

# **Comments on Proposed Development at 936-942 Maple Avenue**

**To Downers Grove Village Council**

**November 13, 2014**

**On Behalf of Pierce Downer's Heritage Alliance**

**By Ken Lerner, Chair**

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## 1. This Decision is a Judgment Call

This project does not fit the zoning criteria as it is and cannot be completed “by right.” A simple point, but one the Plan Commission seems to have missed. Under the Downers Grove Zoning Code Article 4, Special Purpose Districts, and Article 5, Allowed Uses, apartment or condominium uses in the Downtown Business (DB) district require a special use permit. It should be noted that various commercial uses in the DB district are permitted as of right; **petitioners are asking for a permit for a special use and under the special use criteria, petitioners bear the burden of showing that the requested use is needed, reasonable, and in the best interests of the Village.**

This is NOT a property rights issue in even the slightest manner. There is a reason the Village established a special use requirement for this type of development in the DB zoning district. It is to gauge the public impact of this type of development on the downtown, the neighborhood and the Village and to determine if it is in the public interest. Denial of this project on grounds that it does not meet the special use standards **would not be a denial of any property rights.**

## 2. Zoning Code Policy and Criteria

The Zoning Code sets the criteria for granting a special use permit in Section 12.050 H. It says that a special use permit should only be granted if “the proposed special use is consistent with and in substantial compliance with all village council policies and plans . . . .”

Section 12.050 H also sets the following criteria for evaluating a special use application:

1. that the proposed use is expressly authorized as a special use in the district in which it is to be located;
2. that the proposed use at the proposed location is necessary or desirable to provide a service or a facility that is in the interest of public convenience and will contribute to the general welfare of the neighborhood or community;
3. that the proposed use will not, in the particular case, be detrimental to the health, safety, or general welfare of persons residing or working in the vicinity or be injurious to property values or improvements in the vicinity.

Petitioners have not shown that their proposal meets these criteria. They have provided very little evidence that it does, and there is abundant evidence that it does not, as detailed below.

### **3. Project Not Consistent with Comprehensive Plan**

The Comprehensive Plan is the most complete statement of the Village's policies and plans regarding land use and development. Consistency with the Comprehensive Plan speaks directly to the general requirement to be consistent with Village policies and plans, and to the specific criteria number 2 and 3 in terms of whether the proposed use in the proposed location is necessary or desirable, will contribute to the general welfare, and will not be detrimental to general welfare or injurious to property values or improvements in the vicinity.

The Comprehensive Plan contains numerous policy statements that directly conflict with the proposed use, both in the sections pertaining to the downtown business district and in sections on residential development.

#### **A. Commercial Areas/Downtown Business District**

General policies are laid out in the Comprehensive Plan in Section Three, Land Use Plan. In the section on the downtown area (p.28) it says,

To maintain its vibrancy and importance to the Village, Downtown should continue to contain a mix of land uses that reinforce its unique character. . . [in] order to achieve this, it is recommended that ground floor uses are primarily retail, entertainment, and personal service, with office and residential uses located on the upper floors.

The staff analysis of the petition asserts this this recommendation is met because "The proposed ground floor uses are the entertainment and fitness amenities for residents" (p. 3 of the staff analysis). That is a clear misreading of the Comprehensive Plan, which is describing a mixed-use development where businesses that serve the public are on the first floor, similar to recent DB developments such as Acadia on the Green and Station Crossing. A fitness room for residents does not serve the public and does not make this proposal a mixed-use development.

Commercial district policies are addressed in Chapter Five, Commercial Areas Plan. Page 46 of the Comprehensive Plan discusses downtown and mixed use developments. "Offices in converted houses provide an important transition area between the commercial activities of Downtown and nearby residential areas and should remain." Petitioners argued during the Plan Commission hearing that this policy does not apply since the parcel is in the DB zoning district. However, it is a stated policy goal for all commercial areas in the Comprehensive Plan. The reality on the ground is that this section of Maple Avenue is indeed a transitional neighborhood. Until recently, 942 Maple was used in exactly this fashion, and several properties on the south side of this block are also converted single family homes housing small businesses. In fact, on the block of Maple Ave. between Main St. and Washington St., there are 16 parcels; all but four of them are either single family residential or homes converted to business use as described above. This block is a prime example of the sort of transition area contemplated by the Comprehensive Plan.

The most specific areas of the Comprehensive Plan are in Chapter Nine, Key Focus Area Plans, which includes a Downtown Focus Area. The Downtown Focus Area discussion includes several Key Concepts (see Comp. Plan, p.102). The proposed development does not comply with a single one of these key concepts.

