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City Planning Commission

**FROM:** Kimani Jeffrey, Staff

**RE:** Request of Brush Park Properties, LLC in partnership with 112 Edmund, LLC on behalf of Terranovus Development to modify the provisions of an existing PD-H (Planned Development-Historic) zoning district Article XVII, District Map 4 of the 1984 Detroit City Code, Chapter 61, Zoning, to allow for two mixed-use buildings which will include office, retail, commercial and residential space; additionally, to construct a parking structure with retail and commercial space on property commonly known as 2827 John R. Street, 112 Edmund Place and 105 Alfred Street.

**DATE:** June 7, 2018

**BACKGROUND AND COMMUNITY ENGAGEMENT**

At the City Planning Commission's regular meeting on March 15, 2018, a public hearing was held to hear the request of of Brush Park Properties, LLC in partnership with 112 Edmund, LLC on behalf of Terranovus as it relates to properties commonly known as 2827 John R. Street, 112 Edmund Place (city owned) and 105 Alfred Street (See attached map.)

The original request was proposed in order to allow for a multi-building mixed-use development on the eastern portion of the subject block to provide two buildings which will include office, retail, commercial and residential space; additionally, to construct a parking structure with retail and commercial space on the ground level (See original CPC report dated March 10, 2018).

According to the Brush Park Citizens District Council (CDC) records, the developer first presented a proposal for development of the 112 Edmund parcel in October 2014 at the CDC's public meeting. Updated drawings responding to community feedback was then submitted in November 2015. At that time the CDC supported the sale of the City owned property to the petitioner.

In 2017, the developer again approached the Brush Park CDC with the additional members that now make-up the current development team, with a revised plan to develop all three parcels that are currently under consideration for development. This new proposal was presented at the CDC's public meeting in November 2017.

At that time, the proposed development was reviewed by the community at-large,

specifically in terms of the appropriateness of the proposed height of the 112 Edmund seven (7) story building. It was deliberated and, in the end, the Brush Park CDC specifically voted to support the current seven (7) story height of the building per plans since the community felt that the height was in line with the context of existing buildings along John R. In February 2018, the board voted to support the seven (7) story height of the building, but still had concerns regarding the proposed parking structure and requested to receive more information in that regard. Following these discussions, the City worked with the developer to revise the parking garage to include a commercial liner of office space to conceal the garage component from the street level view.

In March 2018, the CPC held the first public hearing on this matter, and at that public hearing, two (2) residents spoke with strong concern regarding the proposed parking deck and associated commercial space. As a result, a meeting was held in March with CPC staff, the developer, the Alfred street residents who spoke at the public hearing along with several other residents of Brush Park, totaling approximately 15-16 people including the development team. The developer made revisions to the plans and convened a second meeting. The second meeting was held in order to present the changes that were made (these changes were also presented at the 2<sup>nd</sup> CPC public hearing that will be discussed further). The members present at the community meeting that was held to discuss the revisions (largely the same that were at the first) were seemingly happy with the changes as most of their concerns had seemingly been addressed.

After the issues regarding the Alfred Street frontage had been mitigated, it was staff's understanding from the comments made during the 2<sup>nd</sup> Alfred neighbors mitigation meeting, that the community would support the CDC board taking a vote on the entirety of the project. As these meetings were taking place, staff had been in contact with a board member of the Carlton Lofts (Carlton) by phone. Coincidentally, as the issues of the Alfred Street residents had been reconciled, the Carlton residents began to engage increasingly, and after a few phone calls and information sharing, expressed opposition to height of the proposed development. The primary concern expressed to staff through those engagements, were regarding the perceived obstruction of downtown views.

As staff became aware of the concerns of the Carlton Loft residents, we scheduled meetings with members of the Carlton for discussion; the first, being a video conference with two (2) Carlton condo association board members. Staff held another in-person meeting with approximately 12-15 members of the Carlton. Through these meetings, the issues of view obstruction resonated as the primary concern for the residents that were present, although some other questions and concerns were expressed. Residents largely felt that the perceived and/or real possibility of their loss of southern downtown views would impact their quality of life, as well as their property values.

A second public hearing was held specifically for the residents of the Carlton to voice their concerns as some complained that they hadn't received the original notice, although at least one member of the residents in attendance, stated that the notice was posted on the lobby announcement board of the Carlton. Since many felt they were not informed, staff decided to re-notice for a new meeting.

