



Columbia Planning & Zoning Commission Meeting Recap

Council Chambers, Columbia City Hall
7:00 PM Thursday, February 21, 2019

CALL TO ORDER (Members present: Loe, Rushing, Toohey, Burns, Harder, MacMann, Stanton, Strodman, Russell.)
(Members absent: None.)

APPROVAL OF AGENDA (Agenda approved as submitted.)

APPROVAL OF MINUTES ([February 7, 2019](#) meeting minutes approved as submitted.)

PUBLIC HEARINGS

Case # 51-2019

A request by Engineering Surveys and Services (agent) on behalf of Jeffrey E Smith Investment Co Inc. (owners) for approval to rezone 15.68 acres of property from PD (Planned Development) zoning to 9.91 acres of M-N (Mixed Use-Neighborhood) and 5.77 acres of M-C (Mixed Use-Corridor) zoning. The subject site is generally located at the southeast corner of Nifong Boulevard and Bethel Street.

(Action:

(Commissioner Russell asked to abstain from participation on Case #51-2019)

The staff indicated that there were two pieces of correspondence that had been received by the commission. The first was a request by the applicant to amend their request. The second was from the Bedford Walk HOA. Staff also explained that the original report may not match up with the amended request, and that the new request by the applicant meets with their general approval.

The applicant is seeking to rezone the approximately 15.68-acre C-P (Planned Commercial) portion of the originally approved Gentry Estates PUD-17 and C-P development. The C-P portion of the development has never obtained a development plan approval; however, the PUD-17 portion has been fully improved with the Gentry Estates PUD which consists of two, 3-story multi-family residential buildings.

To the east of the site is a PD zoned property owned by the City that includes a development plan for an electric substation, as well as M-N zoned property. To the north is additional PD zoned property that is currently improved with a bank, a medical office (under construction), and multi-family dwellings. On the west side of Bethel is a PD-zoned residential development that includes multi-family dwellings.

Columbia Public Schools owns the property to the south which houses the campuses of Gentry Middle School and Rock Bridge High School. A map was displayed and the history of the site was described.

The original approving ordinance included a statement of intent that included certain use restrictions for the site. Outside of use restrictions, the SOI did not include any other requirements such as additional buffering or design guidelines. The request under consideration is to rezone the Lots 1-3 to a standard (non-planned) zoning designation.

The Comprehensive Plan identified the subject site as lying within the land use category of a Commercial District which is reflective of the site's currently entitled land uses. Area A is similar in nature to the current M-N zoning designation. There are restrictions within area A and B that prohibit drive-throughs for restaurants but allows them for retail. In area A these retail drive throughs are further restricted so that they must be located away from the Bethel side of buildings. In M-N, drive-throughs require a conditional use, but restaurant drive-throughs are not specifically prohibited. Large retail (which likely would include lumber yards) and adult uses would also still be prohibited in MN. But vehicle service/gas stations and car washes would be conditional uses. And some uses currently prohibited would become permitted, such as payday loan establishments and all residential uses.

Area B is similar to Area A, but it removes the Bethel drive-through restriction. It is also somewhat comparable to M-N, with some caveats. Overall, rezoning M-N on area A & B would not have a substantially negative impact on the surrounding properties, and would be appropriate for the location. The PD zoning does not include a substantial amount of additional restrictions that would be lost in the change. Many of the more intense uses would be subject to conditional use approval, which would allow additional development conditions on a case by case basis. Staff believed that the overall site was suitable for M-N and was roughly correspondent with the old plan (except for payday loan stores, general residential and the fact that there was not a definition for a convenience store although gas stations would be conditional.) It is hard to make a one-to-one comparison, but some of the excluded uses would not become conditional uses and would require additional hearings so there is a level of control. This could mitigate concerns.

Staff noted that prior to this hearing, the applicants indicated that in light of the staff's initial recommendation, they would amend the request. Initially, the applicants asked that one area of the site be granted M-C zoning, but staff did not support that piece of the request. The applicant is now willing to accept M-N zoning on the entire tract, which is a lesser designation in terms of permitted uses. M-N also requires conditional use approval for many uses restricted under the old PD plan. Given its analysis, staff supports the amended M-N request. A change in the numbering of the case was also noted.

