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The Plan Commission met on August 14, 2017 in the Utilities Board Room at 5:30 p.m. The members present: Trohn Enright-Randolph, Brad Wisler, Heather Maritano, Joe Hoffmann, Nicholas Kappas, Carol Stewart-Gulyas, and Andrew Cibor.

APPROVAL OF MINUTES:

****Wisler moved for approval all minutes. Kappas seconded. Voice vote was called. The motion passed 5:0.**

REPORTS, RESOLUTIONS AND COMMUNICATIONS:

James Roach, Development Service Manager, thanked the Commissioners for being patient with the change in venue. The venue change was due to City Council debating the budget in the regular venue of Council Chambers.

PETITIONS CONTINUED TO: September 11, 2017

SP-06-17 **Mara Jade Holdings, LLC**
318 E. 3rd Street
Site plan approval for a 4-story mixed-use building.
Case Manager: Eric Greulich

CONSENT AGENDA:

RS-25-17 **RCR Properties LLC**
307 & 317 E. Eighteenth Street
Removal of a zoning commitment required with Hearing Office case #V-35-06
Case Manager: Eric Greulich

****Wisler moved to approve the consent agenda. Kappas seconded. The motion passed 6:0 by voice vote.**

Hoffmann said that the petitioner listed first on the agenda preferred to wait until there were seven plan commissioners to hear his case. To do so, a motion would have to be made to suspend the rules and move on to the second case. He suggested the case be placed as the next case as soon as a seventh member arrived.

****Wisler moved that the PC suspend the rules to adjust the agenda so that SP-07-17 would be heard immediately after the arrival of the PC's seventh member. Kappas seconded. The motion passed 6:0 by voice vote.**

PETITIONS:

ZO-21-17 **City of Bloomington Parks and Recreation**
1611 S. Rogers Street
Rezone 6.01 acres from Industrial General (IG) to Institutional (IN) and to rezone 0.62 acres from Industrial General (IG) to Residential High-Density Multifamily (RH). A waiver from the required second hearing is requested.
Case Manager: Eric Greulich

UV/DP-23-17 City of Bloomington Parks and Recreation

1611 S. Rogers St.

Use variance to allow a parking lot in the floodway and preliminary plat approval of a two-lot subdivision of 6.63 acres.

Case Manager: Eric Greulich

Hoffmann asked Roach if he needed to recuse himself. He explained that although he had no financial stake in the outcome of the petition, he is a member of the Parks Board. He said he wanted to make sure that everything was proper and legal.

Anahit Behjou, Assistant City Attorney, said that as long as Hoffmann did not see any conflict of interest, there was no reason for him to recuse himself.

Hoffmann said that there is no financial conflict of interest, but he is a member of the Board of the City of Bloomington Parks and Recreation. That membership could make him a supporter of the petition. He said that it was a conflict of interest

Behjou agreed that there was a conflict of interest in that sense.

Hoffmann said that he needed to recuse himself for the case and that Wisler would act as chair.

STAFF PRESENTATION:

Eric Greulich, Zoning Planner, presented the staff report. He said he would combine the two cases to be efficient with time, but voting would take place as two separate votes.

Wisler asked if Greulich would be presenting on both ZO-21-17 and UV/DP-23-17.

Greulich said that Wisler's understanding was correct. The rezone represents the initial portion of the Bloomington Parks Department's plan for Switchyard Park. The park would overall be about 60 acres and span from Grimes Lane to Tapp Road to Rogers Street to the west and Walnut Street to the east. The petitioners are still undergoing some of the planning and design processes. There are a few initial hurdles they need to get through. The rezoning request is to rezone the portion of the property along Rogers Street, which is a 6 acre area. It is currently zoned Industrial General, and the Parks Department would like to rezone a majority of the property to Institutional. Parks are not permitted in the Industrial General zoning district, so the rezone to Institutional is necessary to allow a park. Less than an acre of the property to the southwest is proposed to be rezoned to Residential High-Density (RH) to allow affordable apartments to be built. The other petition is a use variance for part of the parking lot, on the north side along Grimes Ln, to be positioned in the floodway. The PC needs to decide if the use variance request substantially interferes with the Growth Policies Plan (GPP). The rezone request is for roughly 6 acres of property on the west side of Switchyard Park along Rogers Street. The petitioner is requesting to rezone from Industrial to Institutional. They are also requesting to rezone a small portion that currently has a single-family residence on it to RH so that it can be multi-family project. The site has a history of industrial uses, including warehousing, semi storage trucks, and outdoor gravel. To use the site as a park, as the Parks Department intends, it will have to be rezoned to Institutional. The highlighted section of the map he showed was looking to be affordable apartments. The GPP gave guidance to create Switchyard Park through redevelopment, and a rezone is needed to put in the park. Having affordable housing immediately adjacent to a city park is something that both the city and the GPP support. The effort to add living areas near the greenway is important to minimize vehicular traffic to housing sites and use alternative transportation. The GPP supports both of the rezoning aspects of the petition, meaning both the development of a park as well as the affordable housing aspect. To accomplish their goal, the petitioner must subdivide off a corner of the property to be developed separately.

The petitioner is requesting preliminary and final plat approval. The petitioner has submitted both the preliminary and final plat, but only the preliminary plat would be voted on in the current meeting then forwarded to the Plat Committee in September. Both of the lots shown to be subdivided meet the minimum lot size. The UDO requires that the floodplain be set aside as common area. The reason for the setting aside as common area is that, typically in subdivisions, staff has found that as property owners change over time, placing a floodplain in easement does not necessarily give appropriate guidance for homeowners. Because the plan of the project would mean that the City would own the floodplain area, there would not be a change of ownership going forward. The petitioner had requested a floodplain waiver because the property would be city-owned for the foreseeable future. The petitioner had asked that the floodplain be placed in a drainage easement, which would still protect the area. Staff was supportive of the request to place the floodplain in a drainage easement since it met the intention of the UDO to protect the floodplain area. There would still be a site plan that must be approved for the project, so staff would get a final look at the floodplain to be sure it is treated appropriately. The petitioner had included preliminary and final plat in the packet, but only preliminary was to be voted on during the meeting. The third aspect of the petition is a use variance request to allow the petitioner to be able to use a portion of the floodway area for parking. He showed a site plan to indicate where the parking lot would be. The existing building on the property would remain as a post for police and dispatch. The petitioner engaged in a floodplain analysis study to keep as much of the built property out of the floodplain as possible. One of the goals of the Parks Department is to place parking lots as close to adjacent roads as possible. This is partly to minimize vehicular trips throughout the interior of the site, but more importantly it was so that the inside of the park can be used to a maximum effect. All physical elements of the park are being located as far from the floodway as possible. The parking lot, which will be at grade, will be the only part of the site interfering with the floodway. The Environmental Commission (EC) did not see any negative impacts with the parking lot in the floodway. The parking lot will be designed with 100% permeable pavers. All storm water drainage from the parking lot will be directed toward large rain gardens which will filter the runoff water both along the parking areas and in a larger retention basin. The petitioners tried to minimize encroachment into the floodway as much as possible. Staff is recommending approval of the waiver for the required second hearing for rezoning and forwarding the petition on to Common Council with a favorable recommendation. Staff recommended forwarding the use variance to the BZA with a positive recommendation. Staff also recommended approval of the preliminary plat with the associated waiver with the common area and forwarding the final plat to the September 11, 2017 Plat Committee meeting.

Wisler asked if there was anyone present to speak for the petitioner.

Dave Williams, Operations Director with Bloomington Parks and Recreation, said he was happy to answer questions. The Parks Department had worked closely with Greulich and planning staff, and had changed the design of the parking lot to be 100% pervious pavers with storm water draining into the gardens.

Kappas asked if the pervious pavers had a maintenance plan in the works. He said often the pavers become impervious over time due to build-up underneath them.

