

## Aldermen vote approval of plan for 75-foot building on Talbot's site

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New Bern aldermen rescinded their original decision on the proposed 75-foot Talbot's project downtown and voted unanimously Tuesday night that the project would be in harmony with the surrounding area.

During a public hearing Dec. 11, aldermen voted 1-6 that the project, with retail space on the bottom floor and residential space on the remaining floors, failed the harmony requirement it had to fulfill to receive a conditional-use permit. But they decided then to resume the public hearing and to see if the project could be changed and salvaged.

Some aldermen said last month that they thought the project as presented was too tall for South Front Street and that it was not what they anticipated when they solicited bids. Some leaders wondered whether all the bidders understood that they could present a project comparable to the one UHF Development Inc. presented to the city when that New Bern company was awarded the contract in 2006.

Tuesday night, City Attorney Scott Davis told the aldermen he was worried that they had themselves open for a judge to overturn their original decision.

"I'm concerned that because of your concerns over the bid process, you've incorporated that into your vote," he said. "That was my impression, but I don't vote."

Davis later said that any worries the aldermen had about the bids would have to be studied in another meeting.

"There are issues there that worry me significantly," he said. "Tonight, we can't address those."

Davis said he was also afraid that aldermen had approached the December decision as a legislative process rather than a quasi-judicial process.

"In a legislative process, you talk to your constituents, Â... but in a quasi-judicial process you weigh evidence," he said.

Davis said Tuesday that if aldermen told him they were weighing evidence in December and decided that the views of "lay people" outweighed architects that were considered experts, he would put that in the record.

"But the far greater weight of the case law suggests that's not going to fly," he said.

Alderman Robert Raynor, who cast the lone supportive vote of the project last month, made a motion for the city board to rescind its original decision. Only Alderman Dana Outlaw dissented.

After a motion from Alderman Max Freeze, the aldermen voted unanimously that the proposed building would be meet the harmony measure. They attached three conditions to the approval, two of which the developer was already intending to meet, according to UHF attorney Troy Smith.

UHF must incorporate transformers that are already on the site into the project. That will cause the developer to give up one retail space, Smith said. UHF must also improve the streetscape so that it fits in with surrounding streets. UHF already intended to do that, as well as handle some environmental contaminants that were found on the site, Smith said.

Developer Eddie Coleman and his partner Hubie Tolson bid \$1,050,000 on the project in 2006 and the city awarded them a contract. The main stipulation of that contract is that UHF put a retailer in the building. Later they found the contaminants, Smith said.

Lastly, aldermen added a condition that the developer “endeavor to reduce the height” to the extent possible.

Davis said that condition should be viewed “more open-endedly and not as a requirement.”

Nancy Hollows, the president of the Preservation Legal Action Team, called the decision “disappointing and confusing.”

“They didn’t allow new evidence to be heard and no evidence had changed since they voted, so I don’t understand it,” she said.