

An Anti-Immuration Petition

In Sophocles= *Antigone*, the heroine opposed a government decree. She declared that she was bound by principles that transcended the dictates of any man or any government. She refused to follow an edict promulgated by the king because it violated a higher fundamental principle. On account of this transgression, the king sentenced her to death by immuration, *viz.* she was to be walled into a cavern and starved to death. (After being walled in, she chose a quick death by hanging rather than a slow death by starvation.)

The government of Milwaukee, through its third district alderman acting in alliance with one particular developer, is proposing the immuration of my property as part of a planned unit development for Downer Avenue. I oppose their plan on principle.

The Plan

The principal feature of the planned unit development for Downer Avenue is the construction of an 11 story condo at the corner of Webster Place and Stowell Avenue. Current zoning regulations prohibit such a structure at that location.

The plan includes the addition of a medical surgery center to the Downer Business District. Existing zoning regulations recognize that a medical facility is not normally appropriate in neighborhood shopping area such as Downer Avenue. Such a use is only permitted by special exception.

The plan also calls for the sale of the city owned surface parking lot at Downer Avenue and Belleview Place. That lot currently provides open, visible, easily accessible, inexpensive, and safe parking for the customers of the Downer Avenue merchants. Just as importantly, the lot creates a green space buffer between the commercial district on Downer Avenue and the historic residential district immediately to the east. That buffer consists of a triangle of landscaped green space with a large magnificent tree at its center.

I live in the residence adjoining and immediately to the east of that green space buffer. My lot line along that property is 109 feet from the city sidewalk to the back of my back yard.

The planned unit development proposes that the existing surface parking lot, the green space buffer zone, and the magnificent tree be eliminated and replaced with a multi-story retail and parking structure. The 48' 6" high eastern wall of that structure would be built along my lot line. The developer has advised his architect that he would prefer that the eastern wall of his structure extend all the way from the sidewalk to the back of my back yard. But in apparent recognition of the fact that building the wall all the way to the sidewalk would be grossly insensitive to the ambiance of the Historic Residential District, the developer's initial formal proposal stated that the northeast corner of the structure would be chamfered, *viz.*, cut off at approximately a 45 degree angle, so that the front edge of the eastern wall would be at the middle of the west side of my house. But as my house does not have much depth and is built toward the front of my lot, the wall would still be toward the front of my lot. And because my home was built within 3 feet of the lot line (in 1909 before the enactment of the current zoning code), the developer's building would be so close to my home that my garbage cart would not fit into my back yard. When this situation was made known to the developer, his architect suggested moving the northeast corner of his building back a short distance. But this option also involved

changing the angle of the chamfer so that the view from the windows on the west side of my house would be much more significantly restricted. I was told that if I did not like either of these options, the developer would gladly revert to his initial plan to build his 48' 6" foot wall all the way to the sidewalk.

Under the developer's preferred plan, the only thing that I would be able to see out of the living room and bedroom windows on the west side of my home would be a 48' 6" foot wall less than three feet away. No sunlight would ever be able to come in through those windows. The extension of the wall to the side walk would also severely limit my views from the windows on the front of my house.

The diagram that the developer has included with his most recent statement of his plan is inaccurate and deceptive. The original submission included a diagram that more accurately showed how close his structure would be to my home. After the developer was advised of how severely his plan restricted access to my back yard, he resubmitted a new diagram which fraudulently suggests a much larger separation between his structure and my home. The new diagram is not remotely close to the options which the architect showed to me and which I have already described. The written submission does not include any site plans for the Downer and Belleview structure, even though site plans for the 11 story condo are presented.

I oppose the Downer and Belleview plan out of self interest. I want to continue to enjoy the home that I have owned for more than 31 years. This is the only home that my wife and I have ever owned. It is the home in which we raised our children. I never intend to leave this home (or this wife).

But it is more than self-interest that motivates my opposition to the planned unit development. I oppose this plan on principle.

The Principles

I oppose this plan because it violate principles of fire and rescue safety and puts the occupants of my home at risk as it would not permit rescue equipment to access the west side or the rear of my home. All emergency equipment would have to operate from the front of my home.