Williams said there is discussion of a maintenance plan. He said as these pavers are used more in the Parks Department developments (Lower Cascades Park, the trailhead at Country Club Dr.), they are moving towards a maintenance plan. The city currently does not own the proper equipment to maintain the pervious pavers, but the City Utilities Department currently helps clean the pervious pavers when they can. The Parks Department also tries to close off the pervious paver parking lots in the winter to keep debris from coming into the pavers.

Kappas said he wanted to hear that there had been thought taken for the pervious pavers. He said that it happens in other cities that developers put in pervious pavers, never maintain them, and they become impervious over time.

Wisler asked about the multi-family development. He wanted to know if there is a plan in place. More specifically, he wanted to know if the city was seeking to develop the multi-family facility themselves or have a public-private partnership. He asked if the city was seeking to sell the land.

Greulich said that the city's plan is to put out a proposal to see if other entities would like to propose ideas and site plans. There is not a specific entity currently in mind. The city would pick the proposal that best suited the site and the city's needs. At current time, the city was leasing the area.

Williams said that the property includes a single-family home. The home would be demolished in an early stage of the Switchyard Park construction. The large, square building to the south would be retained as an auxiliary maintenance facility. There has been strong interest from the city to put in a multifamily affordable housing complex with a potential life-time lease to the developer of the complex. The details of the development process were not yet finalized, but the Housing and Neighborhood Development (HAND) department would initiate proposals.

Wisler asked about the existing businesses occupying the larger building.

Williams said that the Parks Department has been in a landlord role for the property for 3 years. He said there are a variety of uses in the building. All of the tenants have been told that they will need to vacate by December 31. The intention is to rehab the building during the winter months, which are slower for the Parks Department.

Wisler asked if the buildings would become nonconforming uses.

Greulich said that was correct. They would become nonconforming uses once the City Council approves the rezone proposal.

Wisler asked if the tenants would be disrupted.

Greulich said they would not be interrupted.

Wisler asked about adjacent properties that are primed for redevelopment. He asked if the floodway crossed into the privately owned nearby properties.

Greulich said that the floodway did extend to the east. The property is long and narrow, so it is hard to work within while avoiding the floodplain. He said that properties to the east are completely enveloped in the floodplain. It is possible that some properties to the east could be redeveloped, but they would have to show the same support of uniqueness to get a variance as the Parks Department was doing at the meeting.

Wisler asked if the properties to the west were in the floodway, or if just the properties to the east were in the floodway.

Williams said that the southern end, roughly the southern two thirds, of the rectangular warehouse is out of the floodplain.

Greulich said that the area labeled the floodway fringe was colored blue in the graphic. Everything to the west of the floodway fringe is out of the floodway. To the east, the floodway extends almost all the way to Walnut Street. The floodway prevented residences from being built, so only commercial uses would be permitted.

Wisler asked if there was any environmental impact.

Greulich said that the EC wrote a memo saying there was not a negative environmental impact. The parking lot is at grade, so there is no fill, which means there is no elevation of the floodplain

required. The petitioners will have to obtain a permit from the Department of Natural Resources. Most likely, the petitioner will also need to obtain a permit from the Corps of Engineers and the Indiana Department of Environmental Management (IDEM). There are no environmental features to be affected, such as sink holes, steep slopes, or tree canopy coverage. The area has already been completely developed with parking areas, mostly. The entire site used to be a railroad switchyard, so the site is not a pristine, natural environment.

Wisler asked if someone else came forward with a similar proposal in the future, the PC would be forced to approve it because they had approved the Parks Department's proposal.

Greulich said that the Parks and Recreation Department has been treated the same as any other petitioner.

Williams attested to the fair treatment.

Maritano asked if the PC was simply changing the zoning to move towards a multi-family complex adjacent to the park. She wanted to make sure that the PC would see plans for the multi-family development before it could be built.

Greulich said that any development would need a final plan approval, whether that approval came from the staff level, PC, or BZA.

Maritano clarified that the PC would only be voting on whether or not it would be possible to build a multi-family development on the land.

Ann Roberts, Broadview resident, said that she wanted to make a comment about the multi-family housing proposal. She said she was hoping that due to the proximity to the new park, that the housing would attract people who want to be active and use the park. She said that Broadview did not need any more transient housing, as the neighborhood already had problems with transients.

****Kappas moved to approve recommendation of a waiver from a second hearing and forward ZO-21-17 to Common Council with a favorable recommendation and no conditions. Maritano seconded the motion. The motion passed 5:0 with Hoffmann recusing.**

****Stewart Gulyas moved for approval of UV/DP-23-17.**

Cibor asked staff if there was a condition on the petition.

Greulich stated that there was one condition.

****Cibor moved for approval of UV/DP-23-17 with the condition of approval written by staff. Stewart Gulyas seconded the motion. The motion passed 5:0 with Hoffmann recusing.**

Hoffmann said that the PC was waiting to have a seventh member to hear the first petition on the agenda.

Roach stated that he believed the first petitioner was ready to be heard.

Hoffmann asked the petitioner if they were ready to be heard.

Unidentified audience member confirmed they were ready to be heard saying that he did not think the seventh member of the PC would make it to the meeting.

Hoffmann said that his assessment was probably accurate.

SP-07-17 Annex Student Living (Kyle Bach)

313, 317, 325, 403 & 409 E 3rd St., and 213 S. Grant St.

Site plan approval for a 4-story mixed-use building and a 5-story mixed-use building.

Case Manager: Amelia Lewis

Amelia Lewis, Zoning and Long Range Planner, presented the staff report. She said the properties are located on the northeast and northwest corners of East Third Street and South Grant Street. The properties are zoned Commercial Downtown and are located in the University Village overlay. The petition was first heard at the June 2017 PC meeting. The site plan and architecture has since been redone by a new architect. There are two sites, each on one side of Grant Street. Each site is approximately 0.4 acres. The surrounding uses include multi-family, restaurant row, commercial/office, and an adjacent historic district. The east site has 3 structures, currently, with multi-family and commercial uses. The west side contains multi-family and commercial uses as well as a historic structure. The site is partially in a historic district. The new design features focusing commercial uses toward Grant Street and removing a floor from the east building. The 2 4-story mixed use buildings would include a partial underground garage, enclosed bike parking, ground floor retail, and 3 stories of residential space. She showed a rendering of the building at the northeast corner of Third and Grant. The building had been redesigned taking into consideration what was said at the June meeting. She showed more renderings of each building. She said the PC was reviewing a site plan that does not meet many standards of the University Village Overlay (UVO) or the Unified Development Ordinance (UDO). The site does not meet maximum height, minimum first floor non-residential uses, minimum parking, first floor void-to-solid, building façade modulation, building height step down, windows, or impervious surface standards. The site does meet density standards. The east building would be 55 units with 57 beds for a total density of 12.97 which is below the maximum of 13.5. The west site would be 50 units with 50 beds for a total density of 11.2. The UVO has a 40 foot height maximum. The east building would be 51 feet tall at its tallest and the west one would be 58 feet tall at its tallest. The UDO measures height from the lowest point of site to the highest built feature. Both sites have significant slopes; from the southeast to the northwest, the east site has about 15 feet and the west site has about 10 feet of grade change. She showed a rendering of the west site with slope and discussed how height is measured. She showed the overall site plan. The historical feature would remain. The bottom floor of the west building would feature 4,000 square feet of retail space with 24 interior parking spaces accessed off of the alley to the north as well as an interior bicycle parking room that would accommodate up to 24 bicycles. The east building would have 4,800 square feet of commercial space, and would feature 15 interior bicycle spaces. The 22 interior parking spaces for the east building would be accessed by a curb cut in the alley to the north. The UV overlay has a minimum of 50% retail on the ground floor. She highlighted the retail areas in each building, showing that the east building would be 32% and the west 37% ground floor retail. When the original proposal appeared at a previous PC meeting, the ground floor commercial space percentage was highlighted as an area that perhaps would not hit 50%, but needed to have some retail space. The petitioner is intending for the historic structure to remain and be commercial space. The west site is 87% impervious and the east site is 90% impervious, which put both sites over the 85% maximum. Both sites do feature green roofs, which are not counted into impervious surface calculations, but they are considered a benefit. The plan does not meet parking requirements. There is no commercial parking required in the UVO. For the 57 beds at the east side, 35 parking spaces are required, but the petitioner is only providing 22. For the 50 beds on the west site, 29 parking spaces are required, but the petitioner is providing 24. There are also 4 street spaces proposed along the west side of Grant Street and 2 on the northern end behind the historic house. The proposal exceeds bicycle parking requirements. Due to the proximity of the site to the IU campus as well as public transit as well as other downtown amenities, increasing bicycle parking could reduce the impact of less vehicular parking being provided. The site's first floor does not meet the void to solid percentage, but the 2 - 4 floors do meet it. The materials proposed are acceptable. Upper floor windows should have sills and lintels, but the type of windows in the proposed buildings are design choices. The City has recently

