minimum base amount of information we require to do an adequate review, i.e. drainage plan, landscape plan, lighting plan, etc. and we note that there was 12 items that were not provided.

The City Consulting Engineer also provided a letter listing some things they felt they required in order to review this site plan properly. The Special Use standards require a complete Site Plan so you cannot really

review the adequacy or appropriateness of a Special Use until you have a complete site plan.

Voght had a few comments about clarifications required on possible future building indicated on the plan and some other comments providing additional information.

Voght has recommended that this be tabled to allow the applicant to provide a complete plan so that it can be adequately reviewed by Planning Commission. He provided 12 items on Page 7 of his staff report that need to be addressed.

Commissioner Clark moved to open the public portion of the hearing (Support: C. Knapp) and the motion carried unanimously.

Jamal Hamood, Attorney for Thomas Elrod/Budget Towing – which is the company that operates at 876 Railroad.

He stated what it is interesting with this entire situation is that even on the agenda there is a misnomer that this is an application for a Special Use for the expansion of a towing service operation yard, when in fact, the application had been submitted back in 2000 as Mr. Voght indicated when the plan was revised in 1999 (which Mr. Voght acknowledges was revised then). What he said was “it hasn’t been submitted until tonight.”

The truth of the matter is that it was tax abated and at that time there was a discussion on the record between Alice Burg and the Planning Commission. The discussion centered around the appropriate treatment of 868 Railroad and whether the site plan would be allowed. At that time, the decision was made that rather than addressing a Special Use for 868 Railroad, that 868 Railroad would merely be combined with 876 Railroad and that it would be done internally/administratively as a single lot. As we stand here today, there is no 868 Railroad – it doesn’t exist. 876 Railroad is the only address at that location – it encompasses both lots which had formerly been 876 Railroad and would have formerly been 868 Railroad. Today there is a single unit, 876 Railroad.

Mr. Voght is correct in stating that we have been entangled for some time in litigation of this matter and our position in this litigation has not waivered. It is the same position they come before this board with at this time and that is, that this City has already approved the operation of 876 Railroad for a towing facility and subsequently, this City approved combining 876 Railroad and 868 Railroad with no requirement that there be any additional Special Use Permit required because 876 Railroad

already had that Special Use Permit. For litigation, although something that is not relevant today, there is also reliance that was undertaken when Ms. Burg submitted, in writing, documentation to the purchaser of the business indicating that 876 Railroad and 868 Railroad had been combined, and in fact, they could continue to operate a towing facility there as they had done for years prior. The operation since 2000 has been there as a towing facility and the litigation ultimately arrived at the point where the judge just was not certain that the Planning Commission Board had formally ever denied the operation of 868 Railroad as a towing facility and stated that until they received that denial, it did not make sense to litigate to determine whether or not the City was estopped from attempting to enforce any restrictions on 868 Railroad, which does not exist any more.

Having said all of that, Mr. Mamood stated that they submitted the Site Plan in 2000 and that rather than go through a formal approval process, it had been administratively approved through the combination of 876 Railroad and 868 Railroad and he does not believe there is any basis at this point to force yet additional Site Plans to be prepared and additional documentation.

Mr. Mamood does know that after 2000, the City Ordinances had been revised significantly and that Mr. Voght, if submitted to him today, would be justified to say that there are a lot of other requirements, i.e. drainage, landscaping, lighting and the 12 items he identified in his staff report, however, they were not an issue back in 2000 when this plan was originally submitted and they were not an issue when this item was approved through consolidation with 876 Railroad. Mr. Mamood would submit to this panel, that in order to shortcut and prevent all kinds of problems that we are all having in court, it would make a lot more sense for this board to simply say that they are going to approve the Special Use Permit for 868 Railroad, which is ironic since it does not exist, and they can continue to operate as they have been for the last four years on that property.

Commissioner Johnson stated that some clarification is required since there has been an assertion made that 868 Railroad or the lot that used to represent it has already been approved and therefore, we do not have to approve it. He asked for the City position on this.

Jack Gilbreath, Asst. City Attorney – responded to Commissioner Johnson stating that we would not be here if that was the case. It is as simple as that.