I oppose this plan because it violates principles of neighborhood and historic preservation.

I oppose this plan because it violates principles of good urban zoning practice, such as the prohibition against spot zoning and the rule that economic hardship does not justify exceptions to zoning restrictions.

I oppose this plan because it violates principles of good urban planning, such as the need to include open spaces and green spaces in urban settings.

I oppose this plan because it violates principles that promote business for the street level retail merchants on Downer. Those principles include the need for customer parking that is open, visible, accessible, and safe at street level and the need of the merchants not to be under the control of a monopoly landlord. The medical office and surgery complex that is included in the plan will also violate the principle that medical facilities are generally not appropriate for neighborhood shopping areas such as Downer Avenue.

In opposing this plan on the basis of all these principles, I am not claiming that the plan is in technical violation of any law. I do not have the expertise to make such a claim.

The Plan Violates Principles of Fire and Rescue Safety

Building design and placement is an important component of fire safety. The design of the structure planned for the city lot at Downer and Belleview may well comply with all applicable codes (or be exempt from the code requirements because the planned unit development process is being used). Nonetheless the impact of the plan on my home will be to make my home less safe. The design and placement of the developer's structure will seriously impede the fire department's ability to get fire and rescue equipment to the west side and the rear of my home.

My home has a third floor bedroom. That bedroom can be reached by only a single stairway. If that stairway were blocked by fire, the only way out of the bedroom would be two windows on the west side of my home. The distance between the developer's structure and my home would severely compromise the fire department's ability to quickly rescue someone from those windows. The fire department would also not be able to get its rescue and fire suppression equipment into my back yard.

More than fifteen years ago, my daughter was severely injured in a back yard accident. She was bleeding profusely. I picked her up and carefully carried her to my car. I was able to get her to the emergency room within two minutes. Had the developer's building been in place, I would not have been able to carry her as I did. If rescue personnel had come, they may not have been able to fit a gurney into the back yard.

The placement of the developer's building compromises the safety of my family and anyone else who might be at my home.

The Plan Violates Principles of Neighborhood & Historic Preservation

The Murray Hill Neighborhood Association is the neighborhood organization that includes the area where the plan proposes to build an 11 story condo. Murray Hill has adopted a resolution opposing the plan.

The Water Tower Landmark Trust is a neighbor historic preservation organization that encompasses the area to the east of Downer Avenue. The Water Tower Landmark Trust has secured federal historic landmark status for its residential neighborhood. My home is included within the boundaries of that historic district. At its January 3, 2007 meeting, the Water Tower Landmark Trust adopted a resolution opposing the plan. After the developer later made some changes in his plans for the 11 story condo, supporters of the developer introduced a motion at the February 7, 2007 Water Tower meeting to have the Water Tower trustees support the revised plan. That motion was defeated.

Most importantly, the Water Tower Landmark Trust has unanimously adopted a resolution that any development on the city owned land at Downer and Belleview should include a green space buffer of not less than 10 feet along my property line.

The Cambridge Woods Neighborhood Association is on record as opposed to the plan. And *ad hoc* groups of neighbors have been formed to oppose the plan. One of those groups obtained more than 1,100 signatures on a petition opposing the plan.

Just as important as the adverse effects on the character of surrounding residential area are the adverse effects that the plan would have on the character of the Downer Business District itself. The City of

Milwaukee has designated the Downer Business District as an historic commercial area. The City has stated that the existing Downer Business District is similar to a small European village with stores grouped around a central church complex. By its scale and architecture, the plan will destroy the existing ambiance that prompted the historic designation of the District.

The Plan Violates Principles of Good Urban Zoning Practice

Urban zoning laws create an overall plan designed to ensure that any development is compatible with the uses of nearby property. This planned unit development violates several principles upon which urban zoning laws are based.

Zoning laws establish a system in which similar land uses are grouped together and dissimilar uses are segregated into separate areas. Spot zoning is not allowed. Particular lots in an area zoned for one purpose are not supposed to be rezoned to a use that is incompatible with the rest of the lots in that area. By using the device of a planned unit development, this proposal seeks a back door way around the spot zoning restriction. This plan proposes that a portion of a residentially zoned block be rezoned to commercial use.