No commissioners indicated any ex parte discussion of this case.

The public comment period was opened.

The first speaker was an engineer who appeared on behalf of the applicant and apologized for the late decision to amend the request. The speaker indicated that he believed the staff report was accurate and that the M-N designations would protect against a gas station on the property. Also, alcoholic beverages are controlled and that the new code has more protections relating to alcoholic sales than the old code that simply stated a defined use. The new code actually provides many more protections built in.

The next speaker indicated that the commission had received a letter from the Bedford Walk Homeowners Association, and since the speaker was mentioned in the letter he would like to take time to explain. He stated that he had met with the HOA and that the meeting was very pleasant. He noted that years ago, when this property was rezoned as a Planned District, the mood was more adversarial, but since that time the relationship has been much more positive.

The speaker read a portion of the letter that indicated it had been specifically asked during the HOA meeting if the new zoning would remove any of the restrictions in the original plan that had been negotiated. The letter further characterized the speaker's response at the time as saying that NONE of the restrictions would be changed. The speaker challenged that characterization and stated that what he actually said in response to that question was that ALL of the old restrictions would be removed by this action, and that they would be replaced by the provisions in the new zoning code pertaining to M-N and M-C uses. During the meeting, it seemed that the neighbors were most interested in the M-N areas and they had the same map for inspection that the commission has tonight. He noted that when the original plan was adopted, the highest areas of concern were on Development Areas A and C. The staff report slide showed that there was no development plan adopted for the entire site, but that the associated Statement of Intent DID address limitations for areas A through C.

One of the restrictions that was specifically discussed that day concerned the existence of drive throughs on the property at the corner of Bethel and Nifong and how speakers in those drive throughs would be oriented away from the neighborhood. The speaker explained that the old restriction would no longer be enforced, but that the new code replaced that with new rules relating to the positioning of drive throughs on a property and also made them a conditional use in M-N zoning which would give the neighborhood protections.

The same was true with development area C. On that lot along Nifong, the neighborhood had objected to having a convenience store in that area. Although the prohibition would go away, under the replacement M-N zoning, it was explained that there would still be protection since, depending upon what was ultimately put in the location, it would require a zoning change or at least a conditional use hearing where the neighbors could object. The speaker admitted that during the meeting they had not gone through the entire list of permitted uses in the new code or restricted uses in the old Planned district and that a payday loan store was not mentioned that day and that, yes, under the new code, that could be allowed. Another use that had been prohibited was residential uses. That WAS discussed during the meeting since one person asked if student housing could be built in this area. The speaker indicated that it was possible, but that the developer of this property does not do student housing, that he focuses more on senior housing, and that was corroborated by other people in the meeting.

Overall, the speaker indicated that he characterized this whole request as a "sideways" move. That all of the old restrictions would go away, but that all of the protections in the new code for M-N zoning would be enforced and that the neighborhood could rely on those rules. He noted that it is difficult. We are dealing with a new code and it is a difficult document to understand by people who don't deal with it every day, or every two weeks like the commission, or frequently like the speaker does. So, what happens during the meetings with the neighbors now is that the applicants don't just have to explain their proposed projects – they have to try to explain the new code, too. And because it is complicated, there are lots of opportunities for people to not understand what the other side is saying. In this particular instance, the speaker indicated he thought he had been pretty clear. The meeting lasted about an hour and a lot of specifics were addressed, particularly those things that seemed to be of most concern to the neighbors. The speaker said he did leave out some things in the whole permitted use

table since the old and new plans don't match up one-to-one and some things are covered in different ways than other things. He did explain that if something had a conditional use, it would require additional hearings and that that provides them with new protections. We did not talk much during the meeting about the parcel where we had originally asked for M-C zoning, and since that time we have changed our request to M-N for that ground anyway. If you look at the staff report, most of the things that staff objected to were M-C uses, and with our amended request, all of those problems basically go away.

Loe asked the speaker if the neighbors were mostly concerned with the M-N zoning? The speaker indicated that they were concerned about uses that would be allowed in the M-N area, but that the report highlighted problems related to M-C uses, not M-N uses. The speaker offered to answer any additional questions since he believed that this situation did not look very good.

