

EXCERPTS
PLANNING AND ZONING COMMISSION MEETING
SEPTEMBER 19, 2019

Case Number 194-2019

A request by VanMatre Law Firm (agent), on behalf of the Donna Jean Armstrong Unitrust (Owner), for approval to rezone 6.8 acres of property currently within the City from A (Agricultural) to M-N (Mixed Use-Neighborhood). The subject site is located on the south side of Clark Lane, approximately 1,200 feet west of St. Charles Road, and addressed as 5320 Clark Lane.

MS. LOE: May we have a staff report, please?

Staff report was given by Mr. Clint Smith of the Planning and Development Department. Staff recommends denial of the requested M-N zoning change.

MS. LOE: Thank you, Mr. Smith. Before we move on to Commissioners' questions, I would like to ask any Commissioner who has had any ex parte prior to this meeting related to this case to please disclose that now so all Commissioners have the same information to consider on behalf of this case in front of us. Mr. MacMann?

MR. MACMANN: I did see Mr. Hollis on Monday at Council, and he did let me know this was his case. That was the extent of this conversation.

MS. LOE: Thank you. Any additional ex parte? Seeing none. Are there any Commissioner questions for staff on their report? Mr. MacMann?

MR. MACMANN: Thank you, Madam Chair. Planner Smith, PUD-8 due west of the proposed M-N property is built out as R-MF; is that correct? Did those -- are those apartments --

MR. SMITH: It's -- I would consider it multi-family.

MR. MACMANN: Multi-family. With that in mind, can you refresh my memory on the buffering and setbacks from M-N to whatever this is?

MR. SMITH: So buffering between M-N and multi-family residential?

MR. MACMANN: If they went in M-N, what would they have to do as far as buffering?

MR. SMITH: I believe -- do you have the codes -- it's going to be landscape buffer, probably a screening device, which is usually a fence, something that's, you know, opaque, but then also a -- I think it's a six- or a ten-foot deep landscape buffer as well along the entire length of that property.

MR. MACMANN: Okay. I was thinking it was an eight-foot buffer plus a six-foot fence, but I -- that's off -- that's off the top of my head.

MR. SMITH: It might be eight feet --

MR. MACMANN: I was just trying to --

MR. ZENNER: And there will also be additional depending on the scale of the -- if it were zoned M-N and depending on the proximity and the scale of any future structure, you would have neighborhood protection standards that would also come into play with step-down or set -- increased setback in addition

to the required screen and buffering requirements. Likely, I believe this would be a type three buffer, which would be the ten-foot buffer and an eight-foot-tall screening device.

MR. MACMANN: Okay.

MR. ZENNER: So that would be part of the situation that would exist between the two uses to provide separation.

MR. MACMANN: One -- thank you, Mr. Zenner. On another note, on recent -- in the recent past, we did rezone for the solar farm and PUD-7 down there to south. We've done a fair amount of work down there recently, too, have we not? Where --

MR. ZENNER: Off of St. -- off of St. Charles Road?

MR. MACMANN: Correct. South -- due south of this property, but across the highway.

MR. ZENNER: That is correct. There have been a number of requests, annexation, as well as subdivision and rezoning.

MR. MACMANN: And I just -- one last question here. Your reason for denial, I just want to mine into that just a little bit. Given the current size of the potential commercial district, too much for what's out there; is that what you're saying -- given there's not any housing or little housing?

MR. SMITH: I think, at this point, it's -- it's harder to determine. I think it could be enough as it is. It could need more. I think the point is that there's enough vacancy there, it's hard to determine how much commercial entitled properties out here is really needed.

MR. MACMANN: It is vacant. I'll agree with you there.

MR. ZENNER: Said in a different way, Mr. MacMann. I think dilution of the existing commercial by adding to it is not viewed as appropriate at this point. We need absorption of what's there and then if what is there is absorbed, and there still is additional demand needed to meet the surrounding developments consumption needs, then we would come back and we would look at a request that would be possibly better justified given you have a vibrant commercial district that is fully occupied or has minimal vacancies which is typical in most of our commercial locations throughout the City.

