

Bribery Zoning

On June 20, 2023, the Ann Arbor City Council approved the zoning and site plan for a 12 story, 166-foot-tall structure containing 228 residential units and 733 bedrooms. The proposed structure would be at 721 South Forest Avenue, the current location of a 5 story residential structure with 50 dwelling units. The proposal requires the demolition of that structure.



The property for the proposed project is master planned for single and two family/group housing. The zoning of the surrounding property is R4C and R2B. The existing building exceeds the height and density of its R4C designation. Nonetheless, proponents of the rezoning described the property as “underutilized.” The proposal calls for a building 135 feet taller than permitted by the R4C designation. Therefore the PUD zoning ordinance the council adopted permits what the existing zoning would not and is inconsistent with the master plan. The PUD ordinance includes a condition of approval that the developer pay into the City Treasury \$4,700,000. The money is to be deposited in the City’s affordable housing fund where it can be used at the discretion of the City without input from the developer and without any requirement that the funds will be used for the benefit of the housing project.

The [report](#) from the City’s staff provided detailed discussion of reasons the staff recommended denial of the approval of the project including:

The site plan and rezoning of this parcel from R4C to PUD zoning is not supported by City Planning Staff. The rezoning application lacks adequate justification for the requested zoning district and subsequent deviation from the Comprehensive Plan and existing zoning. The proposed project includes 228 units, a significant increase from the Comprehensive Plan Future Land Use recommendation of Single and Two Family/Group Housing. . .The significant increase in height (proposed project exceeds maximum height in the zoning district by 135 feet) is the main reason for the objection of Planning Staff. The project site is directly adjacent to Washtenaw/Hill Historic District on two sides. This proximity prohibits any future transition to

lower scale building massing with the context of the Historic District and neighborhood. The Historic District properties are zoned R2B and R4C which both have a height limit of 30 feet.

The proposed high rise is in a block containing residential buildings ranging in height from 2 story single family on Forest Court to two 5 story apartment buildings.



An adjacent structure built in 1928 is the only other 5 story building.



Across the street is the 3 story Alpha Delta Pi sorority which was built in 1933.



At the [public hearing](#) before the City Council discussion of the proposal, neighboring residents and representatives of the sorority spoke in opposition to the proposal. Several Council Members spoke in favor of the proposal, but none explained how it could be properly approved in light of the staff [report](#). The closest anyone came to justify a proposal which was inconsistent with the Comprehensive Plan was a Council Member who described the plan as out of date. The Mayor said the city had a housing crisis and that the benefits of the proposal outweighed the harm described by residents. Among the benefits he mentioned was the 4.7 million dollar payment that the ordinance requires the developer to make to the City.



Legal Analysis

Spot Zoning.

The authority to enact zoning regulations is the Michigan Zoning Enabling Act. Zoning ordinances and amendments to those ordinances must be in compliance with the Act. The act requires that zoning regulations “be based upon a plan,” (MCL 125.3203). The plan is typically referred to as a “master plan” although in Ann Arbor it is designated as the Comprehensive Plan. “The zoning ordinances promulgated by a local unit of government must be founded on a master plan. . .” (KI Props. Holdings, LLC v. Ann Arbor Charter Twp. (Mich. App. 2020)”)

A master plan serves as a guideline for zoning amendments, and it must not be ignored.

Although not denounced by any hard and fast rule, zoning in a haphazard manner is not favored and, on the contrary, zoning should proceed in accordance with a definite and reasonable policy. Thus, a zoning ordinance or an amendment of a zoning ordinance to permit piecemeal or haphazard zoning is void, and so-called "spot zoning," where it is without a reasonable basis, is invalid. (Jostock v. Mayfield Twp. (Mich. App. 2023))

The staff [report](#) for the proposed rezoning of 721 South Forest describes a classical example of spot zoning. A building currently providing housing consistent with zoning and surrounding uses is to be demolished and is to be replaced with a 12 story building that is totally inconsistent with existing uses and the master plan. For that reason alone, the zoning amendment is invalid spot zoning.

Illegal Contract Zoning

The zoning enabling statute authorizes municipalities to include in zoning amendments conditions that go beyond the dimensions provided in the base zoning ordinance. Such conditions constitute “contract

zoning.” Contract zoning is legal in Michigan to the extent authorized by the Zoning Enabling Act. Otherwise, it is considered illegal bargaining away of zoning authority. “[C]ontract zoning is prohibited unless specifically authorized by statute,...” *Clam Lake Twp. v. Dep’t of Licensing Mich. 2017*)” The Michigan authority for contract zoning is provided in the zoning enabling act at MCL 125.3504(4) as follows:

(4) Reasonable conditions may be required with the approval of a special land use, planned unit development, or other land uses or activities permitted by discretionary decision. The conditions may include conditions necessary to insure that public services and facilities affected by a proposed land use or activity will be capable of accommodating increased service and facility loads caused by the land use or activity, to protect the natural environment and conserve natural resources and energy, to insure compatibility with adjacent uses of land, and to promote the use of land in a socially and economically desirable manner. Conditions imposed shall meet all of the following requirements:

(a) Be designed to protect natural resources, the health, safety, and welfare, as well as the social and economic well-being, of those who will use the land use or activity under consideration, residents and landowners immediately adjacent to the proposed land use or activity, and the community as a whole.

(b) Be related to the valid exercise of the police power and purposes which are affected by the proposed use or activity.

(c) Be necessary to meet the intent and purpose of the zoning requirements, be related to the standards established in the zoning ordinance for the land use or activity under consideration, and be necessary to insure compliance with those standards.

Broad authority for contract zoning is provided that may even include improvements off the development site if the conditions serve the purpose of ensuring that a development is consistent with existing uses and the master plan, But there is no authority to sell a zoning designation with a payment to the municipality That is what the 721 South Forest zoning amendment does. It requires a payment to the City which the City can use in its discretion for purposes for which it could otherwise levy taxes. There is nothing voluntary about the payment requirement. The developer is not to be allowed to occupy the development until the 4.7 million payment is made into the City treasury. It constitutes illegal contract zoning which may appropriately be described as a bribe to obtain the desired zoning amendment.

Remedy

Spot zoning and illegal contract zoning render the 721 South Forest zoning amendment invalid. But it may only be voided by court order or by rescission of the ordinance by the City. Until it is voided, permits for construction may be obtained. Michigan court decisions have limited challenges to zoning to persons who show damage by a development and therefore have “standing.” The speakers at the [public hearing](#) demonstrated that there are numerous nearby residents and property owners who would have legal standing to challenge the zoning amendment.

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