contracted with Schmidt and Associates, an architecture firm in Indianapolis, to help with review of downtown design projects. One of the firm's suggestions was to increase the depth in the modulation on the upper levels, especially along Third Street. They suggested to introduce more architectural accents to provide more detail interest and anchoring between the two sites. Finally, they had suggested to increase the patterning and depth to the ground level facades. Both buildings have façade modules on Third Street and Grant Street offset 12 and 18 inches. The requirement for such buildings is an offset of 4 feet. There is some modulation, but not as much as the UVO requires. Because the northeast corner of the west site is located in restaurant row historic district, it does not meet the step down requirement because it is more than one story, or 14 feet, taller than the adjacent structure. Neither building meets the step back requirement. She showed a rendering of the east building from Third St and showed how the building did not meet the void to solid requirement. There were site constraints with the slope and inability to add windows. The department thought some more visual interest could be added as opposed to windows to make the building more inviting from Third Street. The south façade of the west site had the same issues; the retail space had metal louvers which are not inviting. She showed a rendering looking from the Dats restaurant area. The western building had been designed with the adjacency to the single family homes on the street in mind. Stepping from the single story to the taller story along Grant Street was an intentional design choice to make the ground floor seem more like the restaurant row buildings. There is a single story of retail adjacent to the historic house and the second through fourth floors had been pushed back significantly to create a green roof and a patio above the single-story retail space. There are 20 feet between the historic house and the exterior wall of the proposed building with a patio between the two buildings to create a neighborhood feel. The historic district cuts into the western site. A Certificate of Appropriateness (COA) was required for the new construction. City staff recommended approval, but the HPC denied the petition, and the petitioner will continue to work with staff to obtain the COA. There is garage access for each building off of an existing alley. The east building will need a curb cut. The curb cut location was chosen to maximize the pedestrian walkway area and access to the retail spaces. Each retail space has its own access along Grant Street; the residential areas all have an access point on Grant Street. Each site has a portion dedicated to a green roof and patio space accessible to residents. The eastern building will be shaped like a U to let in more light and break up building massing. The western building will be shaped like an L for the same reasons, and also to create space around the historic district and not overshadow it. She showed a rendering of the building. The ground floor of each building would be a red blend brick veneer. The openings in the façade would be flat arches. Portions of the brick veneer extend up through the second to fourth stories. The windows along the extended brick portions would have Juliette style balconies with black metal railings. The second through fourth floors that do not have brick veneer will have light grey and white cementitious siding in a paneled pattern. The red and dark grey portions of the rendering were metal panels. The brick and metal panels are slightly projected out to add depth and modulation along the facades. She showed renderings from perspectives of different streets. The building was designed to transition in height from the single family properties next door. She showed a rendering of the east building, and said that due to slope and site constraints windows have not been added to the ground floor. The lack of windows are a part of why the petitioner does not meet void to solid requirements. Staff felt that more visual interest could be added to the site, especially when addressing the access point for residents, such as an archway to show the entry point. She showed renderings of elevations from all directions. She indicated retail and garage portions. She indicated entrances to residential and commercial areas on the west building. The retail portion of the west building was pushed back to be in line with the historic structure. She indicated renderings that showed the scale of the proposed buildings in relation to the size of nearby buildings. The white buildings shown were the existing buildings to show the height comparison to the proposed building. The overlay advises the PC to consider the extent to which the design incorporates sustainable design features. The petitioner was proposing many on-site, environmentally-friendly design features. The design features included building green roofs, green-friendly building materials, increasing window areas for daylighting, the site's proximity to campus and public transit, and increased bike parking. Staff wanted to see a firm commitment from the developer to provide recycling for residents. Staff felt that a traffic study should be completed, per the UDO,

due to the increased density the two new buildings would add to the area. The proposal would likely have a negative effect on the Third and Grant intersection, but the level of service at the intersection is fairly low. Staff was working with the petitioner to deal with the traffic effect. The petitioner made a written commitment to affordable housing. The commitment was to provide 15% of the total units to those who qualify for workforce housing at 120% adjusted median income or less for 99 years, which helps address housing diversity.

Roach said that the P&T department did not make a recommendation for the project. The project had been reworked in the months since the PC first heard the petition. Staff wanted the petitioner to hear the PC's comments, and then, hopefully, staff could make a recommendation for the site plan approval for the September PC hearing. He said there is a lot to like in the project, and said that the department had had great success working with the new design team. Staff had been happy to see the retail space rotate to face Grant, which would pull energy from Restaurant Row and Fourth Street, as opposed to only facing Third Street. Removal of a fifth floor from the eastern building was seen as a positive by staff. Staff also liked the new step-downs the building showed as it approached the historic district. Staff felt that the petitioner still had some work to do. Staff wanted to see the petitioner gain more modulation, especially along Third Street, so that there was not a flat plane. Staff encouraged the petitioner to include more masonry or some more prominent awnings, in order to pull out the more residential style from Fourth Street all down the block. There are opportunities to make the first floor on Third Street more inviting to pedestrians. There are blank walls, areas of dead parking space, and parts of the building without entries or openings that serve as opportunities to improve the architecture. The building serves many needs. It increases downtown housing and commercial space. The building helps move commercial space from Restaurant Row to further south. The project is very green. The green roofs were seen as interesting by staff, and the project may be the most green roofs staff has seen on a building. Staff was encouraged by the commitments to green building. Staff wanted the PC's feedback. Staff's hope was to be ready to bring the petition before the PC for approval in September, but they realized that some of the architectural elements still needed to be worked out. The petitioner wanted the opportunity to redesign the west building to meet the HPC's standards. Staff wanted to discuss the traffic impacts of the building and think through how to handle the traffic impacts at Third and Grant. Lewis had mentioned the "3-legged stool". The UDO has set out tests for projects that do not meet all of the standards of the overlay. The proposed project does not meet all of the standards of the overlay: it is too tall, it is under-parked, there is not enough commercial space. A building can be approved that does not meet all standards if the PC sees fit. The PC is encouraged to look at whether the project meets the goals of the GPP. Another issue to take into consideration is the one of diversity of housing. Staff felt that the proposal could alleviate some of the housing challenges in the community. The building may not meet standards, but can still be unique and say "Bloomington". The UDO asks the PC to consider the degree to which the project incorporates sustainable design features - additional environmental elements above and beyond minimum code or zoning requirements. He said that the petitioner has made an excellent second step towards staff being able to make a recommendation next month. Staff recommended continuance of the petition to September.

