

**EXCERPTS**  
**PLANNING AND ZONING COMMISSION MEETING**  
**January 9, 2019**

**Case Number 28-2020**

**A request by Brush and Associates (agent) on behalf of Thomas and Pam Kardon (owners) for a rezoning of approximately .44 acres of property from PD (Planned Development) to M-N (Mixed Use-Neighborhood). The property is addressed as 1001 N. Providence Road and is located at the northwest corner of Providence Road and Third Avenue.**

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

Staff report was given by Ms. Rachel Bacon of the Planning and Development Department. Staff recommends denial of the M-N zoning map amendment.

MS. LOE: Thank you, Ms. Bacon. Before we move to Commissioners' questions, I would like to ask any Commissioner who has had any ex parte on this case to disclose that now so all Commissioners have the same information to consider on behalf of this case in front of us. Seeing none. Are there any questions for Ms. Bacon? Ms. Burns?

MS. BURNS: Ms. Bacon, do you know what the coffee shop hours -- how late they're open in the evening? No?

MS. BACON: I don't, but the gentleman who owns it is here, so it might be a question for him.

MS. BURNS: Okay. Thank you.

MS. LOE: Ms. Carroll?

MS. CARROLL: Can you remind me what the zoning of the coffee shop is?

MS. BACON: It's PD.

MS. LOE: Mr. Strodtman?

MR. STRODTMAN: Ms. Bacon, I think you -- earlier slide said there was 19 postcards?

MS. BACON: Uh-huh.

MR. STRODTMAN: A couple of questions then. I assume one of those 19 would have been the CPS? Would they have gotten a postcard?

MS. BACON: Yes. Uh-huh.

MR. STRODTMAN: And there was no feedback of any sort from those 19, other than the coffee shop in agreement verbally?

MS. BACON: Yes.

MR. STRODTMAN: Thank you.

MS. LOE: Mr. Toohey?

MR. TOOHEY: So is your main objection because of the alcohol and tobacco sales and the hours of operation, or was it just in general all the other -- I mean, was it specifically those two items?

MS. BACON: Those were the two that we were most concerned about being directly across from the school.

MR. TOOHEY: Okay.

MS. LOE: Any additional -- Mr. Toohey?

MR. TOOHEY: So Taco Bells are beginning to serve alcohol around the country. So what happens if Taco Bell begins to start selling alcohol? Are there any restrictions that prohibits them from doing that?

MS. BACON: No. They would be outside the 100 feet.

MR. ZENNER: And I think the difference there, Mr. Toohey, is Taco Bell is currently zoned to operate as a restaurant, which is not what this site currently is allowed or authorized to operate as. And I think that was part of what Ms. Bacon's point was is there was a significant amount of neighborhood engagement to specify the uses to reduce impact that this facility may create. We can't speak to why those neighbors have not responded at this point. However, we believe it is our duty to ensure that, as Ms. Bacon pointed out, that that public process that was employed is honored to the extent that it can be. Obviously, this decision is yours if you feel that it is appropriate to remove the conditions and Council agrees with that, that'll be the outcome. However, we believe that there are other issues associated with this that resolving the desire for expansion of the uses can be accommodated and it is more appropriate to go through that process than to open this particular site up to an opportunity to change at the whim of a market that may potentially create much greater negative impact on the adjoining property owners than what exists there or possibly what the applicant would like to do immediately, and that is what the planned district process provides for us at this point.

MS. LOE: Any additional questions of staff? Seeing none, we're going to open up the public comments.

#### **PUBLIC HEARING OPENED**

MS. LOE: If anyone has public comment on this case, please come up to the podium and give your name and address for the record. You'll have three minutes to speak on your behalf. If you're speaking for a group, you'll have six minutes.

MR. RIPPETO: My name is Tom Rippeto, and I live at 806 West Boulevard South. And I'm interested in this neighborhood for a couple of reasons. I am an investor in property in the last couple of years in that area, and I'm an alumni of the Ridgeway School District, and feel like this area, and I want to segue on the word that you used, it is a very sensitive residential area. And encroachment from I-70 or Business Loop 70 has created a number of problems for those -- that area. It's almost a case of where if you're going to give it up to retail and that sort of thing, it's just going to push us all the way -- all the way back. Parking lots, neon signs, you're going to destroy the neighborhood. I think there is a significant number of residents in the area that enjoy that type of a neighborhood, and I think as an investor -- I own

-- I just purchased four lots on Third Avenue just across the street from this -- this business. And the way the whole thing sits, it looked -- it looks perfectly fine. But I'm very concerned about trying to -- and I'm going to demolish some houses and wanting to build in that area. You know, what am I going to be dealing with? The traffic from some of the businesses on I-70 filter down through that neighborhood already. I'm afraid -- I'm afraid this change will encourage that even more. And it's not -- it's not necessarily local traffic that's coming through there. So it again -- it's a sensitive area. It's not going to affect my -- probably my investment long term, anything like that, but I do have an interest in the neighborhood from -- actually from that whole -- that whole area. Any questions for me?

