

MORNING SUN, FRIDAY, MAY 7. 2004

Two apartment complexes to be replaced

<p>By MARK RANZENBERGER Sun Staff Writer</p> <p>A pair of apartment complexes that have housed several generations of Central Michigan University students are to be torn down and replaced with modern town house-style buildings.</p>	<p>Neither rebuilt complex will meet current city requirements for parking. Huntington has 173 spaces, and will gain some spaces under the redesign, but won't have the 256 required by the current zoning law. Concord has 180 spaces, but would need 212 under the current law.</p>	<p>However, city Planner Tony Kulick said because the parking met requirements when the complexes were first built, they could continue.</p>
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Site Plan Review SPR-04-08

Concord Apartments 1108, 1110, 1112, 1120 W. Campus Drive

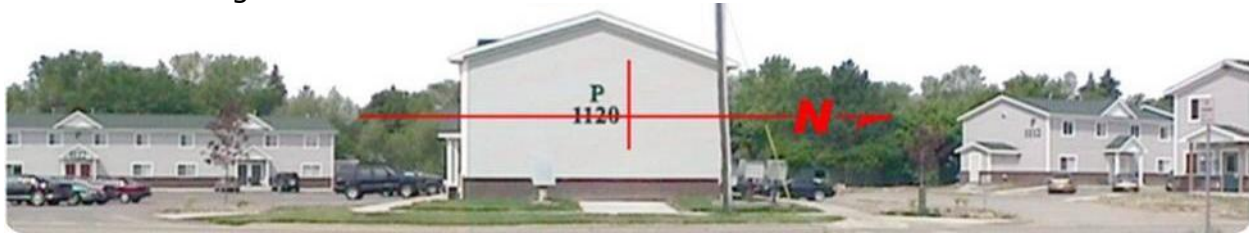
- City staff intentionally denies adjacent property owners/occupants due process rights provided in the Mt. Pleasant, MI zoning ordinance.
- City staff intentionally disregards zoning ordinance standards with issuance of permits and allowing operation of the site without required variances.
- City staff conduct diminishes the use and enjoyment of adjacent single-family residential properties beyond that which may have occurred with conduct pursuant to regulations.

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SPR-04-08 Description

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An apartment complex, developed from a site plan approved by the Mt. Pleasant Planning Commission on May 6, 2004, along the west side of West Campus Drive. The site is a double fronted zoning lot ranging in elevation from lowest in the southwest to highest in the northwest.



Zoning Ordinance Violations

		Requirement	Permitted
Maximum Density		175 occupants	210 occupants
Minimum Parking		1 space each occupant	204 parking spaces
Minimum Yard Setback	§154.095(C)	Building Height	≈ 3' < Building Height
	§154.095(R)	58.8 feet	25 feet
NW Building – (C) north side yard; (R) west side yard $6.5' + (((364' - 50') / 12) * 2)$			

Documentation supporting claimed violations includes and is not limited to:

MINUTES – ZBA meeting July 28, 2004 -

'Mr. Beebe explained ... The height of the vertical walls would be 20feet, ...'

'Kulick explained ... allowable occupancy of 175 occupants.'

CORRESPONDENCE - October 13, 2005, Brian Kench Building Official to Brian and Pamela Cone - 'Double frontage lots by definition lack a typical rear yard ...'; 'These buildings have been constructed having a 25 foot side yard setback, with an overall height to average grade of 24 feet 9 inches.'; 154.095(R) requirement

ZONING ORDINANCE –

154.003 Height of Building or Structure. The vertical distance from the highest point of a building to the average elevation of the finished lot.

154.095(C) Where groups of principal buildings are located on the same lot, no principal or accessory building shall be closer to the side lot lines than the distance equal to its height.

154.095(R) – on page 3

VISUAL REPRESENTATION - relative building elevation above and following



154.095(R) – There shall be two side yards and no side yard shall be less than 10% of the required lot width or less than 6½ feet. The other side yard shall be at least ten feet in width unless the lot is a through lot or is abutting a public alley or other public vehicular right-of-way in the rear yard. The side yards on a side street shall be one-half of the required front yards of the zone. The minimum distance between buildings on adjacent lots shall be 12 feet. Each side yard where required shall be increased in width by one-inch for each one-foot by which the length of the side wall of the building adjacent to the side yard exceeds 50 feet for each story or portion thereof.

Add'l Reference

The following sections and paragraphs of the Zoning Ordinance may limit the ability of the ZBA to grant the variances that are required to allow SPR-0408 to continue as it currently exists.

Sec. 154.004 – No building, structure or land shall be used and no building or part thereof shall be erected, raised, moved, reconstructed, extended, enlarged or altered except in conformity with this chapter.

Sec. 154.007(B) Nonconforming uses

(3) Nonconformance of yards. A conforming use which does not meet the area, yard, or height standards of this chapter may be altered or enlarged provided there is no increase in the specific nonconformity. Landscape and parking standards must be met.

(6) Nonconforming use destroyed. A building which has been damaged by fire or other cause to the extent of more than 50% of its replacement value must be repaired or rebuilt in conformity with the provisions of this chapter.

Sec. 154.164(C) A variance shall not be granted where the condition for which the variance is sought is so general or recurrent as to make reasonably practical the formulation of a general regulation for such conditions or situation as part of this chapter.

SPR-04-08 Concord Apartments, West Campus Drive

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Correspondence City Manager/Mary Johnson September 14, 2005 states that City Attorney Martineau believes zoning ordinance nonconforming use provisions are not clear and should be reviewed; and, possibly an ordinance amendment is needed to 'provide clear direction'.

The record of SPR-04-08 does not support City Manager Preston's statement of City Attorney Martineau's conclusion. While City Attorney Martineau may have claimed he was befuddled, correspondence City Attorney Martineau/City Planning Director Kulick July 5, 2005 reveals that on occasion he has been able to muster the wit necessary to comprehend our zoning ordinance.

The record demonstrates a willingness to disregard ordinance requirements, ignore opportunities to correct or mitigate violations, and obfuscate when responding to inquiries. This behavior, not zoning ordinance language, warrants review and amendment.