- One Key Concept is that “To maintain Downtown's unique identity and character, the Village should consider policies, programs and tools to identify and facilitate the protection of historic buildings and sites and encourage adaptive reuse of historic structures.” The Village has indeed identified 942 Maple as a significant historic structure and should not approve a special use that does not work to preserve and adaptively reuse the structure (at least without other compelling reasons). This applies to Standard 2 as it is not “desirable” to demolish the historic building and Standard 3 as it would be against the “general welfare” and “injurious to improvements.”
- Another Key Concept of the Downtown Focus Area is that “The priority for downtown should be on infill development and redevelopment of key sites.” This project is neither infill (the site is not vacant) nor is it one of the identified key sites. (The Comprehensive Plan identifies nine specific areas of the downtown area that represent opportunities for redevelopment, with a map on page 105. The subject site is not one of them.) This does not preclude redevelopment, but there is no compelling reason for the Village to have to approve this special use as it does not meet either of those criteria.
- “Infill development and redevelopment should be pedestrian oriented in order to complement the historic building pattern of downtown. Retail shops with attractive display windows and restaurants with sidewalk cafes maintain visual interest and generate foot traffic.” The proposal does not include any retail or restaurant component, and the building does not complement the historic building pattern of this stretch of Maple Avenue.
- “Prohibit new and redevelop existing, non-pedestrian-oriented businesses....” This project would not be pedestrian oriented or attract pedestrian traffic.
- “As key properties redevelop, a sense of enclosure should be maintained to provide comfort to pedestrians. A sense of enclosure is attained through the combination of street widths and building height in proportion to the historic building pattern of downtown.” The project is not in character with either the setbacks or heights of this portion of Maple Avenue.

## **B. Residential Redevelopment**

Chapter Four of the Comprehensive Plan is the Residential Areas Plan. On page 37 it discusses new development and reinvestment. “It is important that new development be sensitive to local context. Regardless of the location of housing type, residential development or redevelopment should be carefully regulated to ensure compatibility with the scale and character of surrounding and adjacent residential neighborhoods. New infill development and alterations to existing development should maintain a setback, height, bulk and orientation similar to that of neighboring development.” A brief look at the applicant's Massing Study should make it clear that this project is nowhere near compliant with these goals.

Page 40 of the Comprehensive Plan outlines the Residential Policy Recommendations. Most are not relevant but #3 is, which encourages multi-family development near significant activity centers. In general, a multi-family project is not inappropriate on this site. However, the recommendation states that mixed-use development should be a component within the downtown. Again, this project is not mixed-use.

As a last note regarding the Comprehensive Plan, it is illustrated throughout with particular buildings, features and scenes highlighting the character of Downers Grove. Page 146 features a photo of the Edwards House (942 Maple).

#### **4. Project Does Not Meet Special Use Criterion Two**

The second criterion for evaluating Special Use applications is “that the proposed use at the proposed location is necessary or desirable to provide a service or a facility that is in the interest of public convenience and will contribute to the general welfare of the neighborhood or community.”

The petition in essence says that the proposal meets this criterion by bringing additional residents into the area (p.2 of petitioner’s Oct. 14 communication). The staff analysis says the project will “provide a diversity of housing types, sizes and prices” (staff analysis p.7).

A case might be made for a special use if the proposal met some specific need that a mixed-use development would not. Further, no evidence was presented that the project will fulfill an unmet need at this location, or will provide diversity as stated in the staff report. Neither the petition nor the staff report contained a housing study of any kind. On the other hand there is evidence that the project would be redundant with existing or planned developments. There are several large, recent condominium or mixed use developments in the downtown area, including Morningside, Acadia on the Green, Station Crossing, 922 Warren Ave., 4929 Forest Ave., and the RMG Realty proposed development at 715 Rogers. It is not clear how this project would add diversity. In addition, there is evidence that we do not have an unmet need for this type of unit. Acadia on the Green has 8 units currently on the market, ranging from newly listed to 267 days on the market. 4929 Forest Avenue has 2 units on the market, the longest for 57 days. Station Crossing has 3 units on the market, at 34, 174, and 234 days on the market. 922 Warren has one unit on the market for 63 days. In total, these 4 recent developments have 14 units on the market. If 922 Warren ever gets completed, there will be another 7 units on the market.

Of the six developments named above, one failed after only half of it was built, and the most recent on appears to have failed before the start of construction. And failures of these projects are injurious: for example, 922 Warren has presented a face of unfinished foundations to commuters and other downtown travelers for the last several years. Petitioners have shown no evidence, such as a market analysis, that their proposed project is financially sound.