MS. LOE: Any questions for this speaker? I see none at this time. Thank you.

MR. DARKHALIL: Yosef Darkhalil, I'm with 1009 North Providence, Aroma Coffee House. And we are Mr. Kardon's neighbor. And the reason we are supporting Mr. -- because we don't want to see an empty building. Because what I'm seeing now, I've been there every day for the past three years where they have a sign out there to lease it for the past seven months. And a lot of people come in to talk to me thinking I own the place because I'm there, and here you want -- and no, they call the number, so called him, and they -- they can't because they have to go through that every time they need to lease it for something or something else. Now the building is there and I'm -- I'm -- so the building is not going to change with the zoning. And I believe that there are a hedge in the new UDO that was passed in 2015 that will prohibit the use -- the sale of alcohol and tobacco, and that's at least what I thought when -- when we developed the coffee shop that it will never -- and I hope it will never sell that across the street from school. Now the other -- the other thing that I'm hearing from the investors like the gentleman that spoke, and I'm -- nobody is building their own home over there. Yes, they're building homes, but they're building homes for business, and they are using three or four or five lots on that, and they are collecting about -- or paying about \$3,000 or \$4,000 in property taxes, where Mr. Kardon's lot, after it was developed from \$500 to \$10,000 in property taxes. So he pays \$10,000 in property taxes and now he's going to wait on an empty building if he can't find the right tenant. So just look at it from his -- as investor put -- that puts a building there and he can't change it. It's there now. We can't change the building, but we're going to see an empty building. And, you know, just growth and he just has to mow it without -- without a tenant. That's what we really want to see. And I didn't see any -- spoke with the neighbors and it's there, not maybe the change of use, it's not going to change that many traffic on that, that much of the traffic on that -- on that building. I hope you consider his request and help him out, at least.

MS. LOE: Thank you. Are there any questions for this speaker?

MR. STANTON: If I'm correct, you own --

MS. LOE: Mr. Stanton?

MR. STRANTON: Oh, excuse me. If I'm correct, you own the coffee shop?

MR. DARKHALIL: Yes. Correct.

MR. STANTON: Okay. That you came before us a couple of years ago, last year?

MR. DARKHALIL: Yes.

MR. STANTON: Okay. So you understood at that point when you came before us then how serious the neighborhood is about retaining a particular feel, a particular, you know, buffering from commercial property. Your argument just now is, oh, it's going to increase property tax, it's an empty building. We need to do something with it, but you understand through the report, it's not a matter of using it, it's our concern of how it can be used with the zoning. I don't think -- and so by giving you the open slate to do whatever you want in that building, do you see where the concern of the neighborhood would be? I mean, so the property tax really isn't their concern. They're concerned about their neighborhood in general.

MR. DARKHALIL: Yes. I -- I studied -- and if I exceeded my time, I can just -- just let me know when. But I -- when we started the coffee -- that building and the rezoning on that, I studied the whole case of Mr. Kardon before I even talked to the neighborhood. And we started with the neighborhood and we did not have any problems with most of the neighbors in the neighborhood. Now we did have some people standing in here and talking about it and a lot of them, I'd say 30 percent of them, were not even in the neighborhood, but just they're here and they just come in and complain about every single project in this town. And I've -- they have been in front of you and you know them, and I know them, and I can -- you know, we're not naming names, but it -- it happens. So a lot of the rejections, all the minutes are there. I have copies of it. I could -- a lot of the complaints did not come from the neighborhood because we -- we met -- actually, like, the neighbors and now with what we did up -- most -- some of the neighbors said no, and now, you know, we're hosting that we're going host hopefully the neighborhood meetings in the coffee shop, for instance. But what I'm saying now, it's a beauty supply shop. Right? And it has traffic. It's not going to stop. Cars going to come, cars are going to go, customers are going to come. So if it's going to be a restaurant, which is -- I'm not -- you know, I'm a coffee shop and it may be a competitor to me if he puts a restaurant there. I'm saying okay, why not? Give him that -- it would be less traffic than -- than a retail shop like that. But -- so the traffic part of it, I'm really not seeing anything because if -- if you've been on Providence, it does not lack traffic and they don't stop. They're just in and out, in and out, like, going back and forth. So I -- there are some -- the neighbors that were not with it, but not everybody that came. A lot of them came to support that -- actually, that --

MR. STANTON: So if it's about using the building, then a planned development shouldn't be a problem there, because then it's -- then it's protecting what the neighbors have concerns with and it's protecting our concerns because I live right close to this and I -- I know the neighbors around there. I don't want a liquor store there. I don't want a --

MR. DARKHALIL: Yeah. Well, I really do not think --

MR. STANTON: I don't want a -- none of that.