Craig Pride, principal with the firm KTG Group Incorporated, said he runs the Chicago office of his firm, which specializes in housing and mixed-use design. He was brought in to redirect the project in order to bring it forth for approval. He said the site is like a Rubik's Cube. The sites are smaller for a downtown development area, and the grade fall on each parcel makes development difficult. He said the architects first met with staff to understand the principles of the UDO, UVO, and the EC requirements or anything else the designers would need to know. He said that the site is such that they did not want to excavate much, especially because Bloomington sits on top of bedrock limestone. The design team decided, on each site, to park on half of the first floor and use the other half for retail and residential entry. He said it seemed appropriate to locate all of the retail areas on Grant because it was a good extension of existing pedestrian activity. He said that Third Street was not the best pedestrian space, although a portion of it could be activated. He said that on the east block they chose not to activate it at all for pedestrians because he did not feel the building had a story on Third Street. The east block had windows incorporated around the

corner from the corner retail space onto Third Street along with added patio space. He thought that because of the busyness of Third Street, the pedestrian-friendly areas should be on Grant Street. The residential entries were located off of Grant so that an urban, mixed-use feel could be achieved, but also so that residents were not exiting out onto Third Street. Grant Street is not flat, and the grade change is a challenge. The ground floor of both buildings must be stepped on the interior to provide the at-grade patios. The vehicular access had to come from the alleys. The petitioner would have to widen the alley entrance on the east block to allow for 2-way traffic. The plan is to carve out the corner of the building, set the garage entrance 30-40 feet back, and provide a private, indoor garage for the residents. There were comments about some of the parking spaces being difficult to access, but he said it would work because the garage is not public. The design team had designed much tighter spaces in the past, and there would not be very much traffic pressuring residents. The east building has a restriction of an overhead electrical wire, which meant that the entire building had to be moved 8 feet off of the property line. The building cannot provide 50% retail because of restraints from the environment, such as the electrical wire and the residential entrance requirement. The west building is even harder to get commercial space in because the whole site cannot be used due to the historical building. The west building had completely eliminated the volume of the building that was within the historic parcels on the site. The HPC meeting had been Thursday; the design team had received no comments about the portion of the building within the historic lot. The building had been denied by the HPC because it was too big. The petitioner was considering pulling the one-story portion out of the historic parcel all together in order to get approval from the HPC. The petitioner was also looking at modulation or designing a separate retail building that would continue the intent of the project while also finding a way to build within the historic parcel. The leg on the west side of the building had been pushed back as far as possible in an attempt to modulate the building height and mass away from the contributing structure in the northeast corner of the west parcel. The petitioner did not want to articulate the visible brick base on the east building. He said mature landscaping would cover the brick after 4 or 5 years. He talked about the way both buildings would look from Third Street and explained the design choices. He talked about the architectural louvers that would ventilate the parking garage, either naturally or mechanically. He talked about how the garages would look from the alley and exterior wall penetrations that would be needed to ventilate the garages. He pointed out the pedestrian entrance off of the alley that would lead to the bike storage. He also mentioned that the roof of the garage would be a green roof so that the residents do not look out onto an unfinished roof. Because the alley is narrow, the entrance to the garage is recessed to provide adequate turning space. It is difficult to modulate a residential building to accommodate the grade changes existing at the proposed site while still keeping everything ADA accessible. When trying to control the overall height of the building, the design team determined a minimum floor to floor height that would be needed to provide reasonable retail space at the ground floor while maintaining an interior ceiling height of 9 feet. All mechanical distribution for the commercial space as well as the residential systems could be accommodated with 3 feet of above ceiling space. This means that there are a total of 12 feet from floor to floor in the commercial space. He said that because the project is a market rate project, they are trying to provide larger market rate units. The market rate units are needed to offset the affordable housing units. The floor to floor height for the residential areas is 10 feet. After the areas needed for structure, the ceiling height in the units would be somewhere between 8' 9" – 9'. He said that the units are fairly small in terms of square footage, so the ceilings must be taller to demand a luxury market price. The size of the units does not leave much space for utilities, so there are closets for in-unit washers and driers as well as closet space for hot water heaters, although ceiling-mounted HVAC systems will have to be used. The amount of space above the ceiling allows for the HVAC systems to fit. After a 13 foot floor to floor measurement on the retail space and a 10 foot floor to floor measurement on the 3 floors of residential space, the building would be 43 feet to the roof. He said the heights shown in the drawings are a result of the design team trying to modulate the exterior of the building. The exterior has three basic materials: brick at the base and extended up the side on Third Street, metal panel at the corners of the building, and infill panels made of fibrous cementitious material. The cementitious material is very dense so, unlike brick or limestone, it does not absorb moisture. The petitioner wanted to put panels up in 2 foot by 4 foot length panels. They wanted to use the same color with 3 different textures to emulate limestone.

The petitioner would still look at adding limestone features to the building. The compressor units for the mechanical equipment will be on the roof, so the parapet heights were modulated. The metal panels on the exterior would be two different colors: crimson and grey. The metal panels would not be a consistent size in order to achieve architectural interest. He asked for as much feedback as possible. The petitioner's goal was to be back in the September PC meeting for approval.

Maritano asked about the on-street parking on Grant St. She asked if it would be public parking or permit only spaces for residents.

Pride said they would remain public parking spots.

Maritano asked if a drainage study had been done. She was concerned about flooding and drainage issues on Fourth Street and Kirkwood Avenue.

Roach said that many Fourth and Kirkwood flooding issues are part of a larger issue with the Jordan River culvert system. Kirkwood was ripped up around 10 years ago so that a new storm water culvert could be put in under the street. New culvert systems have been put in further west as well, but there is a gap between the east and west that has not yet been replaced. The middle section of replacement is in the design phase, but has not yet been budgeted. Once the middle section is replaced, many of the flooding problems will be mitigated.

Brehob said that there is a missing section of work that still needs to be done to correct the flooding issue. The upgrades that have already been made to the culvert have created a significant benefit. The project would look at storm water generated by the project. If the project produced too much storm water, the petitioner would have to plan for storm water detention. Many downtown project have storm water detention areas beneath parking garages, but they are unseen by the public. The petitioner may have to have a storm water detention area under their parking garage, but that has not yet been determined.

Maritano asked what the plan was to integrate the workforce and luxury student populations.

Joyce Skidmore, Annex Student Living, said that there would be on-site management to help incorporate residents. The owners have considered providing bus passes to the workforce housing residents. She said all of the units will look the same, whether luxury or workforce.

Maritano said that one of the selling points for the developer was the amenities they offer their residents. She asked if all residents would receive the same amenities.

Skidmore said that all residents would have access to all amenities because all residents would be a part of the same community.

Maritano said there had been a mention of on-site programming and possible liaisons to the university.

Skidmore said that every resident would have access to every program provided.

Wisler asked how the property would be marketed and if the developer had decided on a name for the property.

Skidmore said the name is currently "Annex of Bloomington". Annex would be marketed to mainly upperclassmen, graduate students, and young professionals.

Wisler asked if it would be marketed as student living.

Skidmore said that it would be marketed to everyone, not just students.

Wisler asked how the affordable housing would be administered. He asked if Mecca Properties would take applications directly or the city would take applications on their behalf. He asked how someone would apply.

Skidmore said that the company had come to the PC for an affordable housing complex, which meant they had experience administering affordable housing. She said they would use that experience to administer applications.

Wisler asked if the Annex staff would determine who qualified or not for an affordable unit.

Skidmore said that she understood that the city wanted Annex to make the decision. She said that if the city wanted to be involved, the developer could talk about that with the city.

Roach said that the city may monitor the application process and perhaps ask for annual reporting. He said that the details were still far in the future.

Wisler asked what the income qualifications would be workforce housing.

Skidmore said that they were proposing workforce housing to be for 120% AMI.

Wisler asked if there was a requirement to be employed in order to qualify for workforce housing. He asked how to prevent the development from being all students with some getting a break on rent. He said that all students would qualify under the income guideline.

Skidmore said that she was not knowledgeable enough to answer the question, but could come back to the September meeting with answers.

Wisler said that the goal is not to give some students a break on rent, but to make a new class of housing for the workforce. He asked Pride about the Juliette-style balconies.

Pride said that Juliette-style balconies are balcony railings with no balcony. He said that Roach had mentioned awnings on Restaurant Row. He said that he saw small, residential-type structures that had been modified to be restaurants. The prominent exterior features of Restaurant Row were decks and terraces. He said that the buildings are already going to be built to the lot line, so nothing can hang off of the building without being in the public right of way. He said the design team has been conservative about projecting into the public ROW.