The reality is that the City took the initiative to engage in enforcement action and that matter has been litigated for the last couple of years. There was a hearing on this matter and the judge at that particular time suggested a Site Plan Review be submitted by the applicant, Mr. Elrod, and his representatives and this was not done. There has been a whole series of activity and status conferences, which are part and parcel of litigation and the result of it has been that we have now had this litigation reduced to an order from the Circuit Court Judge since this is where this has taken place and that judge has indicated the following:

In an order dated January 9, 2004 for "it is further ordered that Thomas Elrod and Mary Elrod and Budget Towing shall submit to the City of Ypsilanti an application for Special Use Permit to operate an automobile storage facility at 868 Railroad Street. The application shall be accompanied by a site plan and fees in effect at the time the application is submitted. The application shall be considered by the City of Ypsilanti Planning Commission in a timely manner and that the City shall not be required to approve the use to the extent that the defendants, Thomas Elrod and Mary Elrod and Budget Towing fail to comply with the ordinance requirements."

In essence, it says in effect that the City shall not be obligated to approve the use if there are things in there that are required. The Planning Commission is basically in a situation where they can approve what he has submitted, ask Mr. Elrod to provide more information, consistent with the more recent Zoning Ordinance or it can be denied outright. That is the way Mr. Gilbreath reads this order and that is the status of the litigation.

This whole issue of what Alice Burg stated, etc. etc. is in essence an effort this evening to re-litigate a case that has already been litigated and we are here as a result of that litigation but the board has the prerogative to do one of three things which Mr. Gilbreath indicated – take the site plan for what it is and grant the Special Use, deny it outright, or ask him for more information consistent with the Zoning Ordinance.

Jamal Hamood – asked to respond to Mr. Gilbreath's comments. He continued by stating that he may have misunderstood Mr. Johnson's question regarding the assertion that 868 Railroad had already been resolved in some way. The issue that is being raised is that 868 Railroad has already been consolidated with 876 Railroad. He does not see how the board can deny the use of the property pursuant to what is 876 Railroad.

Mr. Gilbreath, a fine attorney to be sure, can bring a separate action to say that Mr. Elrod has exceeded the scope of the Special Use Permit on 876 Railroad – he can argue that – but I think he will have about as much luck arguing that as he had that they had expanded the use on lot 828 Railroad, another piece of property just down the street which was also involved in the same litigation. What the court found in that case, which Mr. Gilbreath is talking about and read a small portion of, was that the enforcement action on Lot 828 was effectively a frivolous action and the court found in favor of Tom Elrod that he had not expanded his scope.

What the court said on 868 Railroad was that if there was a shortcut on this and it looks like the City is going to approve this anyway for 868 Railroad, why is it being litigated – just submit the site plan on 868 Railroad and get the board’s opinion. If the board approves, there is no more need for litigation on the enforcement action. If the board denies the site plan, then Mr. Gilbreath can go back before the judge to say that 868 Railroad is being improperly used and then they can litigate that issue again. The court did not make any finding that was in favor of the city in any way on that litigation – to the contrary, the court found that on 828 Railroad, the city’s action was frivolous. Mr. Hamood stated he would be more than happy to litigate with Mr. Gilbreath as long as he wants to.

The only issue is that the court stated if the board is likely to approve 868 Railroad without the need for litigation – if a site plan is submitted and approved – why are they there. The thrust of what was coming up in the litigation is the suggestion that the city would have probably approved 868 Railroad anyway if it had been just been submitted for a site plan. Mr. Hamood said they don’t need to submit a site plan but the judge said to go ahead and submit one and see what happens.

Quite candidly, Mr. Hamood would like the board to approve 868 Railroad but whatever the board does, he would like a ruling one way or the other so they can have it resolved or go back for litigation in Circuit Court. Mr. Hamood is requesting that the board either rule in favor of the plan or deny it.

Commissioner Johnson stated that he understands the issue clearer now. By Court Order, the board is being asked to judge the merit of the Site Plan and the merits of the Special Lot 592, formerly know as 868 Railroad. It is his understanding that, like any other issue that comes before the board, they simply take a look at it using our standards as a guide and make a decision. He does not see all necessary information on this site plan to make that decision and like any other issue, it is tabled until they get that information.

