

## *Uptown Triangle Neighborhood Association*

*Sheldon Hersh, MD, Editor  
Zoning for Dollars is Wrong  
[www.zoningfordollarsiswrong.org](http://www.zoningfordollarsiswrong.org)*

March 22, 2004

Councilman Jay Batt  
City Hall, Room 2W80  
1300 Perdido Street  
New Orleans, LA 70112

Re: Zoning Docket 8/04. Rebuttal of the City Planning Commission's reason for approval of the Short Street high-rise building. This request for a zoning change is a "Spot Zone."

Dear Councilman Batt:

The CPC Staff Report is incorrect: This is a Spot Zone.

On January 22, 2004 the City Planning Commission (CPC) released its Staff Report regarding Zoning Docket 8/04, which is a request by a developer to change the zoning for Square 52 in order to build a 14-story high-rise on Short Street in Uptown New Orleans. On page 15 of this report, under the section "Reasons for Recommendations" the staff report lists its number one reason for approving this rezoning request as "1. Since the request is to change the zoning for an entire square, it does not constitute a spot zone." This "entire square" argument has been used repeatedly throughout the ensuing debates and has been the foundation upon which the staff based its decision to approve Mr. MacPhaille's zoning request.

I believe the Staff Report's approval of this zoning request based on the "entire square" theory is arbitrary and capricious, and is, therefore, legally indefensible. This letter will rebut this "entire square" argument by examining the history of Square 52 and explaining how this relates to other similarly odd-shaped "squares" along Leake Avenue and throughout the City of New Orleans.

### History of Square 52 and Leake Avenue.

As seen in the enclosed "Map of Uptown New Orleans Neighborhoods From Robinson's Atlas of the City of New Orleans, 1885," you will note that in 1885 Square 52 was not a "standard" city square. According to this map, Square 52 was then less than one-half of its neighboring city squares. If the small Square 52 on Short Street were joined to its equally-small sister Square 53 on Fern Street the resulting block would still be less than the size of one standard city block. Separating these small squares is Huso

Street, which appears as a narrow service alley between these small squares. Therefore, even in 1885 Square 52 was less than one-half of a standard city block.

According to the enclosed Sanborn-Perris “Insurance Maps of New Orleans, Volume Four, 1896,” at the turn of the century the Uptown area near the levee was significantly larger and extended much closer to the levee. In this 1896 map much of Square 52, as well as Squares 51, 66, and 67 were occupied by the Fisher Lumber Company. The Picayune Saw Mill was located at the end of South Carrollton Avenue in Square 51 and fronted onto Levee Street, which paralleled the levee. Below Square 52 was Square 50, which housed a beer garden, bar, boarding house, and horse shed. Square 50, which no longer exists, also fronted onto Levee Street. There were no railroad tracks running along the levee at that time.

The New Orleans Public Belt Railroad, which now runs along the levee, began service in 1908. Sometime between 1896 and 1908 several blocks of Uptown New Orleans, which ran along the now-defunct Levee Street, were expropriated, the houses were demolished, the railroad tracks were laid down, Leake Avenue was constructed, and the zoning map of New Orleans was permanently changed.

Looking at the “Official Zoning District Maps, City of New Orleans, July 2000,” we see that several city squares seen on the 1896 map were either completely removed or significantly truncated by the construction of the railroad tracks. Comparing the 1896 map to the 2000 zoning map reveals that Square 50 south of Square 52 is now completely gone, and what is left from Square 49 is now only an unnamed tiny island bordered by Fern Street, Dominican Streets, and Leake Avenue measuring less than 2,000 square feet (66’x60’x84’ curb to curb). This small remnant of Square 49 now supports only one tree and three Stop signs. Similarly Square 37 south of Square 48 was also devoured by the railroad tracks and has completely disappeared. As a result of this land expropriation Mr. MacPhaille’s Square 52 was also significantly truncated. This resulted in the odd-shaped small Square 52, which now measures approximately one-third of a standard city square.

As a result of the railroad track construction along the levee many city blocks along the present-day Leake Avenue were permanently changed. Although these areas are no longer recognizable as standard city blocks, according to the 2000 zoning maps they still carry their original square numbers. For example, in 1885 Square 68 was a triangular city square several times larger than square 52, which existed on the levee side of the intersection of St. Charles Avenue and South Carrollton Avenue. In 1896 this square was home to the Carrollton Garden, a dancing floor, bar, and shooting gallery. As a result of the railroad construction this square was severely constricted and is now represented by a miniscule island of land upon which only the Daiquiri Shop sits. This tiny parcel measures only 6,840 square feet (120’x152’x114’ curb to curb), which is only one-quarter of Mr. MacPhaille’s Square 52. Despite this parcel’s very small footprint, it is still labeled as city Square 68 on page A-13 of the Zoning Map. Similarly, the small triangular piece of land bounded by Dublin Street, Hampson Street, and Leake Avenue is still labeled as city Square 69, despite its measuring only 12,384 square feet (144’x172’x228’ curb to curb), which is less than one-half the size of Square 52. These

remnants of larger squares can be easily identified in Zoning Map Attachment 1 of the CPC Staff Report for Zoning Docket 8/04. In addition to these two obviously tiny city squares, other odd-shaped small squares are found up and down Leake Avenue as a result of the railroad construction 100 years ago.