MR. DARKHALIL: I thought there was a hedge in the 2015 UDO that will stop any -- and I'm, you know, I would love to own Aroma Coffee House for -- forever, but one of these days, if somebody else bought it from me or my siblings come in and they want to put a cigarette store or a -- that they will -- something will stop them from doing that. I hope so.

MR. STANTON: You went through a big fight with your coffee shop. Right? And we -- you know, I remember that. I was in on -- a part of that, so --

MR. DARKHALIL: Yeah. Uh-huh. No. I -- I'm just wanted -- I really --

MR. STANTON: The neighborhood is --

MR. DARKHALIL: I'm -- right now, with what I see and the neighbors, I'm concerned that with -- with what the tenants want every time they call to come and rent it, if they -- because he has to come in and apply for a new permit every time he gets a new business, every five years or three years, and it's always people call and then they will never call him back again because they -- of that. So I'm -- I'm just -- I'm here to ask if you guys can give him a, you know, a pass on that. And I'm sorry that I --

MS. LOE: Ms. Burns?

MS. BURNS: Yeah. How late is coffee shop open?

MR. DARKHALIL: Eight. Eight.

MS. BURNS: So 6:00 in the morning till 8:00, and I hope we're not -- that we're not violating anything here, because I thought 7:00 to 7:00. No. We're open 6:00 to 8:00, and just to let you know, we employ ten workers at this minute. Right now they're -- and at least seven of them are full time, and three of them walk to the coffee shop from their -- their residence, so --

MS. BURNS: Thank you.

MS. LOE: Any additional questions for this speaker?

MS. CARROLL: The reason --

MS. LOE: Ms. Carroll?

MS. CARROLL: Yeah. I suspect the reason why you can't have alcohol sales or a cigarette shop where Aroma Coffee House is is because you're planned development, which is the same zoning as this lot. What they're asking for is a change in zoning, and it's not so much that we're considering retail as a problem as it is, we'd like to have the opportunity to consider the retail given that the neighborhoods have been involved. They're asking for a zoning, that you don't have, and -- and that's why it's different.

MS. LOE: Any additional questions? I see none. Thank you.

MR. KARDON: My name is Tom Kardon, home address 4103 Hartfield Drive. My dad owns the property and I will represent him. The company we have is called goPuff. It's got over 100 stores in the U.S. He does not sell tobacco or alcohol. It's an online store. He provides an online service. You need to order ice cream, they will bring it to you. You want pasta, they will bring it to you. If you want coffee, they will bring it to you. If the coffee from the neighbor -- everybody is happy, they could do it -- they could order online. So, therefore, the traffic, it's not there. And also what I heard is tobacco and alcohol. He does not sell tobacco and alcohol. It's not open to the public. You are online. A long time ago when my dad built a store, I took over his business. I'm the owner of the repair shop now. He was planning for me to take and open a parts store with my brother, but that -- it never happened. So therefore, I took the business over and I can't operate both places. So what we're asking now is the existing tenant was there for ten years, and he can't afford to stay in business. So you guys want to promote growth, you guys

want to provide jobs, it's not about alcohol, it's not about tobacco. It's an online convenience store that they deliver products -- baby diapers. What do you need? If you need something and they don't have it, and there's a service, like, let's say Gerbes, they don't have a delivery, they will deliver it to you. That's all it is. And imagine the people in the neighborhood that can get jobs. And there's not much traffic flow. When the student wants to order coffee because he's studying at 4:00 in the morning because he runs out of coffee, he gets on his phone like everybody else, he doesn't -- you know, he orders coffee, they take it to him. Where is the big deal? Where is the -- why are stuck at the tobacco and the alcohol here? And this is just an online convenience store which provides goods, nothing to do with that. It will create income, jobs, and revenue. There's a lot of people without a job right now. I have friends of mine with experience in those areas, and they can't get a job. So what are we promoting here, growth or not? Ask me that -- ask anything, you can ask me.

MS. LOE: Thank you, Mr. Kardon. Are there any questions for this speaker? Mr. Stanton?

MR. STANTON: Sir?

MR. KARDON: Yeah?

MR. STANTON: It's not what you may currently do. We have to think --

MR. KARDON: Long term.

MR. STANTON: -- 20 and 50 years ahead of time. So we're worried about when you leave that spot, by giving you this particular zoning, what else can happen there. So we're not worried about you right now, right then. We're thinking 20, 30, or 50 years away from that.

MR. KARDON: Right. So --

MR. STANTON: So we're protecting the neighborhood from when you leave.

MR. KARDON: Right. Right.

MR. STANTON: Now maybe you don't, but maybe you have an opportunity that you can't refuse. We're protecting the neighborhood from that.

MR. KARDON: I understand that.

MR. STANTON: So a planned development like your neighbor had would -- would do that. You can tell us what you want to do, design it, we can work a deal, and everybody can be happy and we can guarantee that the fears of the neighbors that have been well documented over time would be protected.