Wisler asked if the windows behind the railings worked.

Pride said the windows would be operable. He said the team considered what would be taken out of the inside space to provide a real balcony. A real balcony could not meet ADA. The balconies are an effort to create modulation. The design team pushed the base of the building back so that there was space to project the metal panel systems out to the property line in order to create modulation. The fiber cement panels, in some places were pushed into the building by 12 inches. Between pushing panels in and pulling metal panels out, there is 2 ½ feet of modulation. He also said that with the shade and shadow being created by the exterior features, he felt that the building achieved the intent that the code requests. He said there are five modules created along the Third Street elevation. He said that a full balcony would be 8 feet by 4 feet and would not meet ADA.

Wisler asked if the windows started at floor level.

Pride said that yes, the windows go down to grade.

Wisler asked if passersby might see someone standing in the windows even if the residents would not be able to walk out onto a balcony.

Pride said the windows gave the full effect of a patio door without actually being patio doors.

Brehob said there are a lot of projects in Bloomington with Juliette balconies. He said it is like having a patio door without a patio.

Wisler said there are plenty of projects that have a railing but not an operational window behind it.

Brehob agreed and said that the petitioner was making the project as balcony-esque as possible.

Pride said that each window had to have features to make it an egress window through which the fire department could gain access to the building. He said that one section of each of the windows would be operable to meet egress. He said the design team was providing windows instead of a sliding balcony door.

Wisler asked about the Third Street façade on the east building. He asked why the retail space could not come around the corner as it did on the other building.

Pride said that the grade, as it comes around the corner, made it difficult. He said that if there were a window, the placement within the elevation would be strange. He also said that a window would look into mechanical space. Because of the mechanical space, it would be better to put in a false window that could not be seen through. He said there does not seem to be any value in placing a window on the building that could not be seen through and would not be the same size and proportion as the other windows.

Wisler asked why the mechanical room needed to be in the location Pride was describing.

Pride said there are not any mechanical penetrations through the wall, but there is mechanical equipment on the other side of the exterior wall that would be seen through a window. A window would have to be placed very high in relation to the interior rooms and it would show the top few feet of the first floor as well as the in-ceiling mechanical equipment.

Wisler said that there would have to be substantial excavation to put in the corner.

Pride said that there would be substantial excavation.

Wisler said that the site is currently built up. He asked if the project is predicated on the decision to dig down in order to reduce the building height at the corner.

Pride said the building is predicated on the effort to minimize the excavation needed in order to provide the program. He said the program was to provide retail space at Grant Street. He said that to start at Grant Street, excavation would have to go all the way back to the east. There is one level below grade that represents the parking garage for the building. He said that his team did not see the first design for the project until after the current design had been submitted. He said that his understanding was that the previous design team had gone significantly lower down for the parking garage. Pride said that, from an economic standpoint, the garage did not need to be lower into the ground for a project of that size.

Wisler asked if Pride was saying that the whole building could not be brought up because it would bring the retail space too far off of Grant Street.

Pride said that was correct. He said the previous design for the building was a full story taller in their attempt to keep the retail space on Grant Street. He said his team chose to put the retail on the corner and the parking on the same level to avoid having an extra story.

Wisler asked if, assuming the total height was not an issue, the retail space could be higher.

Pride said yes and he would have been happy to do so. He said that having a 13 foot retail space is challenging; the design team would rather have a 15 or 16 foot retail space.

Wisler asked if increased height could allow for windows around the corner without having the windows look into the ceiling.

Pride said that the extra height would make it easier to add windows, but it would be odd to look up and out of the windows. From the interior space, there would not be much benefit to the windows. There is a code mandate, but the height of code is hard to apply to non-flat sites. He also said that height requirements are unusually restrictive for sloped sights. He said the residential entrance on East Third is for fire/emergency access to the residential floors without penalizing the size of the retail space. He said that the code requires that any doors do not swing over the property line.

Kevin Robling said the mayor wanted a project from Annex that he could support. The mayor's office said he would prefer to sacrifice retail space to bring the building down a floor.

Kappas said that he read the EC's recommendation. He said there is not enough transparency regarding the green roof system. He asked how the green roof system would fit into the impervious surface percentages. He said that the petitioner had originally been told that if there was too much impervious surface area, the water would just go into the storm water system. He asked how the roof would be different from any other roof.

Pride said that green roofs are separate from storm water and impervious surface issues. The site has impervious surface challenges. The green roof system can improve the quality of the water being sent into the storm system. It does not substitute for impervious surface requirements. The green roof is a part of the proposal so that the PC would look more favorably on granting a waiver for not meeting the impervious surface requirement.

Kappas asked staff if the green roof item will become common practice.

Roach said that every project is different and has different challenges and properties. He said the project's engineer thinks he could get the impervious surface coverage down close to the requirement. He did not know if green roofs would be the way of the future. He agreed that there was not a large difference between rain water hitting the green roof system and a bioswale or a pervious paver system. He said pervious paver systems have underdrains because of the clay soil in Bloomington. He said there are other benefits of the green roof. He said that staff was encouraged by the green roof. He said that the green roofs are an aesthetic benefit for the tenants.

Pride said that the proposed project on the west parcel would have less hard surface than the current site. He said that the current west site has no ability to treat storm water before it enters the storm sewer, but he thought better water quality could be achieved with the green roof. The parcel to the east was about 50% vegetated and 50% impervious, by Pride's estimation. He said that on the whole, he thought the proposal could achieve better environmental performance on water quality, but the impervious surface percentage was close to the limit.

Kappas said he is looking long-term. If green roofs become common practice, those individuals who are not well-versed in green roofs may not maintain them and they could fall into disrepair.

Pride said the green roofs proposed on the project are no maintenance roofs. He says he put roofs like the one being proposed in 10 years ago and they still look as good as they did 18 months into the project. Once the sedum plants are established, they do not need maintenance.

He said the plants would not need to be pruned or trimmed, but would provide a mix of green and flower foliage mixed in with a lava rock-like mixture in which the plants grow.

Cibor asked about the Third Street frontage. He said one leg of the 3-legged stool was innovation, specifically, architectural innovation. He was hearing comments that Third Street is not the best pedestrian facility. He said that if buildings such as the proposed one go up on Third Street, it will surely not be a good pedestrian facility. He asked Pride to sell him on the idea that the design was innovative for pedestrians and street activity. He asked what could be done to make the design more innovative.

Pride said that the two parcels of the development are different, and the east side is more challenging. This is because of the grade change and the proximity to the street to the east. The area of the proposed site has high vehicular activity, and the proximity of the curb to the building is much less on Third St. than it is on Grant St. which is why the retail space was focused on Grant St. The extra depth of the right of way on Grant allowed for the retail frontage to be set back into the building and a larger depth patio could be created. When Pride said that Third Street was not great to activate, he meant that for someone exiting the retail space and wishing to sit down for a cup of coffee, Grant St. would be way better. He said that Grant St. is a better place for retail customers to spend time. He said that there were things that could be done to make Third St. more activated such as changing the landscaping or adding public art. He said the east block would not be well received by pedestrians, in part, because of the steep grade. The west block of the development attempts to make pedestrian use of Third St, although he acknowledged that the patio depth on Third St. would only be 6 feet.

Cibor said one of the other legs of the stool was the sustainability component. He asked about the commitment to recycling on-site.

Pride said there are two elements of recycling: recycling during construction and recycling after construction. He was not familiar with recycling programs in the Bloomington area. He said that the last few projects he had worked on had only sent 3% of the construction waste, by volume and weight, to a landfill. The petitioner could institute that same program as long as there were adequate local waste haulers. He said that the petitioner had proposed a chute for recycling and one for trash. He said that the waste hauler would have to have a recycling program for commercial projects.

Cibor said the last leg was housing diversity. The commitment was for 15% of the units over 99 years. He asked how the cost of the affordable units was determined compared to market rate cost.