Rezoning small city squares would be arbitrary and capricious.

If we use the logic of the Staff Report that rezoning Square 52 would not be a spot zone because it is “an entire square,” then rezoning the tiny remnants of Squares 68 or 69 should also be allowed and would not constitute spot zones. Because city squares come in all shapes and sizes, using the criteria that a development is not a spot zone because it is “an entire square” is arbitrary and capricious and will set a poor example for future development of such unusual city blocks.

New Orleans has other exceptionally small blocks which carry a square number. Squares 124 and 521 on page B-13 are small parcels bisected by Washington Avenue. On page B-14 Square 472 is a very narrow miniature square measuring 60’x70’x330’ curb to curb. It is bounded by Toledano Street, Rocheblave Street, and Washington Avenue. This parcel is so narrow that it is better suited to host a statue or monument, rather than a house. At present this square is host to three trees, two public telephones, and one Stop sign. Other small squares are scattered throughout the City. Square 230 on page F-17 on the West Bank, for example, is bounded by Maumus and Blythe and the Intracoastal Waterway levee. This diminutive square is home to only three small parcels.

Because these and other miniature city blocks throughout New Orleans are labeled squares can any developer who owns such an “entire square” change the square’s zoning and build inappropriate developments in the middle of stable neighborhoods? Clearly using the criteria of ownership of an “entire square” as the primary reason to approve a zoning request flies in the face of logic and sound urban planning. Using such a loophole would be harmful to our neighborhoods and to the City of New Orleans. It would set a precedent for inappropriate development on inappropriately small plots of land.

The standards for a Planned Residential Community are arbitrary and capricious.

On page 14 of the Staff Report, under “Preliminary Staff Recommendation,” the CPC staff recommended a modified approval for the requested Planned Residential Community (PRC) overlay district for Square 52. According to Section 10.7.04 of the CZO, the minimum area required for a PRC district is “one contiguous acre or one-half of a City square, whichever is lesser.” Mr. MacPhaille’s Square 52 measures only six-tenths of one acre and falls short of the one-acre requirement. The proposed project does, however, qualify for PRC consideration because Mr. MacPhaille owns more than “one-half of a City square.”

In order for a law or regulation to be valid it must be applied consistently. If we apply this “one-half of a City square” rule to the above-listed miniature squares along

Leake Avenue, does this mean that the tiny parcel of land upon which the Daiquiri Shop now sits in Square 68 would qualify for Planned Residential Community consideration, even though it is less than 7,000 square feet of land? Although this would be ludicrous, according to the Section 10.7.04 of the CZO, the owner of this parcel is legally entitled to propose such a project because he or she owns more than “one-half of a [very tiny] City square.” This PRC section of the CZO cannot be applied consistently to all zoning proposals and is, therefore, arbitrary and capricious. A more reasonable minimum area requirement for a PRC district would be “one contiguous acre or one-half of a City square, whichever is *greater*. (Emphasis added.)”

The Short Street high-rise proposal is a spot zone.

The rules which govern the numbering of city squares and the standards for a PRC district are obviously arbitrary. Basing a zoning request on such arbitrary rules cannot be legally valid. Therefore, basing the approval of Mr. MacPhaille’s zoning request on his owning “an entire square” must be legally invalid, too. Negating this most important basis for the CPC staff’s approval leaves the developer with little justification to change the zoning to build a 14-story high-rise on this small Square 52, just 21 feet away from its one- and two-story neighbors in historic Uptown New Orleans. Without the “entire square” argument, we can easily see that this project is a blatant spot zone, which must be denied.

Thank you.

Sincerely yours,

Sheldon Hersh, MD  
Board of Directors, UTNA

CC: All City Councilmembers  
Mayor Nagin  
City Planning Commission  
Upper Audubon Association  
Maple Area Residents, Inc.  
Carrollton/Riverbend Residents Association

Enclosures.  
Map of New Orleans, 1885  
Map of New Orleans, 1896  
Map of New Orleans, 2000  
CPC Staff Report for Docket 8/04, Attachment 1

## Zoning Map of New Orleans, 2000.

In 2000 Square 52 (Docket 8/04, the Short Street high-rise proposal) is much larger than Square 68 (the Daiquiri Shop) – after the railroad tracks were laid down.



## Map of New Orleans, 1885.

In 1885 Square 68 (the Daiquiri Shop) was much larger than Square 52 (the Short Street high-rise proposal) - before the railroad tracks were laid down.