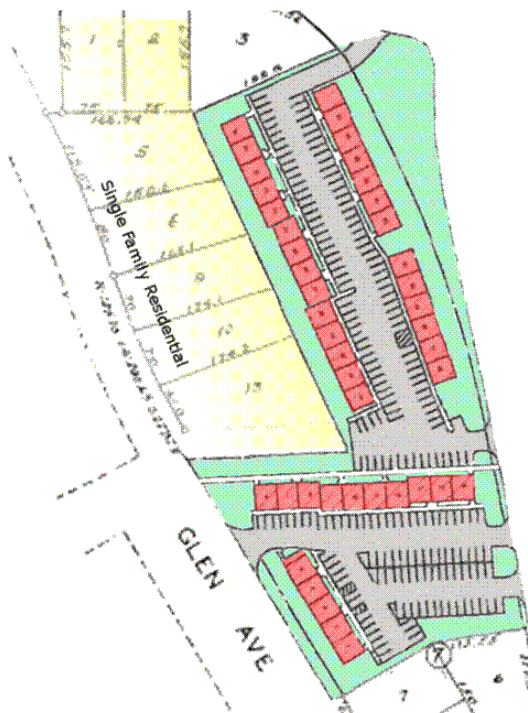
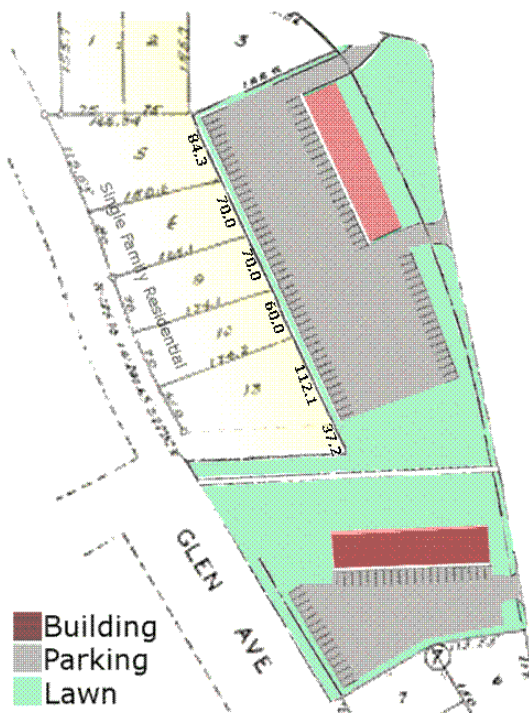
Selected Events SPR-04-08

- May 6, 2004** Planning Commission approves SPR-04-08
- May 7, 2004** The Morning Sun, a local newspaper with general circulation in the area, reports front page center rebuilt complex will not meet current zoning law requirements for parking.
- May 10, 2004** email Planning Commissioner and ZBA Member indicating Planning Commission does not have authority to approve variance.
- June 14, 2004** City Commission, City Manager, City Attorney and City Director of Planning are informed approval violated ordinance requirements.
- July 28, 2004** Zoning Board of Appeals initiates hearing with respect to the site, appellant withdraws petition.
- October 18, 2004** Initial building permit issued
- July 5, 2005** City Attorney Martineau is able to interpret the ordinance and concludes ZBA approval is required.
- August 22, 2005** Mary Johnson requests information regarding action taken or pending with respect to ongoing unlawful development.
- September 12, 2005** City Commission, City Manager and City Attorney are informed construction not in conformity with site plan is creating additional violations.
- September 14, 2005** Responding to August 22 inquiry, City Manager Preston asserts unlawful Planning Commission action becomes lawful after 30 days and City Attorney Martineau finds himself befuddled.
- September 18, 2005** Complaint filed with City Building Official
- September 25, 2005** Contiguous single family resident laments loss of morning sunshine.
- September 30, 2005** Development/Construction ongoing.
- October 13, 2005** Correspondence from city building official responding to September 18th complaint, in his opinion this project does not violate the provisions of the Zoning Ordinance.

Comparison – Existing vs Approved

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May 6, 2004 - Planning Commission approves SPR-04-08, United Apartments 1108, 1110, 1112, 1120 W. Campus Dr. apartment complex with demolition of existing buildings



■ Building
 ■ Parking
 ■ Lawn

Site Zoning M-2	Existing	Approved	Change
Buildings	2	5	+ 3
Apartment Units	49	42	- 7
Occupants (1 person ea. bedroom)	196	212	+ 16
Allowable Density (1 person/900 sq. ft.)	175	212	+ 37
Licensed Occupancy	212	210	- 2
Parking Area Total* - Parking Spaces**	> 212	204	- >8
Required Parking Spaces	212	212	0
North Side Yard NW Building		< building height	
West Side Yard NW Building	> requirement	< ½ requirement	

*Suitable area, when surfaced and marked in a manner that would allow description as a number of parking spaces, >212 spaces.

**Existing parking spaces, 180 marked hard surface, >32 unmarked lawn surface
 Approved parking spaces, 204 marked hard surface, 0 unmarked surface

City Commissioner Bradley-Kilmer email

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(approx. one year later, Kulick handled SPR-05-08, a substantially identical site plan circumstance, in the same manner as SPR-04-08)

From: "cindy bradley" <cynycyn@yahoo.com>

To: "bojoda" <bojoda@hotmail.com>

Sent: Tuesday, October 18, 2005 1:46 PM

Subject: Re: ppp-10-01 SPR-04-08

Mr. Preston had a packet delivered to my home Friday evening containing a chronology and various internal memos and opinions. I wasn't able to get to it until Monday afternoon. I spent several hours digesting the material piece by piece. I compiled a list of question/observations that were not real easy friendly ones. I called Mr. Preston just before 5:00 and expressed my continued "trouble" with the material. He agreed that he and Mr. Kulick would meet with me this morning.

At the meeting I expressed a good deal of concern and unhappiness at the way the situation had been handled from the start. They admitted that Mr. Kulick had erred in his interpretation of the zoning ordinance in May of '04. Mr. Kulick expressed strongly that the error on his part, in May of 04 was not intentional. I have, of course, no way of knowing, when someone admits to an error, whether it was intentional or not.

I expressed the most concern about what happened next. It is my opinion, that once it is discovered that an error may have been made, that we (the city) should investigate further, on our own initiative, find out what mistake, if any, was made, and do what we could do to fix the mistake as quickly as possible. That would certainly have been my preference.

As you know, what happened in actuality, was that it was somehow decided to avoid getting or giving a legal opinion on whether the planning commission had the authority to issue the site plan until the 30 day appeal period was up. This is the point that bothers me the most and the point upon which I expressed the most "concern".

I expressed the strong belief that if we think we may have made a mistake, it shouldn't be up to the citizens to cough up \$250 to tell us so.

Here is another point that I made. If I hired an attorney, and I asked him a very direct question, and he answered me to the effect of " I don't think it's appropriate for me to answer you for another 30 days (at which point it's too late), I would seriously consider not using that attorney any more."