Mr. Hamood responded by saying that he understood. His client has been fighting with Mr. Voght (City Planner) for at least two years on what he requires and each time his client submits what he believes is satisfactory, Mr. Voght comes up with new criteria. In light of that, they simply cannot provide any more information to satisfy the City. If the City does not like the plan that is submitted, it should be rejected. If the City is satisfied with the proposal, or if the City recognizes that 876 Railroad is the only property there at this time, then that ought to be put on the record. Either way, they would like a ruling.

Commissioner Johnson responded that the board understands its choices.

Tom Elrod, 876 Railroad Street – stated that he came before the board in 1997 when he applied for that and he told the board then, and it's on record, that he felt he did not need a Conditional Use Permit considering the City allowed Discount Towing to operate out of 41 Water Street up until a year or so ago. They operated there without approval of any kind. He said it then and says it now. Also, the board had already approved the use. Most of the board members except for Frank Enneking and Mr. Johnson were here the night it was approved. The rest of the board members are fairly new and don't know that it was done here but it was done here.

Mr. Elrod continued by saying "I will tell you flat out that we are not doing anything else – period – not one single thing. We'll litigate you in court until hell freezes over because I know what you did the night we were here with Alice Burg. I would say deny it, let's go back to court – just like I told Nathan when he called – let's get on with this – you guys have played games for the last three years – it's now time to go back to court – you can table it all you want but I'm not bringing anything else back – that's it, period."

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

Commissioner Johnson stated that we have the plans and they do not begin to give us any direction for making a decision. What we would normally do in a situation like this is to table the issue to give the applicant time to come up with a good faith site plan and application. There are some conditions here that have not been met. Johnson feels we should go forward like we normally do in terms of what we have making a decision on the next step.

Commissioner Knapp agreed with Commissioner Johnson. He is having a hard time approving/disapproving since there is not enough information to disapprove, as much as that would please the applicant. Mr. Knapp feels that this is a very reasonable board (at this point, Mr. Elrod interrupted by yelling "well you're wrong"). Commissioner Johnson advised Mr. Elrod that the public hearing was closed. Commissioner Knapp continued by stating that he was not here at the time the decision was made and is not aware of what the Zoning Standards were previous to his joining the Commissioner two years ago. It is his understanding that he is being asked to perceive what is put before him with today's regulations and that seems to be what has been communicated here this evening. It is his opinion that this be tabled since he does not have enough information on either direction to make a decision.

Commissioner Clark stated that the board is looking at this as we would any other issue. There are some very significant pieces of information missing, which was cited on points 1-12 of the staff report. Commissioner Clark continued by stating that he would never approve a site plan that had these items missing – it doesn't matter whose site plan it is and this is clearly nothing personal to Mr. Elrod. We would normally ask for missing information from any applicant.

Commissioner Knapp moved to request chronological information on this issue. The Commission discussed the possibility of obtaining a chronology of past history. Commissioner Clark added that it is not within the scope of the Planning Commission to re-litigate this. To have this brought in front of the board in this way, is asking us to do something that the court either should be doing or has already done. It is his understanding that the court already did this and directed us to consider it as a Site Plan/Special Use and do what we normally do. Since there was no support for the motion, it was withdrawn.

Commissioner Clark moved to table the Site Plan and Special Use Applications for 876 Railroad Street pending the applicant providing information which is not provided on the Site Plan at this time, Points 1-11 as listed on Page 7 of the Staff Report dated 9/21/04:

1. Provide Site Plan with all required information in order to review all Special Use standards.
2. "Possible future bldg" should be removed from the plan, if not proposed at this time. All proposed uses must be clearly indicated such as paved parking areas, landscaping, and outdoor storage areas.