The 2<sup>nd</sup> public hearing was held on May 17, 2018. Approximately 12-15 people spoke in opposition or with strong concern about the height or other aspects of the development.

Most of those persons were residents of the Carlton or affiliated. One letter was read on behalf of the owner of the Lucien Moore mansion stating opposition and another Brush Park resident of Brush Park expressed opposition.

In addition, the two (2) residents of Alfred Street who had originally submitted a letter opposing the development, now spoke favorably of the project, voicing newfound agreement for the project, post revisions that were made. The Planning and Development Department (PDD) and the Housing and Revitalization Department (HRD) spoke in strong support of the proposal. Sue Mosey, on behalf of Midtown Detroit Inc. (MDI) also spoke in favor of the development in its current form and have submitted a letter of support for the project. In closing remarks, at least one Commissioner spoke to the fact that they would be waiting for staff's recommendation so that the Commission could possibly take action on the matter.

Since then there has been additional engagement between staff and residents of the community, including the Carlton. Those in opposition have submitted a letter of mitigation requests for the developer. Below is a summary of some of the recent meetings surrounding this project. This list is not exhaustive and does not include dozens of email exchanges, phone calls, and other meetings. Please see below:

**June 2017 – PDD Meeting**

**September 2017 – PDD Meeting**

**October 2017 – HDC Informal Meeting**

**November 2017 – Brush Park CDC Formal Presentation**

**December 2017 – PDD Meeting**

**January 2017 - CPC Meeting**

**February 2017 — CPC Meeting**

**March 2018 – CPC Public Hearing 1**

**March 2018 – Alfred Neighbors Meeting 1**

**April 2018 – Alfred Neighbors Meeting 2**

**April 2018 – Edmund Neighbors 1**

**May 2018 – Edmund Neighbors 2**

**May 2018 – CPC Public Hearing 2**

**June 2018 –CPC/PDD staff meet with residents**

#### **OTHER CONCERNS**

This proposal comes at a turning point in Brush Park. As Your Honorable Body well knows, Emergency Manager Order No. 36 was put forth during the emergency management in 2013-2014. Due to this action, the adoption of the 4<sup>th</sup> Modified Development Plan (proposed zoning provisions for Brush Park) was brought to a halt.

As the City grappled with the ramifications of this, Brush Park has suffered the consequences of not having a set of standards that reflects the community’s current vision or allows for more flexibility that’s needed for the current market trends, as conditions are much different than when the Brush Park 3<sup>rd</sup> Modified Plan was adopted in 2002. This is has led to the community requesting an update.

For this reason, numerous developments that have come before this Honorable Body seek to utilize the more flexible provisions of the Planned Development district, of which the subject parcels of this proposal lie within. The PD regulations of the district are designed to “*permit flexibility in overall development while ensuring adequate safeguards and standards for public health, safety, convenience, and general welfare and, where applicable, encouraging historic preservation.*”



**City Modern buildings which is one of many projects that have used the PD modification provisions and are now under construction; has peak heights of 78.5 ft. (montage taken from Oombra architects presentation)**

One of the more recent developments that proposed a PD modification to increase height, scale and density is the City Modern development which this Honorable Body reviewed and approved with agreement from the Brush Park community and other City Departments.

### ***Brush Park Form Based Code***

Much of the discussion surrounding this project has been regarding the forthcoming

Brush Park Form Based Code (FBC) effort. Staff would like to reiterate as stated in other public meetings, that the FBC is still conceptual and in draft form. It's a type of zoning that was introduced internally by the CPC staff after we had gone through training and certification courses in 2015-16 with the Form Based Code Institute. After this, CPC staff thought that Brush Park would be ripe to apply this innovative type of zoning. In that effort, CPC staff approached PDD as they were also trying to find a solution to apply to Brush Park's dilemma. CPC staff proposed the FBC to PDD and a partnership was formed between staff's to carry out this process.

The consultant planning and design firm, Utile, was hired by PDD to assist City staffs. Studies were then conducted on the Brush Park area immediately, upon them coming on board. Meetings were had in the community at-large to present initial studies and there was large support for the effort. As the consultant and staff received more information, the findings of those studies evolved and thus resulted in changes to the draft form based zoning provisions.