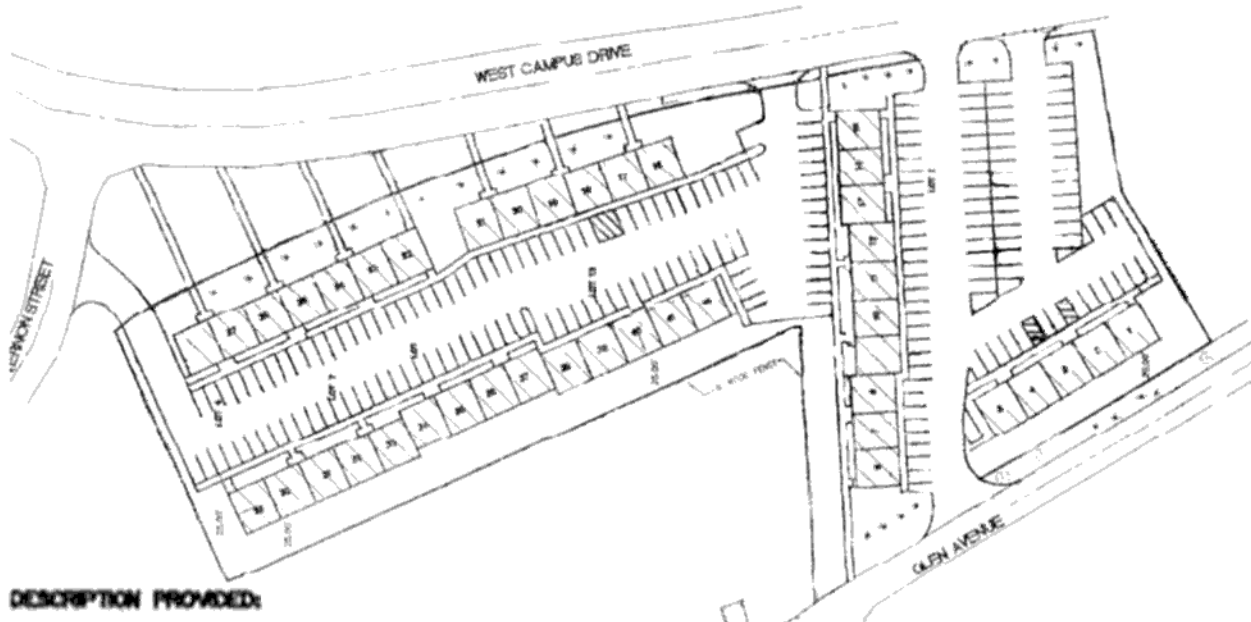
So what I was asking myself was - Did the attorney come to this decision to NOT decide all by himself, or was he requested to NOT come to a decision because that decision might not be what we wanted to hear?

So I asked that outloud to Mr. Kulick, who insisted that he never requested the attorney to NOT give an opinion for 30 days. He insisted that the attorney was the one who suggested this. He looked me in the eye and appeared to be sincere and said something to the effect of swearing on a stack of bibles.

The attorney was not present during all of this, so I couldn't get any further with this line of questioning. Mr. Preston said he would set me up with an appointment with the attorney after the attorney returns from vacation.

Approved Site Plan

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DESCRIPTION PROVIDED:

LOTS 1-5 BLOCK 7 AND LOTS 4, 7, 8, 11, 12, AND 14 BLOCK 8 AXTELL TERRACE NO. 2 AND THAT PORTION OF THE VACATED HOPKINS AVENUE CITY OF MT. PLEASANT, ISABELLA COUNTY, MICHIGAN.

**CITY OF MT. PLEASANT
PLANNING COMMISSION**
401 N. MAIN ST., MT. PLEASANT, MI 48858

- SITE PLAN APPROVED
- APPROVED WITH CONDITIONS
- DENIED

BY Tony Kulich DATE 5-6-04

ZONING REQUIREMENTS:	M-2
MINIMUM LOT FRONTAGE, LOT WIDTH (FEET)	66
MINIMUM LOT AREA (SQUARE FEET)	8,000
MAXIMUM BUILDING HEIGHT (FEET)	35
MINIMUM FRONT YARD SETBACK (FEET)	20 (A)
MINIMUM SIDE YARD (FEET)	6.5(C)(R)
MINIMUM REAR YARD (FEET)	25 (B)
CURRENT SITE CONDITIONS	
49-4 PERSON APARTMENTS 196 OCCUPANTS	
LICENSED FOR 212 OCCUPANTS	
STANDARD PARKING 180 SPACES	
BARRIER FREE PARKING 0 SPACES	
PROPOSED SITE CONDITIONS	
40-5 PERSON APARTMENTS 200 OCCUPANTS	
2-6 PERSON APARTMENTS 12 OCCUPANTS	
212 TOTAL OCCUPANTS	
LICENSED FOR 212 OCCUPANTS	
STANDARD PARKING 198 SPACES	
BARRIER FREE PARKING 6 SPACES	
TOTAL PARKING 204 SPACES	

Planning Commission minutes May 6, 2004

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B. SPR-04-08 - United Apartments - 1108, 1110, 1112, 1120 W. Campus Drive - Construct a 49-unit apartment complex (with demolition of existing buildings).

Staff reported that this site plan is for the construction of a new 49-unit complex after the demolition of the existing Concord Apartment complex in the 1100 block of West Campus Drive. The buildings to be torn down include 1108, 1110, 1112, and 1120 W. Campus Drive. The existing property is currently a non-conforming use zoned M-2 because of its density at 212 occupants.

No sidewalks are present on West Campus Drive or Glen Street. The Planning Commission must determine if sidewalks are necessary at these locations. The installation of sidewalk on West Campus Drive would help create a safe cross walk. Currently the majority of pedestrians travel to and from campus, and do not cross the street at any particular location.

The possibility of installing an additional drive onto the property from Glen Street may cause a problem for the residential neighborhood. The Planning Commission

needs to determine whether this drive would be too much of a burden onto Glen Street traffic. DPS approves of the additional drive and suggested that the drive be gated for emergency use only. The project meets the requirement for 24' fire aisles, as well as a fire hydrant to be installed capable of adequate water flow. An existing asphalt area west of units 29-42 will be removed and sodded.

DPW has noted a large area with catch basins that drain into the city, and has suggested that this area be connected to a 36" storm sewer with a manhole and a 6" sanitary sewer. Sanitary and water line connections must be designated, with drainage and detention connections indicated, as well as locations of water meters. All unused curb cuts from the existing complex will be eliminated.