MR. MACMANN: All right. Thank you. Madam Chair, that's all my questions for right now. Thank you.

MS. LOE: Thank you. Any additional questions for staff? Mr. Strodtman?

MR. STRODTMAN: I just want to go off of Mr. MacMann's comments a little bit. At what -- what's the -- what ratio, this occupancy criteria is kind of new to me. At what point are you saying it's acceptable for more? Is it a 20 percent vacancy rate or, I mean, I don't think that that's our decision personally. I think we're asked about a land use and not if it's going to be successful or not because if we're saying that it won't be successful because there's other vacancies, then are we going to set other people up for failure when we approve their project. And they say, well, Planning and Zoning approved us, they must think it's going to work because they think it's a vibrant business area. That doesn't always mean it's going to be successful. So I think we're kind of treading on business rights, and if I want to take the risk a developer or an applicant to build something, then I'm taking the risk and I don't know. I just want to know

more about what that threshold is and not just a personal opinion.

MR. SMITH: No, I mean, I get the concern. And what I'd love to tell you is there's a hard rule and a hard number in Columbia Imagined or any other documentation we have, but there is no minimum commercial district size. There's no limit that says it cannot exceed 150 acres. So at this point, it is somewhat subjective. I think looking at the district, though, I think what you can see clearly is the vacancy is high. And I don't want to say vacancy in the manner that things, you know, have been abandoned. It's just the development has not caught up so much with what we've entitled. And I think there is a reason there to say let's let that catch up. And once it catches up, we can reevaluate some of these edge properties and say do we need more commercial to meet the goals of the City or do we need to provide additional residential -- high density residential development for people that are also in close proximity to these commercial uses. And I do think that's the City's role somewhat to say what do we feel is appropriate zoningwise, but also what is appropriate to meet the goals that we have laid out. And so that's part of what our evaluation was there. We -- I look at this as a good opportunity to have something that is a different mix of uses, to have a really good transition from that commercial to high-density residential perhaps, and then this medium residential because that -- that sometimes is very important for the success of a commercial district. And that's also some of these features and facilities that people, you know, more and more are seeking in residential locations is something that's walkable that they can actually go to their residence to commercial districts and to services and to stores -- retail stores without having to drive. And this provides a really good opportunity if, in fact, in a few years we reevaluate it and determine that R-MF maybe is the best zoning for it. I'm not saying --

MR. STRODTMAN: My suggestion is, is I think you need to come up with a hard, fast rule or a process to evaluate that because, in my opinion, it's -- we can start -- we're opening up a can of worms potentially with future developments where a citizen, a neighborhood could come to us and say we don't think it -- we're ready for that. We don't think it's going to be successful and so, as a result, they're going to put pressure on you to say -- make a business decision that you're not qualified to make. So I think that we just need to have a process, if you're going to make this occupancy criteria going forward, I think we just need to have a process to -- so that the development community knows that, hey, we might have to wait five years, ten years, because we have a high school out there. We have an elementary school out there. It's on I-70. I don't know what more, you know, necessarily it could take to justify, you know, a business corridor. I just think we're setting ourselves up a little bit for the vagueness of we, the -- not me, but you, the City, is trying to dictate businesses' decision and I think that should be the businesses' decision and not the City. So I think the land is appropriately zoned and it should be, you know, at that owner's choice to build it today or tomorrow. If it needs, you know, some setbacks or some things in between to transition, then that's acceptable, too. I just don't think it's -- unless we have a process that says, you know, unless it's 75 percent occupied, we're not going to go to that next level. I think unless we have that, I'm just concerned, so --

MS. LOE: Ms. Rushing?

MS. RUSHING: And I agree with Mr. Strodtman. To me, the M-N zoning would be appropriate between the multi-family residential and the commercial. And for us to say we're not going to give that zoning because of the vacancies, to me, is holding this property owner hostage to some other property owner's decision as to how they're going to use their land, and I don't think that's appropriate.

MS. LOE: Additional comments? Mr. Toohey?

MR. TOOHEY: I was going to wait until we heard from the applicant if we are going to, but I -- I agree. I mean, maybe the right kind of commercial isn't out there at this point and with this approval, that might happen. I mean, there's already a ton of residential out in that area that could potentially be underserved.