No evidence was presented to support the proposition that the addition of 100 or so local residents would benefit downtown businesses, and that such benefit would outweigh the negative impact on the neighborhood and historic resources of the village. Hundreds of residential units

have been built in the DB district in the last several years; if this has benefitted downtown businesses, there should be clear evidence of that. Customer survey data or studies of downtown business district vacancy rates or turnover should be presented to support this purported connection.

## **5. Project Does Not Meet Special Use Criterion Three**

The third special-use criterion in the Zoning Code says, “that the proposed use will not, in the particular case, be detrimental to the health, safety, or general welfare of persons residing or working in the vicinity or be injurious to property values or improvements in the vicinity.”

Petitioner’s answer to this criterion is essentially that the project will not be detrimental because it meets other code requirements. “Petitioner is very proud of the fact that Petitioner and its professional development team have been unable to identify any variations.” (p. 3 of the Oct. 14 communication) As noted earlier, this ignores the fact that the code incorporates specific use requirements; some uses are permitted by right, but others require a special use permit. The fact that the building meets the requirements for height, parking, and so on are irrelevant. The scope of inquiry for this question goes beyond mere code compliance; the question for this criterion whether the proposed special use is potentially detrimental to the neighborhood. A number of factors point to such a detrimental impact.

### **A. Incompatibility of Size and Setback**

The proposed building’s combination of large mass and negligible setback is incompatible with the neighborhood. The other large buildings on the block – the Lincoln Center, First Christian Church and school, and Siever building – are set well back from the roadway. The remaining improvements on the block are primarily single family homes, either occupied as residences or converted to small business use. The renderings shown in the appendix to the petition do not accurately portray the uses and structures on the rest of the block or how the proposed building would look in context. The negligible setback and large size of the proposed building would greatly contrast with most of the structures on the block. This negative impact is actually shown clearly in the petitioner’s “massing study” illustration. In this image, the scale, density and volume of the proposed building far exceeds those of the Maple Ave. corridor, and even the nearby downtown district buildings. The street photos in the Appendix to this document also illustrate the character of the block.

### **B. Property Values**

Property values in the vicinity would be negatively impacted. In particular, the home immediately to the west, the King residence at 946 Maple, would suffer a considerable impact on property value being sandwiched between two large buildings reducing light and air. The character of Maple Ave. in the immediate vicinity and for several blocks to the east is one of

low-density, single family, mostly historic homes. The proposed building would erode this character to the detriment of neighborhood property values.

At the Plan Commission hearing, petitioner had an expert appraiser testify to the impact of this development on property values. However, the expert presented no evidence to support his conclusion. No report was provided. No comparables were noted. He merely made a statement. This provided no opportunity for the Plan Commissioners or the public to properly evaluate his testimony.

### **C. Erosion of Historic Character**

The Comprehensive Plan sets forth the goal of historical preservation in at least eight separate sections, including both the business and residential zoning characteristics. As stated in the Comprehensive Plan, residential modernization “should not conflict with the promotion and protection of the Village’s distinguishing character and historic resources.”

The Village has demonstrated its commitment to historic preservation. The Village passed a preservation ordinance, established a Design Review Board, enacted a Preservation Plan, received Certified Government Status, and spent \$25,000 in public funding to identify significant historic and architectural structures. As stated in the historical survey report, “It is the Village’s desire to maintain and preserve its important architectural and historical resources for future generations.” (Downers Grove Historical and Architectural Survey, p. 6.) Given this policy commitment to historic preservation, a project that destroys historic structures in a historically significant area can be considered detrimental to the welfare of the community. In particular, it is not unreasonable to conclude that the demolition of a significant structure at 942 Maple is NOT in the best interests of the Village given the lack of compelling desirability of this project. The proposal would have a large impact on historic structures and the historic integrity of the neighborhood. The historic character of the neighborhood has been recognized by the Downers Grove Historical Society, which designated Maple Ave. as an honorary historic district, and by the Village of Downers Grove Historical Survey conducted last year.

The Historical Survey concentrated on the area of Maple Ave. between Main St. and the Burlington Northern RR crossing as one of the prime historic areas of the village. (A map of the historical survey area along Maple is attached to this document.) The Edwards House at 942 Maple was rated as a “significant” historic structure, and the house at 936 Maple was rated as a “contributing” historic structure. The Edwards House designation as a “significant” historic structure, the highest ranking awarded, means that the property is “individually eligible under one or more of the Evaluation Criteria of the National Register of Historic Places. The building, site or structure, must possess a high distinction of architectural style or building type, or itself be valuable for understanding of a historic period or context, method of construction, use of indigenous materials, exceptional craftsmanship, or work of a master builder or architect. Significant historic resources must possess a high majority of its architectural features and elements typical to its form and style and a high degree of integrity of location, setting, feeling, and association.” A “contributing” structure “possesses a moderate to good degree of integrity and a majority of its architectural features and elements.” (Downers Grove Historical and

Architectural Survey, p. 14.) Petitioners have made no reasonable effort to avoid or ameliorate the impact of razing these historic structures.