Pride said that the cost is 120% of AMI, which is the same system used throughout the state, region, and country for establishing the level for what "affordable" means.

Alex Crowley, Director of Economic and Sustainable Development (ESD), said that there are two price points to think about. One is to set rent and the other is what the qualification for a tenant would be. ESD was looking at setting rent by looking at the living wage and following Housing and Urban Development (HUD) guidelines. HUD says that one should not spend more than 30% of one's income on rent, which is what ESD is using as a calculation for a rent. He said that, using the 30% guideline, rent would be about \$645 per month. There is a lot of development and credits for housing up to 60% of AMI, but there is not a lot between 60% and 120%.

Cibor asked about parking, which is a topic of interest for many people. He said that the report had mentioned comparable Annex parking sites and the parking ratios they had included. He asked where the sites are located and if there was information to compare the particulars of those sites to the proposed site. He repeated the question because Pride had not heard it.

Lewis said that if one looks at the number of beds and required parking, the required ratio would be 0.6 parking spots per bed. The proposal would have 0.44. Annex operates 2 similar properties with similar bed counts, 118 and 134, at parking ratios of 0.51 and 0.54 spaces per bed.

Cibor asked where the developments are located and how occupied they are.

Skidmore said she has a spreadsheet where she tracked all parking, but would have to look into the locations of the projects mentioned for parking. She asked what other specific details about the projects Cibor wanted. She said the developments are performing fine.

Cibor wanted to know where the sites were and asked if staff could follow up with the local agencies for the sites mentioned to find out if there were parking issues around the site. He said it was interesting that the examples given had more parking than the proposal being considered by the PC. He asked if the parking would be for residents only.

Skidmore said that the parking would be for residents, but pointed out that the petitioner had provided bike parking over and above the requirement. She said that with a parking deficiency, they wanted to provide another means of transportation for residents.

Cibor asked what the construction schedule would look like.

Skidmore said that they are currently leasing the spaces on the sites. They would look to start construction in spring of 2018 in order to open by fall of 2019.

Pride said there were a lot of things to do before spring of 2018.

Skidmore agreed.

Enright-Randolph asked if the only access to the 8-person bike area was through the first floor. He asked if the residents could come in the Third St. entrance and access the bike parking.

Pride said that the bike parking was 6-7 feet below the elevation of the entrance on Third St. even though the entrance and bike parking appear to be side by side on the plans. He said the principal bike parking is right off of the vehicular access. He said the petitioner may be able to expand the bike parking on the northern section of the plan.

Enright-Randolph said he brought the issue up to highlight the issue of losing pedestrian traffic and how that loss could affect the area. He said that if people could access the Third St. door with their bikes that would be beneficial.

Pride said the petitioner looked carefully at how to exit the building to Third St. and Grant St. the best way. He said that plan shown is the best overall solution. The petitioner was looking to provide wall-mounted racks to intensify bike parking density. He said the residents could enter from Third St. and carry their bikes up to their unit.

Hoffmann said that the south face of the west building, the first two windows, east to west, are restaurant windows. The third window was the back of house window, labeled #8. He asked what the next window, the one to the left of #1, would be. He said the one on the far left is louvers for the parking garage, but wanted to know what the one right in the middle would be.

Pride said the window in the very middle would be the back of house window.

Hoffmann asked if that one is the back of house window, what #8 would be.

Pride said it would be a true window. He said that #8 and to the right would all be true windows. He said that the renderings depicted the glass better than the elevations did.

Hoffmann asked staff about the significance of a COA denial by the HPC. He asked if the petitioner would have to over-come it in order to do a plan that affects a historic property.

Roach said that to build in the district, the petitioner must have a COA. He said the he had heard from the petitioner that they are weighing what that might be.

Hoffmann wanted to know what the significance was. He asked if the project had to pass the COA hurdle or be changed in a way to avoid the hurdle.

Roach said that was correct.

Hoffmann said that there was nothing the PC could do about the COA.

Pride said the petitioner is seeking specific comment or feedback of elements to alter or change so that the petitioner could work with staff in order to obtain a favorable opinion.

****Wisler moved to continue SP-07-17 to the September 11, 2017 meeting. Cibor seconded.**

Roach asked the PC for very clear feedback and guidance. He asked about the kinds of items the PC would like to see. He wanted to know if there was anything the petitioner or staff should study. He asked if there were particular parts of the building that should be changed. His goal was to bring back a clear and concise project to the next meeting.

Hoffmann said that the petitioner seemed willing to work with staff and asked the PC to give as much help as possible.

Stewart Gulyas said she was very pleased with the project and now understood how challenging the project was. She said she was pleased with staff's recommendations and felt everything was going in the right direction. She was concerned about the cold feel of the architecture. She hoped that the issue was on its way to being solved. She said she was feeling better about the project.

Cibor said he was interested in hearing more about the quantity of parking. He wanted to feel confident that the parking would be sufficient to serve the residents. He was interested to see how everything worked out with the HPC. He also wanted to see more in regards to the recycling component as well as see some kind of commitment to recycling on-site. He said he was intrigued by, and liked, the way Grant Street was addressed, but he had significant concerns about the east block of Third Street. He said Third Street seemed cold and unfriendly to pedestrians. He said that the petitioner needed to keep in mind not just pedestrians who would walk on Third Street to get to the proposed buildings, but also pedestrians who would walk past the buildings to get to a different destination. He suggested that the petitioner work with the Bloomington Arts Commission to do something more innovative and creative. He said he would like to know about the construction schedule and how the construction would affect the public ROW. He said that even if the PC approves the petition, if construction affects the ROW, the petitioner must go before the Board of Public Works.

Enight-Randolph said he appreciated the innovative design of the green roofs. He said they could be used in other developments in the city.

Kappas expressed his thanks to the petitioner and staff. He said the loss of the fifth floor helped him be able to potentially support the project. He said he would like to see a detailed landscape plan. He said he still had questions about the environmental impact, but thought the project was much improved in terms of innovation. He said he would like to see more green roofs. He said the petitioner should ask themselves the question "what good does this do for the community?" He told the petitioner that the question is not just for the future residents of the development, but for the entire community.

Maritano said the location is challenging. She said there is confusion on Third Street of hurry up and stop. She felt that the east building and west building had completely different cultures and paces because Third Street has different cultures and paces. She asked what staff could do to slow down Third Street and be better for traffic and pedestrian flow. She said she was at My Thai restaurant recently, sitting on the porch considering the height of the building. The person she was having dinner with, a long-time resident, had expressed that the particular area was one of the last remaining character areas. She said the corner of Third and Grant is an important bridge to Grant and Fourth Street. She wanted to see a development that was more of a bridge between Restaurant Row and the Grant Street housing styles. She felt that a lot of comments from the June meeting regarding scope and size had not been addressed in terms of the character of the development. She said the red metal was undesirable to her. She recognized all of the challenges surrounding the project, but said it was out of scope for the corner.

Wisler said the plan was a dramatic improvement with a lot to like. He said he was generally pleased with the architecture. He said that the roofline modulation was appreciated; many projects come through with a flat roofline and he does not like that. He said that he did not have a problem with the parking. He felt there was a strong chance that the development would attract residents who did not need a car. He thought the density was good. He said he liked the commercial area along Grant Street. He said the same did not go for Third Street. He said that the petitioner could not just refuse to make Third Street visually interesting because they figure no one will walk along Third Street. If the petitioner does not make the area visually interesting, no one will want to walk there. Visual interest and increased pedestrian traffic would slow down vehicular traffic. He said that building height is not a huge factor of walkability. People do not look up when they walk down the sidewalk, they look around. He said a brick wall is not somewhere people want to walk and does not get vehicles to slow down. He wanted to see some way of opening the corner on Third Street. He said the balconies helped with walkability. He said artwork has been suggested, but he felt there needed to be people nearby in windows, doorways, or outdoor seating. He said he has not received a direct answer to the question about qualifying standards for workforce housing. He asked if there would be a requirement that tenants have full-time employment in order to qualify for an affordable unit. He also asked how that would consider self-employed applicants.