MR. ZENNER: And I would suggest, though, based on that statement, if there was a demand for commercial development out there on the acreage that is currently zoned, which is, I believe, the point we are trying to make, you would have seen development to satisfy the rooftops that are there. There are not enough -- there is not at this point, to staff's evaluation, enough demand to support the addition of this particular acreage at this time. And once you create potentially a catalytic project, such as what is going to be discussed in the next two cases moving forward, you may create the incentive to develop that which is vacant. But until the vacant property has some purpose for development to add to that doesn't provide -- it may not provide the land-use transition or the zoning in order to accommodate something that is more compatible with the comprehensive plan because you are diluting -- you are redirecting where we should be directing infill development to first. The property that is zoned M-C that is down just north of where Ashley is has been zoned that way for probably ten-plus years and has not developed. If we have the rooftops and the demand, you would have expected to have occurred at this point. We haven't seen that. And with the school -- two schools and additional development being built out there, we would have also seen that. So what you are doing in respect to zoning this particular parcel M-N is you are basically pulling away an opportunity to utilize it. Yes, we may be creating winners and losers, which I think is part of what the Commission is concerned about. However, we're looking at an overabundance of a particular land use type that may be premature. And that's our opinion, that is our position. And to take a hard and fast rule that 75 percent occupancy must exist in all of our commercial zones within the City I don't think is -- it may not be wise on our end as a City because not all areas are created equally. And in some instances, you may have an area in transition that's going to have a higher level of vacancy and we have many areas in the City -- Blue Ridge Town Center. It has been zoned commercial for years and it has not yet developed. And it is surrounded by a lot of rooftops. Is it appropriate, I think, from a land-use perspective for this Commission to continue to approve additional commercial development when other parcels exist in the City that could be accommodated in better locations possibly that have the transportation infrastructure already in place? That's part of what our decision-making process is and that's how the evaluation on this particular case has come forward. We understand it is a directional shift; however, we believe that it is -- it is appropriate to point out these facts and let the Commission make that decision.

MS. LOE: Ms. Russell?

MS. RUSSELL: I agree with Mr. Strodman and Ms. Rushing. I particularly agree with the hostage mention of holding that -- this property owner hostage or future property owners hostage. To me, this just is like screaming -- stomping on someone's property rights. If they want to do this whole project together, we don't have a crystal ball to say what might -- they might put out there or what might happen. I mean, this is a great piece of property to do something really cool on. And so, I -- I agree. I just -- I think that for us to -- to just say no, the City thinks that the other businesses need to get filled in first without a hard, fast formula, I don't -- I don't agree with that.

MS. LOE: Any additional questions for staff? Mr. Smith, I believe in your report, you identified an appropriate use of the site would be multi-family, office, or mixed neighborhood. I believe M-N does allow multi-family, office, and mixed -- small commercial. Can you tell me what density of housing would be allowed in an M-N district?

MR. SMITH: It would be the same as the R-MF, so it's appropriately or approximately about 17 units per acre.

MS. LOE: So if we -- so we're not outruling -- in fact, if it was zoned R-MN, it could be developed in any of those ways. By leaving it as agriculture, we're actually disallowing it from being developed in any of the manners that we've identified as appropriate.

MR. SMITH: Yeah. So that's correct. So M-N, you know, it is mixed use, so it would allow a lot of the actual --

MS. LOE: It would allow any of the mix.

MR. SMITH: Yeah. R-MF.

MS. LOE: Okay. Also in Case Number 196-2019, it identifies, I believe, that the owner actually requested M-N for all three parcels, but that's contingent on this parcel being rezoned M-N; is this correct? That they didn't actually ask for an M-N, M-C, they wanted M-N across all three, but if they don't get M-N on this parcel, then we're going to go with a split zoning on the two. No. I'm not reading this correctly.

MR. SMITH: No. I'm not -- I'm not aware of that. I think the --

MS. LOE: Okay. Let me -- let me -- because I actually saw --

MR. SMITH: There was -- there is a potential split zone issue --

MS. LOE: Correct.