## **6. Suitability of Current Structures and Potential Uses**

The Plan Commission properly considered only the proposal before it, and did not address potential alternatives for this location. However, petitioners raised the issue by describing the property as “functionally obsolete” in the petition, and testifying at the Plan Commission that no other offers had been received for the property since the offer by the petitioners.

Up until recently, 942 Maple was occupied by various office tenants, until they were evicted or their leases were not renewed. At the Plan Commission hearing, several witnesses testified that recent tenants of the building noted that it was in good condition and that some restoration work had been undertaken. Photos of the restored areas are attached to this document. As described by architect and Oak Park Plan Commissioner Douglas Gilbert, “Older buildings such as this are routinely renovated and made compliant with modern codes and standards. I personally have made my 20 year career on this type of work and there are even various tax incentives available in cases where costs to renovate are high.” (email, 11/6/2014) Both 942 Maple and 936 Maple are certainly no older or substantially different from numerous older structures used as office space in the downtown area, including several just across the street on Maple, and others located on Main St., Grove, Curtiss, and Forest Avenue, not to mention the many hundreds of older homes in Downers Grove that continue to serve as residences.

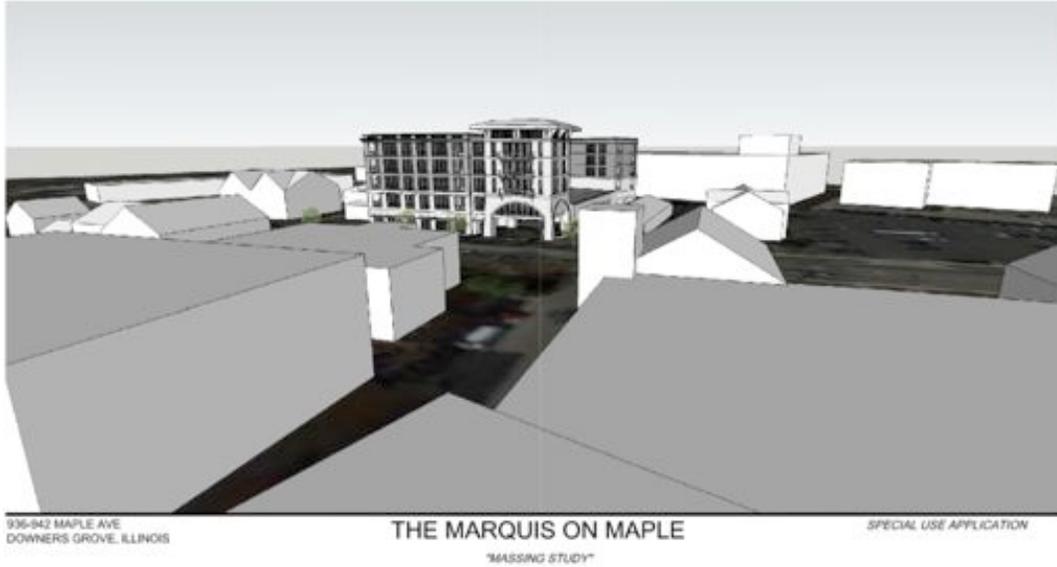
## **7. Conclusion**

Downers Grove residents have taken a great interest in this case. As noted before the Plan Commission, residents have gone out of their way to defend the neighborhood through their comments to the Commission, letters to local newspapers, and nearly 1,000 likes on the HelpSave942Maple page on Facebook. At the Plan Commission hearing, every person who spoke who was not being paid to do so was against granting the permit. Contrary to the opinions expressed by some Plan Commissioners, the public’s interest in this case is legitimate, and it is legitimate for the Council to consider the reaction of the community in determining whether this project in this location would have a detrimental effect.

The decision before Council is whether to grant a special use for this proposal in this location. Petitioners are not entitled to relief as a matter of right; it is a matter of discretion for the Council. Specifically, the Council must determine whether the case for this proposal is so compelling as to justify departing from the policies in the Comprehensive Plan, sacrificing a major part of Downers Grove history, and eroding the character of the neighborhood. Petitioners have not made a case for this action.

Ken Lerner, 4933 Whiffen Pl., Downers Grove

**Appendix A: Massing Study of THE MARQUIS ON MAPLE Compared with Photos of the Neighborhood and Edwards House at 942 Maple Avenue**







## Appendix B: Maple Ave. Historic Survey Area