Commissioner Smith noted that 212 parking spaces are required, but only 180 parking spaces are available.

Staff explained that this is an existing non-conforming use and the developer has created parking in comparison to what exists at present. The ordinance requires one space per occupant, and currently does not conform to density requirements. This may or may not be a problem due to the majority of occupants being students that travel to campus on foot.

Commissioner Markham noted only 175 occupants are currently allowed on site.

Staff explained that since this is a non-conforming use, he is licensed at 212 occupants. The developer has chosen to keep that maximum number of occupants. Originally this number would have been obtained on a square foot basis.

Tim Beebe, representative for the applicant, explained that the residency has been decreased to 210 occupants since this site plan does not have the ability to expand. According to DPS requirements, the applicant will install the required fire hydrants as well as the extra gated drive onto Glen Street. The asphalt area will be removed and planted, and the existing privacy fence repaired. All existing non-used curb cuts will be removed. The developer intends to replace sidewalks like those that currently exist. No plans have been made for installing sidewalks along West Campus Drive. The applicant is willing to work with DPW on utility leads and wiring, as well as drainage, given that the storm sewer is broken and travels in two different directions. Mr. Beebe explained that parking has been maximized as much as possible, and that parking is never at full capacity since it is located close to campus. He suggested that the applicant compensate for the parking with the installation of sidewalks, since the largest portion of occupants are walking students. The proposed complex is like the successful complex previously built by the applicant and Washington Street.

Commissioner Harter asked about the outer appearance of the buildings and whether they would have a staggered appearance. Mr. Beebe explained that the curb along West Campus Drive does not allow for a jog in the buildings. He could only accomplish this with a variance, as currently there is no room to stagger the buildings.

Staff suggested that open porches can extend 6' into the required setback, which would allow for staggering of units 22-28, and between 18 and 19 for a better exterior experience.

Mr. Beebe explained that they would be happy to install porches as suggested if the site plan was not in violation of the setback requirements.

Commissioner Ellertson inquired as to the current cost of sidewalk installation and approximately how much it would cost to install sidewalks along West Campus

Drive. Mr. Beebe explained that installation is normally about \$15 a foot. The sidewalk length of this project would be approximately 600 feet at an approximate cost of \$10,000.

In response to Commissioner Markham, staff suggested that the current problem of mid-block pedestrian crossing is not safe.

Commissioner Harter asked if landscaping was planned in the rear where the existing asphalt area will be removed.

Staff cited Section 154.169 (A) of the ordinance that pertains to site plan review. Specifically paragraph 2(A) which reads, "Adjacent properties and topographical features are protected through appropriate siting of structures and landscaping." Staff suggested that landscaping would allow adjacent features to be protected and would separate the student population from the single family homes on Glen Street.

Commissioner Harter asked the developer for his comments.

Mr. Beebe answered that he does not feel that the landscaping is necessary since there is an existing privacy fence at that location. There are also no doorways at the rear of the building that would allow immediate access to that area.

Commissioner Markham suggested that sidewalk utility is important since this is such a high density project without a walkway. She also feels that the gated entry on Glen would be appropriate.

Chairman Bradac asked if the developer has a particular type of gate in mind for the entrance onto Glen.

Mr. Beebe explained that the gate needs to be one that can be cut by the Fire Department to swing open. The applicant is willing to install solid gates as directed. He added that sidewalks are planned for the length of the project to follow the contour of the buildings and to extend 1' inside the right-of-way. He offered to maintain the longest existing sidewalk which would allow for a hook-up to a future street sidewalk. This would encourage pedestrians to walk the sidewalk to the crosswalk.

Chairman Bradac voiced his concern about traffic onto Glen Street if a new drive were installed. He approved of the pipe-style gate for emergency use only. The developer should provide various types of gates for the commission to approve.

Commissioner Harter asked his peers if they felt the privacy fence was adequate for screening.

Commissioner Smith replied that he believes that the privacy fence is sufficient.

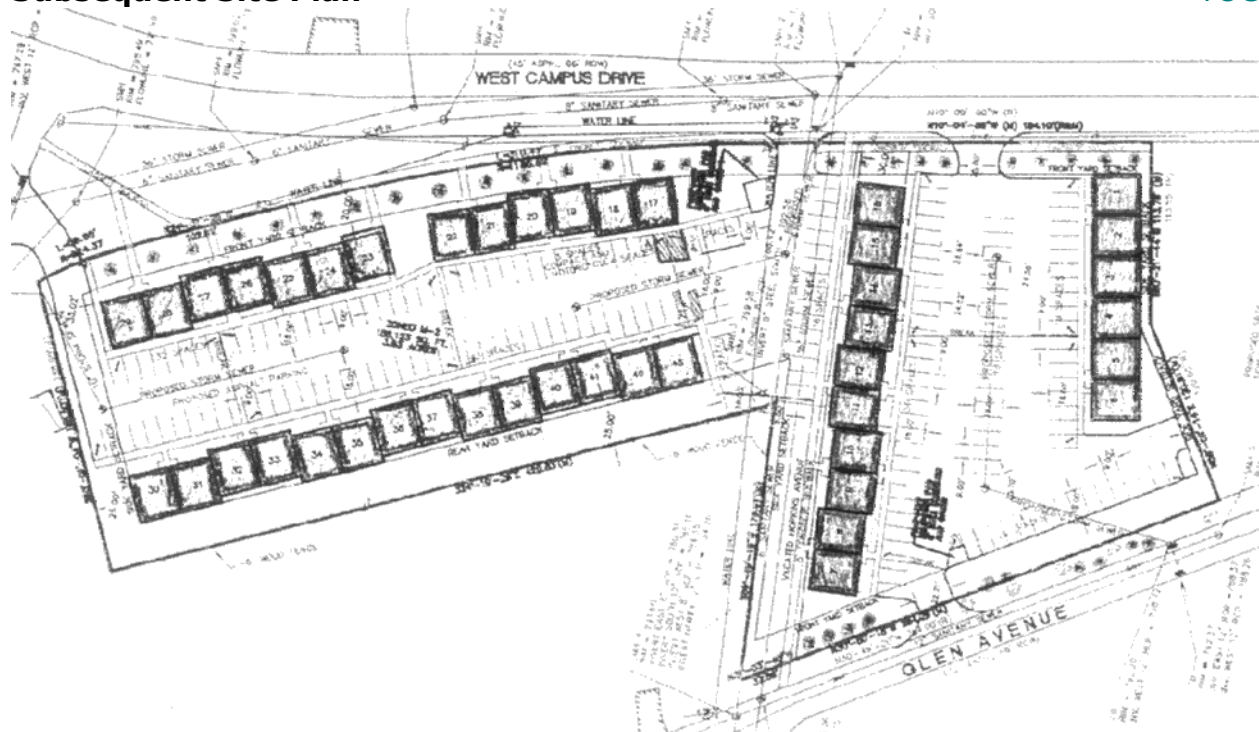
M/S Smith/Holton to approve SPR-04-08 subject to the following conditions:

1. All DPS and DPW requirements to be met.
2. Waive sidewalk requirement on Glen Street since it is not a designated school walking route.
3. A landscape plan to be submitted with location and plant type.
4. All new site lighting to be full-cut off.
5. A gated drive to be installed onto Glen Street with gate plan to be approved.
6. Total occupancy reduced to 210.
7. Existing wooden privacy fence along the NW lot line to be repaired or replaced.
8. Staggered offsets in buildings 16-21, 22-28.
9. Asphalt west of existing units 29-42 to be removed and sodded.

Motion approved unanimously.

Subsequent Site Plan

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Zoning Board of Appeals minutes July 28, 2004

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Case #7-2004 - 1108, 1110, 1112, 1120 W. Campus Drive (United Apartments/Concord Apartments) - Timothy Bebee - request for a variance from section 154.095 (C) (R).

Mr. Bebee explained the reason behind the variance request. A site plan was previously approved by the Planning Commission. The variance request is for a slightly different site plan which has been submitted to the planning commission for approval. Due to some engineering issues and the contour of the land the applicant feels this new site plan would better suit the layout of the land. The ordinance requires a setback of 6.5 feet with a condition that the setback not be less than the height of the building. The height of the vertical walls would be 20 feet, therefore the variance request is for the setback to be the standard 6.5 feet rather than the conditional 20 feet.

Mr. Bebee further stated that the buildings would be sufficiently separated to provide the adequate fire safety. In addition, if a 20 ft. setback was maintained, there would be a loss of 19 parking spaces, which is an additional reason for the variance request.

Tolas asked for clarification of what was approved at the Planning Commission.

Mr. Bebee stated an occupancy of 210, with 204 parking spaces had been approved. (198 standard spaces and 6 handicap spaces). The existing structure, which would be tore down and replaced with the new proposed structure, is currently licensed for 212 occupants.

Staples questioned why they were tearing down the current structure and rebuilding as they were not increasing occupancy.

Mr. Bebee indicated it was to upgrade conditions.

Tolas stated they would be losing parking spaces.

Staples asked for clarification on exactly what they were requesting. Bebee explained the area in question was along the South property line. Staples asked if it was possible to purchase an additional 10 feet of property.

Mr. Bebee indicated that they could go back to the old site plan if the new proposed plan was not acceptable. The engineering standpoint prompted the request.

Murray questioned whether the property is currently in accordance with zoning requirements. Kulick explained that they are zoned M-2. The use is a permitted use, however, the density is non-conforming. If this was a new use, it would be required that There be 900 square feet of land area per occupant, which would give an allowable occupancy of 175 occupants. In addition, under the new ordinance, it would be required that there be one parking space for each occupant

Benison asked about distance between buildings. Bebee indicated there was a six foot high fence between properties and there would be 34 1/2 - 50 feet between buildings.

The Chairman opened the public hearing.

Elizabeth Lawrence, stated she and four other property owners had concerns about the new development. She expressed opposition due to parking issues that they deal with day and night. She indicated that at the very least, parking should be considered and should include one space per occupant. In addition, she expressed concern in regards to devaluation of property value.

Mary Pitt Jennings, , reiterated the parking concerns. She expressed opposition to the variance request for that reason and also expressed concern over the garbage and noise.

There being no one else who wished to address the board, the public hearing was closed.

Kulick shared correspondence from two individuals: one in support with stipulations and one not in opposition to the setback, however, expressing concerns with privacy and property values and asked that large pine trees border the property if variance is granted.

Elizabeth Lawrence stated that a two story building would look directly into yards of neighbors and also asked that if granted, mature trees be planted to protect privacy.

Staples asked if the apartment complex would lose the grandfathering if tore down. Kulick explained it depends on the interpretation of the ordinance. As long as they are not increasing a non-conforming use, they are allowed to renovate and repair. Staples questioned whether this could be considered a renovation/repair if they were tearing down and rebuilding.

Kulick explained that the Planning Commission looked at the reduction of occupants (from 212 to 210) and the increase in parking and did not feel that this would be increasing the nonconforming use.

Staples expressed concern over privacy issues for the neighbors with a 25 ft high structure looking into neighboring yards.

Curtiss asked if the Planning Commission had addressed placement of trees. Kulick stated that the Planning Commission specified the fence be restored to good condition and any new fence be installed with the good side facing the residential area or a fence with two good sides be installed. No requirement was made in

regards to evergreens. Kulick further showed the difference in the site approved by the Planning Commission in comparison to the plan proposed for Zoning Board.

It was also stated that the Zoning Board could attach requirements to variance if granted and could specify occupancy reduction to equal number of parking spaces.

Murray stated he felt that the apartment complex was creating their own hardship by tearing down and rebuilding rather than remodeling and improving. He also expressed a concern regarding infringing on the neighbors and taking away from their enjoyment of their own properties.

At this point appellant withdrew the petition

Correspondence City Attorney Martineau/City Planner Kulick (OCR Scan) TOC

LYNCH, GALLAGHER, LYNCH, MARTINEAU & HACKETT

PROFESSIONAL LIMITED LIABILITY COMPANY

ATTORNEYS AT LAW

555 NORTH MAIN STREET

P.O. BOX 446

MT. PLEASANT, MICHIGAN 48858

TELEPHONE (989) 773-9961

TELEFAX (989) 773-2107

EDWARD N. LYNCH (1908 - 1984)

BYRON P. GALLAGHER
JOHN J. LYNCH
STEVEN W. MARTINEAU
MICHAEL J. HACKETT
JENNIFER M. GALLOWAY
MATTHEW A. ROMASHKO
MARY ANN J. O'NEIL
KEVIN M. PLUMSTEAD

July 5, 2005

Mr. Tony Kulick
City of Mt. Pleasant
401 N. Main Street
Mt. Pleasant, MI 48858

RE: Site Plan Request of United Apartments

Dear Mr. Kulick:

You have shared with me that United Apartments has filed a site plan with the Planning Commission and requested that it be approved. The Planning Commission has tabled that request and asked that our office provide the Planning Commission an opinion as to whether the City's Zoning Ordinance permits United Apartments to undertake this proposed project.