MR. SMITH: -- if staff recommendation is followed because the -- the corresponding of the -- of the lot that would be created there would split between the M-N on the small portion of the annexed piece and then this, which would be A.

MS. LOE: So if this was zoned M-N, that doesn't change -- since it's in another case, it's going to take me a minute to find it.

MR. ZENNER: Ms. Loe, to just simplify this --

MS. LOE: Uh-huh.

MR. ZENNER: -- the request for 196-2019, the annex -- the permanent zoning was for M-C to the east, M-N on the western portion of that, and that M-N would be combined with this current request, 195. The staff report for 197, which is the preliminary plat, makes mention of a split-zone scenario that would exist if, in fact, the Commission were to not approve M-N on 195's parcel. There has been no -- there was no request submitted in my review of the report when I proofed it before we presented it, there -- it was clearly indicated to us from application to report preparation, M-C east, M-N west on 196.

MR. SMITH: Yeah.

MR. ZENNER: There was never any -- any contingency here. We don't offer the opportunity for an applicant to provide requests to the alternative.

MS. LOE: Okay. So that parcel was always M-C?

MR. ZENNER: Always M-C, M-N. It was a split M-C, M-N parcel and they were looking at the M-N on the western portion of that property, the proposed permanent zoning site, for the purposes of transitioning all the way over to the PD multi-family development on the far west boundary of the overall tract of land.

MS. LOE: Okay. Thank you for that clarification. Any additional questions? Mr. MacMann?

MR. MACMANN: Just to close up a little bit, I think at this time, it would be good to hear from the applicants, but I think we've raised enough questions among ourselves that when we're moving forward, particularly when we're doing this west area plan, and we're looking at intensities and sizes and ratios, that we have a process or a series of processes that Mr. Strodman had mentioned so -- because we're going to have -- we're going to have this issue. I just recommend that we have the philosophical and ordinance type debate not on this applicant's time.

MS. LOE: Any additional questions from Commissioners for staff? Mr. Smith?

MR. SMITH: Yeah. If you don't mind, I just want to clarify that my statement on the case, and that the vacancy percentage isn't something we looked at and said that's clearly a tipping towards the wrong direction. I think it's more along the lines of we have a large commercial district here and it's not yet developed, and we think that this could be just the commercial district that we have. This is what we need here, and this piece then, the appropriate long-term zoning for the site might be more appropriate for residential. So there wasn't a test that we put on there. There's not a minimum vacancy I think that we're advocating for. It's merely looking at the site and saying given the direction that we get within the Columbia Imagined, what's a reasonable future zoning for this site. And, honestly, M-N would not be it. It would be something that probably offers different opportunities given that we have a large amount of commercial now and it's not fully utilized. And so that's -- I'll leave it at that.

MS. LOE: Thank you. Any additional Commissioner questions? Seeing none. We're going to open up the public comment period.

PUBLIC HEARING OPENED

MS. LOE: If anyone in the audience has public comments they would like to make about this case, they're invited to come to the podium. Please give you name and address for the record. If you're

speaking for a group, you'll be allowed six minutes. If you're speaking individually, you'll get three minutes. The little red light on the podium will let you know when your time is up.