MR. KARDON: Right. I understand that. And my answer to that is in order to get here, I had to ask a different zoning. Right? Basically, what I want, exception on the current zoning, plus just for the use for ten years. So therefore, your case is not valid because I'm not looking for the long term, but I can ask for the existing zoning, I have to go to the M-N. So basically what I'm asking is from what I've got, and to add an extra use, if that's possible.

MS. LOE: Ms. Carroll?

MS. CARROLL: That sounds like planned development to me, though. Can we not, as part of planned development, can you not apply to have that added to the use? Yeah.

MS. BACON: Yes, he could.

MS. CARROLL: That could still be done as planned development.

MR. KARDON: That's why we -- that's why we -- you know, MALY Real Estate works with me, so basically, that's what we were asking at the beginning. But he told me to, you know, to apply for M-N, so I did what I did. So, basically, what I'm asking is, I have the existing one, I have this company right now with a guaranteed contract to create jobs, to create income for ten years, and it's an online store. You add their use --

MS. LOE: So Ms. Bacon?

MS. BACON: Yes.

MS. LOE: Currently, the statement of intent identifies that professional business use involving sale or provisions of services, but not the sale or rental of goods. Could that be amended to add online sales?

MS. BACON: Not defined in our Code.

MR. ZENNER: Yeah. We do not define online sales in the Code, so the -- the operation that is currently there, which actually as a part of our review of this application and the current tenant, AQ Beauty Supply, it's a personal service. They have retail sales associated with the personal service that they are offering. And therefore, how this particular use that is in the structure has been permitted from a licensure perspective was found compliant is because it's a -- the retail sales is related to that personal service. What is being suggested here is actually a full retail use, which is currently not included. Yes, if the applicant were to come and ask to have the use list amended for retail, that is for general retail, that is a possibility. General retail would however include, not that this is what they're desiring, but it goes to Mr. Stanton's point, it would include tobacco, vape products, anything else that is sold at retail. So there is no control within that retail definition within our Code. Alcohol, alcoholic beverage sales is actually a principal permitted use in M-N, but it is a separate defined use, which means if the statement of intent weren't amended to include alcohol beverage sales, if an application came in to open up a liquor store, an Arena Liquor or a Circle Liquor store, we would likely, through a business license review, as a staff, deny that building -- deny that business license application even though it could be considered general -- alcohol could be considered general retail, but it is more specifically defined in our code.

MS. BACON: And I've pulled up the 2009 SOI if you have any specific questions about it at ready.

MS. LOE: The point here being that it seems from what Mr. Zenner just said that the statement of intent could be amended to include the use you say you're interested in using.

MR. KARDON: Right. Right. And we're just trying to --

MS. LOE: Okay. Mr. Stanton?

MR. STANTON: So my chairman is saying, basically, we want the PD protection. If we give M-N, it's like a wild, wild west.

MR. KARDON: I understand that.

MR. STANTON: We don't want that.

MR. KARDON: Okay. And that's --

MR. STANTON: That's why it was denied by staff. But the work will -- if you were looking at maybe the -- the statement of intent being modified and then everybody is happy. But we have to -- we have to think long term.

MR. KARDON: Right.

MR. STANTON: We have to. We have to think hundreds, 50 years out.

MR. KARDON: Right.

MS. LOE: And we can work with you if you have a specific use, which it sounds like you do. It's when it's more speculative that it's more difficult to approach.

MR. KARDON: Right. But at the same time, that's what they advised me was, you know, go for the M-N basically. I had to --

MR. STANTON: It's probably more convenient, but not practical for us.

MR. KARDON: Yeah. Right. We can just add the use, basically, and proceed with --

MR. STANTON: Hopefully. Yeah.

MS. CARROLL: Yeah.

MR. KARDON: That's, you know --

MS. LOE: Let's see if staff has any advice.

MR. ZENNER: We are -- we are working a solution for you, as you speak, so you all know how we operate.

MS. LOE: We're trying to buy you some time here with our --

MR. ZENNER: Thank you. I greatly appreciate that. We group think over in this corner. So the applicant is asking for a less restrictive zoning designation on this property at this point. We have advertised for something less restrictive. An amendment of their existing statement of intent to include a general retail use would be an option to consider at this venue, before this body, through this advertising. That would be an amended application that we would just forward to City Council with your recommendation. I think what we would advise, and this is what Mr. Caldera and I were talking about. As I pointed out just a moment ago, alcoholic beverage sales, and this would not be associated with a restaurant, for example, it would be package sales, is a defined use within the use table, in our permitted use table. We would probably, however, as we have done previously, with this particular property, the original designation on this property was restricted to a single land use, as you probably identified in your staff report, to an auto parts store. Back in the day before we adopted the UDC, that was the tactic that we normally took. We would eliminate everything out and put a single use on the property. While we have gravitated away from that, there is nothing to state that we can further refine a use restriction through an existing planned district. So we're -- and what Mr. Caldera and I were talking about is, is by default, while we would say retail sales, because alcoholic beverage sales is singled out as its own land use, if it was not included in their statement of intent, it would by default be considered not permitted. To make that emphatically clear, however, we could indicate retail sales with the exception of alcoholic



