

Plan Commission  
Meeting of December 15, 2025  
Legistar #90908, Agenda #2

The Marquette and SASY neighborhoods have a substantial amount of mixed-use zoning abutting the Cap City Trail, but only four lots which could benefit from this change (one of which is already fully developed). A carte blanche rear yard exemption – which is essentially what this ordinance would provide by requiring only 5 feet instead of 20 feet – allows the owners of those few lots to have a significantly larger building. Perhaps there may be an actual need for a particular project to have a smaller rear yard setback – but that is what the variance process is for.

I do hope a Commissioner asks staff whether there is a development in the works that would benefit from (or prompted) this proposed change. There have been ordinance changes proposed in order to accommodate a new development (e.g., allowing drive-thrus in TSS to accommodate a bank on Monroe Street). Hovde's development team presented a proposal to the MNA and SASY neighborhoods last July for a new development at 2066 Helena. Support for PD zoning was being sought in order to avoid the rear yard setback requirement (the rear yard abuts the Cap City multi-use path). The rationale for PD zoning under City ordinances was, at best, shaky. This ordinance change would allow Hovde to use TSS zoning and build a building exclusively for residential use merely 5 feet from the Cap City Trail.

#### Reasons to keep the rear yard setback

This proposal would privatize public land for private use. Yes, there are buildings along the Cap City trail that have a building facing the side street, thus only the 5-foot side yard setback is required along the Cap City trail. But these buildings do have a backyard (except for some zoned PD). This backyard can be used by the building's residents for various activities – including taking out their dogs, or a game of Frisbee.

Below is an image of 302 S Livingston, a PD zoned lot that has virtually no green space. The property line is the edge of the sidewalk near the public sidewalk – so there is about a foot of green space running along most of the northern edge of the building. When looking at this, would the public think of this as a public space, or would they think this mowed lawn is private property? (And it is clearly an area for the residents' dogs – the bright green is the extra fertilization provided by those dogs and there is a poop station behind the white exhaust pipe.)



Google Street View, June 2025

The 20-foot rear yard is valuable for a number of reasons.

- It provides a space for resident use.
- It increases the probability that the building's owners won't be mowing, or chemically treating, public space for the convenience of its own residents.
- Often these right-of-ways are covered with a no-mow grass or, as in the case of the Marquette neighborhood, prairie. These paths provide habitat for wildlife and allow for more of a connected wildlife corridor (per the Comp Plan) that mowed areas do not offer.
- Tall buildings often shade the multi-use path, which can be a problem with icing in the winter and require higher applications of salt. The further a building is from a path the better.
- Trees are impacted when the development is a mere 5 feet from the lot line. Trees are on public right-of-way are often located close to the lot line. (While often these trees near the lot line are naturally propagated rather than being intentionally planted, they are not less valuable.) With the 306 S Brearly development several trees on public property were removed. The photo below shows how the construction fence was substantially bowed out in order to remove trees on public property. Two trees in the public right-of-way that had not been marked on the storm sewer plan for removal were taken out by the developer. The developer also removed a large cottonwood - the construction manager said the cottonwood's roots would have gone into his building. Then another cottonwood at the Brearly corner had its roots severely hacked (second photo). The developer also did a bad job pruning the limbs (Forestry made them address this issue).







- Trees provide shade for users of the multi-use paths. Trees help to effectively manage storm water. Trees provide some screening from the large buildings. A 5-foot rear yard would cause more of the types of problems seen with the Brearly project.
- These multi-use paths are increasingly important as open space. The isthmus and near east side have gained, and continue to gain, many more residents - more residents without any corresponding increase in park space (and the Parks department declared years ago that the isthmus was already deficient in park land). Open space requires an open area, an area where the sky is visible while looking somewhere other than up, an area that has green vegetation, an area that does not seem like being in a canyon. If a survey of users were to be taken, I think residents would appreciate openness over not having to look at a back yard (even a back yard with parking and/or accessory buildings).

#### Various issues should this proposal move forward

What is a “publicly-owned multi-use path?” The staff report provides one example – the Capital City Trail. Does a path through a greenway, or a path through a park, count as a “publicly-owned multi-use path?” Or a bike boulevard? Or a sidewalk that is also part of a designated bike route? This term needs to be defined.

Why is this just being applied to mixed-use districts? There is stretch of the Southwest Commuter Trail in the Industrial Limited district. IL requires a 30 foot rear yard setback.

Why is this not being applied to any residential districts? For example, 1620 Monroe, zoned TR-U1, could benefit from this change the same as mixed-use districts. And there is really no difference between an exclusively residential mixed-use building and TR-U1 or TR-U2 district.

The Comp Plan speaks of the importance of increasing shared paths under a number of different actions. As shared use paths increase in diverse locations, what is the potential impact of this ordinance change?

"Rear yard setback if rear property line adjacent to a lot or right-of-way with a publicly-owned multi-use path within 100' " seems to say that if the actual path is within 100', then the rear yard could be 5'. Yet shouldn't there also be a minimum? For example, if the actual path is only 5 or 10 feet from the developer's property line, wouldn't that provide more reason for a larger back yard?

The staff report refers to buildings abutting the bike path that face the side street (e.g., 306 S Brearly and 302 S Paterson) as buildings "located on corner lots." These are not corner lots. Under the ordinance definitions a corner lot is one in which two adjacent sides abut for their full lengths upon a street. The Cap City Trail is not a "street." For about 4½ blocks the Cap City Trail is a former street, one which City arcgis map do not reflect as a street. (Nor did the staff reports for these projects call these corner lots.) Nor are lots that face a public street, such as Helena, and have a rear yard abutting a multi-use path, such as the Cap City Trail, a "through lot." Under the ordinance definitions a through lot is one which has "a pair of opposite lot lines along, and access to, two (2) more or less parallel public streets, and which is not a corner lot. On a through lot, both street lines shall be deemed front lot lines." The lot line adjacent to the path is not an additional front lot line since that lot line does not abut a public street.

Eliminating side yards where the proposed buildings or abutting buildings have window openings inside walls that are within six feet of the lot line

While this provision is described as overly prescriptive by staff, it does serve a purpose: it is a clear standard not dependent on building code requirements. It guarantees an existing structure on the abutting property some measure of light and ventilation, both of which could be lost if the side yard setback is eliminated. This is particularly important in the older parts of the City where residential and mixed-use are often intermixed. Old homes are not always set in the center of the lot and there may be only 2-3 feet between the home and the mixed-use lot.

Respectfully Submitted,  
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