This effort is still on-going and planned to be completed by the end of 2018 with the legislative body support. The community has to date has been very supportive of the eventual adoption of the FBC. However, at this point, the FBC serves only as a study to help inform possibilities and is not yet legally binding.

So as of now, the PD district provisions of the Zoning Ordinance are those that the developer is utilizing in order to propose the subject development. The development's height does align with FBC current draft, but it serves as a guide of what may be possible, and should not be considered binding.

## **ANALYSIS**

This project is generally in conformance with the PD District design criteria of Sec. 61-11-15 of the Zoning Ordinance. Staff's review is as follows:

Criterion (a) *Master Plan outlines that this zoning ordinance requires that the proposed major land use be consistent with the adopted Master Plan in all PD developments.* Regarding the City of Detroit Master Plan of Policies (MP), the subject property is located in the Lower Woodward area of Neighborhood Cluster 4. The future land use designation for the subject parcels indicates (MRC) Mixed Residential-Commercial. The Planning and Development department has submitted a letter stating that this development will contribute to the mixed-use character of the MP designation of the area.

CPC staff concurs that the proposed development is consistent with the MRC designation.

Criterion (B) *addresses scale, form, massing and density*

CPC staff points to the surrounding context when it comes to scale. form, massing and density Regarding the buildings height and scale being appropriate for the current site, it is very plausible to say that the proposed building's seven (7) story height fits the existing and historic context of the Brush Park neighborhood.

This project is seemingly consistent with the scale, form massing and density of the existing neighborhood and historic precedents of the neighborhood, particularly for buildings between John R. and Woodward. At the time of the Brush Park Historic District designation of the 22 block area in 1980 by the Historic Designation Advisory Board (HDAB), buildings varied greatly in size. According to the HDAB <sup>1</sup>staff report for the district, *“Houses are generally oriented to the east-west streets, while apartments and commercial structures are more often oriented to the north-south streets.”* Most lots were around 50 feet wide and the neighborhood historically maintained all types of buildings from Victorian style mansions to institutional churches, to apartment buildings and hotels.

The historic district ordinance speaking of the period of designation, states that, <sup>2</sup> ***“Height varies in the district from one (1) to eleven (11) stories. In the area between Woodward and Brush.... All other buildings more than four (4) stories in height are located between Woodward and John R, and generally on or immediately adjacent to buildings on those streets”*** the ordinance states.

*“Older single family houses between Woodward and Brush generally occupy about twenty-five (25) to thirty (30) percent of the building lot, not including coachhouses or garages. Later apartments and commercial buildings often fill a much higher percentage of the lot, sometimes approaching or reaching complete lot coverage.”*

Some of the taller buildings in Brush Park were directly adjacent to the smaller two (2)-three (3) story buildings. Brush Park had many building typologies. St. Patrick’s Church that once existed on John R. and Adelaide, was a church that maintained two very large steeples and is a good example of the vastly different mix of scale and land use that existed in the area.



St. Patrick’s Church, John R. and Adelaide 1975

In present day, there are still remnants of those larger scale buildings that existed between Woodward and John R. At least two of those buildings stand in the middle of the blocks that they lie on, demonstrating the historic language of six-plus story buildings

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<sup>1</sup> Historic Designation Advisory Board staff report for the Brush Park Historic District.

<sup>2</sup> Sec. 25-2-76 Brush Park Historic District ordinance.

integrating with one (1) to three (3) story buildings and co-mingling adjacent to one another, creating vibrant spaces in the days when Brush Park was in its prime.





*Criterion (c) Compatibility- asks whether the proposed development is compatible with surrounding development in terms of land use, general appearance and function, and should not adversely affect the value of properties in the immediate vicinity.*

CPC staff believes that the development is compatible with the surrounding area and that the developer has worked closely with the community and City to come to a product that takes into consideration all concerns that can reasonably be accommodated and make the project still remain feasible.