MR. HOLLIS: Good evening. My name is Robert Hollis with the VanMatre Law Firm, with offices at 1103 East Broadway, here on behalf of the applicant. I've passed out a PowerPoint presentation to you that will also be on the screen. With me here is Elliott Reed with Cochran Engineering. He will speak to you if you have questions, and then also with regard to the preliminary plat, which is the last of the three matters to review. I can skip a lot of what I put in this presentation. You guys have made a lot of my points, so I appreciate that. And staff, of course, as always, has done a good job of explaining the situation in general. As far as existing conditions and projected conditions, if you see that slide, here's what it looks like now. Even though we're not considering this portion that I'm showing this overlay on, that's the idea, and that will be a plan or at least something very similar to that -- a large grocery store and some outlots on the site. That will be on the M-C portion of the site. And as Mr. Zenner so aptly put, a catalytic project is on the way, and so all the more reason why we think M-N is appropriate on the -- on the west. So on the agenda, you have rezoning, which is identified. And then you have permanent rezoning if annexed. You have a preliminary plat as described by staff applicable to the entire site. Now, to the matter at hand, which is the proposed M-N, approximately seven acres. This depiction is directly from the M-N ordinance. And if you look at it, it looks a heck of a lot like what it looks like there now, and that's with regard to the residential portion on the -- on the right of the depiction. And I've got some photos, and if you've been out there, you've seen what The Links look like, and it looks very similar to that. Of course, we don't know what the M-N development would look like, but it's sure what we're proposing certainly matches the depiction. So here's a photo of what it looks like, looking to the west. And as far as -- it seems to me that we have essentially two competing issues or primary issues. One, are you in the business of making decisions that it seems at least a few of you are opposed to making with regard to inventory and regardless of whether or not a site is from a land-use perspective proper, do you then override a proper land-use decision based on how you view the market. And so I'll leave the -- that second part up to you and we'll talk about land-use decisions for the most part. In particular, the fact that this is what I believe is a proper buffer as requested by the existing ordinances, I mentioned the catalytic development to the east, the developer and the property owner believe that it should be commercial now. And as Madam Chair pointed out, that would certainly not preclude high-density residential if that's what the market demanded. So we also -- you also talked about the fact that there would be a single lot. And if you look at the plat which -- that's not -- we're not there yet, but Lot 6 on the plat would be if you didn't approve M-N would be split zoned. You would have -- assuming you approved M-N for the western portion, you would have a lot that would be partially M-N and then A, which I don't think anybody thinks A is the proper use -- land-use designation for the site. There is a buffer that no matter what we do will not go away. And so I want to show you as best I can with photos the topographical buffer. This is standing at the north part of the site immediately adjacent to the western boundary looking up the hill. And so that row of trees also has a fence in it, and so that's the property

line. If we were to take this site down to where it would need to be taken down to in order to develop it, you would still have this enormous, I assume, a retaining wall and mound because this mound doesn't end in our property. As you can see, it stays high as it -- this is now, I've moved to the west, and you're looking at The Links property, it remains high. So there is nothing we can do to get rid of that as far as buffers go. Sure, the ordinances require buffers, but this is the ultimate buffer. It would be a giant wall. Here is one more photo that shows that. The staff's recommendation, we agree with much of what staff has in their report. There isn't technically any vacant M-N property that we could find in the area that staff references. There may be some planned districts that have similar used, but, technically, there is no vacant M-N. There's definitely the infrastructure, the 50-foot setback exists, and the grade change is not going away. And with that, with regard to the rezoning portion, we respectfully request your recommendation for approval for an M-N zoning district. And I would be happy to answer any questions.

MS. LOE: Thank you, Mr. Hollis. Are there any questions for this speaker? I see none. Thank you. Any additional speakers on this case? Seeing none, we're going to close the public comment.

PUBLIC HEARING CLOSED

MS. LOE: Commissioner discussion? We've already had a lot of discussion. Any additional discussion? Ms. Russell?

MS. RUSSELL: I'm just going to go ahead and make a motion and we'll see what happens. In the Case of 194-2019, Donna Jean Armstrong Unitrust rezoning, I move to approve the requesting M-N zoning change.

MR. STRODTMAN: Second.

MS. LOE: Second by Mr. Strodman. We have a motion on the floor. Any discussion on that motion? I see none. Ms. Burns, may we have a roll call, please.

MS. BURNS: Yes.

Roll Call Vote (Voting "yes" is to recommend approval.) Voting Yes: Ms. Burns, Ms. Loe, Mr. MacMann, Mr. Strodman, Ms. Rushing, Ms. Russell, Mr. Toohey. Voting No: Ms. Carroll.

Motion carries 7-1.

MS. BURNS: Eight to one -- seven to one, motion carries.

MS. LOE: Thank you, Ms. Burns. Six to one. Michael showed up.

MR. MACMANN: After Pat's very concerning e-mail, I couldn't not be here.

MS. LOE: Seven to one, motion -- just to be clear -- motion passes. Recommendation for approval will be forwarded to City Council.