By using the same device, this plan also seeks to avoid the rule that the economic considerations of the landowner cannot be used as a reason for being excused from zoning restrictions. Here a well heeled and well connected developer is essentially asking that he be excused from existing zoning restrictions so that he can make a greater profit. He is not satisfied with the deal that he made when he purchased the majority of the Downer Business District last year. Now he is asking the City to excuse him from the existing zoning restrictions so that he can have a

better financial deal than the one for which he bargained when he purchased the property.

This plan also seeks to violate the spirit of the zoning laws by applying setback rules that were meant to apply to adjoining commercial lots to a situation in which a commercial lot adjoins a residential lot. The spirit of the zoning law is to provide setback of buildings that are adjacent to residential lots. Here the developer says he should be allowed to build on the lot line of a residential property because the zoning law does not specifically address the issue of what rules apply when a commercial lot adjoins a residential lot. The developer says that zoning laws should read literally when they suit his purpose. But when zoning laws impede him from making all the money he wants, he says he should be excused from the requirements of the law even if it adversely impacts others.

The Plan Violates Principles of Good Urban Planning

It is a principle of good urban planning to provide open spaces, particularly open green space in commercial urban settings. ArrowHead Park, MacArthur Square, Ziedler Park, Pere Marquette Park, and Cathedral Square in downtown Milwaukee are all examples of this principle. The developer even boasts in his proposal that he is including a green buffer zone as part of his surgery center for the visual enjoyment of the patients of the center and as a buffer for the residents to the east.

But the developer makes no such provision in connection with the lot at Downer and Belleview. Rather he seeks to eliminate an already existing landscaped green space, a green space that is part of the present European Village ambiance of Downer Avenue.

The Plan Violates the Interests of the Street Level Retail Merchants

The elimination of the street level parking in the existing surface lot at Downer and Belleview will be bad for the street level merchants. The merchants recognize that they need open, visible, accessible, and safe parking. The proposed development will convert Downer Avenue from an inviting open space into a canyon in which potential customers driving on Downer will not be able to see that parking is available. Those potential customers may well keep driving to Oakland Avenue in Shorewood that has abundant open surface parking adjacent to its businesses.

Merchants on Downer Avenue, including Sendik's, Downer Hardware, the Chancery, the Original Pancake House, and the Belleview Barber Shop, understand the importance of preserving the existing surface parking lot at Downer and Belleview. They have all written to the Mayor objecting to the sale of that land and the elimination of the existing surface lot with its open, visible, accessible, and safe parking.

At a public meeting over a year ago, Mary McCarthy of Schwartz Bookstore, who is also an officer of the Downer Merchant's Association (and who has been a vocal supporter of this planned unit development), stated that the merchants did not need more parking. Rather she said that the merchants wanted vacant store fronts filled and more activity on the street. She also said that they wanted another landlord on the street so that the merchants could improve their bargaining position with the dominant landlord on the street at the time. Ironically, the proposed planned unit development will give the new dominant landlord even more power over the merchants than the old landlord had.

Finally, the addition of a surgery center on Downer will change the character of the existing business district to the detriment of the street level retail merchants. The existing zoning laws would permit a surgery center on Downer only if a special use exception were granted. The reason for that restriction is that a surgery center would normally be expected to be incompatible with the retail establishments that are in the district. There is no reason to doubt the logic of that zoning principle that the inclusion of a medical facility on Downer Avenue is disfavored.

Conclusion

Investment in Downer is a good thing. Thoughtful development on Downer is a good thing.

However, the proposed plan is not the only possible development option for Downer. The plan is very good for the real estate developer. But the plan is detrimental for the immediate neighbors and the street level merchants. And the plan is dangerous for me.

There are other options available to the developer that will permit him to build condos on Stowell Avenue and to include a hotel and other new businesses on Downer. These options do not require any zoning changes and do not require that the city owned surface parking lot at Downer and Belleview be eliminated. But the developer wants to reap greater financial benefits than the current zoning allows, so he has requested a planned unit development in order to circumvent the zoning protections that have been established for this community. This plan is an abuse of the planned unit development process.

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Peter J. Kovac
PJK/ms