You have also shared with me the following information

1. United Apartments owns and operates four apartment buildings on the east side of West Campus Drive which are contiguous to each other. These four buildings have been treated by the City as one parcel for zoning purposes.
2. These apartment buildings are licensed for a total of 246 occupants and 61 separate apartments. This apartment complex has 109 parking spaces.
3. If the present zoning ordinance were to be enforced, this property could only be licensed for 172 individuals in no more than 53 apartments. One parking space is required for each occupant.
4. United Apartments proposes to demolish three of these buildings and reconstruct this apartment complex so that there will be 220 occupants in 55 separate apartments. It will provide 176 parking spaces.

United Apartments is permitted to operate its present apartment complex even though it does not conform to the present zoning ordinance because the complex was operating at the time the present zoning regulations were adopted. Section 154.007(B)(2),

Mr. Tony Kulick
City of Mt. Pleasant
July 5, 2005
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attached to this letter, permits a non-conforming use to "be continued provided there is no increase or enlargement in the degree or manner of nonconformance". Applicable Michigan law grants the City of Mt. Pleasant the authority to adopt an ordinance which would permit a land owner to reconstruct a non-conforming use or structure. MCL 125.583a(2) provides:

"The legislative body may provide by ordinance for the resumption, restoration, reconstruction, extension or substitution of non-conforming uses or structures upon terms and conditions provided for in the ordinance...".

The City's zoning ordinance initially addresses this issue in Section 154.004, which provides:

No building, structure, or land shall be used and no building or part thereof shall be erected, raised, removed, reconstructed, extended, enlarged, or altered except in conformity with this chapter.

In other words, unless there is authority elsewhere in the ordinance, after the building has been torn down the non-conforming use may not continue.

Sections 154.007(B)(2)(5)(6) and (7) all potentially impact on this decision and lead, potentially, to different results. Copies of those provisions are attached to this letter.

For example, Section 154.007(B)(6) provides that if a building has been damaged by fire "or other cause" to the extent that more than 50% of its replacement value must be repaired or rebuilt, then the building can only be repaired or rebuilt if it conforms to the exact specifications of the zoning ordinance.

It is the opinion of this office that that provision does not control in this factual setting and that the phrase "or other cause" does not relate to the intentional renovation or reconstruction of a building. Instead, it is the opinion of this office that that language refers to loss by windstorm or a similar casualty, and not to the intentional demolition as a part of a reconstruction project.

Section 154.007(B)(7) should be read in conjunction with Section 154.007(B)(6). If a building has been damaged by fire or other cause to less than 50%, the building or non-conforming use "may be repaired or restored to a safe condition". However, if the building has been damaged by "fire or other cause" to greater than 50%, then the building must be restored in conformity with this chapter.

Mr. Tony Kulick
City of Mt. Pleasant
July 5, 2005
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Section 154.007(B)(2) makes it clear that a building or use lawfully existing may be continued if there is no increase or enlargement in the degree or manner of nonconformance. It is the opinion of this office that that provision, by itself, does not authorize the intentional destruction of a building and then the reconstruction of a new building that would continue to be used in a non-conforming manner.

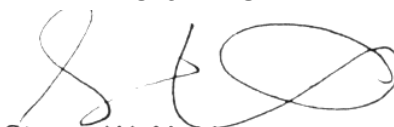
Instead, it is the opinion of this office that Section 154.007(B)(5) provides the appropriate direction. The present non-conforming use (i.e. 54 too many occupants, 8 too many apartments and 138 too few parking spaces) may be changed to a new non-conforming use (i.e. 26 too many occupants, 2 too many apartments and 46 too few parking spaces) if the Zoning Board of Appeals concludes (1) that the new use would markedly decrease the degree of non-conformance and (2) the new use would enhance the desirability of adjacent conforming uses.

This is the approach that was taken by the City with the renovation project at 330 Cherry Street. In an opinion dated March 25, 2003, this office concluded that the decrease in non-conformity must be "marked" or "clearly defined". In this setting United Apartments intends to reduce the non-conformance in the number of occupants from 54 to 28 or 48% reduction. It intends to reduce the non-conformance in the number of units from 8 to 2 or a 75% reduction. It intends to reduce the non-conformance in parking spaces from 137 parking spaces to 46 parking spaces or a 65% reduction.

You have also shared with me that on two recent occasions the Planning Commission approved site plans in a situation similar to this (where a non-conforming apartment complex remained non-conforming after reconstruction) without the approval of the Zoning Board of Appeals. It is the opinion of this office that in the future the continuation of the non-conformance use after reconstruction would only be permitted if the Zoning Board of Appeals concludes that the requirements of Section 154.007(B)(5) have been satisfied.

I am prepared to review this with you at your convenience.

Very truly yours,
LYNCH, GALLAGHER, LYNCH,
MARTINEAU & HACKETT



Steven W. Martineau

SWM/cde



THE CITY OF
MT. PLEASANT, MICHIGAN

CITY HALL

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PUBLIC WORKS

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September 14, 2005

Mrs. Mary Johnson

Mt. Pleasant MI 48858

Dear Mrs. Johnson:

At a recent City Commission meeting you raised some concerns regarding the rebuilding of apartment complexes on West Campus Drive, specifically the Concord Apartments. We indicated we would look into this matter, including discussing this matter with the City Attorney.

A little background might be helpful. At its May 6, 2004 meeting, the Planning Commission approved a site plan to rebuild Concord Apartments on West Campus Drive. The old complex was licensed for 212 occupants and 180 parking spaces. The site plan for the rebuild project approved on May 6th called for 210 occupants and 198 parking spaces. The land area at the site would only be large enough for 175 occupants based on the density requirement of 900 square feet per occupant. It was Tony Kulick's opinion that the Planning Commission action was appropriate since it lessened the degree of non-conformity.

I believe at the August 22nd meeting you asked the City Commission to consider stepping in and stopping the project since it did not meet the requirements of the Zoning Ordinance. The City Attorney was requested to provide a legal opinion on the status of the project and whether it should be permitted to go forward. He has written an opinion which I will summarize here. He indicated that the Planning Commission has the responsibility and authority to review and approve the site plan for the 2004 project. He also indicated that the Planning Commission concluded that it had the authority, as a part of the site plan review process, to authorize the 2004 project even though the Zoning Board of Appeals had not approved the change in non-conforming use.

