



## Zoning Committee Recommendation

Rezoning Petition 2021-096

January 4, 2022

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### REQUEST

Current Zoning: R-5 (residential)  
Proposed Zoning: MUDD-O (mixed-use development, optional)

### LOCATION

Approximately 1.89 acres located along E. 36th Street between N. Alexander Street and N. McDowell Street in the NoDa community.

(Council District 1 - Egleston)

### PETITIONER

Ascent Real Estate Capital, LLC

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### ZONING COMMITTEE ACTION/ STATEMENT OF CONSISTENCY

The Zoning Committee voted 4-3 to recommend APPROVAL of this petition and adopt the consistency statement as follows:

This petition is found to be **inconsistent** with the *36<sup>th</sup> Street Station Area Plan* with respect to proposed land use, based on the information from the staff analysis and the public hearing, and because:

- The plan recommends institutional and residential uses up to five dwelling units per acre for the site.

However, we find this petition to be reasonable and in the public interest, based on the information from the staff analysis and the public hearing, and because:

- The petition's request for a mixture of uses (retail and multi-family) is similar in density and scale to recently approved rezonings in the immediate area (e.g., 2019-069).
- The requested height is consistent with the maximum height permitted (65 feet) under TOD-NC zoning, which is proximal to the subject property.
- The site is under .5 miles from a Blue Line transit station. The density proposed with this project is appropriate considering the site's proximity to rapid transit.
- The site is currently a mixture of vacant land and former institutional uses (place of worship). The redevelopment of this block's frontage along E. 36th Street will provide density close to transit without requiring the tear down of any existing single-family detached homes.

- The petition's proposed uses are complimentary to the 36th Street Station Area Plan's overall goal of community design by creating a "high quality urban environment by enhancing the identity of the transit station area through the creation of attractive streetscapes." This petition commits to streetscape improvements along all three streets it fronts and commits to a higher percent ground floor transparency percentage than is required in the MUDD district (60 percent committed/50 percent required) while providing improved urban open space through the creation of a retail courtyard space along E. 36th Street.
- The petition is proposing to protect adjacent single family uses from the structure's visual impact through stepdowns/stepbacks in height, parking deck screening, and an enhanced landscaped buffer between the parking deck and single family uses.

The approval of this petition will revise the adopted future land use as specified by the 36th Street Station Area Plan from residential and institutional uses to residential/office/retail uses for the site.

Initial Motion to Approve

Motion/Second: Spencer / Blumenthal

Yeas: Blumenthal, Samuel, Spencer and Welton  
 Nays: Ham, Rhodes, Chirinos  
 Absent: None  
 Recused: None

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Substitute Motion to  
Defer Decision to next  
ZC meeting

Motion/Second: Ham / Chirinos

Yeas: Ham, Rhodes, Chirinos  
 Nays: Blumenthal, Samuel, Spencer and Welton  
 Absent: None  
 Recused: None

## **ZONING COMMITTEE DISCUSSION**

Staff provided a summary of the petition and noted that it is inconsistent with the adopted area plan.

After the staff summary, Chairwoman Samuel asked to hear from every commissioner as she was aware that they have been very engaged with this rezoning through communication with the neighborhood and community.

Commissioner Blumenthal noted that he was torn in that he did see both sides of the coin here; that it should be a site that is supportive of density based on a number of factors but also a site that should respect the single family homes to the rear of it. HE acknowledges that there certainly are factors that keep this area from developing in a less dense matter. He notes that he has not made his mind up at this point.

Commissioner Chirinos acknowledges the benefits of the project in affordability and the end product that would be built on site (smaller units, etc.), however she notes that she is struggling with the design and is out of character with the existing neighborhood. She notes that she understands the issues that neighbors have with the potential structure. While she acknowledges that it aligns with principles of TOD however she would like to see revisions to the building; that the scale, in her opinion, is overwhelming and there should be revisions made to the design and recommended the designer explore other options in concert with the neighborhood.

Commissioner Ham noted that he did meet with the petitioner and the neighborhood but generally is okay with the concept. He notes that he feels the structure is overwhelming for the space. Also is worried about the lack of parking at the site and noted he feels it is not fair to the neighborhood that parking may trickle into the neighborhood for this site.

Commissioner Rhodes mentioned that she did not get to meet with the neighbors but did have an opportunity to visit the site. Noted that she realizes that this is an active pedestrian corridor and noted that there are often issues with pedestrians being able to cross the street safely in this location. She feels that a building of this size would destroy the neighborhood without extra parking and widening of roads. Notes that she sees lots of issues that do not align with the neighborhood and what it stands for.

Commissioner Spencer noted that he has an uncharacteristic amount of certainty for this project accomplishing goals as they relate to transit and density. That denser projects such as this are appropriate at our light rail stations, not just the ones with less effective advocates. He notes that he loves the neighborhood and looked at the site before the meeting today. He disagrees with the notion that this is different from other projects built or entitled in the area (Mercury being one mentioned). Noted that he would like to see more efforts as it relates to traffic calming to slow traffic in areas like this portion of E. 36<sup>th</sup>. Mentioned that he will support this petition but would like to have the opportunity to ask questions of the petitioner to ensure that outstanding issues will be addressed.