Hoffmann said there was a lot to like in the project. He said it is more student housing downtown, but the proximity to IU buildings made a lot of sense for students to walk to campus. He said he would like staff to work on the pedestrian aspect on Third Street as well as Grant Street. He said that many of his comments have been informed by the new City Architect, who reviews designs. He thought that it seemed obvious that brick pavers should be on Grant Street. He also said staff should work with the petitioner on the driveway that cuts across the curb for the eastern building. He said that although there is not much in and out traffic, he thought the paving should signal to drivers that care is needed to look out for pedestrians. He said the picture on the cover of the submittal is indicative of the things that have been done well on the west building. He said the west building has a dead zone represented by the parking garage louvers, but once a pedestrian is in front of the louvers, they can already see the windows and patio areas coming up ahead of them. Urban planners say that there is only so much dead space people are willing to walk comfortably. Only half of the west building is dead space, while the other half is very active along Third Street. The east building is a full block of dead zone. Hoffmann said the dead zone was unacceptable and must change. He said the glass window could hook the corner from Grant to Third on the east building. He said the window would not be functional because it would not be able to be opened. However, if the glass went around the corner, people coming down Third Street could look in and see the entrance to the retail space. He said that something like limestone sculptures projecting off the building where the brick is would be helpful. He suggested the use of limestone bas relief, or raised, murals. Something needed to be done to make at least half of the east building frontage on Third Street something that will not make pedestrians cringe. The rendering showed a dead zone that needed to be addressed. He said he still thought the issue of height still existed. He said that the height issue existed in two places. The first is the

northwest corner of the west building next to the historic house appeared to be looming over Grant Street. He said the houses on Fourth Street that back up to the building are affected when viewed from Grant Street. Both Grant Street and the houses on Fourth Street across the alley would be affected by the height. He said that, similarly, but less of a concern, the east building, near the Dats building, has taken care to protect the Dats building by having the entrance to the driveway and having the building set back. He said the height of the building as it is closest to the Dats building, the red and gray portion on the rendering, is looming and will create problematic shadows. He asked staff to talk to the petitioner regarding what kinds of changes can be made to address the two concerns he laid out. He said the whole building does not need to lose one story, but the height has a couple of places where it interacts with adjoining smaller buildings that are problematic.

Wisler said that one of the waivers being requested is a step-down waiver. Typically the PC wants to see a gradual step down towards the shorter adjacent buildings. The plans show a big jump from one story up to four stories. He said patio umbrellas help mitigate the harsh step. He said the green roof could have a stepdown, though it would be more work. He said that more visual interest was needed and suggested trees, taller shrubs, awnings, umbrellas, or even changing the modulation. He said that breaking up some of the blocks of color on the façade of the building would be helpful.

Hoffmann said he was mostly concerned with the impact on the Dats building and the historic building. He felt the project had a lot of merit and looked forward to seeing a project that would be ready to be voted on in the September hearing.

The motion to continue passed 6:0.

DP-24-17 City of Bloomington Redevelopment Commission
610 N. Rogers Street
Preliminary and final plat approval of a six-lot subdivision of 4.97 acres.
Case Manager: Eric Greulich

Jackie Scanlan, Senior Zoning Planner, presented the staff report. She said the petition site is downtown by North Rogers Street between Tenth and Eleventh Streets. The site is 4.97 acres of the 12 acre Trades District. The property is zoned Commercial Downtown (CD) and is in the Showers Technology Park overlay. The GPP designation is Downtown. She said the site currently contains open space and multiple parking areas. The petition is a request for a 6 lot subdivision as well as preliminary and final plat requests. Lots 1 and 2 are for future development, Lots 3 and 4 will be open space, Lot 5 would remain a parking lot, and negotiations for Lot 6 are ongoing, although it is planned to be a detention area. There is a detention area planned in a common area on the south side of Tenth Street. The subdivision would plat right of way for Tenth Street on the southern portion, a new Madison Street north of Tenth, a new north/south alley between Lots 1 and 2, and a new Trades Street north of Lots 1 and 2. The right of ways are designed to accommodate innovative green infrastructure while providing a pleasant pedestrian experience along Madison and Trades Streets. The right of ways would be roughly 72 feet wide. She showed renderings of the proposed project as well as of the preliminary plan of the right of way. The right of way would include space for vehicular traffic as well as parking, but would also include pervious pavers and planting areas to accommodate the green infrastructure water treatment features. There would also be a sidewalk on both sides of the street for pedestrians. She said the plat meets minimum preliminary plat requirements of the UDO. Staff recommends approval of the preliminary plat and continuation of the final plat to the October PC hearing. There are not minimum lot sizes in the zoning district, so Lots 3 and 4 may seem irregular, but they do meet code.

Hoffmann asked to break in for a moment so that Wisler could make a statement.

Wisler said he needed to recuse himself from the case because he had had previous and may have potential future ventures in the Trades District area. He did not have an immediate financial interest, but could have a financial interest in the area.

Scanlan said staff was recommending approval of the preliminary and continuation of the final plat.

Crowley recognized Melanie Walker as well as Angela Parker who represented Tasus. He said they were moving towards activation of the Trades District. A lot of work had gone into designing and planning the infrastructure. The team was looking to prepare the lots and move them towards sale. He said that Tasus had committed to purchasing Lot 2. The area that was part of the petition is the southern portion of the Trades District, which extends to Eleventh Street. He said that his team was focused on getting the lots figured out so that they could market them.

Melanie Walker, president of Tasus, commended the PC and the city for their efforts towards the Trades District. She said the project was exciting. Tasus was designing and looking at their building and what they would like to do with it. She said Tasus would be designing and developing equipment, parts, and tools as well as having the Tasus staff centered in the Trades District. She said that Tasus would like to bring in neighbors and grow the Trades District in order to achieve the collaborative feeling. She hoped that the Trades District feeling would be achieved and that ideas would flow from company to company. She thanked the PC for their support.

Erin Beech, resident of Maple Heights neighborhood, stated that she was confused about the plan for the Trades District. She is the owner and resident of some space on Twelfth Street; she received a notice stating she had an adjacent lot to the 610 N. Rogers St. property. She said she did not have an issue with the tech park, but wondered how it would make and impact as it moves north. There is a Duke substation being built in her backyard. She asked how the proposed Trades District would affect the nearby neighborhoods. She was concerned about the impact to the residents of the Maple Heights neighborhood. She hoped someone could answer her questions.

Scanlan said that Beech had been notified because the Trades District property is made up of multiple properties that are contiguous and span to Eleventh Street. Duke Energy owns the properties to the north. She said that the portion being discussed at the current meeting was closest to Tenth Street, but the Trades District would eventually develop north to Eleventh Street. She offered to get Beech's information and meet with her in the future to share information on the proposed Trades District. She said that the idea of the Trades District is to develop as a place to incubate technology-focused businesses that they may interact with each other. The Trades District would also house some employees who work in its businesses.

Hoffmann asked staff to get Beech's name and phone number in order to set up a meeting to show what was being planned. Not all of the Trades District plans were finalized. He wanted staff to show Beech and any interested neighbors what was being proposed to go in further north from the location being discussed as part of the current petition. He asked that staff discuss how the northern expansion may interface with the neighborhood.

Beech said that the talk in the neighborhood is that the substation, which many residents are upset about, is being put in for the sole purpose of the Trades District.

Hoffmann said he did not doubt that there was a relationship between the substation and the Trades District, but he wanted staff to reach out to Beech.