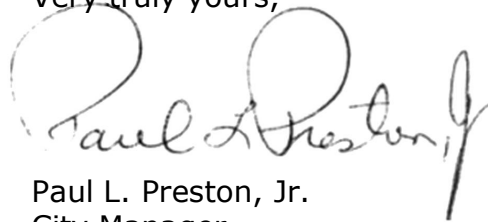
Mrs. Mary Johnson
September 14, 2005
Page 2

Under state planning law, only the Zoning Board of Appeals has the power to decide upon appeals of a decision of the Planning Commission. Our Zoning Ordinance states that any appeal of a Planning Commission action to the ZBA must be made within 30 days of the action of the Planning Commission. State law also states that appeals to the ZBA must be filed within the time specified in the City's Zoning Ordinance. Even the City Commission must file an appeal to the ZBA if it does not agree with a decision of the Planning Commission. No appeal was filed in this case, and it is Mr. Martineau's opinion "that since no appeal was filed with the Zoning Board of Appeals within 30 days after the Planning Commission approved the site plan for the 2004 project, the City does not have the authority to prevent the 2004 project from being completed in accordance with the terms of the site plan approved by the Planning Commission in 2004".

Mr. Martineau also commented in his letter that the section dealing with non-conforming uses is subject to various interpretations and should be reviewed. This is especially true in a situation such as we are dealing with here when a property owner voluntarily tears down a building and wants to rebuild. It was his recommendation that the Planning Commission and City Commission review this portion of the Zoning Ordinance and provide clear direction on these types of issues so that a possible amendment can be drafted that meets the Commissions' goals.

I trust this letter addresses your questions, but if you should require anything further, please do not hesitate to contact me.

Very truly yours,

A handwritten signature in black ink that reads "Paul L. Preston, Jr." with a stylized flourish at the end.

Paul L. Preston, Jr.
City Manager

PLP/je

Complaint Brian & Pam Cone/City Building Official Kench (OCR Scan) **TOC**

September 18, 2005

Brian and Pamela Cone

Mt. Pleasant, MI 48858

To: Brian Kench, Building Official

We are writing to register a formal complaint regarding the ongoing development of the United Apartments Development on West Campus Drive (formerly Concord Apartments).

Our complaint is based on several zoning violations regarding:

- 1) Increased density nonconformance - §154.007(B)(1), (B)(5), and (B)(6)
- 2) Reduced parking below minimum required - §154.120
- 3) Violation of required minimum setback - §154.095(C)
- 4) Violation of required screening – site plan approval SPR-04-08

Factual information supporting our complaint:

- 1) Existing density nonconformance increased from 21 occupants to 37
- 2) Existing parking area decreased from >212 spaces (180 marked/>32 unmarked), to a maximum of 204 spaces. (8 less than required for 212 occupants)
- 3) New buildings located in required side yards
- 4) Required screening not provided

Due to reliance on city staff and confidence in the actions of the City Planning Commission, the site plans remained unchallenged for more than 30 days. It could have could have been known that:

- 1) Replacing 196 bedrooms with 212 bedrooms would increase density
*Current city code allows 175 on this site - §154.095(E).
Licensed occupancy based on building floor area was not a valid indication of land use density.
- 2) 204 parking spaces was a reduction of parking creating nonconformity. - §154.120
180 spaces had been surfaced and marked, with suitable unmarked area to exceed 212 spaces. Parking nonconformance that once existed only with respect to surfacing and marking, now exists with respect to area.
- 3) Location of the southwest building violated setback requirements - §154.095(C). South side yard less than the height of the building.

It could not have been known however, until September 2005, that the northwest building foundation, unlike the two previously constructed buildings, would be more than 3 feet above surface elevation (§154.003 Definitions – Height of building or structure) creating additional violations:

- 1) Required building setback not provided - §154.095(C)
*Required side setback of northwest building will be less than building height
- 2) Required screening not provided
*Current 6-foot fence screening effectively reduced to less than 3 feet We hope that you will take appropriate actions to correct these violations. - §154.160, §154.174, §154.175

Sincerely,

Brian and Pamela Cone

Correspondence City Building Official Kench/Brian & Pam Cone (OCR Scan) [TOC](#)

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October 13, 2005

Brian and Pamela Cone

Mt. Pleasant, MI 48858

RE: Redevelopment of the United Apartments

Dear Mr. Cone,

Thank you for contacting our office regarding your concerns with the redevelopment of the United Apartment complex on West Campus Drive. You allege that this redevelopment increased the density of nonconformance and reduced the parking.

It is my understanding that prior to this re-development this apartment complex was licensed for 212 occupants and provided 180 parking spaces. The site plan that was approved by the Planning Commission in May, 2004, was for 210 occupants and provided 198 parking spaces. As a result, it is my position that there was a reduction in the density and an increase in the parking.

You also raised the question regarding violations of setbacks. In reviewing the approved plan, it appears this project is located on a 'double frontage lot' which is defined under section 154.009 as being a lot that runs through a block from street to street and requires front yards along each street lot line. Double frontage lots by definition lack a typical rear yard and therefore are required to meet the side yard requirements of the district.

The front setback along both Glen Avenue and West Campus Drive is required to meet a 20 foot minimum front setback, which has been met. The zoning ordinance established the required side yard requirement under the following sections for whichever produces the greater setback.

1. 6.5 feet (Section 154.095)
2. The height of the building which is adjacent to the side yard (Section 154.095), or
3. 6.5 feet plus (for each story of the building adjacent to the side yard) 1 inch for each 1 foot by which the length of the sidewall of the building adjacent to the side yard exceeds 50 feet (Section 154.095 R).

These buildings have been constructed having a 25 foot side yard setback, with an overall height to average grade of 24 feet 9 inches. Although the building is 130 feet in length, if we apply condition three to establish the required side yard under this scenario, we only increase the 6.5 foot setback by 13.3 additional feet or 19.9 feet overall.

Further, if we assume a rear yard setback would have been required rather than a side yard in the area west of buildings 29 through 42, the twenty five foot rear setback for the zoning district would still have been met

Your comments regarding the effectiveness of the 6 foot screening fence as it relates to the elevation of the building is a point that is well taken, however, the Zoning Ordinance does not account for topography or the building elevation for required screening. This may be an issue that the Planning Commission may want to discuss for future language amendments regarding the screening provisions.