3. The areas of pavement, building, and landscaping are not sufficiently distinguished to adequately review appropriate building placement and site arrangement.
4. Vehicle parking that is currently occurring along the west property boundary does not allow for parking and circulation as originally approved in 1997.
5. It is unclear how the adjacent parcel to the east will be used. Where will vehicles be stored? Where will drive lands and parking spaces be provided? Where will fire lanes and emergency vehicle access be provided.
6. Additional paving completed on easterly parcel should be shown on the Site Plan.
7. Off-Street parking calculations must be provided on the plan.
8. Dimensions and locations of all parking spaces are not clearly shown.
9. Provide separate Landscape Plan for Planning Commission review.
10. Is new signage proposed?
11. Is lighting proposed?

The purpose of tabling this item is to give the applicant ample time to provide the required information so we can move forward with this. The motion was supported by Commissioner Knapp. A roll call vote was taken and carried unanimously.

Commissioner Johnson stated that he hoped we would have information next time. Mr. Elrod responded by saying "well, you're not getting it". Mr. Hamood asked for a copy of the staff report which included the items referred to in the motion. A copy was provided.

2. Peninsular Place

Staff report was presented by Nathan Voght, City Planner, who stated that this is a request on behalf of Edwards Communities for a minor revision to an approved Planned Unit Development. This was approved by the Planning Commission earlier this year and City Council in March/April.

There has been a lot of activity on the site – the old building has been demolished and there is some utility work going on at the present time. This project has moved along very quickly.

The board may recall the parking spaces along Railroad Street – when they originally saw the plan there was angle spaces on the south side and they were parallel on the north side. When this went forward to City Council, it was actually reversed – the angle spaces were put along the

north side of the building and the parallel on the south side – and this is how City Council approved it.

The project engineer and City's consulting engineer have determined that the width of the right-of-way for Railroad Street, originally surveyed to 55 ft. wide, was incorrect and that the actual width is 33 ft. This change has resulted in the relocation of 23 on-street parking spaces from the Railroad Street right-of-way to the wet end of the westerly building site. A total of 27 angled spaces will still be partially located within the right-of-way. Other minor changes have been made to the plan, such as a reduction in the number of units from 186 to 184 and total room from 667 to 663. The easterly parking and building have been shifted approximately one (1) foot to the north. The parking spaces near the river on the eastly parcel will be constructed with 16 ft of pavement and two (2) feet of overhang, instead of 18 ft. of pavement. Some streetscape elements have been modified along the easterly building to accommodate the reduced Railroad Street right-of-way.

A detailed lighting plan has also been included for Planning Commission review which has been reviewed by Mr. Voght.

The proposed changes do not materially affect the original basis for granting approval of the Planned Unit Development. The obsolete industrial facility has been removed, remediation of the site is underway, and all proposed land uses and amenities remain unchanged from the original approval.

The proposed changes, including parking space dimensions, parking space location, angled parking in Railroad St and one (1) foot building shift all comply with all applicable Zoning requirements. These changes will not adversely affect the overall planned unit development in terms of the intent and purpose of the development.

Commissioner Johnson asked if there was an overall loss in parking and Voght responded that they have eliminated two one-bedroom units but there is no net loss.

Commissioner Fosket moved to approve the minor amendment to the approved Planned Unit Development, with revision date July 16, 2004, as well as the lighting plan dated 9-7-2004 (Support: F. Enneking). A roll call vote was taken and carried unanimously.

3. Review of Proposed Historic District

N. Voght gave some background on this item – Starkweather House at 1264-1266 Huron River Drive. This is an historically important home. The current owner, Mr. Campbell, has been speaking to Mr. Voght about the possibility of developing the parcel and tearing down the Starkweather House which had been a rental for many years but is now in very poor condition. The Historic District Commission found that this was a possibility and formed a committee to propose to City Council that a new historic district be designated for this house.

We have a Historic District which encompasses many neighborhoods. Any historic landmarks can also be designated if they are important enough. Part of the process is a report by a committee that reviews the appropriateness of how historically important the resource is. Voght believes it goes through the State Historic Preservation Office who has to review the findings and also find that the Historic District has merit, etc. and then finally to City Council to be passed as an Ordinance. Right now, we have a Historic District Commission Ordinance, which is empowered by State Law, Federal Law and Department of Natural Resources.

Public Act 169 of 1970 requires transmittal of the preliminary study report to the local planning body for review and to provide any comments they may have.

VII. ADJOURNMENT

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 8:58 p.m.