Staff also indicated that the site is subject to a development agreement that requires infrastructure upgrades to be completed, most notably a new roadway, Aurora Drive and Nova Way, that will intersect Nifong and which will include a new traffic light; stormwater; and traffic mitigation – all of which were concerns of area residents during the original hearings. Because the existing development agreement references the planned development zoning on this site, a new development agreement must be approved if the rezoning request is approved. The property owner and the City are currently working on a revised Development Agreement that would remove references to the planned development zoning, and thus would allow the requested rezoning to proceed. Due to their interdependence, both requests will be considered by Council concurrently, so this request cannot be placed on a future Council agenda until a revised development agreement has been agreed upon. The new agreement will address changes during the intervening time and establish a new timeline for completion of various aspects of the agreement.

Burns asked about readvertising this rezoning request since the applicants had requested a late change. Staff indicated that if they had requested more intensive zoning, that would have occurred, but since they were reducing the request, that would not be required. Staff did acknowledge that the proposal had changed and also noted that public input is not solely limited to this meeting and that other opportunities still exist for discussion and testimony on this issue. If the commission directs that this item be placed under Old Business at a future council meeting, that automatically guarantees that a hearing will be held. Staff also noted that although a development agreement had been mentioned, that agreement is not a part of this action tonight and should not be referenced in any action to approve or disapprove this request tonight. You can go ahead and vote on this item tonight, even though the development agreement is still in the works.

The next speaker was a member of the Bedford Walk neighborhood. He asked if there were any meeting minutes that could be referenced to determine who really said what at the meeting since that seems to be in dispute. Loe indicated that there may have been multiple meetings. The speaker said that it seems that the neighborhood is saying that they believed the old protections were going to stay in place. The applicant is saying that they were clear that the old plan would be invalidated and that the new code restrictions would now apply, and he wants to know what was actually discussed.

The first public speaker returned to the stand and indicated that there were multiple meetings. The first was held with the HOA board, and the applicant did not record that meeting, and he does not know of the existence of any minutes from that meeting. The second meeting was a Public Information Meeting, hosted by the city in the lobby of City Hall, and staff did attend that meeting. Only one person from the

public showed up at that meeting. She was the daughter of one of the residents at Gentry Estates and the only question that was asked was what would it look like from her mom's room. We could not answer that question specifically because we don't know exactly what will be built there. The speaker indicated that there must have been a third meeting of the HOA that the applicant was not invited to attend because the letter that was submitted indicated that the board had reviewed the staff report and decided to withdraw their support, so some sort of meeting must have occurred.

MacMann stated that any such meetings between the applicant and the neighbors are private interactions and that minutes or notes from those types of meetings are not routinely shared with the city since they are not city sponsored.

The next speaker indicated that he is a representative of the Bedford Walk HOA. He stated that he specifically asked the applicant if there was anything that changes between the old plan and the new request. He said that the applicant said there is nothing that is going to change as far as he knows. We accepted that explanation and made a motion to approve of the applicant's request. Subsequently, one of our members read the city staff report. She had been involved in the original discussions about the neighborhood. She believed that the new plan would result in substantial changes, so the HOA distributed it by email, and we voted by email that we should withdraw our support until this could be cleared up.

Loe asked if there were any minutes from the original meeting. The speaker indicated that there were no formal minutes. Loe asked if they were concerned about the M-N rules and not the M-C uses? The speaker said their concerns were about the agreements that were written into the original Planned documents and were concerned about how those would be enforced under the new set of rules. We don't know exactly how the M-N and M-C works when it matches up with the existing PD. We were told that there would be no substantive changes and that's why we initially agreed to support the request. Now, we are not sure.

Stanton asked if he supported the M-N zoning? The speaker said he thinks that's probably a good thing, but until they know how it all matches up one-to-one, it's hard to say exactly. Rushing asked what current restrictions the neighborhood is concerned about losing? The speaker indicated that he doesn't recall all of the issues and he is representing more people than just himself, but generally it has to do with the types of businesses that would be allowed in this area such as adult establishments, gas stations, businesses that the board a long time ago felt were advisable restrictions. That occurred before I was on the board. My understanding is that the M-N is more consistent with the old plan, but I don't really know the details. More consistent is good from our perspective, but we don't know where the inconsistencies are.