beverage sales to clearly indicate that the intention here was to eliminate that. Cigarette or tobacco sales, unfortunately, because it is not listed within the Code as a separate land use, we would not be able to restrict. And at that point, that is where you would end up with a little bit of the gap maybe of adding full protections, if that is what the Commission is indicating. So -- and that may -- that's a lot of information to be presenting here and dropping on the applicant at this point as to how this may impact their proposal. They may choose that they want to have a little bit of additional time to discuss this with our staff. What I can tell you is that if what I'm understanding Mr. Kardon, on behalf of his father, respectfully requesting that the Commission do, the opening of just general retail sales with no change to the building, so we have all of the exact same design parameters associated to it or have the same restricted hours, but just adding the use, based on what I'm understanding I'm hearing this evening, that would accommodate them, and then given the model that they are proposing to implement for their purposes at this point, a restriction of alcoholic beverage sales as an add-on to retail sales would gain protection for moving forward should the Kardons decide to sell the property or open it up for someone else in the future to operate a business there, but it would clearly indicate to the public that you never wanted a bar, you never wanted alcoholic sales on this property, which is what the current provisions contain as restrictions because they're not permitted uses, and I think we can move the item forward. But that is if the applicant is comfortable with doing so and getting the retail component that they're really wanting, and if that's not clear to them, we're more than happy to come back and discuss this and bring it back on the 23's agenda. Or if the Commission is not comfortable with that, we could do that, as well.

MS. LOE: Mr. Strodtman?

MR. STRODTMAN: Mr. Zenner, the only thing I would maybe caution -- or maybe caution Mr. Kardon is when I go to the website of goPuff, they do sell alcohol on the website. Now, that may be they're going to change it. It's packaged and it's only online, so maybe you could word it or change it where package alcohol that's ordered and delivered -- or on the website it has goBooze.

MR. KARDON: Yeah.

MR. STRODTMAN: And you click on that, it has wine and --

MR. ZENNER: Ms. Bacon brought that to my attention. I think bottom line is, you have to likely get a retail sales license for alcohol in addition to a general retail license, which would be required to go through an evaluation process to ensure that it met the separation requirement from the school. That is likely going to come through our business licensing process, so we would likely not allow that. Again, I think what we want to be clear about, if that is a concern of the Commission, while it is part of their -- their national web chain, the website, that may not be how the independent operators are operating their businesses. They may have the opportunity to choose what products they sell. So a restriction to the package liquor sales is clearly a way of being able to do that. Now package liquor sales is different, of course, from that that would occur if they should choose to utilize the property and convert it to a restaurant that has liquor sales as part of meal service. So a restaurant with alcoholic sales would be still permitted. A bar or a nightclub, which is -- is prohibited without a conditional use approval. So that is

what the -- I think when we look at what Aroma may have been recalling, that is the restriction in M-N. So a bar or a nightclub would not be permitted there without going through additional review. So I would suggest, if the Commission is amenable to amending just the statement of intent at this point, it is a more restrictive action, therefore, procedurally, you could do that. That is, of course, if the applicant is comfortable with that movement and the Commission is, as well. And, again, we would recommend adding retail sales excluding alcoholic beverage sales.

MR. CALDERA: I do want to stress the last part of Mr. Zenner's statement there. This is ultimately the applicant's choice. If he chooses to proceed with the current request, then, ultimately, you have to make a decision on that. However, if he's amenable to this more restrictive approach, then that's something you can do because it is more restrictive.

MR. STRODTMAN: My last comment, Mr. Kardon, is make sure that your potential tenant understands that the package liquor may not be an option.

MR. KARDON: Right. He knows that. They know that.

MR. STRODTMAN: Okay. I'm just saying, because the website does not --

MR. KARDON: If you scroll -- if you Google it and you scroll down, it says not all locations sells alcohol, so --

MR. STRODTMAN: Just making sure you understand that.

MR. KARDON: Well, they won't -- they won't propose a contract when they know the school is across the street. It does not make sense. You have to be 500 feet away from a school; right -- or a distance?

MR. STRODTMAN: One hundred. One hundred.

MR. KARDON: One hundred, which it is not.

MS. LOE: Ms. Burns?

MS. BURNS: And I don't know, Mr. Strodtman. So does your -- sir, Mr. Kardon, does your business operate 24 hours a day?

MR. KARDON: Mine? No.

MS. BURNS: The business that would be here?

MR. KARDON: They deliver 24 hours.