Therefore, it is my opinion that this project does not violate the provisions of the Zoning Ordinance. I appreciate this opportunity to address your concerns. Should you need anything further, please do not hesitate to contact my office at (989) 779-5301.

Sincerely,

Brian Kench Building Official

cc: Paul Preston, City Manager Tony Kulick, City Planner Steve Martineau, City Attorney

Correspondence Brian Cone/City Commission

TOC

From: Brian Cone**To:** cbradle@mt-pleasant.org ; kspycher@mt-pleasant.org ; sbissel@mt-pleasant.org ; jholton@mt-pleasant.org ; jjoslin@mt-pleasant.org ; jmoreno@mt-pleasant.org ; stilman@mt-pleasant.org**Sent:** Friday, September 15, 2006 9:26 PM

Dear City Commissioners:

For the past two years, we have had ongoing correspondence with city staff concerning the United Apartments redevelopment on West Campus Drive which borders two sides of our property. For those of you who may not be familiar with this situation, or have forgotten the details, I will attempt to summarize.

In May of 2004 the Planning Commission approved site plan SPR-04-08 without sending it to the Zoning Board of Appeals (ZBA) for required variances for nonconforming use as required by City Ordinance.

*Sec.154.169 authorizes the Planning Commission to approve only site plans where it finds "regulations of this chapter have been complied with".

*Sec.154.007 requires ZBA approval of all new nonconforming uses, which would in turn have given nearby residents an opportunity to voice concerns.

Current city ordinance allows a maximum of 175 occupants on this site with one parking space per occupant. This plan, wrongly approved by the Planning Commission, allowed 212 occupants (37 more than allowed by ordinance) and 204 parking spaces (29 more than allowed by ordinance and 8 less than required for the approved occupancy). The old Concord Apartments, although licensed for 212, had an occupancy of 196 (only 21 over current code requirements) and 180 parking spaces (only 5 more than current code allows). How could an increase of 16 occupants and 24 parking spaces, on a site that was already nonconforming, be considered a "marked decrease in nonconformity" as required by ordinance? We believe the Planning Commission made an inexcusable, as well as illegal mistake in allowing this development to take place when it had no authority to do so.

In addition to the nonconforming issues, no screening was required other than an existing 6 foot wood fence in poor condition. At the time, a member of the Planning Commission commented that the 6 foot fence would be "adequate". Of course he is not staring at a 25 foot wall bordering two sides of his property. In addition, because the building foundation to the East was elevated by 3 feet, the 6 foot fence screening has been reduced to only 3 feet. By the time we learned of this development, Mr. Kulick told us that further screening requirements were not possible because the plan had already been approved. We were left to request further screening from the owner. He did agree to plant some trees but they are too short and not spaced properly to screen the apartments from our home. In addition, 3 have already died. The existing trees and bushes on our property only provide screening during the summer months. When the leaves fall and students return each Fall, we are left with virtually no screening at all. We have lost property value and our privacy. If these apartments had existed in their present state 7 years ago, we would not have even considered moving here. We are upset and discouraged at the complete lack of concern and respect we have been shown by some city officials. Despite our feelings, we have been trying to be patient and work with city officials to find a way to regain at least some of what we have lost.

Throughout this 2 year ordeal several City and Planning Commissioners, including our past and present Mayors, have admitted the city did in fact wrongfully approve this plan. In fact, in former City Attorney Martineau's opinion, dated July 5, 2005 regarding nonconforming uses, he concluded that continuation of the non-conformance use after reconstruction can only be permitted if the Zoning Board of Appeals concludes that the requirements of Section 154.007(B)(5) have been satisfied. In other words, the Planning Commission had no right to approve this plan and deny us the right to voice our concerns.

Fortunately, some commissioners are willing to fight for what is right and would like to help us acquire appropriate screening. Mayor Bradley and Vice Mayor Spycher have visited our home and agree that the City should pay for their mistake. What we have asked for all along is:

1. A solid 10 foot barrier, such as a fence, to screen the lower level windows and to provide a buffer to noise and trash being thrown into our yard.
2. A solid barrier of 20 foot plus evergreens, such as arborvitaes, to screen the upper level.

The owners have planted several 12 foot spruce trees. We asked them to add a second row, staggered with the first, to provide a solid barrier but were denied. They have indicated there will be no more trees added. It will take many years for these trees to reach a height and width which will screen these buildings. In fact, the current positioning of these trees will never provide adequate screening, if they even survive. These property owners have a reputation for neglecting lawns and plantings and this is ongoing. Since no requirements were made regarding screening, we are faced with having to live with the noise, swearing, arguing, partying, trash thrown in our yard, students urinating on our lawns, etc., or selling our home at a significant loss as a result of this project.

At the suggestion of Mayor Bradley, Mr. Preston had obtained estimates on a taller fence and was prepared to offer a cash settlement so that we could obtain screening ourselves before the students returned this Fall. Since his retirement, Ms. Grinzinger has looked into the matter and decided that the City Commission needs to vote on this before she can provide us with any monetary settlement. We are asking that you please vote in our favor to help us regain some of what we have lost. City officials have admitted to their mistake and should be held responsible. If I backed into a car in a parking lot would it be okay to acknowledge my mistake and leave the repair bill to the owner? Of course not and this "repair bill" should not be left to us.

We realize that there are concerns with setting precedence. Two things to consider:

1. For those in other parts of town, there is no precedent being set for site plans which are approved by proper and legal means.
2. For others affected by this development, only our property is bordered on two sides by these apartments, the full length of our East and South lot lines. Furthermore, those to the South have rear entrances which allow students to spill out into the side yard and congregate just a few feet from our yard.

We are convinced, from observing the actions of the ZBA on other site plans, that had they been given the opportunity to review this plan and hear our concerns, as required by city ordinance, that these buildings would not exist in their current state. At the very least, a significant amount of screening would have been required, such as a solid wall in conjunction with plantings to provide complete coverage.

One more issue to consider, we hope our City Officials will do more to protect and preserve our neighborhoods. Please provide us with adequate screening if for no other reason than to protect a nice home in a nice neighborhood. We hope the City will begin to put as much work into preserving single family homes as they currently put into planning/ building new apartment complexes.

We appreciate those who have supported us with e-mails, phone calls and visits to our home. Please vote to right this wrong. We have been concerned and upset over this for over two years and hope you will help us regain our privacy and property value. Please do not hesitate to call or e-mail if you would like to discuss this matter further or come to our home and see what has occurred.

Sincerely,

Brian and Pamela Cone