****Kappas moved for approval of the preliminary plat and continuation of the final plat for petition DP-24-17 to the September 11, 2017 hearing. Stewart Gulyas seconded the motion. The motion passed 5:0 with Wisler recusing.**

ZO-20-17 **City of Bloomington**
UDO Amendment (Sexually-Oriented Businesses)

Amendment to the City's Unified Development Ordinance to change the development standards for Sexually-Oriented Businesses
Case Manager: James Roach

James Roach, Development Services Manager, presented the staff report. He said that the last case was an amendment to the UDO regarding how the City regulates sexually-oriented businesses. Before 2006, the city had no sexually-oriented business rules at all. When the UDO was adopted, regulations were put in place for sexually-oriented business which limited the zoning districts where they were permitted and required a buffer between those uses and certain protected other uses. There were all sorts of protected uses including churches/places of worship, schools, daycare centers, parks/trails, libraries, residential districts, large shopping centers, cemeteries, and other sexually-oriented businesses. Sexually-oriented businesses would have to be in the Industrial General (IG) or Commercial Arterial (CA) district and not be within 500 feet from the list of protected properties. When the UDO was adopted, there was a cache of properties around the city that would meet the requirements for sexually-oriented businesses. In the decade since the adoption of the UDO, construction around the city has taken place. There have been new churches and shopping centers have been built as well as properties that have been re-zoned. The building and re-zoning that has taken place has limited the locations available for sexually-oriented businesses. There was an adequate amount of land for sexually-oriented businesses in 2006, but in 2017 there was an inadequate supply of land. 0.045% of the city limits, which is about 8 acres, is eligible to have a sexually-oriented business. There are two parcels within the city that could have a sexually-oriented business. In 1986, the U.S. Supreme Court found in the case of *City of Renton v. Playtime Theatres* that Renton's zoning ordinance was constitutional. The ordinance was a legitimate exercise of the city's authority to zone for sexually-oriented businesses in certain ways. Renton had very similar restrictions to Bloomington except that they had 5% of their city available for sexually-oriented businesses. The Supreme Court did not rule that the city had to ensure that the properties were vacant or eligible for purchase or that the property owners were interested in selling or leasing the property. Renton simply had to meet the regulatory test of the community. He said that there was a huge difference between 0.045% and 5% of properties being eligible for sexually-owned businesses within city limits. Staff had been researching the issue for over a year with a goal of getting Bloomington's regulations as close to having 5% of property to be eligible within the city limits. Staff knew that 5% of property being eligible would meet the Supreme Court test, but staff could not quite get to 5%. The UDO Amendment sought to change the amount of eligible land from 0.045% to 4% of the City Limits. The Amendment would provide an increase in land for the constitutionally-protected use which would bring the city closer into compliance with the *City of Renton v. Playtime Theatres* decision. The increase in eligible property would be achieved in 3 ways. First, the Amendment sought to add Commercial General as a permitted zoning district. Second, the Amendment looked to remove two protected uses: cemeteries and large-scale, multi-tenant nonresidential centers. The removal of cemeteries was important because of the way that Valhalla Memory Gardens impacted the availability of many properties on West Third Street. Removal of large-scale, multi-tenant nonresidential centers as protected would be crucial according to the analysis completed by staff. In many communities the only areas that can qualify as a sexually-oriented business location are right in the middle of large shopping centers. Large shopping centers tend to be very large properties that are isolated from residential districts or other protected uses. A sexually-oriented business in the center of a large shopping center would be sure to not be right up against homes. Third, staff was looking to change how to define the 500 foot separation calculation. The UDO, as adopted in 2006, considered a 500 foot separation to be measured from property line to property line. The measurement would be from the property line of the protected use to the property line of the proposed sexually-oriented business. For example, if a sexually-oriented business wanted to locate in the middle of College Mall, the measurement to the nearest protected use would be from the outermost property line of the College Mall. The proposal was to change the calculation to the property line of the protected use to the wall of the sexually-oriented business. He said that those 3 changes would increase the supply of available

land by a factor of 100. Staff asked that the PC forward a positive recommendation to the City Council to keep Bloomington in line with Supreme Court decisions. He showed maps and explained how future construction could affect which land was available for sexually-oriented businesses. He showed a map that highlighted two available properties for sexually-oriented businesses: one was a portion of a concrete manufacturing company on South Rogers and the other was Upland's West Side production brewery. He showed a map highlighting the properties that would be eligible to be a sexually-oriented business under the proposed amendment. Some areas that would become eligible included College Mall, Whitehall Crossing and Whitehall Plaza, commercial properties along West Third Street, and some industrial properties along South Rogers or Tapp Road. Staff recommendation was for the PC to forward a positive recommendation to City Council.

Hoffmann underscored two aspects of what Roach had discussed. He said that the constitutional issue for the petition is a First Amendment issue. The sexually-oriented businesses, or some of them, involve protected speech under the First Amendment, which is why the Supreme Court ruled that a city must allow some opportunity for people to create such businesses. He said that the case in Renton specifically involved sexually-oriented theaters in which the films being shown had constitutional First Amendment protection. He said that the current regulation as well as the proposed new one have protected areas that must be a certain distance away from sexually-oriented businesses. The notion of protection is protection from the secondary effects of the sexually-oriented businesses. There have been studies across the country that show increases in trash and crime as secondary effects of the sexually-oriented businesses. Regulations to protect certain uses are in place to protect those uses from the secondary effects of sexually-oriented businesses.

Wisler asked if the change were not enacted, if there would be any immediate consequence before someone brought suit. He asked if the consequence would simply be that someone would sue the city because they wanted to open a sexually-oriented business and there were no available locations.

Roach deferred to Anahit Bejhout. He said he believed there would be two opportunities for challenges: there are no places to create a sexually-oriented business or, on the face, the ordinance does not provide any opportunity for sexually-oriented businesses.

Anahit Bejhout, City of Bloomington Legal Department, said that Roach was correct. There are two issues that could come up. One is that if someone wanted to open a sexually-oriented business or if someone wanted to challenge the ordinance.

Wisler asked if someone would have to have standing or prove damages in order to bring suit. He asked if anyone could bring suit on the face of the ordinance.

Bejhout said that standing is hard to comment on until a case would come forward.

Hoffmann said that if someone brought suit and won against the city, any regulation on sexually-oriented businesses would be invalid and such businesses could be placed anywhere.

Stewart Gulyas asked if the situation surrounding sexually-oriented businesses was similar to the one the city found itself in regarding the sign ordinance. She said that the city had to clean up its act in preparation for being in compliance.

Roach said that Stewart Gulyas was correct. After *Reed v. Town of Gilbert*, a recent Supreme Court case, the city was trying to make sure its regulations had met the standard of the case. He said that in the case of the sexually-oriented businesses, the city's regulations have simply not kept up over the years as the city has changed.

Kappas asked if the city had received feedback from the community on the issue.

Roach said that there had not been any feedback until the current meeting.

Kappas stated that the PC would be the first feedback.

Roach confirmed.

Maritano asked where the specific definition of a sexually-oriented business could be found. She asked if Spencer's in the mall or Cirilla's on the west side would count as sexually-oriented businesses. She also asked if Cirilla's was grand-fathered in.

Roach said the Maritano was correct about both businesses. He said that the definition is stated in the UDO. Staff was not seeking to change the definition. He read the definition from the UDO.

Maritano stated that Spencer's would not count as a sexually-oriented business but Cirilla's would.

Roach said he had not made a zoning interpretation on those specific businesses.

Kappas said that the highlighted areas are proposed. He asked if the existing businesses in the area had been notified of the proposal to add sexually-oriented business uses nearby.

Roach said that the areas were not proposed, they are just areas that would meet the standard. He said that the city was not seeking to zone the areas for sexually-oriented businesses. The areas highlighted on the map would meet the distance regulations if the code were to be changed.

Kappas said that, working within the current zoning structure and altering a few definitions, the map showed areas that were eligible for sexually-oriented businesses.

Hoffmann explained that there were 3 proposed changes and explained them to Kappas.

Roach said that sexually-oriented businesses could be permitted in PUDs that were created before the adoption of the UDO where the listed uses are the same as CA, CG, or AG.

Hoffmann said that essentially it would be the same zone, but the zoning would be done by PUD.

****Maritano moved to approve ZO-20-17 and pass on to City Council. Stewart Gulyas seconded. The motion passed with a 60:0 vote.**

Meeting adjourned.