MS. BURNS: So they -- would trips -- trips be generating out of this particular --

MR. KARDON: Generating. The night shift will be -- probably less, the day shift will be more.

MS. BURNS: So you gave the example of a student ordering a cup of coffee at 4:00 in the morning?

MR. KARDON: Yeah. I mean --

MS. BURNS: So a car might be exiting your building at 4:00 in the morning, driving to get the desired product for your person who was placing an order?

MR. KARDON: They understood that they have what they have in stock, because they will have freezers inside, you know, or if you want chicken, whatever you need, basically. If they have outsourced

it from somewhere else, they'll go pick it up and just deliver it to you.

MS. BURNS: I guess this, just in my mind, I'd like more time to think about this, is -- I don't know if the neighbors understood about trip generation 24 hours a day. I'm looking at the map here, and I'm looking at the properties where your vehicles might be entering and existing, and lights flashing in their cars -- not your -- the business who would operate out of the building.

MR. KARDON: Well, you're saying about lights flashing. Right?

MS. BURNS: I'm saying headlights flashing in windows.

MR. KARDON: Right. When you pull in, there's no houses around it. When people -- when you pull from the Providence into the parking lot, you're not flashing anything.

MS. BURNS: Okay. Thank you.

MR. KARDON: When you pull into the parking lot, you're not flashing anything. When you exit the building, you're seeing the baseball field from Hickman High School. There's no houses.

MS. CARROLL: I thought you exited on --

MS. LOE: Ms. Russell? Ms. Russell?

MR. KARDON: And not always there's going to be traffic flow.

MS. RUSSELL: A couple of questions. If the applicant is amenable to the SOI amendment, do we need two motions, one to deny and then two to approve an SOI? And then a third question, if we feel like we need more time to do this, we have the authority to table this. Correct? Okay. Thank you.

MS. LOE: Ms. Carroll, did you have a question?

MS. CARROLL: I thought the exit of the parking lot was on Third Avenue. Am I remembering that right?

MR. KARDON: Well, the entrance is from the Third Avenue and the exit. A lot of people use it from the Third Avenue. Otherwise, you have to go through the alley.

MS. CARROLL: I think I exited Third Avenue when I drove it.

MS. LOE: Any additional questions? Mr. Stanton?

MR. STANTON: So are you open to the amendment to the SOI?

MS. LOE: Statement of intent.

MR. STANTON: Statement of intent, meaning we change the scope of what you can put there and you abandon the M-N zoning.

MR. KARDON: Right. Right.

MR. STANTON: Or are you sticking to your guns and your own opinion?

MR. KARDON: Right. Right now, what we have -- we have an existing contract in effect, and we need to add that use.

MR. STANTON: Okay. So you're willing to abandon M-N --

MR. KARDON: Yes.

MR. STANTON: -- and amend what you've got? I'm trying to get that clear because that's going to be where my voting is --

MR. KARDON: What do you mean, what I've got? What I've got existingwise?

MS. LOE: Well, are there any -- any additional discussion?

MR. KARDON: Zoning? You mean existingwise zoning, or you mean we're just adding an option?

MR. STANTON: Right now, you're asking to get an M-N zoning. You're wanting to change your zoning from what you have to M-N.

MR. KARDON: Right.

MR. STANTON: We're suggesting that you keep what you've got and change the list of things that you can do with what you've got.

MR. KARDON: Right.

MR. STANTON: Are you willing to do that or are you going to stick to your guns with M-N?

MR. KARDON: No. We're going -- we're going to change it just to get those guys in.

MS. LOE: Okay. So we would change -- we are changing the proposal to change the statement of intent to add general retail sales, excluding alcoholic sales?

MR. KARDON: Right. Tobacco.

MS. LOE: I don't think we can exclude tobacco.

MR. ZENNER: That could be --

MS. LOE: That gets -- that comes in with general retail.

MR. KARDON: Okay.

MR. ZENNER: And that could be a private restriction as it relates to any tenant that may occupy their structure if they wanted to create a legal document that said that these are the permitted uses. That's a private -- private contractual matter.

MS. LOE: That would be between you and your tenant. We wouldn't do that at the City level.

MR. ZENNER: Again, and I think the one thing that we have to point out is, just so Mr. Kardon is aware of this, as well as any other property owners that may be adjoining, an amendment to the statement of intent is to amend only the permitted land use. What we have heard here just momentarily ago is that the potential client, the tenant that would be occupying this facility wants to operate 24 hours a day, the current statement of intent limits hours of operation from 7:00 a.m. to 7:00 p.m. I want to make that very clear, we are not amending that as a part of what -- any motion that you would be making, and that may be a determining factor for Mr. Kardon that if their contract is such that this operator wants a 24-hour operation, they are not going to have it here. We will not, if you abandon your M-N request which is to open up the zoning with no restrictions, if you abandon that and you go to the amendment of your uses that you are allowed to have, they're going to be restricted to a 12-hour operation window.