Toohy asked about the possibility of tabling the item. Staff indicated that that was an option if the speaker wanted to visit about this. The speaker did not know if his board would support tabling. He indicated to Loe that there are 7 members on the board of the HOA. MacMann thought that 2 to 4 weeks would be an appropriate period of time for tabling.

The public comment period was closed. MacMann noted that there was still time needed to hammer out a development agreement so he thought during that time the neighbors could get more information. He also noted that it was difficult for him to know how an agreement that was appropriate back in 2011 matches up with M-N now. Stanton noted that the HOA didn't really know what it wanted. There is a list of uses clearly stated. Some of the things that the neighbors fear may be restricted as

conditional uses under the new code, and that would provide an opportunity for the HOA to specifically object. I am leaning against tabling. I think the HOA is protected under the new code. Staff pointed out that under the new rules tabling can be considered since new information has been presented. However, you should not reference a development agreement that has not yet been written as the basis for your decision. I'm not quite sure how we got to this point since we haven't had any correspondence from the neighbors about this until now. Burns thought tabling was reasonable. If the homeowners want to withdraw their support, that's OK, but I am not using the letter as the basis for my support.

Stanton asked staff if they suggested the replacement request for all M-N. Staff said that was correct and they thought M-N more closely resembled the original PD. Stanton asked if the things that were most controversial would all come forward as conditional uses? Staff said payday loans would not be restricted, but that most of the other items were either restricted or subject to a conditional use permit. The new rules are tailored to the environment, so sometimes the rules are different depending upon what they are next to. Other parts of the code simply add more restrictions, but do not require conditional use. Staff was confident that the new request was consistent with the old agreement. Loe asked about adult stores and gas stations. Staff said that adult uses are prohibited and car washes, other drive throughs and bars are conditional.

MacMann made a motion to table.

The motion to table failed on a vote of 5 to 3.

MacMann then made a motion for approval of the request, as amended to include only M-N zoning. That motion passed by a vote of 7 to 1 with MacMann voting no.

The commission then voted to place this piece of business on the OLD Business section of the council agenda when it goes forward. The vote was unanimous.

Staff then explained that by placing this on the Old Business section of the council agenda will give them time to get additional information and will insure that a hearing is held.)

(DISCLOSURE NOTE TO READERS: One member of the CityWatch team was directly involved in this case and is referenced as a "Speaker" in this report. That same individual was involved in the preparation of this report. Any characterizations made in this report should be considered with that information in mind.)

PUBLIC COMMENTS

One speaker indicated that he wished that the commission had tabled the previous item. Maybe M-N zoning is better, but now we have missed an opportunity for further discussion. We are volunteers. This could have been a win-win if we had given this a little more time. One or two weeks could have helped get people on the same page. Stanton mentioned that he was appreciative of the involvement and that they still have the opportunity to go to a hearing and maybe they can work this out. The speaker said all the changes and exchange of letters just happened today and he wished there would have been more time. Loe explained that because it was less restrictive, that was not required.

STAFF COMMENTS

Staff explained that at the next commission meeting the following items would be considered:
Sawgrass Estates zoning and plat approval

Special item: Short-Term Rental discussion (An updated draft of the ordinance will be distributed in advance along with public input. This will be a public input session only and there will be no final vote.)

At the worksession on March 7, the commission will discuss medical marijuana. There are some specific dates in the new medical marijuana law that was passed by voters, but local governments have some control about where dispensaries can be located and we will need to add those to the code. We need to figure out what zoning classifications those kinds of stores will be allowed in so people can begin to apply for licenses, which will happen this summer. This may need to move pretty fast, but we will need to accommodate a lot of public input. Commissioners have been given a list of topics that they can begin to think about, including growing, retail sales, and testing facilities.

COMMISSION COMMENTS

MacMann said that they may be making decisions without complete information on the medical marijuana topic since the state has not yet formulated its final rules in this regard. Loe said that sounds familiar.

NEXT MEETING DATE - March 7, 2019 @ 7 pm

ADJOURNMENT

(Time: 8:15 PM)

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