Some members of the Carlton Lofts have suggested that the building is not compatible with the site as it will obstruct the existing building's views and may also impact their property values. CPC staff is empathetic to the perceived loss in property value, but maintains that in an urban downtown neighborhood, density and mixed-use are to be expected as this is the urban core of a City. There is a nationwide trend towards mixed-use and density and away from urban sprawl. The planning community has realized the detrimental impacts that it has had on America in terms of non-walkability, obesity and health, economics due to car costs, and the death of neighborhoods. The proposed development seeks to add for-sale housing, office space and retail restaurant uses into the neighborhood. All of these things, in the long run, will make the neighborhood more



desirable for urban dwellers, hence the trend of movement towards densely populated cities again.

### ***Obstruction of Views- Legal Precedent***

As the City of Detroit is beginning to experience a boom in new construction, the issue of landowner rights to unobstructed views is certain to continue. Based on staff's research, outside of zoning, there is little to no precedent that establishes that a landowner has the right to forbid development due to it resulting in an obstructed view.

### ***View Ordinances***

In a small number of instances, a few cities have adopted "view ordinances." These municipalities are usually those that have ocean side properties and other scenic views that the community desires to protect. In these instances, the laws usually do not protect from buildings or structures that prohibit views, but instead apply to trees, fences and similar objects.

### ***Subdivision Regulations***

Subdivisions many times have conditions, covenants and restrictions. These rules many times have stipulations that also involve penalties for violations, but unless such provisions are in place, there is no precedent to prohibit the erection of a new building.

### ***Case Law***

From staff's research, the general rule regarding obstructed views seems to be that the landowner has no common law right to unobstructed views of adjoining property owner's.

As examples, legal cases that cite this include a decision by the North Dakota Supreme Court <sup>3</sup>Ceynar v. Barth, 2017. In this case, a homeowner filed a nuisance action on a neighbor, because of a pool house that was built which blocked the neighbor's view of a nearby golf course. The court determined that in the absence of an express easement or covenant, advantageous views are unprotected. The court further explained: "Because the Ceynars [plaintiffs] have no cognizable right to an unobstructed view from their property, Barth's [defendant] construction of the pool house as a matter of law did not unreasonably interfere with the Ceynars' use and enjoyment of their property."

Another case <sup>4</sup>Wolford v. Thomas, stated that a ("building or structure does not constitute a nuisance merely because it obstructs the passage of light and air to the adjoining property or obstructs the view from the neighboring property, provided such building or structure does not otherwise constitute a nuisance.)"

Criterion (d) *Circulation* and (e) *parking and loading- Vehicular and pedestrian circulation facilities should be adequately designed to meet expected demands.*

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<sup>3</sup> Ceynar v. Barth, 904 N.W.2d 469 (2017), the North Dakota Supreme Court.

<sup>4</sup> Wolford v. Thomas 190 Cal. App. 3d 347, 356, 235 Cal. Rptr. 422, 427 (1987).

Staff believes that the developer has worked to come to a viable solution for parking based on the limitations of the site. The parking structure at 105 Alfred that will also serve 2827 John R retail, has been well designed and can be modeled in other areas of the City. Parking structures usually create dead spaces because their function is limited to transient traffic and there is no additional activity. However, in this case, through working with the City and further refining with the community, a structure was reached that fits within the context of the neighborhood. From the street view, the garage can't be seen and would not be perceived as a parking structure, because it has a residential liner on its facades that will serve as two (2) townhome units. The garage also has six (6) car capacity for stacking space that is within the actual site to relieve possible congestion from Alfred Street. This is something that other developers have failed to achieve or simply rejected in staff's experience. So it is good to find a model that can work as we explore creative options to find better ways to accommodate parking in dense areas. A sea of surface lot parking is not desired, but parking demand still exists. This approach could be a medium to conceal cars, yet yield capacity. Parking for the 112 Edmund building will be located underground. The alleys are used as egress and the streets for each building are used for ingress. Since the developer plans to use the alleys as secondary option for ingress in case of any back ups, this should eliminate any congestion. Most traffic will be spread throughout the day because of its nature. Parking ratios are appropriate based on zoning ordinance ratios. 140 spaces are planned for the overall development. None of those parking stalls will be visible.

*(f) Environmental impacts and (g) Open Space inquire into any health impacts and open space provided by the development.*

Staff does not expect that this project would create any deleterious impacts on the environment related to pollution, waste or other toxic conditions. Regarding open space, the development does provide balconies and terraces for recreational space, as well as a green roof. The restaurant and commercial space also add to the amenities of the project.