MR. KARDON: Well, like I said, Mel is -- the real estate agent is not here tonight. He was supposed to be here because I -- he knows more of the details of what they want to propose, because I haven't seen the contract yet.

MR. ZENNER: Mr. Kardon, would you be willing then, at that point, given that Mr. Zelenek is not

here this evening, would you be willing to table this for two weeks to allow Mr. Zelenek to attend the next Planning and Zoning Commission meeting and potentially have any questions, as it relates to what is being discussed?

MR. KARDON: That way, he can clarify, because, like I said, he called me today, he was supposed to be here, he didn't show up. I called him. I have no other details. What I know is what I read in the past and what I saw online, and he told me there's no alcohol, there's no tobacco sales, but I'm -- I don't know about the hours of operation. Are they 24/7, like most of them, or with restrictions, I don't know that. If he was here, actually, he was supposed to call somebody.

MS. BACON: He called me, yeah. We did speak about it today.

MR. KARDON: And what did he say about the hours?

MS. BACON: He didn't say anything about hours. He did say that at some of their locations, they have tobacco and alcohol, but they were not planning on having tobacco and alcohol at this location given the proximity of the school.

MR. KARDON: Because --

MS. BACON: I think the staff might be amenable to maybe looking at the hours of operation of the coffee shop, since you did approve that recently through a public process, but I don't know that we would be able to support 24 hours in this location.

MR. KARDON: Because I thought, you know, because -- since we got here, you never specified and say that -- you were saying all the time tobacco and alcohol, and you already knew that they won't be any use, so why not say it from the beginning?

MS. BACON: Because there could be. I can't restrict it. So there's -- we all have good intentions.

MR. KARDON: But he told you, you know.

MS. BACON: And that was today that he told me that. It wasn't prior.

MR. KARDON: Right. Right. And he was supposed to be here tonight. The only thing I don't know is the hours they work. If they're 24/7 like everybody else or not.

MS. LOE: Mr. Zenner, would Mr. Kardon need to request tabling this at this point -- or we would. Okay. So, Mr. Kardon, based on the fact that this does seem to be more -- okay -- more complicated. There's more than just the use, there's also the hours. Are you amenable to tabling this for two weeks?

MR. KARDON: Yeah. And I can bring a contract signed by that time probably, pending on that, with the hours of operation.

MS. LOE: All right. So we're going --

MR. KARDON: That way, we're clear from the beginning to the end.

MS. LOE: -- make a motion to table your case for two weeks. What's the date on that?

MR. ZENNER: It will be January 23rd.

MS. LOE: All right. Ms. Russell?

MS. RUSSELL: Is the public hearing closed?

MS. LOE: Oh. This is a good point. Mr. Kardon – are there any more questions for this speaker? I see none. Thank you, Mr. Kardon.

MR. KARDON: My name is Thomas Kardon. I live on 1206 Coats Street. I started this building years ago. I've been zoning this building 18 times. This is the 18th time. So it was a lot of difference then to build a building. And everybody talk about alcohol or tobacco and stuff like that. The shop I work on it, it's the Tom's Import, 1206 Coats Street, across the street from Auto Zone. Front of me, I've three bars, and I have problems for 40 years with those guys. I have to clean the garbage, I have to clean the bottles, I have to do all the stuff for them. Even if this building allowed for alcohol and tobacco, I say no. Empty, vacant, but no -- no bars or alcohol or anything. But across the street from the school, you're not allowed to sell the stuff. And this -- this guy at the real estate told me they don't sell alcohol. And I asked him last time what time they're going to open, he says normal hours like you do, 8:00 to 6:00. That's what he said. I said how long they're going to open? He said how long do you open? Just normal hours, that's what he told me. And he was supposed to be here. And the M-N, I put them in there, I didn't put them on to change things. I'm getting close to retire, okay, and I don't want to come anytime somebody come and rent the building again, I have to be here. So the building they talk about, if somebody sell it, this building will never be for sale. After I die and my wife die, for 50 years, they're not allowed to sell the building because the building has got a history. I talk to my daughter quite a few times. She's a teacher. I said write a book about this building and the zoning. She said what do you want me to put? I said put something else, not zoned by the Greek, but come the Greek, because those columns I put under there, those are special columns we ordered for Texas. We didn't get them from Greece. These are Corinthian columns, and the original building when I tried to build it didn't look like this. They put me to put the L. I didn't like it, I didn't want it. The first plan shows ten columns in the front, four on each side, and it looked nice, and everybody is going to come and say this building, some Greek built it. It cost more, but it's -- it was nice plans to do. The way it is now, I didn't like it, but it looks good. The building itself is 14 feet high. Nobody want that area, the Providence area, it's going to be some day M-N. I want them to put M-N. I don't want to come back here again. Just -- I'm getting tired to -- to go, so that's the only reasons. So the Providence area there, I see so many open lots. I don't like that. When people going to the games, they go through that street. What they want to see, junky houses hanging, falling apart or a nice building? Nobody is going to build it like we built it, nobody. If I would have had the zoning, that building would be a lot of difference today. They're more expensive, yes. And we talk about property tax. I was paying \$72 tax for ten years. After I put the building, the City gets \$9,114, and I never complain. The City needs the money, we need police protection, we need the tax. I never complain. But the thing is I got five more years to pay off the building. I have two choices. Work five more years, which no doubt I have to, sometimes, or to pay the bank. If you pay the bank, and you pay the City, three month's rent, the city gets it. The rest of them, the bank gets them. I have to pay for the insurance, so I have to work to support the building. So I cannot afford to have the building open. It's not going to change anything if this guy sells stuff like this. It's going to be -- it's not going to be today. It's going to be 20 years from now, no