Commissioner Welton noted that there is a lot of agreement with what he is thinking and what Commissioner Spencer mentioned. It feels like a slam dunk in that we place density and retail near our transit stations. He noted that one of the things that make a transit stop work in the employment density at the stop. By increasing the employment density through this project, people will use the Blue Line to get to NoDa instead of from NoDa. 36<sup>th</sup> Street is also a through street and is that way because there is nothing to stop at along the street – if places are created where people want to stop then 36<sup>th</sup> becomes less of a through street and more of a Main Street with inherent traffic calming characteristics. Encouraging additional employment in areas outside of uptown should be welcomed. Additionally, he noted the

approved NS petition across the street that is offering a similar product that could further the notion that 36<sup>th</sup> could become a Main Street. He also noted that he did not agree with the fact that parking should be a bigger issue here and was resolved to the mindset that there would be a mixture of ways that one could get to this location without using an automobile.

Chairwoman Samuel noted that she agreed with everything mentioned by Committee member Welton, except for the fact that this petition should be a slam dunk. She continued by mentioning that yes, we do need density around our transit station and was curious as to why this petition was not originally submitted as a TOD petition and why this site was zoned R5 to begin with. She began to describe the multitude of uses within a stone's throw from this parcel (mixture of SF, multifam, and others) and noted that she was not opposed to the height and density except when it starts to interact with adjacent single family residential towards the northern property boundary. She also mentioned concerns with stormwater at the site and that current regulations may not be enough to satisfy the needs of a site such as this.

She continued by asking the Committee members who are not supportive of this petition for a concise set of questions if a vote was held to suspend the rules to ask questions of the petitioner. Each were asked to name one item they would like to see the petitioner address so that they would be more comfortable with the project.

Commissioner Rhodes noted the one item that would make her more comfortable with this petition was "traffic". Commissioner Ham noted "scale". Commissioner Chirinos noted "aesthetics". Commissioner Blumenthal noted "cooperation with adjacent residents". Chairwoman Samuel mentioned that Commissioner Blumenthal's item was too broad and went forward with the word "cooperation".

With those responses, Chairwoman Samuel requested that Committee member Spencer formulate three specific questions to ask the petitioner/petitioner's agent once the rules were suspended. Committee member obliged and wanted to add commentary to the discussion to serve as a reminder that this board (Zoning Committee) is a land use board and not a design review board and that distinction should be important in how this board makes its decisions.

Question one for the petitioner: Are you committing to resolving the outstanding issues as presented by staff? Question 2: How are you going to work with CDOT to resolve the traffic issues along the site as it relates to Vision Zero goals? The third question was left to a fellow Zoning Committee member.

Committee member Chirinos, after making a counter argument that design is essentially a part of this committee's purview, would like to hear if the petitioner has explored different designs for this building to better provide a product that works better,

from a design perspective, with the community. Ultimately, the question presented to the petitioner's agent was: Can the petitioner reduce the height to 40 feet?

The Zoning Committee voted unanimously to suspend the rules (Spencer motion, Blumenthal second).

Before the petitioner weighed in, Chairwoman Samuel asked for details regarding transportation commitments. Patrick Monroe from CDOT detailed both on-site and off-site improvements (including bulb-outs, rapid rectangular flashing beacons, etc.).

The petitioner's agent (Collin Brown; Alexander Ricks, PLLC) responded to Zoning Committee's questions by noting that the petitioner will be able to address every outstanding issue on the staff report outside on internal trash storage, which would result in a taller height for the parking garage. Mr. Brown then pivoted to the questions regarding transportation improvements and Vision Zero compliance and made note that none of the recommendations were for vehicular traffic but in fact ways to improve the pedestrian experience both on and off site. Regarding height, he makes note that there are conflicts with accommodating every request, especially as it relates to height. Addressing height concerns ensures that trash isn't handled internally and making the building smaller provides affordability challenges. He noted that they have not explored making this site a townhome site, that they do feel that this site is appropriate for a multi-family building.

Chairwoman Samuel mentioned a better height transition to SFR and exceeding min. stormwater requirements would get her closer to a yes for this petition. She then summarized her understanding each Committee member's positions on this petition.

Commissioner Spencer made a motion to approve the petition. Commissioner Blumenthal seconded the motion.

Commissioner Chirinos asked a question on how the Committee knows that the outstanding issues would be addressed. Chairwoman Samuel reviewed the responses from the petitioner's agent.

Commissioner Ham questioned the potential of a substitute motion and subsequently made a substitute motion for deferral in order to ensure the petitioner addresses outstanding issues and to revisit any design questions at the next meeting. Commissioner Chirinos seconded the motion, which failed (3-4).

There was no further discussion of this petition.

#### **MINORITY OPINION**

The Committee members voting against the motion to approve believe a deferral would have helped foster more discussion with the neighborhood and further flesh out neighborhood concerns and committee concerns related to trash and overall design.

#### **PLANNER**

William Linville (704) 336-4090