*(h) Rights-of-way, easements, and dedications-* To staff's knowledge, there is no need for easements or dedications, but there is likely to be a maintenance agreement required from the City by the petitioner to maintain the portion of the alley that immediately abuts their project since the plans show the alleys as a component of their circulation plan.

*(j) Screening-Appropriate buffering and screening of service, loading, refuse collection, mechanical and electrical equipment and of parking areas should be provided.*

Staff believes that there are still some items to be addressed regarding screening between the Lucien Moore mansion and the proposed development. These concerns however are minor and the developer has agreed to work through them staff have identified possible solutions such as a possible low brick masonry wall adjacent to the property line coupled with a tree line to mitigate any undesirable sight of cars entering the underground parking of the 112 Edmund Place building adjacent to the mansion. This would also act as a sound barrier. Staff would suggest this be added as a condition if this project were to be approved.

Refuse collection, mechanical and electrical equipment would mostly be maintained within the buildings relieving this condition on the outside environment.

Criterion (k) *Orientation- consideration should be given to orientation both for solar access to the proposed project and for shadow impact upon surrounding development.*

The proposed buildings are in scale with the historic orientations of buildings along John R. as well as the residential streets. Solar access would still be provided although staff would not suggest that it would not be impacted for certain adjacent buildings. As was pointed out previously, this condition does exist amongst other historic developments. Any shadow effect would be minimal and depend on the time of day, as there is approximately 40' between the façade's of the 112 building and the Lucien Moore mansion. A building might experience some impact during the very early morning hours in the summer and during the winter months, but may not experience any difference in shadows at all.

Other criterion are as follows:

Criterion (l) *Signage- Signage and graphics should be tastefully designed to be visually appealing and in character with surrounding development*

Some examples of signage have been shown in renderings and CPC staff will continue to refine these in partnership with HDC staff in accordance with historic district appropriateness as is our practice.

(m) *Security considerations- Security considerations, especially avoidance of visually isolated public spaces, should be a major element of the design program.*

This project will add many eyes and ears onto the City streets which will act as deterrents for criminal activity. There would be very few to no isolated public spaces as ground floor spaces will be transparent and the site would activate the area.

(n) *Accessibility- Barrier-free access and public safety features should be carefully planned.*

The buildings will have high fenestration creating many access points on John R.

(o) *Preservation and restoration- Preservation and restoration of buildings.*

The plans preserve the historic carriage home on John R. which has been in disrepair for some time and will incorporate this relic before it is beyond preserving.

(p) *Urban design-Urban design elements of form and character, especially in intensely developed areas, should be carefully considered....*

The development maximizes on the urban design and incorporates many elements of a urban neighborhood and meshes them to create a desirable area that will be open to the public. For instance, the restaurant on the corner of Alfred and John R. will be a space that is designed to mesh with the street to become a place where neighbors can meet up and interact over food and beverage. The building creates visual interests with its many different projections and recesses, staying away from a simple flat façade. The combination of materials will spur interests as well. Unit balconies will create opportunities for residents to interact with the public realm. Many elements of the design will cause more pedestrian activity to be drawn to John R. It's the power of attraction; People attract people. Jane Jacobs, the famous urban planner persuasively put it like this, "the sight of people attracts still other people.... "People's love of watching activity and other people is constantly evident in cities everywhere." Christopher Alexander put it like this, "One of the greatest problems in existing communities is the fact that the available public life in them is spread so thin that it has no impact on the community." This project has the opportunity to spur more life into Brush Park, specifically on the John R. corridor, in a community that throughout its history was diverse, dense and attractive.

*(q) Amenities. Special attention should be given to amenity and comfort considerations such as provision for outdoor seating, restrooms for public use, bicycle storage, convenience of access points, and protection from harsh weather through features as enclosed walkways and arcaded pedestrian areas.*

The project does incorporate outdoor seating, specifically along John R. acting as an activator for community connections.

## **Conclusion**

Staff has been working on this project along with the developer diligently, even up until this week having conversations with the community members. A recommendation has been prepared.

Attachment

Cc: Maurice Cox, Director, PDD  
Arthur Jemison, Director, HRD  
David Bell, Director, BSEED  
Detroit Housing Commission