later than, it's going to be like that. It's not going to change anything if somebody sells -- this guy will be there for ten years. And nobody have any problems with those guys. I take care of the land. I like the flowers, I like all the trees, all the stuff, but the City five years ago, they called me, they say, Tom, both corners from the alley, we've got access to the alley and to the Third Avenue, they make me cut those trees. So why? Because they blinded you. And I cut a lot of trees. If you see those trees now, I just cut them a year ago. And I try a little of the time, they're coming back, they say, Tom, you're going to cut these trees, and you're going -- I cut a lot of them. I cut them too short, but a year later, it goes back up again. So I take care of the building. And I love this building. I take care of it. Every side, I go water the flowers, the roses, all the stuff in there. I not let the thing fall apart. You know, some people say, oh, you're going to rezone, you can sell it. It's not going to be for sale. Now, I heard here somebody is buy or sell it. No. My grandkids are going to sell it.

MS. LOE: Well, I think --

MR. KARDON: But these boys -- my boys -- I got two boys and a daughter, they're not going to have -- who knows how long I'm going to live. See, the Greek lives long time. Average Greek lives 78 years. Some of my aunts live 98 years. So I can work. I don't have no problem to pay, but we didn't ask too much. We just ask to put somebody in there and help me with the payments. That's it.

MS. LOE: And I think we're working on some options that will compromise -- it may be a bit of a compromise, but hopefully we'll help you get someone in that building. So it sounds like your son was amenable to the two-week extension --

MR. KARDON: Yeah. That would be fine.

MS. LOE: -- to -- all right.

MR. KARDON: Yeah. That's fine.

MS. LOE: So we're going to vote on that, if there aren't any more speakers. Are there any questions for this speaker? I see none at this time. Thank you for coming up.

MR. KARDON: Thank you.

MS. LOE: Are there any more speakers on this case? Seeing none, we're going to close the public hearing.

#### **PUBLIC HEARING CLOSED**

MS. LOE: Commissioner discussion? Ms. Russell?

MS. RUSSELL: Well, I'm going to make a motion, but I would also like to request that staff reach out to the owners so that they completely understand the options and what we're recommending. In that case with regards to Case 28-2020, I move to table to the January 23rd Commission meeting.

MR. STANTON: Second.

MS. LOE: Second by Mr. Stanton. We have a motion on the floor. Any discussion on that motion? Seeing none -- oh. Mr. Toohey?

MR. TOOHEY: So I will say this. I mean, I look at this project or I look at this request, and to me it makes perfect sense for M-N. I mean, part of the zoning code was so that we would eliminate some of

these planned developments and the owner of a property had a better idea of what they could and couldn't do with the property so they wouldn't have to keep coming back here making these types of requests. When you look M-N, other than that ten-foot setback, I mean, that's exactly what M-N is. And so if this was even built to M-N stipulations, the neighbors would hate this even worse because it would have to have that ten-foot setback, which means the front of the building would actually have to be on Providence, and so you would have more traffic in the neighborhood. So I actually think this is actually really appropriate for M-N, so I will support the tabling, but I really think this is a slam-dunk, no-brainer to be M-N.

MS. LOE: Any additional comments. Ms. Carroll?

MS. CARROLL: If we gave them M-N, later somebody could build it. If they wanted to develop this later, the next property that was here would have that ten-foot setback and the traffic that the neighbors would dislike even more though. And that's part of the consideration.

MS. LOE: Any additional comments? Seeing none. Ms. Burns?

MS. BURNS: Yes.

**Roll Call Vote (Voting "yes" is to recommend approval.) Voting Yes: Ms. Rushing, Ms. Russell, Mr. Toohey, Ms. Burns, Ms. Carroll, Ms. Loe, Mr. Stanton, Mr. Strodman. Motion carries 8-0.**

MS. BURNS: Eight to zero, motion carries.

MS. LOE: Recommendation for tabling will be completed. You will see us again in two weeks. Thank you for that discussion.