



Department Source: Community Development - Planning

To: City Council

From: City Manager & Staff

Council Meeting Date: September 20, 2021

Re: 5500 W. Van Horn Tavern Road - Permanent Zoning Upon Annexation (Case #227-21)

## Executive Summary

Approval of this request would apply two zoning district designations on approximately 121 acres of property addressed 5500 W. Van Horn Tavern Road as permanent zoning upon annexation. Of the 121 acres, approximately 115 acres is sought to be permanently zoned Open Space (O) and the remaining approximately 6 acres is sought to be zoned M-N (Mixed-Use Neighborhood). The subject site is presently zoned Boone County REC (Recreation).

## Discussion

Crockett Engineering (agent), on behalf of MFL Golf, LLC (owner), seeks approval for the assignment of approximately 6 acres of M-N (Mixed-Use Neighborhood) and 115 acres of O (Open Space) zoning as permanent zoning upon annexation. The property is located approximately 1800' to the east of the intersection of Highway UU and Van Horn Tavern Road, addressed 5500 W. Van Horn Tavern Road, and presently improved with Midway Golf and Games which has existing outdoor entertainment use activities on-site.

The property is contiguous to the City's corporate limits on its eastern boundary which adjoins the City's Strawn Road Park east of Perche Creek. The annexation request (Case #226-2021), as well as a concurrent Conditional Use Permit (CUP) request (Case #253-2021), are discussed under separate cover in addition to this item on the Council's September 20 agenda. Annexation is desired to permit connection to City sewer service and associated with such request is this permanent zoning.

Midway Golf and Games is presently located in unincorporated Boone County and includes the following outdoor recreation use activities: par-3 golf course; mini-golf course; batting cages; go cart track; yard games; driving range; corn maze area; and laser tag. The location of each activity is shown on the attached "Conditional Use Exhibit". The site is also improved with parking areas and customary accessory indoor uses including concessions, ticketing, and administrative activities. The desire to connect to City sewer is made in advance of possible expansion of the existing operations as well as the desired construction of a restaurant on the acreage. The attached zoning graphic illustrates where the M-N and O districts are proposed to be located on the overall acreage, respectively.

The property is currently zoned Boone County REC (Recreation) which is consistent with the requested O district zoning. The County REC district allows restaurants as a conditional use; however, construction of such a structure would require connection to public sewer. The applicant's request for approximately 6 acres, or 5% of the property, to be zoned M-N is



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narrowly tailored to permit the desired future restaurant which would be attached to or built near the existing clubhouse area. Restaurants are a permitted use in the City's M-N district, but are not permitted in the O district. Outdoor entertainment or recreation uses are not permitted in the M-N district, but are permitted in the O district via approval of a Conditional Use Permit, which is the topic of Case #253-2021.

While both restaurants and outdoor entertainment or recreation uses are permitted "by-right" within either the M-C (Mixed-use Corridor) or IG (Industrial) zoning districts, these districts were deemed too intensive for the subject site given numerous environmental constraints, limited accessibility, and the surrounding land use and development patterns. These constraints are discussed in greater detail in the respective Planning Commission staff reports associated with each request. These reports also discuss that large swaths of the property are anticipated to fall under the Flood Plain Overlay District (FP-O) should the annexation be approved per the Flood Insurance Rate Maps (FIRMs) for Boone County and per Chapter 29-2.3(d) of the UDC.

Development within the FP-O overlay is limited by the Unified Development Code as well as other City and governmental agency regulations and requires issuance of a Floodplain Development Permit. Upon annexation, the property would also be subject to all City environmental protection and development regulations, including stream buffer, stormwater, neighborhood protections, and climax forest and significant tree preservation standards.

The applicant has indicated the desired O zoning on the majority of the property (115 acres) with the concurrent CUP for outdoor recreation or entertainment uses is sought to allow the existing uses to continue legally upon annexation. The O district is designed to permit public parks, open spaces, nature reserves and master-planned private open spaces. The O district has the ability to serve as a recreation district as well, should a CUP for outdoor recreation uses be approved, such as is the request herein.

The height and setback requirements of the O district are considered restrictive, relative to other districts, with setbacks from all property lines being 25' and the maximum height of a primary building being 35'. The M-N request is tailored to an area not located in the flood plain, is desired for a specific/non-speculative purpose, and is effectively surrounded by the larger O-zoning request, which will serve as a buffer for uses of a slightly more intensive nature than the more rural surrounding properties in the area.

The staff report for the concurrent CUP request (Case # 253-21) provides additional analysis on the desired outdoor recreation and entertainment uses for the property relative to the unique characteristics of this site and area and proposes conditions to mitigate potential negative externalities associated with that use within this land-use context. Additionally, the use-specific standards for outdoor recreation or entertainment uses (Section 29-3.3(y)) are discussed in more detail in that report.



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As the property is unplatted; therefore, if the annexation is approved and permanent zoning assigned a subdivision plat will be required to confer legal lot status on the acreage before any building permits will be granted. All typical subdivision related requirements will accompany any such platting action.

Access to the property is provided by Van Horn Tavern Road which is generally unimproved and is a private road as it runs through the subject property. The unimproved condition of Van Horn Tavern Road has been cited as a concern throughout the review process and as such was an underlying factor in why no support was gained for more intensive zoning than the O/CUP/M-N as proposed. Furthermore, proposed conditions with the CUP request include development-related triggers for a traffic impact study and limitations as to the on-site scale and type of activities that could occur on the site.

The site is located within the City's Urban Services Area (USA) and designated on the Future Land Use Map as Open Space which is consistent with the 115 acres proposed to be permanently zoned O. The requested 6 acres of M-N zoning is more intense than what is typically considered consistent with the Open Space designation; however, as discussed, is believed appropriate given the unique characteristics associated with this request. The site can be served by city sanitary sewer service should it be annexed and is further supported by Boone Electric and Consolidated Water District #1 for electric and water services, respectively. Extension of sewer would be at the expense of the applicant and subject to applicable connection charges assessed to similar city development.

The Planning and Zoning Commission considered this request at their August 19, 2021 meeting. Staff presented its report and the applicant was available to answer questions. The Commission discussed the request, the impact of areas likely to be mapped as Flood Plain Overlay (FP-O), and clarified where the location of the laser tag activities occurred. A motion to approve the assignment of permanent O and M-N zoning as requested passed 8-0.

Planning and Zoning Commission staff report, locator maps, City-County Zoning Graphic, Zoning Graphic (requested), Conditional Use Exhibit, and excerpts from meeting minutes are attached.

## Fiscal Impact

**Short-Term Impact:** None anticipated within the next two years. Public infrastructure extension/expansion would be at the cost of the developer.

**Long-Term Impact:** Public infrastructure maintenance such as roads and sewers as well as public safety and solid waste service provision. Future impacts may or may not be offset by increased user fees and/or property tax collections.



## Strategic & Comprehensive Plan Impact

### Strategic Plan Impacts:

Primary Impact: Reliable Infrastructure, Secondary Impact: Not Applicable, Tertiary Impact: Not Applicable

### Comprehensive Plan Impacts:

Primary Impact: Land Use & Growth Management, Secondary Impact: Livable & Sustainable Communities, Tertiary Impact: Not Applicable

## Legislative History

Date	Action
09/07/2021	Set public hearing on annexation. (Res. 143-21)

## Suggested Council Action

Approve the requested O and M-N zoning, upon annexation, as recommended by the Planning and Zoning Commission.